

Swaraj Constitution.

1. Nehru Committee's Report

**ALL PARTIES
CONFERENCE**

1928

REPORT OF COMMITTEE

All Parties Conference 1928

Report
of the Committee appointed by the Conference
to determine the principles of the
Constitution for India

PUBLISHED BY THE GENERAL SECRETARY, ALL INDIA
CONGRESS COMMITTEE, ALLAHABAD

CONTENTS

	PAGE
Letter to President	
Introductory	I
THE REPORT	15
I The Committee	17
II The Communal Aspect	27
III The Communal Aspect (<i>cont.</i>) Reservation of Seats	34
IV Re-distribution of Provinces	61
V Indian States	70
VI The Proposals	89
VII The Recommendations	100
VIII Note on the Informal Conference and after	125
IX Schedule I, Central Subjects	127
X Schedule II, Provincial Subjects	130
THE APPENDIXES	
Appendix A: Punjab Population Figures	i
Appendix B: Bengal Population Figures	xii
Appendix C: Bengal District Board Figures	xviii

To

DR. M. A. ANSARI

PRESIDENT, ALL PARTIES CONFERENCE

DEAR MR. PRESIDENT,

I have the honour to present to you the report of the Committee appointed by the All Parties Conference in Bombay on May 19th, 1928 to consider and determine the principles of the Constitution for India. I regret the delay in presenting this report. You have already been informed of the reasons for this delay and you were good enough to extend the time for the presentation of this report.

Yours Sincerely

MOTILAL NEHRU

Chairman

ALLAHABAD

August 10th, 1928

INTRODUCTORY

In submitting this report to the All Parties Conference which appointed this Committee, we consider it necessary at the very outset to draw attention to the fact that our instructions were to frame a constitution providing for the establishment of full responsible government. The reasons which have led us to interpret these instructions as a direction to follow the model of self-governing dominions are explained in Chapter I. It will be observed that in the body of the report we have made no distinction between "responsible government" and the "dominion form of government" and have throughout presumed that they mean one and the same thing. Our terms of reference do not call upon us to make out a case for responsible government for the obvious reason that so far as the conference was concerned there was no necessity for doing so. There certainly are those among the parties represented in the Conference who put their case on the higher plane of complete independence but we are not aware of any who would be satisfied with anything lower than full dominion status. On the assumption that India is to have the status of a member of the British Commonwealth of Nations there is scarcely any difference of opinion between one section or another of political India. It may be safely premised that the greatest common factor of agreement among the well recognised political parties in India is that the status and position of India should in no case be lower than that of the self-governing dominions such as Canada, Australia, South Africa or the Irish Free State. In one word the attainment of dominion status is not viewed as a remote stage of our evolution but as the next immediate step. That being so it would in ordinary circumstances be unnecessary for us to justify the basis of our recommendations.

But certain false issues have recently been raised in official circles with a view to defeat or delay the establishment of any form of responsible government in India. It is quite

Terms of reference

False Issues

likely that the arguments of these critics will be repeated in different forms from different quarters. We have therefore considered it desirable to dispel the clouds that have gathered round the main issue in this introduction to our report. These arguments may be summarised as follows :—

1. That responsible government does not necessarily mean dominion status and may fall short of it.

2. That Parliament does not stand pledged to dominion status.

3. That the problem of minorities and the absence of the necessary social conditions are obstacles in the working of a system of full responsible government.

4. That we are incapable of defending ourselves.

5. That the problem of Indian States has not been solved.

6. That there is a feeling of uneasiness prevailing in European commercial circles and the services.

'Dominion status' is a well understood phrase in constitutional law and though the task of defining it with precision may be difficult, yet every one acquainted with the history and growth of the political institutions prevailing in the dominions, understands what is meant by it. At the Imperial Conference of 1926 the position of the group of self-governing communities composed of Great Britain and the dominions was defined as follows : 'They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations' (Keith, Responsible Government, Volume II, page 1224). The learned author from whom we have quoted says that 'the definition may be admired for its intention rather than for its accuracy as a description of fact as opposed to ideal'. We are content to look to its intention, and we feel that such difficulties as may arise in the actual working of a constitution, the basis of which is dominion status, in relation to the other members of the British Commonwealth of Nations may well be left to be solved in the case of the 'Dominion of

India' as in that of any other 'dominion', by those wholesome moral and political influences which regulate and must regulate the relations of a composite commonwealth of nations.

The common characteristic of the constitutions of all the dominions is that they all have the responsible form of government everywhere, in other words a form of government in which the executive is responsible to the popularly elected legislature. That is how the 'autonomy' and the political power of each dominion has found expression, and we are not aware of the phrase 'responsible government' having received any other interpretation anywhere, nor, excepting where the form of government is professedly autocratic, do we find that the legislature has been assigned a position of subordination, or that fetters or restrictions have been imposed upon its powers.

Our critics, however, urge that the pronouncement of August, 1917 spoke of 'gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India,' and that, that is the phrase used in the preamble to the Government of India Act. Now in the first place it is scarcely necessary to point out that those of us who are members of the Indian National Congress never acquiesced in the said phraseology, and in the second those of us who accepted the preamble cannot believe that in 1917-1919 Parliament or British statesmen deliberately spoke with mental reservation, and chose language which might be used to repel the claim of India to dominion status. In his speech delivered in the Legislative Assembly on February 8, 1924, Sir Malcolm Hailey the then home member of the government, observed, 'If you analyse the term 'full dominion self-government' you will see that it is of somewhat wider extent, conveying that not only will the executive be responsible to the legislature, but the legislature will in itself have the full powers which are typical of the modern dominion. I say there is some difference of substance because responsible government is not necessarily incompatible with a legislature with limited or restricted powers. It may be that full dominion self-government is the logical outcome of responsible

government; nay it may be the inevitable and historical development of responsible government, but it is a further and a final step'. This speech may be taken to be the beginning of a new current of thought in official circles in India and we find that it has ever since been re-echoed in the speeches of some British statesmen and the writings of publicists in the British press, or the books that have been brought out by retired English members of the bureaucracy in India. Sir Malcolm Hailey's arguments and the implications of his arguments were at once repudiated by the members of the Legislative Assembly and by Indian public opinion outside the Assembly.

Now we desire to point out that the distinction drawn between 'dominion status' and 'responsible government' is a distinction which was never sought to be made in 1917, or 1919, nor was India invited to accept the declaration of August 20, 1917, in the sense that what his majesty's government intended to promise to India was something less than the dominion status, viz., a responsible government comprising a 'legislature with limited or restricted powers'. To hold that this is what British statesmen really meant would be to attribute to them a deliberate equivocation which if true, must tend to shatter the faith of even those Indian political parties in the plighted word of British Parliament, which have hitherto acted upon the assumption that dominion status was India's allotted goal. Sir Malcolm Hailey knew well enough that in the instrument of instructions, issued by the King to the Governor-General, 'reference is made' "to the end that British India may attain its due place among our dominions" and he referred to it assuming, but not proving, that it would reinforce his argument. We think that the quotation we have made from the instrument of instructions so far from supporting the view he was urging, supports our view that neither Parliament nor any British statesmen made the subtle distinction between 'responsible government' and 'dominion status' in 1917 or 1919 which it was left to Sir Malcolm Hailey to make in 1924. It is entirely out of question that India can agree to have responsible government in the sense in which Sir Malcolm

Hailey used that expression, that is to say, a system of government in which the powers of the legislature are limited or restricted.

We should have thought that statesmanship required that the promise of responsible government would be interpreted in a broad minded spirit and that there would be no room for an interpretation which, if true, cannot but react on the honour of those who made it, and is bound to be repudiated in India. If the atmosphere in which the declaration was made by Parliament, and the demand in response to which it was made, are borne in mind, if, further, it is borne in mind that India was just like the dominions a signatory to the peace treaties, and is and has been an original member of the League of Nations, there should be no room for doubt that England is pledged to India that her place in the British Commonwealth of Nations is to be exactly the same as that of any other self-governing 'dominion'. The claim of India cannot in our opinion be disposed of by such distinctions as were made in 1924 by the home member of the Government of India. If Sir Malcolm Hailey is right in saying that in a system of responsible government, the legislature may be one with limited or restricted powers, then full dominion self-government cannot for obvious reasons be the logical outcome of responsible government, it can only come as 'a further and a final step' when restrictions or limitations placed on the power of the legislature have been removed. This is merely trifling with India and perpetuating that sense of struggle which, until it is over, must on the one hand be an ever widening source of friction between England and India, and on the other prevent the application of our energies to the practical task of self-government and social and economic reconstruction. As against Sir Malcolm Hailey's interpretation, we refer to the royal proclamation of December 23, 1919, in which his majesty spoke of the Act of 1919 as pointing the way to "*full responsible government hereafter*" and "*the right of her (India's) people to direct her affairs and safeguard her interests*". Professor Keith speaking of the elections to Indian legislative bodies at the end of 1920 said "they....herald the time when India will possess full autonomy and will rank as an

equal with the dominions and the United Kingdom itself as a member of the British Commonwealth". Our interpretation is no other than this, and we cannot acquiesce in an interpretation, put by a member of the Government of India which virtually negatives the solemn declaration of Parliament.

We have therefore made our recommendations on the basis (1) that we are agreed that nothing short of dominion status will satisfy India and (2) that the form of government to be established in India will be the same and not lower than that of the other self-governing dominions.

We are aware of the various objections that have been taken to the suitability of that form of Government to India. For instance it has been said that the ballot-box is not suited to the genius of India and that India may have self-government without necessarily having responsible government. Indeed our critics go to the length of maintaining that parliamentary institutions have failed in Europe in practically every country other than England. It is somewhat remarkable that notwithstanding this sort of criticism, every country in Europe, which has turned its back on autocracy, has adopted some form or other of parliamentary institutions. Italy or Russia, which represent extreme types of political experiment, can scarcely be held out to us by our critics as examples to follow. Not only is this true of Europe, but even oriental nations like Japan, Turkey and Persia have adopted constitutions of a parliamentary character. But assuming that the ballot-box is not suited to the genius of India, we ask, 'what is the alternative?' Some fanciful theories have been suggested. It has, for instance, been said that India may be parcelled out into compact states upon the model of the indigenous system prevailing in the Indian States. 'The ardent builders of the new Jerusalem', says Sir Walter Lawrence, 'must come down to some safe and sound foundation. Surely it would be better to adopt and improve the indigenous institution of Indian States, than to travesty and emasculate a system which is only tolerable in the vigorous hands of British officials, detached, im-

partial, and, to the Indians, inscrutable as the Sphinx' ("The India That We Served", page 289). What exactly can be the meaning of this sort of confused suggestion, it is difficult to understand. Surely, it is not intended to suggest that the provinces of India, or parts of those provinces, should be handed over to Indian Princes or that a new order of princes is to be created from among the favoured classes in British India. That will be, not evolving a constitution for India, in accordance with the wishes of the people of India and the plighted word of Parliament, but writing an epitaph on British rule in India from which the future historian will draw his own moral. A yet more grotesque suggestion was made a few months ago in a reputed organ of Tory opinion in England that the government should rescue from oblivion some surviving descendant of the great Moghal and install him as King at Delhi. We can scarcely believe this to be serious politics.

Again, the idea of Indo-British partnership has been seriously mooted in England by some retired governors who believe that the entire problem of India will be solved if Indians can agree to a perpetual maintenance of a certain number—not less than fifty per cent., it may well be more—of British officials to man the services of India. We have reasons to believe that in some high quarters the belief is seriously maintained that all that need be done at present is (1) to establish a modified form of government which shall consist of ministers appointed from among the elected members of the legislature and officials appointed by the crown and owning responsibility not to the legislature but to the crown, (2) to establish second chambers in the provinces so as to stimulate the conservative element and thus to provide an equipoise against the hasty, ill-conceived activities of an irresponsible lower house, (3) to leave the structure and composition of the central government absolutely untouched and (4) if possible to make the Legislative Assembly less harmful than it is supposed to be by restricting the legislative activities of the All India politicians who are imagined to be less 'representative' than their more compromising brethren in the provincial councils. Now, all that may pass with a certain class.

Indo-British Partner-
ship

of people, both in England and in India, as a constitutional advance. In our opinion it will be very far removed from the problem of responsible government or dominion status.

The fact is that whatever difficulties may be said to exist in the way of establishing full responsible government in India, that is to say, in giving India the status of a dominion, there is no half-way house between the present hybrid system and genuine responsible government. As we visualise the problem, it is not to our mind, so much a question of the colour of the administrative and governmental machinery, as of the basic principle on which the future government shall be based. If all the members of the Governor-General's executive council were Indians and if all the members of the bureaucracy in the provinces were Indians, it would only mean the substitution of a brown for a white bureaucracy. We use these expressions in no offensive sense. The real problem, to our mind, consists in the transference of political power and responsibility *from the people of England to the people of India.*

How do the people of England discharge their responsibility towards India at present? The average British voter knows little of India and has no time for India. He sends a certain number of representatives to Parliament, who are divided into parties or groups. Most of them are supremely ignorant about India, and they have an abiding faith that the Secretary of State for India, on whom they have by statute conferred certain powers, is there to look after the interests of India. The

Secretary of State for
India

Secretary of State in his turn is generally a politician who has no first hand knowledge of India and who must perforce derive his knowledge of Indian affairs either from the Government of India, or from the members of his permanent staff, or from the members of the India Council. In other words, in actual practice, the sovereignty of Parliament is translated into the rule of the India Office. The first need, therefore, of India is the abolition of the rule of this coterie, which in recent years has been found, in several respects, to be disastrous to the best interests of India and opposed to the freedom

of the Government of India itself. The freedom of the Government of India, however, from the leading strings of the Secretary of State necessarily postulates the transfer of the political power from the British voter to the Indian voter. Never before in the history of India has India been ruled by a distant sovereign body which cannot exercise its powers directly, and which must, therefore, delegate its authority and power to its agents. Unnatural as the system would be in the case of any country, it cannot be endured indefinitely in a country like India, with its varied problems, social and economic, and more particularly when a new consciousness of its capacity, a new self-respect, and a new spirit of patriotism have given her a new motive power. Constitutionally, and as a matter of principle, therefore, we think, that nothing short of full responsible government based on a transference of political power to the people of India can meet the situation.

The practical objections to our demand for dominion self-government, were formulated, by **Indian States** Sir Malcolm Hailey, in the form of certain questions in the speech to which we have already referred. They may be taken as typical of the criticism that is usually made by our critics. 'Is dominion self-government' asks Sir Malcolm Hailey, 'to be confined to British India only, or is it to be extended to the Indian States?' We have attempted to answer this question in a separate chapter to which we invite attention.

The second question which was put by Sir Malcolm Hailey, and which is usually put by **Minority Communities** our critics is as to the position of minority communities. Like Sir Malcolm Hailey, we do not desire to "exaggerate it", and like him we feel that "it has to be faced". We have attempted to face this problem in our report. We have provided for the protection of the rights of the minorities, not only in the declaration of rights, which in the peculiar circumstances of India we consider to be necessary, but we have dealt with the question at length in relation to the problem of the representation of the minorities in the legislatures. We would, however, point out that the problem of minorities is not peculiar to India. The existence of that problem in other countries has had to be

faced in the framing of their constitutions after the war, but has never been treated as an argument or reason for withholding from them self-government in the fullest measure. We would earnestly recommend to the Conference that if, in addition to, or in substitution for, our recommendations, the settlement of the problem of minorities is possible by agreement on any other basis, such basis should be accepted in the larger and more abiding interests of the country.

Another question, which was put by Sir Malcolm Hailey, and which is also usually put by others, is, whether we have satisfied ourselves that "there exist those social and political foundations on which alone such constitutional structure can safely exist". Sir Malcolm has in a way answered this question himself in his speech. "Now I do not wish," said he, "to exaggerate this point. I do not claim that a country must wait for constitutional advance until it has a huge preponderance of educated voters. We did not wait for this in England. Again, I do not wish to deny that the intelligentsia of this country has a great—perhaps a preponderating—influence over the mass of public opinion, certainly an influence out of proportion to its numerical strength. But I do claim that for the moment political advance in India has already outrun social advance". We would like to point out that a national government based on democratic lines could not have more grievously neglected the claims of social advance than has the bureaucratic government, partly because of its foreign character, partly because of its natural reluctance to court unpopularity, and partly because a socially strong India would also be a much stronger political India. We do not deny that there is much need for social advance. Indeed, the need seems to us to be urgent and imperative. We feel, however, that that is an argument for, rather than against, the establishment of responsible government; for we believe that without real political power coming into our hands, a real programme of social reconstruction is out of the question. At the same time we desire to point out that there are a number of agencies in the country, manned, supported and financed by the intelligentsia of this country, which have been for years past, working in

the field of social reform, with appreciable results which are ignored by our foreign critics, who rather lay stress upon the darker side of our life than upon the brighter. We can not believe that a future responsible government can ignore the claims of mass education, or the uplift of the submerged classes, or the social or economic reconstruction of village life in India. At any rate, the record of even the present councils with their limited financial resources and limited power, shows that primary education has in several provinces received far greater attention and support from the members of the council than it used to in what are called the pre-reform days.

We are next confronted with questions relating to European commerce, and are told that "men who have put great sums of money in India and are daily increasing the sphere of their operation, have a right to know if we contemplate an early change of government". Similarly, we are told that "men entering the services, whether civil or military, whether European or Indian, have a right to know if we intend a radical change of government at an early date". As regards European commerce we cannot see why men who have put great sums of money into India should at all be nervous. It is inconceivable that there can be any discriminating legislation against any community doing business lawfully in India. European commerce like Indian commerce, has had to bear in the past, and will have to bear in the future the vicissitude inseparable from commercial undertakings on a large scale, and no government in the west or anywhere else has been able effectively to provide a permanent and stable solution for conflicts between capital and labour. If, however, there are any special interests of European commerce which require special treatment in future, it is only fair that in regard to the protection of those interests, Europeans should formulate their proposals and we have no doubt that they will receive proper consideration from those who are anxious for a peaceful solution of the political problem. As regards the services, we would draw attention to the provisions that we have suggested in our report. In respect of the emoluments, allowances and pensions

European Commerce
and Services

they would be entitled to on the establishment of the Commonwealth we have provided a statutory guarantee. It is however our duty to point out that the Lee Commission was appointed in the teeth of Indian opposition ; that its recommendations were adopted over the head of the Indian legislature ; and we feel that the entire question of the source and method of recruitment of the services, their salaries, emoluments, allowances and pensions in the future, will require re-examination in the light of the new political conditions created under the new constitution. This however, cannot mean, that the permanent services, whether European or Indian, will under a responsible government, occupy a less important or influential or safe position than they do in the self-governing dominions.

The last question to which we would refer is the question of defence. "Full dominion status", said Sir Malcolm Hailey, "means a dominion army under full control of the dominion government, and I have not yet seen any serious thinker who has pretended that India is yet in a position or will, in the immediate future, be in a position to create a dominion army in the proper sense of the word". Professor Keith, writing on the subject, says "that the Indian Army could be officered by the Indians, and brought up to the standard of securing internal order, and even perhaps frontier defence, may be admitted, but the process has been so far extremely slow. It is probably true, that the Indianisation of the Army has not been popular in British Army circles, but there has been a disappointing lack of readiness of the necessary candidates for the commissions available no doubt for the reason that men who desire to secure careers for their sons, find more remunerative opportunities for them in the Indian Civil Service, in which, moreover, an Indian has not to face the prejudice against him which he may find in the British Army. But the fact remains, that self-government without an effective Indian Army is an impossibility and no amount of protests or demonstrations, or denunciations of the Imperial Government can avail to alter that fact".

This is true but we do not accept the constitutional position that without an Indian or dominion army India

cannot attain dominion status. In the first place, the Indian army has not to be created ; it exists there already. In the next place, historically the position taken by our critics, is not correct.

We venture to quote on this subject from the speech of Sir Sivaswamy Iyer in the Legislative Assembly, delivered on February, 18, 1924. Sir Sivaswamy Iyer is a gentleman who has made a special study of the problem of the army in India and we have no hesitation in quoting him. " But with regard to the problem of the army, I have only to observe this, that so far as my reading of colonial history goes, none of the colonies was in a position to assume its defence at the time when a self-governing status was granted to it. For many years, the colonies were not even able to pay for their defence. It was the home government that had to contribute towards the military expenditure of the colonies. We, on the other hand, have from the beginning paid for our army. We have not merely paid for our army, but we have raised our troops. We have raised and maintained our Indian troops and we have also maintained the British troops and paid for them. We have gone further than the colonies have done in the matter of undertaking our defence. No doubt, Sir Malcolm Hailey is right in saying that full dominion self-government implies the capacity to undertake the defence, not merely by paying for it but also by undertaking its officering and administration. But that was not a condition which was insisted upon in the case of any of the colonies. So far as defence against internal disturbances was concerned, that no doubt was a condition which was pointed out to the colonies as essential some years after they were granted their self-governing status. But so far as defence against external aggression was concerned, I am not aware that the duty has been laid upon them even now. As regards naval defence, the obligation has not been laid upon them."

We have recommended in our report the transfer of the control over the Indian army with the necessary guarantees for the pay, emoluments, allowances and pensions of the officers. We believe that the representation of the army in the legislature by a responsible minister,

**Recommendations
about the Army**

who will, in actual administration, no doubt be guided by expert advice, is bound to lead to the establishment of more intimate relations between the army and the legislature, and thus secure a continuous supply of funds for the army. As matters stand at present, the army budget is sacrosanct. Under the statute it is not open to discussion "unless the Governor-General otherwise directs", but in any case it is not subject to the vote of the legislature. The position, at the present moment is that the eight unit scheme is the only serious attempt that has hitherto been made at Indianising the army, and even if it is accelerated it should take at least a century before the army will be really Indianised. The fate of the Skeen Committee's report which condemned the eight unit scheme is well known, and the proposal to increase the number of candidates for Sandhurst is scarcely calculated to lead to the Indianisation of the army within a reasonable distance of time. We do not agree with the view that the supply of candidates for Sandhurst could not have been larger than what it has been. We feel that the method of selection hitherto followed has left much to be desired. But we do not believe that an adequate degree of efficiency in the training of officers cannot be achieved in India, if measures necessary to that end are adopted. It should be the first care of the responsible government of India to make her self-contained in military as in other matters. We have, accordingly, made provision in our report for a statutory obligation on the government to establish military training schools and colleges. As a matter of further precaution, we have provided for the establishment of a Committee of Defence, based more or less on well known models.

THE REPORT

CHAPTER I

THE COMMITTEE

The Committee, whose report we have the honour to present, was appointed by the All Parties Conference at its meeting held in Bombay on May 19th, 1928 in terms of the following resolution :—

“ This meeting resolves that a Committee consisting of Pandit Motilal Nehru as Chairman, Sir Tej Bahadur Sapru, Sir Ali Imam, Syt. Pradhan, Syt. Shuaib Qureshi, Syt Subhas Chandra Bose, Syt Madhaorao Aney, Syt. M. R. Jayakar, Syt. N. M. Joshi and Sardar Mangal Singh be appointed to consider and determine the principles of the Constitution for India before 1st July next ; the Committee to circulate the draft among various organisations in the country. This Committee shall give the fullest consideration to the resolution of the Madras Congress on Communal Unity in conjunction with those passed by the Hindu Mahasabha, the Muslim League, the Sikh League and the other political organisations represented at the All Parties Conference at Delhi and the suggestions that may hereafter be received by it ; the Committee will give due weight to the recommendations made by the various sub-committees of the All Parties Conference at Delhi.

The All Parties Conference will meet again early in August, 1928 to consider the Committee's report”.

Before dealing with the work of this Committee it may be desirable to refer to some of the events leading up to the appointment of the Committee.

Brief History

The Gauhati Session of the National Congress met in December, 1926 in the shadow of a great tragedy* and when differences and conflicts between Hindus and Muslims were at their height. The Congress passed a resolution calling upon “ the Working Committee to take immediate steps in consultation with Hindu and Mussalman leaders to devise

* Swami Shradhdhanand was murdered in his sick bed by a Muslim fanatic.

measures for the removal of the present deplorable differences between Hindus and Mussalmans and submit their report to the All India Congress Committee not later than the 31st March, 1927".

In compliance with these directions the Working Committee and the Congress President for the year held several informal conferences with Hindu and Muslim leaders and members of the central legislature.

On the 20th March, 1927 some prominent Muslim leaders met together in Delhi and put forward certain proposals on the Hindu-Muslim problem for the acceptance of the Hindus and the country. These proposals, which have come to be known as the "Muslim proposals", laid down that Musalmans were prepared to agree to joint electorates in all provinces and in the central legislature provided :

The Muslim Proposals

- (i) Sind was made into a separate province.
- (ii) The N. W. F. Province and Baluchistan were treated on the same footing as the other provinces.
- (iii) In the Punjab and Bengal the proportion of representation was in accordance with the population.
- (iv) In the central legislature Muslim representation was not to be less than one third.

These proposals were communicated to the Congress and the Congress Working Committee the very next day passed a resolution appreciating the decision of the Muslim Conference to accept joint electorates and trusting that a satisfactory settlement would be arrived at on the basis of these proposals. A sub-committee was appointed to confer with Hindu and Muslim leaders.

The Congress Working Committee met again in Bombay from the 15th to the 18th May, 1927 and passed a lengthy resolution on the Hindu-Muslim question. This resolution proceeded on the basis of the Muslim proposals but was more detailed and dealt with some other matters also.

The All India Congress Committee which met in Bombay on the same dates unanimously adopted the same resolution with minor alterations. The principal change suggested on behalf of the Hindu leaders present was that Sind should not be separated on communal grounds but on general grounds applicable to all provinces. A change in the wording of the resolution removed this objection and it was passed unanimously.

This meeting of the All India Congress Committee also passed a resolution calling upon **Swaraj Constitution** "the Working Committee to frame a Swaraj Constitution, based on a declaration of rights, for India in consultation with the elected members of the central and provincial legislatures and other leaders of political parties".

In October, 1927 the A. I. C. C. again passed a resolution on Hindu-Muslim Unity but this dealt with the religious and social aspect of the question.

The Madras Congress considered the Hindu Muslim question in its entirety and passed a lengthy resolution, dealing with both **Madras Congress** political and religious and other rights, on the general lines laid down earlier in the year by the A. I. C. C.

The Congress further passed the following resolution on the Swaraj Constitution :—
Swaraj Constitution

" Having regard to the general desire of all political parties in the country to unite together in settling a Swaraj Constitution, and having considered the various drafts submitted to it and the various suggestions received in reply to the Working Committee's circular, this Congress authorises the Working Committee, which shall have power to co-opt, to confer with similar Committees to be appointed by other organisations—political, labour, commercial and communal—in the country and to draft a Swaraj Constitution for India on the basis of a Declaration of Rights, and to place the same for consideration and approval before a special convention to be convened in Delhi not later than March next, consisting of the All India Congress Committee and the leaders and representatives of the other organisations above-mentioned and the elected members of the central and provincial legislatures".

Immediately after this the annual session of the Liberal Federation held in Bombay passed resolutions "cordially appreciating the earnestness of the distinguished Muslim members who have put forward the scheme for the settlement of outstanding differences between the Hindu and Muslim Communities", and suggesting that "the various items of the proposed settlement should be discussed at an early date by the duly elected representatives of the communities in a spirit of genuine co-operation as will lead to complete agreement".

A few days later the Muslim League met in Calcutta and passed a resolution authorising the Council of the League to appoint a sub-committee "to confer with the Working Committee of the Indian National Congress and such other organisations as the Council may think proper for the purpose of drafting a constitution for India in which the interest of the Muslim community will be safeguarded" in the manner stated in the Delhi proposals of 1927 referred to above.

In compliance with the directions contained in this resolution the Working Committee of the Congress issued invitations to a large number of organisations. Among these we might mention:

Organisations invited

National Liberal Federation
Hindu Maha Sabha
All India Muslim League
Central Khilafat Committee
Central Sikh League
South Indian Liberal Federation
All India Trade Union Congress
General Council of all Burmese Associations
Home Rule League
Republican League
Independent Party in the Assembly
Nationalist Party in the Assembly
Indian States Subjects Association
Indian States Subjects Conference
Indian States Peoples' Conference
Anglo-Indian Association
Indian Association of Calcutta
Parsi Central Association
Zororstaian Association
Parsi Rajkeya Sabha

Parsi Panchayat
All India Conference of Indian Christians
Southern India Chamber of Commerce

Dravida Mahajana Sabha and the Landholders' Associations of Oudh, Agra, Behar, Bengal and Madras.

Subsequently at Bombay invitations were also issued to the Bombay Non-Brahmin Party, the Nationalist Non-Brahmin Party, the Communist Party of Bombay and the Bombay Workers' and Peasants' Party.

Many of these organisations sent representatives to the Conference which held its first meeting on February 12th 1928 at Delhi. The Conference continued its meetings from day to day till the 22nd February.

All Parties Conference-Delhi

The first question discussed by the Conference was the objective to be aimed at in the Constitution. It was proposed that the Constitution should aim at establishing what is called a dominion form of government in India. Objection was taken by some members to this on the ground that the Congress had decided in favour of independence as the goal and no lesser goal should be aimed at. It was evident however that all the parties represented in the Conference were not prepared to go so far. Thereupon it was suggested that a formula might be agreed to which would include both the view points. "Dominion Status" has come to mean something indistinguishable from independence, except for the link with the Crown. The real difference between the two is a difference in the executive. It was possible to lay down general principles governing the entire constitution without deciding at that stage the question of the executive. The proposal to adopt the formula of "full responsible government" was therefore accepted, with the clear understanding that those who believed in independence would have the fullest liberty to carry on propaganda and otherwise work for it. The first resolution of the Conference ran thus :

"The Constitution to be framed providing for the establishment of full responsible government".

The Conference also passed resolutions dealing with the re-distribution of provinces, the electorates and reservation of seats.

On the 22nd February, 1928 the Conference appointed a

First Committee

Committee with instructions to report on the following subjects: whether the constitution should be bi-cameral or uni-cameral; franchise; declaration of rights; rights of labour and peasantry and Indian States. Having appointed the Committee the Conference adjourned. The Committee presented their report within the period fixed for it and the Conference met again at Delhi on March 8th, 1928. Meanwhile the Council of the Muslim League had met and expressed its disapproval of the resolutions of the All Parties Conference. The Council further laid down that its representatives "should press the representatives of various organisations to accept the proposals embodied in the resolution of the League Sessions of 1927 Calcutta and report the final result to the Council for such action as they consider proper before proceeding with the framing of the Constitution".

This resolution of the Muslim League Council placed a difficulty before the Conference. In accordance with its provisions the report of the Committee could not be considered by the representatives of the Muslim League so long as their other proposals had not been accepted in their totality or the League Council was not consulted again for directions.

The Conference met under this handicap. There was considerable discussion on the communal issues and it was found that there was no agreement between the representatives of the Muslim League and the Hindu Maha Sabha on the separation of Sind and on reservation of seats for majorities. The Sikhs were also strongly opposed to the latter claim. Thereupon on March 11th, 1928 the Conference appointed two sub-committees. One of these was to enquire into the financial aspect of the separation of Sind, and the other was to consider the feasibility of the system of proportional representation.

The report of the committee appointed on February 22nd could not be considered owing to the decision of the Muslim League representatives not to take part in the discussion. The Conference ordered the report to be published and circulated, and stood adjourned till the 19th May, 1928.

Early in April the Hindu Maha Sabha met in Con-

ference in Jubbulpore and adopted resolutions of strong disagreement with some of the Muslim proposals.

Thus when the All Parties Conference met again on the 19th May, 1928 in Bombay the situation was not a promising one.

Bombay Meeting
The communal organisations had drifted further apart and each of them had hardened its attitude and was not prepared to change or modify it. The two sub-committees appointed at Delhi on Sind and Proportional Representation had presented no report.

There being no likelihood of an agreed and satisfactory solution at that stage, it was thought that a small committee viewing the communal problem as a whole and in its relation to the constitution might succeed in finding a way out. The resolution quoted at the beginning of this report was thereupon passed.

The present Committee
The Committee had to be a small one if it was to work properly. It was not possible to represent all interests on it, but an endeavour was made to have spokesmen of some important view points. Sir Ali Imam and Mr. Shuaib Qureshi were to express the Muslim point of view; Mr. M. S. Aney and Mr. M. R. Jayakar, the Hindu Maha Sabha's attitude; Mr. G. R. Pradhan the non-Brahmin view; Sardar Mangal Singh represented the Sikh League; Sir Tej Bahadur Sapru the Liberal view point and Mr. N. M. Joshi the interest of labour.

Of the ten members of the Committee elected by the Conference, Mr. M. R. Jayakar expressed his inability to act on it. Mr. N. M. Joshi stated that he could only take part when the rights of labour were being considered. As a matter of fact he was unable to be present at any sitting of the Committee. Owing to ill-health Sir Ali Imam could only attend one sitting at great personal inconvenience and his presence at that sitting was most helpful. He has also been available to us for consultations from time to time. Mr. Pradhan attended the meetings of the Committee up to the 12th June.

Delay in report
The Committee was called upon to report before the 1st July but in spite of every effort to complete the work in time the Committee was unable to adhere to the time table laid down. From June 5th onwards the Committee met al-

most daily for several hours at a time. It held 25 sittings besides informal conferences.

The Committee although a small one consists of members belonging to different political schools and to different communal groups. Under the terms of its appointment it was called upon to give the fullest consideration to a number of resolutions passed by various organisations, some of them being opposed to each other. There were two formidable difficulties in the way of complete or even substantial unanimity. The first arose from the difference in the general outlook of the Congress and that of the other organisations, the former having at its last session adopted a resolution declaring independence as its goal and the latter aiming at dominion status; the second from the widely differing angles of vision from which the various communal organisations viewed their political rights.

The Committee had to face the first difficulty right at the beginning. At Delhi a phrase capable of a double interpretation—**Maximum agreement** “full responsible government”—was used to avoid a decision on the question of dominion status or independence. The Committee felt however that it would be difficult to draw up even the principles of the constitution unless this question was decided at least so far as the draft constitution was concerned. Some members of the Committee desired to adhere to the position taken up at Delhi but a majority was of opinion that a choice had to be made. This choice, in view of the circumstances mentioned above with so many different parties co-operating, could only be one—dominion status. On any higher ground a general agreement was not obtainable. **Independence and Dominion Status** “The majority of the Committee” were therefore “of opinion that the terms of reference to them require the Committee to consider and determine the principles of a constitution for full responsible government on the model of the constitutions of the self-governing dominions”. The principles of the Constitution which we have suggested are therefore meant for a dominion constitution but most of them of course can be applied in their entirety to a constitution of independence. Our deciding, as a Committee,

in favour of such a constitution simply means that the maximum degree of agreement was only obtainable on this basis. It does not mean that any individual Congressman, much less the Congress itself, has given up or toned down the goal of complete independence. Those who believe in this goal retain the fullest right to work for it. But the maximum agreement thus reached will, we trust, serve as a satisfactory basis for a constitution which all parties can unite to work without prejudice to the right of any party or individual to go further ahead.

As to the second difficulty, from the constitutional point of view the communal controversies are of no very great importance. - Communal aspect But, whatever their relative importance might be, they occupy men's minds much more than matters of greater import and cast their shadow over all political work. We thus find ourselves face to face with a number of conflicting resolutions and recommendations all of which are equally entitled to our respect. But when we find that the view of the Madras Congress and the Muslim League is diametrically opposed to that of the Hindu Maha Sabha and the Sikh League, we must respectfully express our inability to accept either in its entirety. Indeed the very fact that we are called upon to determine the principles of the constitution after considering these divergent views shows that we are expected to exercise our own judgment in the matter and make such recommendations as are in our opinion most conducive to the political advancement of the country. We realise that our recommendations however sound and expedient they may be can have weight and effect only to the extent that they are acceptable to all the principal parties concerned. The only hope for an agreed constitution lies in finding the basis for a just and equitable compromise between all the parties after a full and fair consideration of all the circumstances. The Committee has spent a great deal of time and labour in the endeavour to find out such a basis, and has had the benefit of the advice of a number of prominent Hindu and Muslim leaders who, on the invitation of the chairman, attended some meetings of the Committee and rendered most valuable assistance. The result of that endeavour is presented in the following pages in the hope that it will be received by all the

parties concerned in a generous spirit and with the single view of helping each other to lift up the nation from the depths to which it has sunk by mutual distrust and dissension.

Among those who responded to the chairman's invitation were Dr. Ansari, Pandit Madan Mohan Malaviya, Maulana Abul Kalam Azad, Mr. C. Y. Chintamani, Moulvi Shafee Daudi, Dr. S. D. Kitchlew, Mr. Sachchidanand Sinha, Munshi Iswar Saran, Dr. S. Mahmud, Chaudhri Khaliqz Zaman, and Mr. T. A. K. Sherwani. We are beholden to them for their valued help and co-operation. We feel specially grateful to the president of the Congress, Dr. Ansari, who came to us three times and was ever generous with his help whenever we were in difficulties. Our thanks are particularly due to Pandit Jawaharlal Nehru, the general secretary of the Congress, who, but for a brief unavoidable absence, was in constant attendance at the meetings of the Committee. Besides undertaking the arduous task of compiling the figures printed in the appendixes to this report he rendered most valuable assistance at every stage of the Committee's work.

CHAPTER II

THE COMMUNAL ASPECT

The communal problem of India is primarily the Hindu-Muslim problem. Other communities have however latterly taken up an aggressive attitude and have demanded special rights and privileges. The Sikhs in the Punjab are an important and well knit minority which cannot be ignored. Amongst the Hindus themselves there is occasional friction, specially in the south, between non-Brahmans and Brahmans. But essentially the problem is how to adjust the differences between the Hindus and Muslims.

These two communities indeed form 90 per cent. of the total population of India and Burma. The proportions at the 1921 census were :—

Hindus .. .. .	..	..	..	65·9 per cent.	
Muslims.. .. .	..	..	..	24·1	..
Buddhists (chiefly in Burma)	..	..	..	4·6	..
Tribal religions (in hill tracts)	..	..	..	2·8	..
Christians	..	..	..	1·2	..
Sikhs .. .. .	..	..	..	1·0	..
Jains .. .. .	..	..	..	·2	..
Others .. .. .	..	..	..	·2	..
				100·0	..

A study of the figures of previous census reports shows that whilst Hindus and Jains have been gradually decreasing, all the others have increased their numbers from census to census. The increase in the case of Muslims has not been great but it has been continuous. The following percentages since 1881 will show the relative numbers of the Hindus and Muslims at different periods :

	1881	1891	1901	1911	1921	
Hindus	72·0	70·1	68·3	66·9	65·9	= -6·1
Muslims	22·6	22·4	23·2	23·5	24·1	= +1·5

These are the percentages in relation to the whole of India. Taking the Muslims separately we find that they have increased by 3·1 per cent. during the last decade. The Hindus have slightly decreased during this period.

The distribution of the Muslim population is such that except in the frontier provinces in the north-west, and in Bengal and Punjab, they form a small minority everywhere. Their highest minority is in the United Provinces but even here it is less than 15 per cent. This 15 per cent. in the United Provinces is not spread out all over the province, but is largely concentrated in urban areas, specially in the northern part of the province.

In the Punjab, the Muslims are 55·3 per cent. and in Bengal 54·0 per cent. In Sind they are 73·4 per cent. and in Baluchistan and the N.-W. F. provinces they are overwhelmingly strong.

A new comer to India looking at these figures and at the strength of the Muslim community, would probably imagine that it was strong enough to look after itself and required no special protection or spoon feeding. If communal protection was necessary for any group in India it was not for the two major communities—the Hindus and the Muslims. It might have been necessary for the small communities which together form 10% of the total.

But logic or sense have little to do with communal feeling, and to-day the whole problem resolves itself in the removal from the minds of each of a baseless fear of the other and of giving a feeling of security to all communities. In looking for this security each party wants to make for itself or to retain, a dominating position. We note with regret that the spirit animating some of the communal spokesmen, is not one of live and let live. The only methods of giving a feeling of security are safeguards and guarantees and the grant, as far as possible, of cultural autonomy. The clumsy and objectionable methods of separate electorates and reservation of seats do not give this security. They only keep up an armed truce.

The Muslims being in a minority in India as a whole

fear that the majority may harass them, and to meet this difficulty they have made a novel suggestion—that they should at least dominate in some parts of India. We do not here criticise their demand. It may have some justification in the present communal atmosphere but we do feel that it has little to do with the premises we started from, unless indeed the best safeguard that one can have is to occupy a position of domination oneself. The Hindus on the other hand although in a great majority all over India are in a minority in Bengal and the Punjab and in Sind, Baluchistan and the N.-W. F. province. In spite of their all India majority they are afraid of the Muslims in these provinces.

We cannot have one community domineering over another. We may not be able to prevent this entirely but the object we should aim at is not to give dominion to one over another but to prevent the harassment and exploitation of any individual or group by another. If the fullest religious liberty is given, and cultural autonomy provided for, the communal problem is in effect solved, although people may not realise it.

With this view point before us we have provided several articles in the Declaration of
Communal Councils Rights giving the fullest liberty of conscience and religion to each individual. We considered also a proposal to create communal councils to protect the cultural interests of each considerable community. This proposal was that any community being ten lakhs or more in number in any province shall have the right to have a council representing the members of the community for certain purposes which were mentioned. The manner of election of the members of these councils by their respective communities was to be determined by the Provincial Council. Each council was to consist of not more than 25 members. The functions of the communal council were laid down as :

- (1) Supervision of primary education, schools, orphanages, dharamshalas, sarais, widows homes, and rescue homes.
- (2) Encouragement of scripts and languages.

The communal council could recommend that grants be given to institutions or for scholarships, such grants being made either by the provincial or central government after being submitted to the vote of the House.

These were the main provisions in regards to the communal councils. The idea appealed to us as affording some kind of a substitute for other and worse forms of communalism. But some of our colleagues and several friends whom we consulted were strongly opposed to the creation of these councils, both on communal and administrative grounds. They felt that these councils would help to keep communalism alive. We have therefore rejected the proposal.

The communal problem, so far as its political aspect is concerned, resolves itself now into the question of electorates, the reservation of seats, the separation of Sind, and the form of government in the N.-W. F. Province and Baluchistan.

It is admitted by most people now that separate electorates are thoroughly bad and must be done away with. We find however that there has been a tendency amongst the Muslims to consider them as a "valued privilege", although a considerable section are prepared to give them up in consideration for some other things. Everybody knows that separate electorates are bad for the growth of a national spirit, but everybody perhaps does not realise equally well that separate electorates are still worse for a minority community. They make the majority wholly independent of the minority and its votes and usually hostile to it. Under separate electorates therefore the chances are that the minority will always, have to face a hostile majority, which can always, by sheer force of numbers, override the wishes of the minority. This effect of having separate electorates has already become obvious, although the presence of the third party confuses the issues. Separate electorates thus benefit the majority community. Extreme communalists flourish thereunder and the majority community, far from suffering, actually benefits by them. Separate electorates must therefore be discarded completely as a condition precedent to any rational system of representation. We can only have joint or mixed electorates.

We find that the Ceylon Reform Enquiry Committee, who have recently made their report, have recommended the abolition of communal electorates throughout the island.

Regarding the form of government in the N.-W. F. province and in Baluchistan, we are of opinion that the status of these areas must be made the same as that of other provinces. We cannot in justice or in logic deny the right of any part of India to participate in responsible government. The All Parties Conference has already agreed to this and we gather that no considerable group oppose this reasonable demand.

The questions that remain are the separation of Sind from the Bombay presidency and the reservation of seats in the legislatures. These are mixed questions of communal and general importance. We have reserved the question of reservation of seats to be considered both in its communal and general aspects in a subsequent chapter. The communal aspect of the question of the separation of Sind may conveniently be dealt with here and we proceed to consider it.

Sind has, by a strange succession of events, become a major problem in our politics. It is strange that those who were in favour of its separation from Bombay only a few years ago are now opposed to it, and those who were against separation then now vehemently desire it. All India is exercised about this comparatively trivial matter. This sudden and somewhat inexplicable change of opinion demonstrates how communal considerations warp and twist our better judgment. For the last eight years, since the National Congress made Sind into a separate province, no voice was raised in protest. We feel that in the conflict of communal allegations and counter allegations the only safe course is to try to ignore them and consider the problem as dispassionately as possible. But unhappily it has become a part of the sentiment of the people and sentiment cannot be ignored.

It is stated on behalf of the Hindus in Sind and elsewhere that they are strongly opposed to the creation of "communal" provinces. We agree that the Muslim demand for the separation of Sind was not put forward in the happiest way. It was based on communalism and it was tacked on irrelevantly to certain other matters with which it had no concern whatever. We can understand

the Hindu reaction to this. But the manner of putting it forward does not necessarily weaken the merits of a proposal. There is no question of creating a "communal" province. We have merely to recognise facts as they are. A long succession of events in history is responsible for the distribution of the population of India as it is to-day. Sind happens to contain a large majority of Muslims. Whether a new province is created or not Sind must remain a predominantly Muslim area. And if the wishes of this large majority are not acceded to, it would not only be doing violence to the principle of self-determination, but would necessarily result in antagonising that majority population. No Indian desiring a free India, progressing peacefully and harmoniously, can view this result with equanimity. To say from the larger view point of nationalism that no "communal" provinces should be created is, in a way, equivalent to saying from the still wider international view point that there should be no separate nations. Both these statements have a measure of truth in them. But the staunchest internationalist recognises that without the fullest national autonomy it is extraordinarily difficult to create the international state. So also without the fullest cultural autonomy, and communalism in its better aspect is culture, it will be difficult to create a harmonious nation.

We suspect that the real opposition to separation is not due to any high national considerations but to grosser economic considerations ; to the fear of the Hindus that their economic position might suffer if Muslims had the charge of affairs in a separated area. We are sure that this fear is baseless. Among all the people of India the Hindus of Sind are perhaps the most enterprising and adventurous. The traveller meets them in the four quarters of the world, carrying on prosperous businesses and enriching their people at home by their earnings abroad. No one can take away this spirit of adventure and enterprise from the Hindus of Sind and so long as they have it their future is assured. It must be remembered also that the powers of a provincial government are limited and there is the central government which has power in all important departments. If however there is still some ground for fear that is a matter for

safeguards, not of opposing a just demand.

We are therefore of opinion that even communal grounds justify the separation of Sind. If the Hindus stand to lose thereby and the Muslims stand to gain, of which we see no chance, such risk of loss by the one and the chance of gain by the other community will not, we hope and trust, be allowed by either to endanger the larger cause. We shall deal with the general aspect of the question later. We would note here that our colleague Mr. Aney does not agree with all the above views but agrees with our conclusion.

CHAPTER III

COMMUNAL ASPECT.—(contd.)

(*Reservation of Seats*)

Coming now to the question of reservation of seats, **Alternative proposals** it was found that each party held strongly to its own opinion and was not prepared to give in. Muslims were insistent on the reservation of seats for the Muslim majorities in the Punjab and Bengal, and the Hindu Maha Sabha and the Sikh League were equally strongly opposed to this. The Committee considered various proposals, among them being :

1. Reservation of seats on population basis for majorities as well as minorities.
2. Part reservation for majorities with freedom to contest other seats.
3. Proportional representation.
4. Amalgamation of the Punjab and N.-W. F. province, with no reservation of seats.
5. No reservation, but special safeguards in the constitution for educational and economic advance of backward communities.

Before considering these proposals, some of which were new, the Committee was of opinion that representatives of the principal organisations concerned might be consulted. An invitation was therefore sent on June 11th to the Hindu Maha Sabha, the All India Muslim League and the Sikh League to send one or two representatives to meet the Committee on June 21st. The response to these invitations was not very encouraging. The secretary of the Hindu Maha Sabha wrote to express his inability to send any representative on that date, and the secretary of the Muslim League did not send any answer at all. The Sikh League were prepared to send representatives but as the Maha Sabha and Mus-

lim League were not sending any one, our colleague Sardar Mangal Singh did not think it necessary to trouble the Sikh representative to come. Some others who had been personally invited could not come. We had the privilege however of conferring with Dr. M. A. Ansari, who took the trouble to come and assist us with his advice.

The proposals set out above were discussed at two consecutive sittings at which Dr. Ansari was also present. No agreement could be reached on the first proposal, but decisions were taken on the remaining four. It will be convenient to deal with these latter before taking up the main proposal.

The suggestion was to have part reservation of the majority community in the Punjab and in Bengal with freedom to contest the other seats. This part reservation was granted to the non-Brahmins in the south and is still continuing. But even in the case of the non-Brahmins it has been found to be wholly unnecessary as they have always, so far as we are aware, captured a far larger number of seats on the strength of their votes and have had no need to invoke the aid of the reservation clause. It is not the case of any one in the Punjab or Bengal that the Muslim majority will not succeed in capturing a large number of seats. What is feared by the Muslims, unreasonably most of us think, is that they may not capture the majority of seats. In any event they will capture enough seats to make them if not a clear majority at least a strong minority just short of a majority. If they are sure of capturing, let us say, 45 per cent. of seats the need for part reservation disappears. We are not opposed to part reservation for majorities or minorities, with freedom to contest the remaining seats, but we feel that in the case of Bengal and the Punjab it is unnecessary and does not materially affect the situation either way.

The next proposal is that of proportional representation. The sub-committee appointed by the All Parties Conference to consider this method of election and representation has presented no report but some individual members have sent their separate notes. Sardar Mangal Singh has supported the proposal, but the others,

while favouring the system, are of opinion that under present circumstances in India it will not work. We feel strongly attracted to this method and are of opinion that it offers the only rational and just way of meeting the fears and claims of various communities. There is a place in it for every minority and an automatic adjustment takes place of rival interests. We have no doubt that proportional representation will in future be the solution of our problem.

How far is it immediately practicable? Great stress is laid on its intricacy and of the general illiteracy of the electorate in India. We are told that it is impossible to work this system, desirable as it may be, so long as the electorate is not educated up to understanding its significance. We recognise this difficulty. It is considerable. And yet we feel that it is a little exaggerated. Proportional Representation requires not so much a high standard of intelligence in the voters, as expert knowledge in the returning officers and the people who count and transfer votes from one head to another. There can be no doubt that there is a sufficiency of Indians who are competent enough to do this work of counting of votes satisfactorily. As for the general electorate it is very true that a standard of intelligence is necessary for a proper choice to be made in order of merit. But a certain standard is also necessary to exercise the right of vote even in a single member constituency. It is notorious that even in highly democratic England that standard is lacking and votes are given not for high matters of policy or considerations that are really important, but for trivial matters or even sometimes most objectionable considerations which the exigencies of election times force to the front. A general election has turned in the past on the cry of hanging the ex-Kaiser or on a forged letter, and the men, who were to govern an empire and influence largely world events, have been elected for reasons which make every intelligent person despair of democracy. In India the standard of intelligence of the voter will, to begin with at least, be lower than that of the English voter. But these are reasons against democracy, not so much against Proportional Representation.

We are told that another strong argument against Pro-

portional Representation is that for the illiterate voter it would do away with the secrecy of the ballot. We think that the device of three boxes of the same colour for each candidate with different symbols painted on each box to indicate the first, second and third choice, would remove this objection. But it applies in equal measure to the illiterate voter at most of the ordinary elections to-day. In Malta, where there is a large majority of illiterate voters, Proportional Representation has been tried with success, but of course we cannot compare the little island of Malta to our enormous country with its millions.

Most of us feel that there are no insuperable difficulties in the way of giving a trial to Proportional Representation in India. There are drawbacks and risks, but no proposal which we have considered is free from objection, and some of these involve a departure from principle which may bring greater difficulties in its train. Some of our colleagues however are not satisfied that Proportional Representation can be introduced at this stage in India. We therefore refrain from recommending it.

It was suggested that the N.-W. F. Province be amalgamated with the Punjab and that there should then be no reservation of seats in this province.

Amalgamation of Punjab and N.-W. F. Provinces

We have no objection to this proposal but we do not know how far this will meet the different view points of the parties concerned. If it does meet with their approval, we would gladly recommend it. There is no special principle involved in it. Its acceptance or otherwise depends entirely on whether it is approved or not. Our colleague Sardar Mangal Singh does not approve of the proposal and we understand that some other people also are of his opinion. We therefore make no recommendation in regard to it.

A similar but more far reaching proposal was made to us, namely, that the Punjab, the N.-W. F. province, Baluchistan and Sind should all be amalgamated together, and that there should be no reservation of seats, unless the minority desires it, in this area. We were unable to entertain this proposal. It would mean the creation of an unwieldy province sprawling all over

Amalgamation of Punjab N.-W. F. P. Sind & Baluchistan

the north and north west.

Another proposal in regard to the Punjab was that there should be no reservation whatever but that special safeguards in the constitution for educational and economic advance of backward communities may be provided. We would cordially welcome such a solution if it was agreed to. But we have to recognise that a unanimous acceptance of this proposal is at present unlikely, otherwise there would have been no communal friction. In our draft constitution we have included many safeguards for minorities and provisions for the educational and economic advance of backward communities. We would gladly add to these safeguards and provisions if thereby we could remove feelings of insecurity in any community and do away with reservation of seats and other communal expedients. It seems unnecessary to pursue the subject any further in the present atmosphere.

We now come to the main question, the reservation of seats on the basis of population, both for majorities and minorities.

It was never seriously denied that reservation of seats for communities was as bad in principle as communal electorates, but, for various reasons of expediency, such reservation was recommended for a time to serve as a transitional stage between communal electorates and general mixed electorates without any restrictions. The idea was that during the interval the distrust of one community of the other would be very much lessened if not altogether removed. Similar arguments were used when the Lucknow pact was arranged, but the actual experience of the last 12 years has belied the expectations then formed. Communal electorates might or might not be responsible for the increasing communal tension of recent years but they have certainly failed to pave the way to a better understanding between the communities as was hoped. General reservation of seats for any community whether found in a minority or a majority is a full recognition of communalism and differs little from communal electorates.

Reservation of seats for majorities has been fiercely opposed—both on grounds of theory and fact. The question arises only in the provinces of the Punjab and Bengal where the Muslims are in a slight majority over all others. It has not been claimed for any other majority in any other province. We have therefore to consider the Punjab and Bengal only in this connection.

We should have thought that of all the provinces of India the Punjab and Bengal were the most fortunate in that the distribution of population was such that there was little chance of one community or group dominating over another or harassing it and preventing its growth in any way. Although one community is in an absolute majority in both of these provinces the others are strong enough to protect their own interests and prevent any oppression.

Reservation for a majority is indefensible in theory. It is an artificial restriction on the growth both of the majority and the minority and must necessarily retard national progress. It is, we feel, specially injurious to the majority itself for it makes it rely on legislative provision to keep up its position and not on its own inherent strength. After a period of reservation such a community is bound to lose in self-reliance and all the qualities that contribute towards building up a people and adding to their creative energy. Ordinarily a majority captures seats in excess of its population strength unless the method of election is by proportional representation. This is evident as the majority may be so spread out as to be in a commanding position in each or at any rate most constituencies. It is this danger of the majority capturing far more seats than its population strength entitles it to, and thereby encroaching on the limited preserves of the minority, that leads to the protection of minority interests.

A majority reservation or other fixation of seats is incompatible with real representative and responsible government. It obviously interferes with the right of the electors to choose whom they like. Further, it is bound to come in the way of other and more natural groupings in and outside the legislature and it will give

a longer lease of life to communalism. Everybody regrets the communal spirit and desires to exercise it from the body politic. But it is clear that it cannot go merely by talking about unity and indulging in pious platitudes which take us nowhere. Communalism can only go when the attention of the people is directed to other channels, when they begin to take interest in questions which really affect their daily lives rather than in fancied fears based on an artificial division of society. We must therefore try to create this new interest in the people and we must put no barriers in the way of the development of this interest. There can be no doubt that a majority reservation and fixation of seats is such a barrier.

An examination of the methods by which reservation for a majority can be secured will show that it is not only a negation of representative government but is in direct conflict with the principle on which responsible government rests.

One of these methods has been applied in the Madras and parts of the Bombay presidency to secure a partial reservation for the overwhelming majorities of non-Brahmins in those presidencies. This large community which forms over 96 per cent. of the population of the Madras presidency succeeded in inducing the government, on the recommendation of the Southborough Committee, to reserve for them 28 seats out of a total of 98 to protect them from the small minority of Brahmins who did not exceed $2\frac{1}{2}$ per cent. of the whole population. The manner in which this reservation was secured was that two purely non-Brahmin constituencies, each returning a single member, were created and, of the remaining constituencies, 25 were made plural, each returning three or more members, two of whom must be non-Brahmins in Madras City, and one must be a non-Brahmin in each of the remaining 24. The rule on the subject is thus stated :—

“When the counting of the votes has been completed the Returning Officer shall forthwith declare the candidate or candidates as the case may be, to whom the largest number of votes has been given, to be elected ; provided that if one or more seats are reserved the Returning Officer shall first

declare to be elected the non-Brahman candidate or candidates, as the case may be, to whom the largest number of votes has been given”.

To illustrate this rule take the case of Madras City where out of six seats in a mixed electorate two are reserved for non-Brahmins. Assume that no non-Brahmin candidate has secured enough votes to be placed among the first six who have polled the largest number of votes and that the only non-Brahman candidates who have secured any votes are to be found somewhere near the bottom of the list. Under the rule just quoted two of these non-Brahmans would be at once declared to be duly elected and the 5th and 6th candidates on the list who are not non-Brahmans would have to give place to them. Thus in the case of non-Brahmans the choice of the electorate is wholly set aside even though a majority of their own community voted against them. The question is whom would these two non-Brahmans represent. It is clear that they do not represent the majority of the electorate nor possibly even a majority of non-Brahmans. They have come in by an artificial rule based on no principle whatever. Happily the fears of the non-Brahmans in Madras turned out to be unfounded and we are informed that there never was a single occasion to put the rule into practice.

It is bad enough to have 28 members of this kind in a representative house of 98 members, but when the majority of members are elected in this manner and the ministry is formed from out of them, representative government becomes a farce.

Another method of reservation of seats both for the majority and the minority has been suggested by the promoters of what is called the “Sind Pact”. This method is thus described in clause 5 of the “Pact” :—

“ In order to make the system of joint electorates truly effective, there shall be one common electoral roll for each constituency and the election of Muslim and non-Muslim representatives should be held separately but on the same day, so that the whole electorate, Muslim and non-Muslim, shall have the right and opportunity to vote at both these elections separately, whereby the members so elected shall have been returned by the entire constituency and not only

by the voters of their own communities ”.

The only merit claimed for this method is that the “members so elected shall have been returned by the entire constituency and not only by the voters of their own communities”. For this purpose it would not be necessary to hold the elections separately as in a single election also the whole electorate—Muslim and non-Muslim—would have the right and opportunity to vote. The real object of the clause seems to be to avoid competition between the Hindu and Muslim candidates and thus secure to them reservation of seats according to their numbers. Apart from the fact that such competition is essential for the exercise by the elector of his free choice, the method proposed entirely shuts out all opportunity for a Hindu elector to vote for a Muslim candidate in preference to a candidate of his own community and *vice versa*.

It is obvious that the result of two separate ballots for each group of candidates can never be the same as that of a single ballot for both and that there will always be much greater chance at separate elections for the majority community to secure the return of their mandates from among the minority community by concentrating their votes on them.

It will thus be seen that neither of the two methods discussed above is likely to give satisfactory results. The third and the only remaining method of which we are aware is that of separate communal electorates which we have already discussed. The doing away of communal electorates is intended to promote communal unity by making each community more or less dependent on the other at the time of the elections. But reservation for a majority community in a mixed electorate will take away much of the incentive for communal unity, as the majority community as a whole would under all circumstances be assured of its full quota without the help of the other communities. There is no doubt some advantage to be gained by individual candidates of either community having to canvass the other community as against their rivals of the same community but this small advantage will probably not be availed of in times of acute communal tension.

It is absurd to insist on reservation of seats for the

majority and claim full responsible government at the same time. Responsible government is understood to mean a government in which the executive is responsible to the legislature and the legislature to the electorate. If the members of the executive with the majority behind them have all got in by reservation and not by the free choice of the electorate there is neither representation of the electorate nor any foundation for responsible government. Reservation of seats for a majority community gives to that community the statutory right to govern the country independently of the wishes of the electorate and is foreign to all conceptions of popular government. It will confine minorities within a ring-fence and leave them no scope for expansion.

We have based the foregoing observations on the principles generally applied to representative government. We are aware that those principles have in practice been found far from perfect and that serious objections have been raised in certain quarters against democratic government itself. We can hardly enter into these considerations in this Committee and must at this stage of our evolution accept the principles governing elections in most of the advanced countries of the world. We are also aware that the system of election we have recommended has sometimes failed to establish the rule of the majority, as in the case of the last British elections, which resulted in the return of an overwhelming majority of members who had only the support of a minority of electors. This we believe was mainly due to inequalities in voting strength and the wastage of votes on candidates who did not need them. The only remedy is proportional representation which for the reasons already mentioned we have refrained from recommending at present.

We have so far considered the question of reservation for majorities on principle but the strongest argument against such reservation is furnished by the facts as they are. We are indebted to Pandit Jawaharlal Nehru for the figures given in appendixes A. & B. which he has compiled with great industry from the reports of the last census relating to Bengal and the Punjab—the only two provinces in which the Muslims are in a majority. These figures

conclusively show that there is no foundation in fact for the fears entertained by the Muslims in these two provinces, and indeed no occasion for any adventitious aid to secure to them the full benefit of their natural majority. The argument is that Mussulmans will not obtain adequate representation and the slight majority they have will be more than counter-balanced by their educational and economic backwardness in these provinces. The whole force of this argument, which is based on the total population of the two provinces, disappears when we examine in detail the figures relating to the administrative divisions and the districts composing them.

It appears from an analysis of the population figures of the Punjab and Bengal that Muslims can certainly have nothing to fear from a free electorate, without any reservation of seats, in these two provinces. It will be clear from the figures given in the appendixes that in both the Punjab and Bengal the distribution of population is such that the Muslim majority in most of the geographical and administrative areas comprising these provinces is much greater than it appears when the whole province is taken as a unit. We find that there are natural areas of reservation for the different communities which ensure the representation of each community far more effectively than any artificial reservation can do.

Thus in the Punjab, we have a Muslim zone in the north and north-west of the province, where the Muslims are overwhelmingly strong and where no other community can encroach on their preserve. We find also a smaller area in the south, the Hindu zone, where the Hindus and Sikhs are equally strong. Between the two there is a third area where the Muslims are predominant, but not overwhelmingly so. This analysis leads us to the conclusion that Muslims are bound to capture over 47 per cent of the total seats in the Punjab from their special zone alone, whilst the Hindus and Sikhs will jointly capture nearly 30 per cent. The remaining 23 per cent of seats will lie in either a predominantly Muslim area or in districts where the Muslims are the strongest single community. Allowing for every contingency we can not conceive of Muslims not capturing enough seats in this area to give

them a clear majority in the provincial legislature.

We have discussed these population figures for each Punjab district in detail in our note attached. (Appendix A). We may here however refer to some of these figures.

The population of the Punjab (British territory) at the last 1921 census was as follows :

Muslims	..	11,444,321	..	55.3%
Hindus	..	6,579,260	..	31.8
Sikhs	..	2,294,207	..	11.1%
Others (mainly Christians)	..	367,236	..	1.8%
Total Punjab population		20,685,024		100%

There are 29 districts in all. We have divided these into four zones :—

- I. Fifteen districts in the overwhelmingly Muslim zone. The percentage of Muslims in one district is nearly 91; in nine districts it is between 80 and 90; in two districts it is 71 or over; and in three it is 63.3, 61.9 and 60.7. We have included the last three districts in this zone as, although the Muslim percentage is not so high as in the adjoining districts, it is very high compared to the Hindus and Sikhs combined. Thus in one (Sheikhupura) Muslims are 63.3%, Hindus 16.0% Sikhs are 15.9%; in Sialkot, Muslims are 61.9%, Hindus are 19.5% and Sikhs are 8.0%; in Lyallpur Muslims are 60.7%, Hindus are 18.1% and Sikhs are 16.4%.

It should be remembered that the non-Muslim minority in all these districts consists not of one group but of several communities Hindu, Sikhs, Christians and others.

If we give one member of the legislatures to every 1,00,000 population as we have suggested elsewhere, we find that 98 members will be returned from this Muslim zone alone. This amounts to 47.3 per cent of the total membership of the legislature.

- II. There are two districts (Lahore and Gurdaspur)

which might be called the predominantly Muslim zone. Here the Muslims are greater than Hindus and Sikhs combined—in Lahore they are 57·3% of the total—but they are not so many as in zone I. The number of members of the legislature for these two districts are 19½ or 9·4 per cent of the total membership.

III. There are three districts where no community is predominant but even here the Muslims are the strongest single community. The number of members of the legislature for these districts is 27½ that is 13·3 per cent of the total.

IV. There are nine districts which might be called the overwhelmingly Hindu-Sikh zone. The number of members for this zone is 61½ or 29·7 per cent of the total.

We thus see that Muslims are certain of 47·3 per cent seats; have a good chance of capturing the majority at least 9·4 seats; and a fair chance of some seats out of the 13·3 per cent of group III. They are thus, humanly speaking, assured of a clear majority in the legislature.

In Bengal the figures are even more illuminating. These are discussed in full detail in the separate note attached (see Appendix B). We give here only a brief summary. The population figures are :—

Muslims	..	25,210,802	...	54·0%
Hindus	..	20,203,527	..	43·3%
Others (chiefly tribal religions and Christians)	..	1,281,207	..	2·7%
		<hr/>		
Total Bengal population (British territory)		46,695,536		100·0%
		<hr/>		

Here also we find definite zones as in the Punjab.

I. Overwhelmingly Muslim zone. There are 13 districts with 282 members of the legislature or over 60 per cent of the total.

II. Predominantly Muslim zone—two districts with 23 members or 5 per cent of the total.

III. Neutral or predominantly Hindu zone. Four districts with 42 members or 9 per cent of the total.

IV. Overwhelmingly Hindu zone. Nine districts with 118 members or 25 per cent of the total.

Thus in Bengal from the overwhelmingly Muslim zone alone, not taking into consideration the predominantly Muslim zone, Muslims are assured of over 60% seats in the legislature. The Hindu minority, although it is a very big minority, is highly likely to suffer in numbers in an open general election without reservation.

This has recently been demonstrated in a remarkable manner by the figures of the last District Board elections in Bengal, printed in Appendix C. The electorates for these boards are mixed Hindu and Muslim, but the electoral roll being based on a property or tax paying franchise does not maintain the population proportions of the two communities. We expect that the voting strength of the Muslims, who are economically weaker than Hindus, is much less than it would be with adult suffrage and yet we find that they made a clean sweep of the Hindu minority in three districts—Mymensingh, Chittagong and Jessore. In the first two of these not a single Hindu was elected though the Hindus are about 24 per cent of the population, and in the third only one Hindu managed to get in though the community forms 38·2 per cent of the population. As against this we find that Muslims, where they are in insignificant minorities of 3 and 4 per cent., have managed to send one to three representatives to the District Board. We have also very interesting examples of what happens when the two communities are found in about equal strength. The cases of Khulna and Dinajpur are in point. In the former the non-Muslims being 50 per cent of the population carried 11 seats as against 5 taken by Muslims who were 49·8 per cent. In the latter the Muslims being 49 per cent. of the population carried 14 seats as against 4 of the Hindus who were over 44 per cent. Actual population is not a safe guide in the absence of exact figures showing the voting strength of the two communities, but we think it can safely be inferred that the Muslims in Bengal need no

protection from all the non-Muslims put together. The case of Jessore is particularly interesting. As long as the Muslim majority did not take much interest in the local affairs of the district the Hindu minority had it all its own way. Once roused to action the Muslims not only swept the polls but for the first time in the history of their District Board gave it a Muslim chairman and a Muslim vice chairman, both members of the Bengal Council. We are informed that the last elections for the District Boards in Bengal have opened the eyes of both communities and that Muslim opinion is now veering round to mixed electorates. It is one of the tragedies of communal hostility that men shut their eyes to facts and fight against their own best interests. We commend a careful study of the figures we have given in Appendixes A, B and C to those who are flooding the country with elaborate manifestoes and memoranda in support of communal electorates for the Punjab and Bengal.

We find therefore from an analysis of the actual figures that Muslim fears in the Punjab and Bengal are largely imaginary. These fears are based on the superior economic and educational standards of the Hindus and Sikhs. We have seen that this superiority has not helped the Hindus of Bengal at the District Board elections and we are sure that the result of council elections will be even more strikingly in favour of Muslims. But there is no doubt that Muslims are backward both in education and in wealth, specially in Bengal, as compared to the other communities. There is also no doubt that the power of wealth is great in the modern state. It is so great indeed that it seldom troubles to contest seats in the legislature as it can pull the strings from behind the scenes. Reservation of seats or separate electorates or any other device of this kind can not materially reduce this power. So long as people think and act in terms of communalism, so long will they not face the real problem. And if they will not face it, they will not solve it.

We are not here called upon to advise on a new structure of society where the economic power is not concentrated in the hands of a few. We take it that the

communal organisations which aggressively demand special rights and privileges for their respective communities are not desirous of attacking the basis of the existing structure. If this is admitted then all we can do is to provide safeguards and guarantees for education and economic advancement, specially for all backward groups and communities.

We are certain that as soon as India is free and can face her problems unhampered by alien authority and intervention, the minds of her people will turn to the vital problems of the day. How many questions that are likely to be considered by our future legislatures can be of a communal nature? There may possibly be a few now and then but there can be no doubt that the vast majority of the questions before us will not be communal in the narrow sense. The result will be that parties will be formed in the country and in the legislature on entirely other grounds, chiefly economic we presume. We shall then find Hindus and Muslims and Sikhs in one party acting together and opposing another party which also consists of Hindus and Muslims and Sikhs. This is bound to happen if we once get going.

Looking at it purely from the Hindu point of view, however, we can well imagine that a reservation of seats for the Muslim majorities in the Punjab and Bengal, may actually benefit the Hindus, and may be Sikhs also, more than no reservation. The facts and figures we have stated demonstrate that the Muslim position in the Punjab and Bengal is so strong that in all likelihood they will gain in a joint electorate with no reservation more seats than their population warrants. Thus the Hindu and Sikh minorities may find their representation even reduced below their population ratio. This is a possible and indeed a likely contingency. But it is impossible to provide for such contingencies. The safest and most obvious course is to have an open election with such safeguards as we can devise.

The considerations set out above were fully discussed at the informal conference to which reference has already been made and the following resolution was unanimously adopted, sub-

ject to a note by our colleague Sardar Mangal Singh on the second part of the resolution:*

"We are unanimously opposed to the reservation of seats in the legislatures either for majorities or minorities and we recommend that no such reservation should be provided for in the constitution. But if this recommendation is not accepted and an agreement can be arrived at only on a reservation of seats on the population basis we recommend that such reservation be made for majorities or minorities without any weightage and with a clear provision that it shall automatically cease at the expiry of ten years or earlier by the consent of the parties concerned".

The note of Sardar Mangal Singh runs as follows :—

"I agree with the first part of the above proposition, namely that there shall be no reservation of seats either for majorities or minorities in the legislatures of the country. But I am very strongly opposed to the creation of statutory communal majorities by reservation of seats for majorities on population basis under all circumstances and for any time howsoever short it may be. If the agreement can only be reached by reservation of seats I will recommend that the case of the Sikhs be considered as that of an important minority and adequate and effective representation, far in excess of their numerical strength, be given to them in the Punjab on the basis adopted for Muslim minorities under the Lucknow Pact in Behar and other provinces. And I further suggest that special weightage be given to Sikhs for representation in the central legislature".

It will be seen that the first part of the resolution contains the actual recommendation of the informal conference and the second part deals with a contingency which can happen, if at all, only when that recommendation is rejected in favour of an agreement by all the parties concerned on reservation of seats on the population basis. There has not only been no such agreement among the members of this Committee but they have definitely expressed themselves in the first part of the resolution to be unanimously opposed to reservation. It is highly unlikely that the agreement referred to in the second part of the resolution will be reached in the All Parties Conference. But if by any chance such an agreement is arrived at, it would be binding on all those who join it and in that case all that the second part provides is that it should not be given effect to for more than ten

* A list of those who signed the resolution is given in a note at the end of the report.

years. We cannot be taken to have recommended what we have expressly opposed. But we recognise the value of a compromise between parties and communities however wrong it may be in principle, and if such a compromise is arrived at in spite of ourselves, we can do no more than try to limit its operation. This is exactly what we have done. As regards the special claim of the Muslims and Sikhs for greater representation than their population would justify, it is enough to say that in the view we have expressed above, no such claim is admissible on the part of any community however important it may consider itself to be.

We shall have to revert to the resolution of the informal conference in considering the question of reservation for minorities to which we now address ourselves.

Muslims in provinces other than the Punjab and Bengal are in small minorities and in some parts of India almost negligible, though in the total population of India the proportion is over 24 per cent.

After the resolution of the informal conference referred to above was passed it was pointed out to us that it would work great hardship on the Muslim minority who would in all probability be able to elect no more than 30 or 40 Muslims from the Punjab and Bengal, and perhaps one or two from the U. P. and Behar, to the central legislature of 500 members, and that there was little chance of any of the other provinces with less than 7 per cent. of the population returning a single Muslim. The result, it was argued, would be that Muslims, who form nearly one fourth of the total population of British India, would have no more than one tenth of representation in the central legislature. The same reasoning, it was urged, applied to the legislatures of provinces where the Muslims are in small minorities. We recognise the force of this argument and it is here that we feel compelled by force of circumstances to introduce a temporary element of communalism in the electoral system of the country. We are therefore unable to adopt the resolution of the informal conference of the 7th July in its entirety as our recommendation. In provinces other than the Punjab and Bengal we must

make an exception in favour of Muslim minorities by permitting reservation of seats, if so desired by them, in proportion to their population both in the central and the provincial legislatures. The retention of communal representation to this extent for some time to come is in our opinion a necessary evil. It will be seen that by making this concession in favour of Muslim minorities we are not introducing the anomalies arising out of reservation for majorities. A minority must remain a minority whether any seats are reserved for it or not and cannot dominate the majority.

Representation in excess of their proportion in the population fixed for Muslims in a number of provinces under the Lucknow pact, as well as the Montagu-Chelmsford reforms, will disappear under our scheme. Such representation is only possible in separate electorates and has no place in joint or mixed electorates. It is of course not physically impossible to reserve a larger proportion of seats for Muslim minorities than their population would justify but, apart from the obvious injustice of such a course not only to the majorities but to the other minorities as well, it will in our opinion be harmful to the development of Muslims themselves on national lines. We have allowed them their full share on the population basis by reservation and anything over and above that share they must win by their own effort. We do not propose to impose any restrictions on their right to contest a larger number of seats than those reserved for them. The main consideration which has guided us in accepting reservation for their minority is that we are not thereby putting it in a ring-fence beyond which it cannot advance however competent it may be to do so. It is in our opinion more important to secure a free and open field for the expansion of the political activities of all communities large or small than to reserve a maximum number of seats for them even in excess of their numbers. Such reservation will never bring them in open competition with any community other than their own and the inevitable result will be stagnation. It is true that a Muslim candidate will have to canvass non-Muslim votes to defeat his Muslim rival but this is not calculated to advance the Muslim on national lines. It will always

be a question of whether Muslim A is better than Muslim B without regard to the fact that non-Muslim C is better or worse than both.

Muslims cannot reasonably claim reservation of seats beyond their strict proportion to population along with the right to contest additional seats, and the question for them to consider is which of the two is likely to be of greater advantage to them. We have no doubt that when they carefully weigh the pros and cons of the reservation of a larger number of seats than they are entitled to on the population basis *without* the right to exceed that number, against the pros and cons of reservation in proportion to their population *with* the right to contest as many more seats as they like, they will find that the latter is by far the better choice. As we have already pointed out, reservation to the fullest extent deprives mixed electorates in a considerable measure of their utility in promoting national unity. Whatever inducement a Muslim candidate may have to approach the non-Muslim voter to defeat his Muslim rival, so far as his community as a whole is concerned, it will have its full quota assured to it with or without the help of the non-Muslim voters, and at times of extreme communal tension it will be easy both for Muslims and non-Muslims to run their elections quite independently of each other without either losing a single seat. It is only by maintaining the interdependence of the two communities that we can hope to minimise their differences.

Having regard to the actual conditions prevailing in the U. P., where the Muslim minority is the largest, we are convinced that the Muslims stand to gain more seats under our scheme than the number fixed for them under the present system. In several urban areas in the U. P. they are in majorities and in others they have strong and influential minorities. They may perhaps lose a few seats in some other provinces but the net result of a general election in the country as a whole is likely to be fairly satisfactory to all.

So far as the Muslim demand is concerned it only remains for us to deal with that part of it which relates to reservation of one third of the total number of seats in

Reservation for Muslims in the central legislature

the central legislature for Muslims. This point was not directly raised or discussed at the informal conference, but we think that it is concluded by the general recommendations we have made in regard to reservation of seats. The principle we have adopted is that wherever such reservation has to be made for the Muslim minority it must be in strict proportion to its population. The Muslims are a little less than one fourth of the total population of British India and they cannot be allowed reservation over and above that proportion in the central legislature. It must be remembered that they have the right to contest additional seats both for the central and provincial legislatures in provinces other than the Punjab and Bengal, and that in the two last mentioned provinces their right is unfettered to contest any number of seats they like for both legislatures. In the case of provincial legislatures we have substituted this right for the present weightage they enjoy. In the central legislature the Muslims do not at present enjoy any definite weightage and their numbers to be returned by the provinces are fixed on a more or less arbitrary basis. The actual number of the Muslim members falls short of one third of the total strength of the Assembly. There is thus no foundation for the demand even in existing conditions. A little reflection will show that it is far better to have a free hand than to be tied down to the difference between $\frac{1}{3}$ and $\frac{1}{4}$. But as we have already observed we cannot depart from the principle we have accepted for the Muslim minorities in the provincial legislature. Besides the question of principle there are practical difficulties in the way. How are we to secure this one third reservation in the central legislature without restricting the Punjab and Bengal majorities to definite numbers of members and allowing weightage in the other provinces all round? And on what principle is the excess in the numbers of members in the provinces to be allotted to each province? We have given our best consideration to the matter but we regret we are unable to recommend reservation of one third of the total number of seats for Muslims in the central legislature.

For these reasons we recommend reservation of seats,
 Recommendation when demanded, for Muslim minorities
 both in the Central and Provincial

legislatures in strict proportion to their population, with the right to contest additional seats for a fixed period of ten years. We would add, however, that our colleague Mr. Shuaib Qureshi does not agree with some of the arguments and conclusions given above. He is of opinion that the resolution of the informal conference, referred to above, should be adopted in its entirety. He further desires that one third of the seats in the Central legislature should be reserved for Muslims.

As regards non-Muslim minorities the only provinces which deserve consideration are the Non-Muslim minorities in N. W. F. and Baluchistan and N.W.F. and Baluchistan where they are in much the same position as the Muslim minorities in Madras and the C. P. We recommend that the same concession be made to them as to the Muslims in provinces other than the Punjab and Bengal.

Turning to the other non-Muslim minorities we find that there is no such sharp cleavage between them and the majorities among whom they live as there unfortunately is between Hindus and Muslims. We do not think that any protection by way of reservation is either necessary or desirable in their case. They will realize that we are recommending such protection to Muslim minorities under very special circumstances and for a limited period only. The latter have sooner or later to stand on their own legs. We shall indeed be glad if they will make up their minds to do without reservation from the beginning.

There is no analogy between the Muslim and non-Muslim minorities in India. The latter are nowhere when the total population of India is considered. Leaving out the case of Buddhists, who are to be found chiefly in Burma and are in a majority there, the percentage of the population of other non-Muslim minorities to the total population of India is as follows:—

Christians	1.2%
Sikhs	1.0%
Jains	.2%
Others (besides tribal religions in hill tracts)	.2%

It will thus appear that so far as the central legis-

lature is concerned the reservation of seats for non-Muslim minorities on a population basis will hardly help them to any appreciable extent and that there is no occasion to reserve seats for minorities, other than those in the N. W. F. Province and Baluchistan, even in the provincial legislature. Any attempt to do so will only cause confusion and will in our opinion be a very doubtful advantage to the communities concerned.

We have not mentioned the Hindu minorities in the Punjab and Bengal as by no stretch of the imagination 32 and 45 per cent of the population can be regarded as small minorities.

Among the non-Muslim minorities the Sikhs deserve special consideration. They are concentrated in the Punjab and the position they occupy in that province is very similar to that of the Muslims in the U. P. The latter being about 15% of the population are in fact more numerous in the U. P. than the Sikhs in the Punjab where they are only 11%. Under the existing system they have their separate electorate and are given considerable weightage. We recognise that Sikhs are a distinct and important minority which cannot be ignored and we have, all along, been giving our best consideration to the point of view of the Sikhs as expressed by our colleague Sardar Mangal Singh. It must be said to their credit that they have shown an admirable spirit of self-sacrifice by their decision to give up these communal advantages in the general interest of the country. Throughout the communal controversies that have raged round the question of representation in the legislature during recent years they have taken their stand on joint electorates with no reservation for any community. Our colleague Sardar Mangal Singh has drawn attention to the fact that the Sikhs do not form the majority of the total population of any district in the Punjab, and that the strongest position they occupy is in Ludhiana district where they are the strongest single community. Even in this district they are only 41.5 % and are not in a majority. In every other district they are outnumbered either by Muslims or Hindus, and usually by both. It is obvious that situated as the Sikhs are in the Punjab they are subject to all the disadvantages of a minority

in a joint mixed electorate based on the wide adult suffrage we have recommended. In these circumstances they have in the Punjab at least as strong a case for reservation both in the provincial and central legislatures as the Muslims have in the U. P. There is however a third and a very potent factor to be taken into account and that is the presence of the strong Hindu minority side by side with the Muslim majority and the Sikh minority. It is this circumstance in the Punjab which, apart from general considerations has so far defied all attempts at a satisfactory adjustment on the basis of reservation for any community. The Punjab problem has assumed an all India importance and we cannot look at it as an isolated case arising in a single province. The only effective way of avoiding complications and giving full play to the forces of nationalism is to eradicate the virus of communalism from the body politic of the Punjab. Our colleague, Sardar Mangal Singh, who has discussed the matter very fully and frankly with us shares our difficulty. We believe that nothing is farther from the wishes of the Sikh League than to introduce any complications directly or indirectly in the solution of the communal problem. They could, if they had insisted on any special advantage, have caused endless difficulties in the adoption of a uniform rule of representation. They fully realised this and voluntarily gave up all their claims with the sole object, we are assured, of preventing an impasse. We appreciate this spirit and congratulate them on their patriotic resolve.

The only alternative to the proposal we have made is to adopt the recommendation of the informal conference and have no reservation for any minorities, including Muslims, in any legislature. But this will cause considerable dissatisfaction to Muslims without conferring any special benefit on non-Muslims. It must be remembered that besides reservation by means of communal electorates the Muslims at present enjoy considerable weightage in every province. We are offering them the right to contest additional seats in lieu of this weightage and we cannot very well do away with reservation in their case. We see no hardship in this to non-Muslim majorities or

minorities. Endless complications will arise if we recommend reservation for all minorities. Besides the existing well defined minorities such as Christians, Parsis, Jews, fresh groups from among the Hindu castes and sub-castes will claim the right and it will be a perpetual source of trouble.

The communal question is essentially a Hindu-Muslim question and must be settled on that basis. We shall indeed be doing poor service if in our attempt to settle it we let communalism loose on the country to swallow up communities and sub-communities most of whom have not even dreamt of it.

There remain two important communities included in the Hindu majority—the non-Brahmans and the depressed classes. The sharp division between Brahman and non-Brahman is to be met with only in the south and is unknown in other parts of India. Where the non-Brahmans as such are found, they are either an overwhelming majority as in Madras or a very strong minority as in parts of Bombay. They need no protection in the matter of representation in the legislatures as has been established by the elections held in recent times. Their grievances against Brahmans are all traceable to the ascendancy gained by the latter in the political and social life of the country. This is the natural result of their intellectual ascendancy which is now seriously threatened by the rapid advance of non-Brahmans.

The problem of the “depressed” or “suppressed” classes has come to the front in recent years and their present condition is put forward as an argument against the political advancement of India. We are certainly of opinion that the Hindus are chiefly responsible for this suppression of a large class, but we are equally clear that the solicitude for this class which the British government has endeavoured to show has its basis on reasons other than humanity or love for this class. This solicitude is of very recent growth. As the national movement has grown in the country, so has the political value of the “depressed” classes grown in the eyes of the government. It is only since 1917 that their numbers have been separately given in the official reports on educa-

tion and reference has been made to the educational facilities offered to them. The solicitude, of government has so far brought little relief to these classes. It has resulted in giving them some nominated seats in the legislatures and some minor contributions for special schools.

Far more serious and effective attempts have been made by non-official Indian agencies to raise these classes. The Christian missions have also helped in this task. The Congress made the abolition of untouchability one of its principal planks in 1920 and, as is well known, Mahatma Gandhi has thrown himself with all his great powers and energy into the movement. Other political organisations, and we are glad to find even communal organisations, have with equal emphasis declared against untouchability. The practical work done and the considerable results achieved already make it quite clear that these declarations were not mere pious wishes. We realise that there are still conservative elements in the country which are strong enough to put obstacles in the way and retard the progress of the movement. But we are convinced that untouchability is doomed.

In our suggestions for the constitution we have not made any special provision for the representation of the "depressed" classes in the legislatures. This could only be done by way of special electorates or by nomination. We have dealt fully in another place with the question of special electorates and reservation of seats. We are not prepared to extend this unsound and harmful principle if we can help it, nor do we think that we will do any good to these classes by ensuring some seats for them in this way. We are still more opposed to nomination. This can only result, as it has resulted, in the government of the day nominating some one who will support it through thick and thin, and will not represent anybody.

We feel strongly however that the "depressed" classes must be abolished or rather that they should be raised socially and economically so that they may take their proper place in the community. The only effective way to do this is to give them educational and other facilities for this advance and to remove all obstacles in

the way of this advance. Some of the articles in the Declaration of Rights, which we have recommended, will go a long way to remove the disabilities from which these classes suffer and will give them an opportunity to go ahead. The proposal that we should have adult suffrage will also automatically raise their level and increase their political power. Finally, we have strongly recommended that the education of all backward classes should be a special concern of the state. If all these recommendations are acted upon we are convinced that the "depressed" classes will rapidly disappear and will be replaced by a self-reliant and progressive group, co-operating with other groups in the welfare of the entire community.

CHAPTER IV

REDISTRIBUTION OF PROVINCES .

We are glad to take leave of communal problems and enter upon matters more germane to the constitution. The question of redistribution of provinces as a part of the constitution should ordinarily be disposed of by a few general rules governing all cases. But, as we have seen, the simplest problems have a tendency to become difficult and almost insoluble if approached in the wrong spirit and considered not on their own merits but as parts of an entirely different problem. We have already dealt with the communal aspect of the separation of Sind from Bombay and shown how a very simple matter has become a major issue in our politics. We shall now consider the general question on the merits apart from its communal bearings.

Every one knows that the present distribution of provinces in India has no rational basis. It is merely due to accident and the circumstances attending the growth of the British power in India. As a whole it has little to do with geographical or historical or economic or linguistic reasons. Even from the purely administrative point of view it is not a success. It is clear that there must be a redistribution of provinces. Some of us favour small provinces, others prefer large provinces. But small or large the question of redistribution has to be tackled.

What principles should govern this redistribution ?
Partly geographical and partly economic and financial, but the main considerations must necessarily be the wishes of the people and the linguistic unity of the area concerned. It is well recognised that rapid progress in education as well as in general culture and in most

Present distribution
irrational

Principles of redistribution

departments of life depends on language. If a foreign language is the medium of instruction, business and affairs and the life of the country must necessarily be stunted. No democracy can exist where a foreign language is used for these purposes. A democracy must be well informed and must be able to understand and follow public affairs in order to take an effective part in them. It is inconceivable that a democracy can do this if a foreign language is largely used. It becomes essential therefore to conduct the business and politics of a country in a language which is understood by the masses. So far as the provinces are concerned this must be the provincial language.

We are certainly not against the use of English. Indeed from the necessities of the situation we feel that English must, as at present, continue for some time to come to be the most convenient medium for debate in the central legislature. We also believe that a foreign language, and this is likely to be English, is essential for us to develop contacts with the thought and science and life of other countries. We are however strongly of opinion that every effort should be made to make Hindustani the common language of the whole of India, as it is to-day of half of it. But, granting all this, provincial languages will have to be encouraged and, if we wish the province to make rapid progress, we shall have to get it to do its work in its own language.

If a province has to educate itself and do its daily work through the medium of its own language, it must necessarily be a linguistic area. If it happens to be a polyglot area difficulties will continually arise and the media of instruction and work will be two or even more languages. Hence it becomes most desirable for provinces to be regrouped on a linguistic basis. Language as a rule corresponds with a special variety of culture, of traditions and literature. In a linguistic area all these factors will help in the general progress of the province.

The National Congress recognised this linguistic principle 8 years ago and since then, so far as the Congress machinery is concerned, India has been divided into linguistic provinces.

Another principle which must govern a redistribution of provinces is the wishes of the people concerned. We who talk of self determination on a larger scale cannot in reason deny it to a smaller area, provided of course this does not conflict with any other important principle or vital question. The mere fact that the people living in a particular area feel that they are a unit and desire to develop their culture is an important consideration even though there may be no sufficient historical or cultural justification for their demand. Sentiment in such matters is often more important than fact.

Thus we see that the two most important considerations in rearranging provinces are the linguistic principle and the wishes of the majority of the people. A third consideration, though not of the same importance, is administrative convenience, which would include the geographical position, the economic resources and the financial stability of the area concerned. But administrative convenience is often a matter of arrangement and must as a rule bow to the wishes of the people.

In looking at the map of India to-day we see definite linguistic areas. There is the huge Hindustani block all over northern India, with its slight variation into Punjabi in the Punjab. Then there is the Bengali area, the Assamese, the Oriya, the Telugu, Tamil, Malayalam, Canarese, Marathi, Gujerati and Sindhi. Across the Bay of Bengal there is the Burmese area. Demands have been made from time to time for the separation of Andhra, the Telugu area, of Utkal (Oriya) of Karnatak (Canarese), Kerala (Malayalam) Sind (Sindhi) Central Provinces (Hindi speaking area) and other parts, and all these will have to be enquired into and carefully considered when a general redistribution is taken in hand. We have no material before us to give any opinion about most of these areas. We have received no representations except in regard to the Karnataka and Sind. We have also received a small book giving the case for Utkal but we regret we have been unable to consider it in the absence of any special memorandum or representation. Our colleague, Mr. Subhas Chandra Bose, is however satisfied that the Oriya speaking areas should

Wishes of people

Linguistic areas

Utkal

be amalgamated and constituted into a separate province, if this is financially possible. He is further of opinion that the demand for the amalgamation of the Bengali speaking tracts in Assam and Bihar and Orissa is a reasonable and legitimate one.

As regards Kerala we have received a resolution of their Provincial Conference urging unification and separation. *Prima facie* Kerala offers a great many difficulties as a great part of it consists of the States of Travancore and Cochin. Leaving out these States, as we must under present circumstances, we have a small area. We are thus at present not prepared to make any recommendation, in the absence of any material, in regard to Kerala.

The case for the Karnataka was placed before us by a representative of the Karnataka Unification Sangh and the Karnataka Provincial Congress Committee. It had been ably prepared with a wealth of information, historical, cultural and statistical. All our questions were answered satisfactorily and in our opinion a strong *prima facie* case for unification and the formation of Karnataka as a separate province was made.

Parts of the Karnataka lie in Indian States, notably Mysore, and there are obvious practical difficulties in the way of uniting these with the rest. It might also not be convenient to unite the small islands of the Karnataka on the other side of Mysore territory as these would be cut off from the Karnataka proper by Mysore. But even so a sufficiently large area remains.

We were informed that the demand for unification came from the vast majority of the population, if not practically all. There was no Hindu-Muslim problem but there was a Brahman-non-Brahman problem although this did not effect the question of unification much. There was no organised opposition although a small number of Brahmans were opposed. On behalf of the Maharashtrians in some of the border districts a fear was expressed that their language might suffer, but safeguards for this might be provided for.

Financially the position of the Karnataka was very

strong and even at present there was a considerable surplus in the British part of the Karnataka.

Our colleague, Mr. M. S. Aney, does not wholly agree with our view point regarding the Karnataka. He was unfortunately not present at the sitting of the Committee when this question was considered with the help of the representative from the Karnataka. Mr. Aney is of opinion that the opposition may be greater than we imagine and they may not have approached us as they did not know that we were considering the question. This is hardly likely as the press of the Karnataka has been full of this question and considerable publicity has been given to the Karnataka representation to our Committee. If any body of men felt keenly enough in opposition to this demand we think that they would certainly have informed us of their views.

We cannot of course decide this question finally but we feel that the advocates of unification have *prima facie* established their right to it. We cannot suggest the exact limits of the new province. It may be that some of the border tracts are bilingual and an enquiry will have to be made on the spot. This work will have to be done by an expert committee. Messrs. Aney and Pradhan refrain from expressing any opinion on this subject.

It is unfortunate that although the separation of Sind has given rise to a great deal of heated argument, we are yet not in possession of all the relevant facts, such as were placed before us by the representative from the Karnataka. We would commend the way the Karnataka case was prepared, with patient thoroughness and maps and statistics, to those who have demanded the separation of Sind. As we have already pointed out, the All Parties Conference appointed a sub-committee in Delhi to investigate the financial aspect of the question, but unfortunately no facilities were placed before this Committee by the supporters of separation, and it has not yet reported. We do not know if it is likely to submit any report in the near future. For the present, however, we have to proceed on general principles and without the help which actual authenticated figures might have given us.

We laid down two important general considerations

in regard to the distribution of provinces—linguistic and the wishes of the majority. Sind certainly satisfies both these tests. It is a definite linguistic area and the great majority of its people may be taken to demand separation. We have of course no definite data about the number of people desiring separation. But we have yet to know that even a single Musalman opposes it, and Musalmans are 74% of the population. We also know that some at least of the members of other communities in Sind—Hindus and Parsis—support separation. We may therefore safely presume that the great majority of the population desire separation. We are aware that there is a section amongst the Hindus, comprising it may be most of the Hindus in Sind, which is strongly opposed to separation. It has been urged that before a province is separated a section—one third has been suggested—of the minority community must also agree to such separation. This, it seems to us is an utterly wrong principle, cutting at the roots not only of self-determination but of the very principle of decision by majority and is likely to lead to extraordinary results. For instance, it may be, that 10% or 15% of the population may effectively prevent the 90% or 85% from having their way. This is not democracy.

Then again what is the minority community in such a case? Ordinarily a redistribution of provinces is not likely to be a Hindu-Muslim or communal question. The minority which opposes will oppose on the merits and not on communal grounds. How is a single person belonging to this minority to be made to change his opinion? And if some people are converted, another minority remains and it may be urged again that one-third of these should be won over.

Sind undoubtedly satisfies the two main tests. Further it is clearly a geographical unit and its connection with Bombay is a most unnatural one. It is not even easily accessible from Bombay and thus from an administrative point of view a separation is desirable.

It is stated, however, that economically, and even more so financially, Sind cannot shoulder the burden of a separate provincial existence. It is further stated that there is a large deficit in Sind every year which is met from the revenues of other parts of the Bombay

presidency. We are of opinion that ordinarily a province should be self-sufficient in regard to finances and must not look to the central government for doles. We can imagine exceptional cases when the central government might reasonably help the development of a province for a short period in order to make it self-sufficient in the future. There may also be other special cases when such help may be necessary. But an area which desires separation must not live in hopes of money flowing in from outside to enable it to run its administrative machine. It must feel and declare that it will shoulder its own burden.

We shall presume that Sind is at present carrying on its government with the help of outside money. But this does not carry us very far. It may be that a retrenchment in the scale of expenditure will make both ends meet. It may also be, and this is likely, that additional sources of revenue from fresh cultivation or otherwise will increase its income considerably. This problem will have to be faced all over India-as soon as we are free. Our first thought then will be to spend money on the development of the country and specially in the nation building departments. This money can only come by applying the axe to provincial expenditure and by tapping fresh sources of revenue.

Prima facie Sind is capable of great development. Karachi is likely to become a great harbour and there are large tracts which are either uncultivated or not sufficiently developed. It is not an unlikely presumption therefore that Sind will become in the course of time a self-sufficient and prosperous province.

A denial of the right to self determination on purely financial grounds, and there are no other that we think valid, is bound to lead to great dissatisfaction and is bound to impede the progress of Sind. All the energy that should go to building up the life and work of the province would be spent in profitless agitation. If however this right is granted, subject to the people of Sind shouldering their own financial burden, a strong impetus will be given to the new province to work hard and compete with the more advanced provinces.

We feel therefore that the argument for the separation of Sind is very strong. In the absence of

sufficient data regarding the financial position we are unable to give a definite opinion on it. But it is unlikely, to say the least of it, that financial considerations will be such as to override all the other important factors which we have discussed. We would say therefore that unless some insurmountable difficulties supervene, and we are for the present unable to imagine any such insuperable difficulties, Sind should be separated.

We would add that our colleague Messrs Aney and Pradhan are not wholly at one with us in the arguments we have advanced. They agree that Sind is a linguistic area and that there is a strong demand from the majority of the population for separation. But before giving a final opinion they wish that an enquiry be made into the financial and administrative aspects. We ourselves are of opinion that some investigation into the financial aspect will be necessary before separation can be effected.

We might add that the separation of an area and the formation of a new province does not necessarily imply a separate economic life. Nor does it mean a duplication of all the organs of government. For instance it is quite possible for one High Court to serve more than one province.

Before leaving the subject of Sind we must notice a document called the "Sind Pact" received from the Sind National League. It consists of ten clauses covering a wide field and bears 31 signatures of Hindu, Muslim and Parsi gentlemen. We have also received representations from the Sind Aryan Sammelan and the Sind Provincial Hindu Sabha and a number of telegrams from individual Hindu Sindhis repudiating this pact and challenging the representative character of its authors. We have no materials before us to judge between these rival claims to represent Sind nor do we think it is any part of our business to do so. It is clear that there is no such general agreement among Sindhis as would impose an obligation on this Committee to adopt the "pact" as such. As a representation from a number of responsible gentlemen it has had our very careful consideration. We have already noticed the clause relating to the reservation of seats and expressed our inability to agree to it. As regards the desirability of the separation of Sind from Bombay we are at one with

them, but we regret we cannot take their declaration to "cut their coat according to their cloth" as a final solution of the financial problem. This matter must for the present rest where we have left it. It is not necessary to notice the other clauses of "pact".

• CHAPTER V

THE INDIAN STATES AND FOREIGN POLICY

We now come to the all important problems of the Indian States. At the commencement of our treatment of the subject we desire to enter a caveat against the general criticism (which it has become the fashion in certain quarters at present to make against public men in British India) that they ignore in their discussions or their schemes the very existence of the Indian States and the problem of their relations to the Government of India of the present or of the future. It is not, we maintain emphatically, the fact that the Indian States or their problems, or the readjustment of their relations to the Government of India, have been ignored in the past on public platforms, or in political conferences, or in the utterances of our public men. If the grievance is that the affairs of the Indian States, or the nature and character of their relations with the Government of India, have not been discussed on the floor of the Legislative Assembly, the answer is plain and it is that such discussion is barred by the standing orders and in practice is never allowed. It is obvious that for this the responsibility cannot be fixed on Indian public men. On the other hand, there is scarcely a political organisation of influence in the country which has not had in recent years to say something or other on the problem of the Indian States. The Congress and the Liberal League and the Hindu Sabha and lastly the All Parties Conference, to which this Committee owes its existence, have so far from ignoring the problem, laid considerable stress on it. The subjects of the Indian States also have been showing a lively interest in the internal affairs of their respective States and urging for a definite recognition of popular rights and liberties. They have

held two representative conferences and a committee appointed by the second held at Madras has approved and recommended to us a scheme of Swaraj embracing British India and the Indian States. We shall deal with this scheme later on. We are aware that the sensitiveness of some Indian princes has in recent years been touched by what they consider to be a somewhat obtrusive interest taken in them by public opinion in British India, which they have condemned as either lacking in knowledge, or political sagacity, or sympathy. We, therefore, very strongly repudiate the ill-founded charge that intelligent public opinion in British India has been too self-centred to look beyond the confines of British India or has shown any unwillingness to understand the view point of the Indian princes or their subjects, or even to sympathise with it wherever and whenever it has been possible to extend sympathy. If it has at times been critical of some of the "claims" of the Indian princes, or if it has at times approached their internal problems or tried to envisage the development of the constitutional relations between them and the future self-governing India from a different angle of vision, it is no more than what it is clearly entitled to do. We are afraid that the present tendency to stress the problem of Indian States as presenting insurmountable obstacles in the way of British India achieving dominion status is full of incalculable mischief for both and instead of helping to bring the "two Indias" closer to each other is likely to give rise to serious misunderstandings.

While the fact that there is an "Indian India" consisting of these States—some almost as big as, if not bigger than, some of the countries of Europe—enjoying, in a way 'internal sovereignty', 'autonomy' and 'independence', dignities and status—may be and has to be freely admitted, we think it would be very poor statesmanship and shortsighted policy to ignore those obvious historical, religious, sociological and economic affinities which exist between the people of British India and the people of these States. Nor do we think that it is possible to erect artificial geographical barriers between the two. Ideas and opinion travel from one part of

**Affinities between
British India and Indian
States**

India to another much more rapidly than was the case 60 or 70 years ago, and it would be absurd to deal with the problem of Indian States on the assumption that the dynamic forces now in operation in British India can for a very long period of time be expected to spend themselves on the borders of British India. It is inconceivable that the people of the States, who are fired by the same ambitions and aspirations as the people of British India, will quietly submit to existing conditions for ever, or that the people of British India, bound by the closest ties of family, race and religion to their brethren on the other side of an imaginary line, will never make common cause with them. In dealing with the problem, therefore, we would much rather base our conclusions upon the community of interests than upon differences of form. This community of interest would clearly point to joint action by the parties concerned as the most natural course to adopt with a view to mutual protection and advancement. Indeed if there ever was a case for a round table conference at which a perfect understanding could easily be reached it was this. With the representatives of the princes, of their people, of the British government, and of the people of British India assembled at such a conference all difficulties could have been solved with mutual good will. But most of the princes have unfortunately chosen to ignore the two most important parties—their own people and the people of British India—and have asked for or acquiesced in the appointment of the Butler Committee which, apart from the absence of necessary parties, is precluded by its very terms of reference, as we read them, from dealing with the constitutional issue. This committee is sitting in camera but such information as is available from published statements leaves no doubt in our minds that an attempt is being made to convert the Indian States into an Indian Ulster by pressing constitutional theories into service.

We have referred in our introduction to the constitutional question raised by Sir Malcolm Hailey in his speech in the Legislative Assembly in February, 1924. The same or similar questions have since been raised in other quarters and we now proceed to deal with them.

The constitutional position notwithstanding some vagueness that may surround it, is by no means difficult to understand. It is claimed that according to true constitutional theory the Indian States are and have been in relation with the Crown, whether their treaties were with the East India Company, or the British Crown, or whether they have been entered into since 1858 with the Government of India. Now it is obvious that the Crown under the constitution does not mean the King alone. It is a convenient constitutional phrase used to indicate the King-in-Parliament. Before 1858, the East India Company exercised sovereign rights under powers delegated by the 'Crown' and since 1858 those powers have been exercised under delegated authority by the Government of India and the Secretary of State, who is an integral part of the machinery established by Parliament for the Government of India. Section 67 of the Act of 1858 provided that "all treaties made by the said Company shall be binding on her Majesty" and similarly section 132 of the Act now in force provides that "all treaties made by the East India Company so far as they are in force at the commencement of this Act are binding on his Majesty". In point of fact, the enforcement of those treaties, the fulfilment of the obligations created by those treaties, and the interpretation of those treaties, have hitherto been among the normal functions and duties of the Government of India, subject to a so-called 'appellate' or supervisory jurisdiction of the Secretary of State for India. It is inconceivable that any Indian prince could, under the present constitution, ignore the Government of India or the Secretary of State and take up any matter relating to such obligations to the King or to his Majesty's Government. Again, the fact is that the Government of India have acquired certain powers by mere practice, usage or convention which are outside the scope of the written treaties. The Foreign Jurisdiction Act of 1890, and the Indian Foreign Jurisdiction Act XXI of 1879 have not unoften been resorted to by the Government of India for the extension of their jurisdiction.

By the resolution dated the 29th of October, 1920,

Resolution of Govern-
ment of India

the Government of India have given effect to the recommendations contained in paragraph 309 of the report on Indian Constitutional Reforms which prescribed a procedure for dealing with cases in which "the question arises of depriving a ruler of an important State, temporarily or permanently, of any of the rights, dignities, powers or privileges to which he, as a ruler, is entitled, or debarring from succession the heir apparent or any other member of the family of such ruler who according to the law and custom of his State is entitled to succeed".

In his letter dated the 27th March, 1926, Lord Reading emphasised the constitutional position as follows :—(a) The sovereignty of the British Crown is supreme in India, and therefore no ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British government, while scrupulously respecting all treaties and engagements, to preserve peace and good order throughout India. (b) The right of the British government to intervene in the internal affairs of the Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown. (c) The varying degrees of internal sovereignty which the rulers enjoy are all subject to the exercise by the paramount power of this responsibility".

It is a matter of common knowledge that the exercise of these large powers, or to be more accurate, the decision of the Government of India to exercise these powers in the case of some princes in recent years, has been the subject of much comment and dissatisfaction and the exposition of the constitutional position in Lord Reading's letter to his Exalted Highness the Nizam, from which we have quoted above, has led since to much searching of heart. It is not our intention or purpose to discuss the merits of the claim put forward in that letter. We simply desire to draw attention to it to show that even these large powers can only be exercised

at the discretion, upon the initiative, and by the machinery of the Government of India.

By usage or convention, or as a necessary corollary to the paramountcy of British power, the Government of India have claimed and exercised the right of (a) "installing" princes on the *gaddis* (b) administering the States during the minority of the ruler, (c) settling disputes between rulers and their *jagirdars* and (d) interfering in cases of gross misrule. With any legitimate desire on the part of the Indian princes to get their grievances in these respects remedied, it is possible, even for democratic India to sympathise; and we feel that it is by no means impossible or impracticable to define the limits within which the Government of India, as it is constituted at present, or as it may be in future, may seek to interfere. We think however that the plain fact ought not to be overlooked that the Government of India as a dominion will be as much the King's government, as the present Government of India is, and that there is no constitutional objection to the dominion government of India stepping into the shoes of the present Government of India.

If there are personal ties of allegiance or devotion which bind the Indian princes to the throne, person or dynasty of the King, they cannot, and ought not, to suffer in strength by a change or modification in the composition of the King's government in India, when India attains dominion status. There will always be plenty of room for the discharge of those duties to the Crown and for the exercise on the part of the Crown of those prerogatives which may be inseparable from the personal relation that might have subsisted between the Crown and the Indian rulers.

We shall now turn to the latest contribution on the subject. It comes from no less distinguished an authority than Sir Leslie Scott, the learned counsel engaged by the princes, who has expressed his views in a letter which has been printed in the July number of the "Law Quarterly Review". We recognise his eminence as a lawyer, but we cannot help feeling that his views as counsel for the Indian princes have yet to be tested by an independent judicial or legal authority after having both sides of the question presented

to it. So far as we are concerned we venture to differ from him entirely. After laying down that the relationship between the Crown and the Indian States cannot be governed either by international or municipal law, Sir Leslie Scott asks 'To what system of legal principles then are the relations of an Indian State to the Crown referable? There is no legal decision to serve as precedent, no complete analogy to guide. Resort must be had to first principles of law. We must think things out for ourselves. It is almost a virgin field for the lawyer'. Even if it is a virgin field for the lawyer, and we venture to say this is not quite correct, we think it is more a case for the constructive statesman than for the analytical lawyer. Sir Leslie Scott has in this letter stated five definite propositions, some of which may be admitted to be correct, others of which strike us as being too broadly put. In any case the conclusion which is sought to be drawn from these propositions is of such far-reaching consequence that it may be taken as definitely certain that if the Indian princes decide to take their stand upon the position so ingeniously argued out for them, British India must substantially discount their profession of sympathy with its aspirations to dominion status, and treat their reference to the federation of India as no more than a vision, the realisation of which must be left to a remote and uncertain future. The first proposition of Sir Leslie Scott is that 'the fundamental tie is consent and its recognition by Britain is unequivocal'. This may be assumed to be true. It implies nothing more than what can be said of any two states bound together by treaties or mutual understandings.

The second proposition formulated by him is that "those contracts are between sovereigns—The Prince and the Crown—not the Company or the Government of British India". This proposition to our mind is untenable historically and legally, and in any case, whatever may be the true legal theory, actual practice shows that the Indian princes and States have dealt with the Government of India, and submitted to its rulings and decisions and intervention, and have never dealt with 'the Crown' or his Majesty's government. The fact that there may be personal relationship between his Majesty and an Indian prince does not in our opinion alter or affect the

real legal position or the interpretation of that legal position in actual practice.

The third proposition is "that the relationship is wholly legal—a nexus of mutual rights and obligations. It is in no sense arbitrary". We should have thought that one of the main grievances of the Indian princes was that the Government of India had in actual practice extended their jurisdiction over them by going beyond the legal relationship in an 'arbitrary' manner. If they are protesting against 'the arbitrary' extension of such jurisdiction, it is in our opinion an understandable position, but it is somewhat remarkable that the importance of this proposition in the setting in which it is stated lies not so much in its practical application in the present, as in relation to possible constitutional developments in British India.

The fourth proposition is that the princes in making these contracts gave their confidence to the British Crown and nation; and the Crown cannot assign the contracts to any third party. "The British Government as paramount power has undertaken the defence of all the States, and *therefore to remain in India with whatever military and naval forces may be requisite to enable it to discharge that obligation.* It cannot hand over these forces to any other Government—to a foreign power such as France or Japan; to a dominion Government such as Canada or Australia; nor even to British India" (*our italics*).

The necessary corollary to this is stated in the fifth proposition *viz.*, that "The Crown can normally choose its agents. But an agent cannot act when his interest may conflict with his duty. In all matters of common concern with the States—customs, railways, ports, the salt monopoly, etc.—there is always the possibility that the interest of British India may not be identical with the interest of a particular State. The Crown's duty is, or may be, to safeguard the interest of the State—particularly in case of a minority administration. Should the interest of the agent be given the chance of conflicting with the duty of the principal"? This if true is putting up an effective barrier against the progress of British India towards dominion status, now and for ever, for it is obvious that if these 'contracts' between the Indian princes

and the British Crown and nation are of a personal character India must always continue to be divided between what is British India and Indian States, and the British Nation must always maintain adequate military and naval forces to discharge its obligations to Indian States. The argument we venture to say does not appear to us as anything more than ingenious. It starts on a false analogy and in applying that analogy ignores the "hard facts" of the case. There is no ground for the assumption that contracts between the princes and the Crown are on the same footing as contracts between private individuals. Sir Leslie Scott has himself pointed out in an earlier part of his letter that the princes continued to retain the attributes of sovereignty even after parting with some of its functions to the Crown. It is as such sovereigns that they must be taken to have dealt with another sovereign whether we take the latter to be the East India Company or the King in Parliament.

Again, it is not true to say that every contract between private individuals is of such a personal character as to be incapable of being performed by any one else. There is no question of one of the contracting parties having any special confidence in the other. The so-called contracts were made under stress of circumstances and would have been of the same or similar character with any other power if it occupied the same position as the British. The argument ignores the settled practice of the Government of India and by invoking so-called first principles in determining the "legal relationship" it overlooks the hard and unchallengeable fact that from the early days of the Company it has been the Government of India and the Government of India alone which has dealt with Indian princes and Indian States. It introduces an element of "personal confidence" between them and the British nation which is not easy to understand. It suggests that the past and present Governments of India which have so far exercised the power, said to be delegated from the Crown, were and are acceptable to the Indian princes and Indian States; but that the future Government of India, if it is to be of the dominion type, will not be so acceptable. This in plain English means that the past and present govern-

ments of India were acceptable because they were essentially foreign in their composition and not responsible to the Indian electorate and that the future responsible Government of India would not be acceptable to the Indian princes because it will consist of their own countrymen and because it will be responsible to an electorate of their own countrymen. But supposing that this is so is there any authority for the proposition that when a "contract" may be performed by an agent the choice of that agent does not rest with the principal but with the other party to the "contract". We have shown that so far the "contract" has been performed by white agents to the apparent satisfaction of the brown princes. On what principle of law, we ask, may that "contract" not be performed by brown agents to the equal if not greater satisfaction of the brown princes?

Let us now consider the argument that the principal cannot delegate to the agent the discharge of obligations where the agent's interest conflicts with his duty. Here again we find that the hard facts have been entirely ignored. The argument overlooks the fact that the agent of the Crown *viz.*, the present Government of India, has been regularly acting when its interest has conflicted with its duty, without any qualms of conscience on the part either of the principal or of the agent and without any public protest on the part of the Indian States. Sir Leslie Scott then says that when "the legal relationship" has been "made clear"—that is to say according to his own conception of that relationship—"suitable constitutional machinery for harmonious working between the two sides of India can be devised, and the States have already made it clear that they are ready and willing to follow such a plan on reasonable lines". In other words if Sir Leslie Scott's theory of personal relationship and personal confidence, and the consequent duty of the paramount power remaining in India to discharge its obligations, is accepted, the princes would be ready and willing to fall in with British India on reasonable lines. Once this argument is accepted as sound it is obvious that whatever be the machinery devised for harmonious working between the Indian States and British India, dominion status

for India must be ruled out for all time to come. We have shown that this argument is wholly unsound, and we sincerely hope that legal ingenuity will not be allowed to prevail against the larger interests of the country, and that the patriotism and statesmanship of the Indian princes, aided by the growing patriotism and love of freedom among their subjects, will be concentrated more upon the establishment of practical machinery for the settlement of issues between them and a responsible Commonwealth of India than upon a determination of the theoretical question of legal relationship, which can do them no good and is fraught with mischievous possibilities which can only lead to disaster. Mutual relations can only be satisfactorily determined with mutual consent and we believe that there is still plenty of room for it. But we must sound a note of warning that the natural and the legitimate aspirations of India cannot and will not be allowed to be defeated or checkmated by ingenious arguments which have no application to facts as they are.

We take special note of the following passage in Sir Leslie Scott's letter :

“The political issues are of first-class importance to the future of India as a whole. Their wise solution will affect directly the successful accomplishment by Sir John Simon and his colleagues of the task imposed by Parliament upon the Statutory Commission for British India. From an Imperial standpoint a statesmanlike treatment of the Princes now may well prove a vital factor in the future attitude of India towards the British Empire”.

So that the findings of the Butler Committee arrived at in camera are to decide the fate of the people of British India without the latter being given a chance to be heard, and Sir John Simon and his colleagues, who are themselves not seized of these “political issues of first-class importance”, are to be guided by their “wise solution” by the Butler Committee if they are to accomplish successfully the task imposed by Parliament upon them. This was foreseen in India and openly declared from various platforms. We know now exactly what the Statutory Commission is going to accomplish. The only wise solution of these issues

suggested by Sir Leslie Scott is that the British Government must "remain in India with whatever military and naval forces may be requisite to enable it to discharge its obligations". We thank Sir Leslie Scott for this authoritative forecast of the recommendations of the Statutory Commission which fully justifies the attitude taken in regard to it by all the well-known parties in India.

Leaving aside the theory of the relationship between the Crown and the Indian princes and coming to the position as it is, we maintain that we are right in saying that as a matter of fact and actual practice, it is with the Government of India that the Indian princes come into direct contact in regard to everything that concerns them or their States. It is well-known that the political secretary of the Government of India exercises vast powers over the Indian States. Without being a member of the Government of India, he practically discharges all the functions of a member, for there is no separate member in charge of the political portfolio, the political department being supposed to be in the direct charge of the Governor-General. The present position is that if the political department gives any decision against an Indian State or an Indian ruler, the only remedy available against it is 'an appeal, under certain conditions and subject to certain limitations, to the Secretary of State'. We are aware that in the present circumstances this is supposed to be a valued right, but this is probably due to the very unsatisfactory procedure followed in the first instance in India. It is obvious that a right of appeal in a case which is not fairly tried is of little value and we think that it is possible to replace it by adequate constitutional provisions for the future.

In ordinary experience, the matters in regard to which the Indian States come into contact or conflict with the Government of India are those relating to customs, excise, extradition, railways, post offices, and ports or harbours. In addition to this, there is the bigger common interest of self-defence. It is not necessary for us to examine what are understood to be the grievances of the Indian States in regard to these matters. We simply note the fact that responsible

Indian rulers and ministers of Indian States have, at times, raised their voice against what they have described to be the inequitable treatment which they received at the hands of the Government of India. How far those grievances are capable of being remedied, and how best they can be remedied, are matters for investigation and joint consultation, but we venture to think that their solution is not inextricably mixed up with the continuance of the present constitution of the Government of India, or the establishment of an entirely separate and independent machinery for the exclusive treatment of these subjects. If we refrain from going into this question at greater length, it is only because the public have not hitherto been permitted to know enough of the scheme which has been in the course of incubation during the last few months. But if it is permissible to us to draw our own inferences from such statements as have been made in this connection by Sir Leslie Scott, the counsel for the Indian princes, before his departure for England, we shall sound a note of warning against the attempt that is being made to duplicate the machinery, by bringing into existence a separate Council for the Indian States to work with the Governor-General. Apart from the fact that it will be a cumbersome thing, its separate existence cannot secure the solution of matters of conflict with British India or with the future Commonwealth government. It strikes us as being a vicious extension of the system of diarchy with all its attendant incongruities, inconveniences, and constitutional difficulties.

A federation of some sort was foreshadowed by Sir Malcolm Hailey, in the speech to which we have already referred, and there is no doubt that some such idea is also present to the mind of Sir Leslie Scott. But if the constitution of India is to be a federal one, as we think it might well be, the position of the Indian States in relation to that federation appears to us to call for a definite determination and the ideas, on the subject, require to be cleared up. Are the Indian States willing and ready to join a real federation? We put this question as we believe that the lines on which the princes and Sir Leslie Scott are working cannot lead to any kind of federation in its well understood sense. 'A

federal state', says professor Newton, 'is a perpetual union of several sovereign states, based first upon a treaty between those states, or upon some historical status common to them all, and secondly, upon a federal constitution accepted by their citizens. The central government acts not only upon the associated states but also directly upon their citizens. Both the internal and external sovereignty of the states is impaired and the federal union in most cases alone enters into international relations'. It would be, in our opinion, a most one sided arrangement if the Indian States desire to join the federation, so as to influence by their votes and, otherwise, the policy and legislation of the Indian Legislature, without submitting themselves to common legislation passed by it. It would be a travesty of the federal idea. If the Indian States would be willing to join such a federation, after realizing the full implications of the federal idea, we shall heartily welcome their decision and do all that lies in our power to secure to them the full enjoyment of their rights and privileges. But it must be clearly borne in mind that it would necessitate, perhaps in varying degrees, a modification of the system of government and administration prevailing within their territories. We hope and trust that in the light of experience gained the Indian States may make up their mind to join formally the federation. Meanwhile, we think that it is by no means impracticable to provide suitable machinery for the settlement of mutual differences on administrative and other matters. The practical question of the preservation of their treaty rights and such independence as they have enjoyed or as they claim, is, in our opinion, far more important than the arid and academic discussion of the question, whether in theory their relations are with the Government of India or with the Crown.

Accordingly, we have provided (a) 'all treaties made
Our recommendations between the East India Company and the Indian States and all such subsequent treaties, so far as they are in force at the commencement of this Act, shall be binding on the Commonwealth. (b) The Commonwealth shall exercise the same rights in relation to, and discharge the same obligations towards, the Indian States as the Government of

India exercised and discharged previous to the passing of this Act". We have made these suggestions in no spirit of vanity or idealism. We fully realise their implications and the obligations that such provisions will impose upon the future Government of India. We do believe that the Government of India of the future will discharge their obligations in their integrity and with every desire to promote harmonious relations and no desire to override cherished privileges, or sentiments. Similarly, in regard to matters of a justiciable character, we have suggested that 'in case of difference between the Commonwealth and an Indian State on any matter arising out of treaties, engagements, sanads or similar other documents, the Governor-General in Council may, with the consent of the State concerned, refer the said matter to the Supreme Court for its decision'. We think that this will be a far better method of settling such matters than the present arrangement under which the Government of India is both a party and a judge in a controversy between itself and an Indian State. We need scarcely point out that we anticipate that the judges of the Supreme Court will be men of the highest legal training, character, and judicial independence.

In regard to non-justiciable matters involving financial and administrative relations, it should not be difficult to come to a settlement by mutual conferences and understandings. The position, in the future, will not to our mind, be worse than it is. Indeed it is likely to be better, where, between different States, there are honest differences and an independent effort is made to arrive at just and equitable settlements. Practical good will and larger common interest are of far greater value than any meticulous considerations of ultimate sanctions. It is obvious to our mind, that the question of common defence is one which is bound to be in future the rallying centre of the Government of India and the Indian States, and if it has been possible in the past to sustain common obligations and to keep alive a common sense of duty to the country at large, we do not despair of the future.

In making these observations we feel that we have not had the advantage of discussion with the represen-

tatives of the Indian princes, and we are alive to the possibility of much greater light being thrown on some dark corners of the entire problem by such discussions. Meanwhile, we content ourselves by saying that while we recognise that an Indian federation, compatible as it will be with the maximum degree of autonomy in the local units, whether provinces or States, can be the only solid foundation for responsible government, we are not prepared to concede that until Indian States have made up their minds to join this federation in the most formal manner, British India must be denied full responsible government or dominion status, merely because it is supposed that the obligations which the Crown or the present Government of India owe to the Indian States, can be discharged only by a central government which is, and must for that reason continue to be undemocratic. Such an argument can only mean that the Indian States, while professing their sympathy with progress in British India, must effectually defeat our aims and aspirations by an attitude based not on enlightened self-interest, but on practical hostility to our aims and aspirations.

While however the Indian princes have not given us the benefit of mutual consultations and discussions, their subjects have been represented before the All Parties Conference and have put forward their case with ability. The recommendations made by the first committee of the Conference in regard to the Indian States have been severely criticised by Mr. Hosakoppa Krishna Rao, member of the Mysore Representative Assembly, who has also prepared a "Swaraj Constitution" which has been approved by a committee appointed by the All India States Subjects Conference, Madras. We have carefully considered these criticisms and the draft Swaraj constitution of Mr. Krishna Rao. But we regret that in view of the constitutional position we have discussed above we are unable at present to recommend a detailed constitution which would embrace both British India and the Indian States.

It is well-known that the expression "Indian States" does not connote any particular form of government. The authors of the report on Constitutional Reforms have thus described these States :

"They are in all stages of development, patriarchal, feudal or more advanced while in a few States are found the beginnings of representative institutions. The characteristic features of all of them however including the most advanced are the personal rule of the prince and his control over legislation and the administration of justice".

So long as this characteristic feature of personal rule does not undergo a material change the expression "Indian State" must be taken to mean "the individual ruling prince of the State concerned" and has no reference to the nature of the administration. This material change cannot be effected constitutionally without the consent of the rulers of the States who alone represent their governments. Mr. Rao says that "tradition, convention, sentiment and above all an intense feeling of loyalty too deep to be rooted out and finally, a keen desire to preserve the individuality of their respective States firmly bind them (the people of the States) to the Ruling Houses. Consequently they do not hanker after unity but desire only union with British India". With all this tradition, convention, sentiment and intense loyalty to the rulers, Mr. Rao completely ignores their wishes, abolishes all treaties and arrangements between them and "His Majesty or the Parliament of the United Kingdom or the King in Council or the Secretary of State for India or the Governor-General in Council or all the said authorities" and declares by one sweep of the pen that such treaties or arrangements shall become null and void at the date of the commencement of the constitution. He then guarantees to the States "territorial integrity, internal autonomy and stability of constitutions and the fundamental rights of their people", subject to conditions which have never been accepted by them. He provides for the withdrawal of the guarantee in case the States fail to fulfil the conditions laid down by him. We are not told what is to happen if the rulers of the States do not accept either the guarantee or the conditions attached to it and what are the "necessary measures" which Mr. Rao proposes to take against them if they fail to fulfil his conditions. As regard the form of government it is to be "hereditary monarchy, *i.e.*, a government in which the head of the State shall be the hereditary governor or administrator with a popular Assembly and an executive responsible to that

Assembly". He ends with a reservation of the "right of the people of the Confederation to claim the fullest national independence (that is, an unqualified divorce of her political, economic and social relationship from Great Britain and the British Commonwealth of Nations) and evolve her future constitution on a full-fledged federal republican basis, in case no settlement is agreed to by the British and the Indian Governments on the basis of this Constitution".

It is hardly necessary to point out the inconsistencies of these provisions or to criticise them on constitutional grounds beyond which we have not permitted ourselves to go for reasons already stated.

We have hitherto dealt with the relations of the Government of India with the Indian States. We now propose briefly to advert to the relations of the Government of India with foreign states. In one sense we are aware that the position of India as compared to some of the dominions is peculiar. India has got a vast land frontier on the North-West and the North-East, and it has to come into contact with foreign powers and semi-independent tribes. The foreign department of the Government of India is practically in charge of the foreign secretary who works directly under the Governor-General. His duties are multifarious; he has to look after the North-West Frontier provinces, he is in control of the affairs of the tribes in the 'Agency Tracts', he has to deal with semi-independent chiefs in the North-West Province and elsewhere. His jurisdiction extends in some matters to the Persian Gulf and Aden. Some matters—not all—falling within his jurisdiction occasionally come up for discussion in the legislature and then he has to defend or explain the policy of the Government of India. The bigger questions of policy, having an imperial aspect, are settled not in India, but in England, and we realise that in a well-knit Commonwealth of Nations it is inevitable that, consistently with the independence of the dominions, there must be to some extent at least uniformity of foreign policy, but this is in the case of the dominions achieved more by mutual discussion and understandings than by any imperial mandates. Indeed the measure of freedom in regard to questions of foreign policy which in

recent years has been claimed and enjoyed by Canada, South Africa and Australia has been steadily increasing, though this has not tended to weaken the safety of the empire, or to affect the possibility of a unity of policy in larger questions of relations with foreign countries or states.

In point of fact the Government of India discharge and enforce those obligations which mutually exist between his Majesty's government and some neighbouring foreign Asiatic powers. We do not see any reason why the self-governing dominion of India should do anything less.

We are aware of the delicate nature of questions of foreign policy, and the inexpediency of discussing them at times on the floor of the legislature. We cannot see why the legislature of the dominion of India should not observe those rules of prudence and discretion which are observed in other legislatures.

CHAPTER VI

OTHER PROPOSALS

We shall now consider the main provisions of the constitution, as suggested by us. These are framed as has already been stated, on the model of the dominions.

The resolution of the Madras Congress lays down that the basis of the constitution must be a Declaration of Fundamental Rights. Considerable stress has been laid on this and all the draft constitutions we have considered have formulated such a declaration. Canada, Australia, and South Africa have no declaration of rights in their constitutions but there are various articles to be found in the constitution of the Irish Free State which may properly be grouped under the general head "fundamental rights". The reason for this is not far to seek. Ireland is the only country where the conditions obtaining before the treaty were the nearest approach to those we have in India. The first concern of the people of Ireland was, as indeed it is of the people of India to-day, to secure fundamental rights that have been denied to them. The other dominions had their rise from earlier British settlements which were supposed to have carried the law of England with them. Ireland was taken and kept under the rule of England against her own will and the acquisition of dominion status by her became a matter of treaty between the two nations. We conceive that the constitutional position in India is very much the same. That India is a dependency of Great Britain cannot be denied. That position can only be altered in one of two ways—force or mutual consent. It is the latter in furtherance of which we are called upon to recommend the principles of a constitution for India. In doing so it is obvious that our first

care should be to have our fundamental rights guaranteed in a manner which will not permit their withdrawal under any circumstances. With perhaps less reason than we have most of the more modern constitutions of Europe have specific provisions to secure such rights to the people.

Another reason why great importance attaches to a declaration of rights is the unfortunate existence of communal differences in the country. Certain safeguards and guarantees are necessary to create and establish a sense of security among those who look upon each other with distrust and suspicion. We could not better secure the full enjoyment of religious and communal rights to all communities than by including them among the basic principles of the constitution.

A reference to the various clauses of the declaration of fundamental rights as adopted by us will show that we have kept both these aspects in view.

The first committee of the All Parties Conference went into this question carefully and we have adopted most of their articles. We have added to the declaration an independent recommendation regarding the rights of labour and peasantry, made by the first committee, with the exception that "Parliament shall make laws to ensure fair rent and fixity of tenure to agricultural tenants". We have left this out not because we do not approve of fixity of tenure but because we felt that if this was made a fundamental right it might become more of hinderance and obstruction in the way of the tenantry, preventing future progress, than a safeguard. The present system of land tenure in large parts of India is anything but desirable and requires radical change. We recognise that the present condition of the tenantry is very deplorable and even some fixity of tenure would bring great relief. But it would be a shortsighted policy indeed if to gain some relief now we were to barter away the future rights of the peasantry. So long as the present system endures the rights of the tenants might be safeguarded by the article in the Declaration of Rights requiring Parliament, *i. e.*, the Parliament of India, to make suitable laws for securing a living wage for every worker.

We have added an article to the Declaration dealing with the right of all citizens to access to, and use of, public roads, public wells, and all other places of public resort. This may be considered obvious enough but in view of the peculiar circumstances and the customs prevailing in some parts of the country we feel that it is desirable to lay emphasis on it.

Right to use of roads etc.
Certain changes and additions have also been made in some other articles. In the article dealing with the right to free elementary education we have added that there will be no "distinction of caste or creed in the matter of admission into any educational institutions maintained or aided by the state".

No distinctions of caste in schools
To the right to a writ of habeas corpus we have added that in case the central legislature is not sitting during a war or rebellion the executive authority of the Commonwealth will be entitled to suspend the right for the time being but the central legislature must be informed at the earliest opportunity for such action as it may deem fit.

Habeas Corpus
At the request of our colleague Sardar Mangal Singh we have added a note to the Declaration acknowledging the right of the Sikhs to carry kripans on any occasion.

Kripans
We are of opinion that the central legislature should be bi-cameral, consisting of a Senate and a House of Representatives. The provincial legislatures should, in our opinion, be uni-cameral.

The Legislature
For the Senate we recommend 200 members; for the House of Representatives 500 members, with provision to increase the number, if necessary, on an uniform population basis. In the provinces, as a general rule, there should be one member for every 100,000 population. But in a province with a population of less than 10 millions there may be a maximum of 100 members.

Number of members
For the House of Representatives and the provincial councils we are of opinion that the largest possible franchise should be

Franchise

granted. Some of us were strongly in favour of adult suffrage, but others, while favouring adult suffrage as the objective to be aimed at, were of opinion that there would be too many practical difficulties in the way at the beginning. Various proposals were considered among them being, besides adult suffrage, the following :

- (i) Adult suffrage subject to registration by intending voters.
- (ii) The extension of the franchise from the present six millions to about 60 millions leaving it to a committee to determine the franchise which would give this result.
- (iii) Any of the following
 - (a) All persons who may pay any revenue, rent or land or house rates, cesses and taxes.
 - (b) All literates.
 - (c) All persons who earn their livelihood by manual or intellectual labour.
 - (d) All such unemployed as are on the state register of the unemployed.
 - (e) Members of joint families.
 - (f) Wives of male electors.

The third proposal given above would in practice amount to something very near adult suffrage. Some of us were inclined to favour the second proposal, which increased the votes to 60 millions, as a stepping stone to adult suffrage. Adult suffrage would probably give us about 120 millions of voters in British India, and the second proposal would thus enfranchise half of these and would be a great step in advance. There were difficulties however in the way of this proposal. At present the voting ratio between different communities is not the same as the population ratio. Thus in the Punjab although the Muslims outnumber the Hindus and Sikhs combined the number of their votes is far less than the Hindu and Sikh voters. This is due to the superior economic position of the latter. We are strongly of opinion that this anomaly should be ended and the voting ratio should be made to correspond with the population ratio. With adult suffrage this happens auto-

matically, but with any other restricted franchise the only possible way to do it is to have different electoral qualifications for different groups and communities. Thus the basis of representation of different communities cannot be uniform and this may be considered a grievance by some groups. We were thus driven to the conclusion that the only solution is adult suffrage and we have recommended accordingly. We find that the Ceylon Reform Commission has come to the same conclusion. It has recommended a universal manhood suffrage with a restricted franchise for women over 30 years of age. The restriction has been imposed "in view of the necessity for keeping the number of votes within reasonable bounds". We see no such necessity. Any artificial restriction on the right to vote in a democratic constitution is an unwarranted restriction on democracy itself. It is quite a different thing to say that a system of universal adult suffrage is difficult to work. But the difficulty howsoever great has to be faced if what is contemplated is full responsible government in its true sense and with all its implications. The Ceylon Reform Commission have created a novel form of government which has no parallel in the constitutions of the world. But whatever else it may be, it certainly is not responsible government in any sense, and it is responsible government alone with which we are concerned. We do not therefore propose to put any restriction on the right of women to vote which does not equally apply to men.

Universal adult suffrage is at present being successfully worked on a small scale in the elections to the Shromani Gurdwara Prabandhak Committee (Central Sikh Shrines Committee), which are held all over the Punjab. Its introduction on a larger scale only means a multiplication of the machinery employed. We do not see why such multiplication with all the trouble and expense it involves should be considered unreasonable when it is necessary for the purpose of laying the foundation upon which responsible government rests.

We attach no weight to the objections based on the prevailing illiteracy of the masses and their lack of political experience. The proportion of literacy being very small the same objections will apply to the great

majority of voters howsoever much the franchise may be restricted. There is no reason or justice in undertaking the political education of a person earning a certain income and refusing the same education to another person earning a little less. Political experience can only be acquired by an active participation in political institutions and does not entirely depend upon literacy. There should be equal opportunities available to all to acquire this experience. The most advanced countries in the world did not wait to achieve a hundred per cent of literacy before introducing adult suffrage. Why should India?

In regard to the Senate we recommend that the
Senate electorates should be the legislatures
of the provinces, a specific number of
seats being allotted to each province, the basis being
population, subject to a minimum.

A majority of the first All Parties committee recommended a restricted franchise for the Senate, although a minority was in favour of our present suggestion. An upper house, if directly elected, can either be based on a narrow and restricted franchise or on as wide a franchise as applies to the lower house. In the latter case, it becomes merely a duplicate of the lower chamber and is totally unnecessary; in the former it represents only a small section of the community and there is always a tendency to create deadlocks and friction. There is no justification whatever for a second chamber consisting of obscurantists and people belonging to special classes whose chief aim is to protect their own interests and obstruct all liberal measures. The only justification for it is that it ensures the reconsiderations of all measures emanating from the lower house in a somewhat calmer atmosphere and more dispassionately than is likely to be the case in the lower house when controversial matters are discussed. This is specially necessary in India owing to the existence of communal feelings. Direct election to the Senate can thus only result in either a replica of the lower house or in producing a reactionary body representing some vested interests only. The method of indirect election we have suggested gets over this difficulty. The electorate consisting of people presumably of a fairly high

degree of intelligence, there is some chance that the right kind of men may be chosen, men who may not care to face the shouting and the tub-thumping which a modern democratic election with a wide electorate involves. Their electorate although restricted will not be based on status or vested interests or class. It will presumably reflect the temper of the mass electorates in the country. There will be a greater chance of minority and other special interests to be represented, specially, as we recommend, if the election for the Senate takes place by the system of proportional representation.

There will be another advantage in the adoption of this proposal. Provinces as such will be directly represented in the central legislature and provincial view points will be expressed in the Senate. This is specially desirable to co-ordinate the provincial legislatures with the central legislature and to promote the harmonious working of the constitution.

We have suggested that a specific number of seats should be allotted to each province, the basis being population, subject to a minimum. We have not fixed a minimum. Our idea is that although the rough population test should be applied in the allotment of seats, it should not be adhered to in its entirety, so that even the smaller provinces may have adequate representation. In some countries, like the United States of America, the constituent states of the Union send the same number of members to the Senate, regardless of population. In view of the great difference in size and population of our provinces this principle of equal representation of all provinces may not be desirable but the differences between the representation of one province and another in the Senate should not be wholly disproportionate.

We have suggested that the House of Representatives should continue for five years and the Senate for seven years.

We have adopted many of the recommendations of the first committee but we have added to them and made several changes. We have not provided for concurrent powers in any subject of both the central and provincial legis-

lature. This is likely to lead to friction, and so we have endeavoured to place the functions of the two in entirely separate compartments with no overlapping.

The other provisions relating to legislatures are on the lines of the dominion acts. In the case of the central legislature, the House of Representatives has been given sole power to deal with money bills.

We have recommended that the executive council of the Commonwealth should consist of a Prime Minister and not more than six ministers. There will probably be a tendency to increase the number of ministers so as to give representation to various communities. We do not approve of this, and in view of the provincial autonomy we are providing for, we feel that seven ministers ought to suffice in the central executive. The executive council will of course be collectively responsible to the legislature.

The Executive

For the provincial executive we have suggested five ministers—a Chief Minister and four others.

The powers of the central and provincial executives are similar to those found in the dominion constitutions.

We have provided for a Supreme Court, besides the High Courts, and we suggest that ordinarily no appeals should go to the King in Council except under certain conditions, which we have specified.

The Judiciary

We draw particular attention to the cases falling under the original jurisdiction of the Supreme Court. The most important of these are matters arising out of treaties, engagements, sanads, and similar other documents between the Commonwealth and Indian States which may be referred by the Governor-General in Council with the consent of the State concerned to the Supreme Court for its decision.

Supreme Court

The division of the revenues of the country between the central and provincial governments, and the assignment of money for defence, education and other essential matters, will be difficult and will require the greatest care.

Finance

We have recommended that immediately after the establishment of the Commonwealth a commission be appointed to institute an enquiry into

1. The sources of revenue which may be assigned to the Commonwealth and to the provinces, and
2. The financial relations between the central and the provincial governments.

In making the recommendation we have followed the constitution of the Union of South Africa, section 118, as the most suitable.

We have laid an additional duty on this commission to appoint

- (i) a special committee to examine the whole question of the training of officers for the land, naval and air forces, and the establishment of schools and colleges to give this training.
Training of Officers
- (ii) Another committee to investigate and report on the introduction of general primary education, and the grant of special educational facilities to backward classes.
Primary education and backward classes
- (iii) Such other committees as it may consider necessary.

We feel that the commission we have recommended will not be in a position to make a comprehensive report without the help of these committees which will be composed mostly of experts.

We have recommended that on the establishment of the Commonwealth a permanent Public Services Commission should also be appointed.
The Civil Services

One of the first duties of the Commonwealth on its establishment will be the reorganisation and readjustment of the departments of public services. It is notorious that the Indian administration to-day is top heavy and the services are paid at a higher rate than anywhere else in the world inspite of the grinding poverty of the country. The first problem before the dominion of India will be how to find money for defence, education, industry, sanitation and a host of other purposes. We cannot

possibly afford to keep extravagantly paid civil or military services and we must try to reduce the over head charges of administration to find money for developing the country. The people, or rather the articulate section of them, have all along protested against the heavy salaries of our officials. But the only answer to these protests came in the shape of the Lee Commission. This commission as is well-known was appointed in the teeth of unanimous Indian opposition and its recommendations were adopted over the head of the Indian legislature. We feel therefore that the entire question of the sources and methods of recruitment of the services, their salaries, emoluments, pensions and allowances in the future will require re-examination in the light of the new political conditions which will be created under the new constitution. For this we have provided for the appointment of a special Public Service Commission which will cease to function after the reorganisation and readjustment of the services have been effected. But we have provided adequate guarantees for persons holding offices at the establishment of the Commonwealth both in case of their electing to retire and to remain in the service of the Commonwealth. We have given three years for the exercise of the option to retire on the same terms and conditions which may be applicable to those officers at the commencement of the Commonwealth.

We have made similar provisions for all officers serving in the army, the navy, the Royal Indian Marine and in the Air Force of India serving in India at the commencement of the new constitution.

We have suggested the appointment of a Committee of Defence consisting of :

- (1) Prime Minister
- (2) Minister of Defence
- (3) Minister of Foreign Affairs
- (4) The Commander-in-Chief
- (5) The Commander of Air Forces
- (6) The Commander of Naval Forces
- (7) The Chief of the General Staff, and
- (8-9) Two other experts

The functions of this committee will be to advise the government upon questions of general policy and as to the practicability and means of effecting retrenchments in the expenditure on defence compatibly with the safety of India. We have also suggested that the annual estimates should be framed according to the recommendations of this committee. These provisions will, we believe, ensure the efficiency and general administration of the army.

For other recommendations we refer to Chapter VII, where they are set out in detail.

CHAPTER VII

THE RECOMMENDATIONS

We have made no attempt to draft the constitution as a whole, with the precision necessary in the case of a bill intended to be introduced in the legislature. Our recommendations have by their very nature taken a form similar to that of clauses of a draft bill but they are not intended to be treated as such or understood as anything more than an indication of the principles involved, which was all we were called upon to do by our terms of reference. It will be for the Parliamentary draftsmen to put them into shape, add formal and consequential provisions, and such details as we have omitted. It may be mentioned that some of the drafts placed before us provide for transfer orders and orders in Council to give effect to the constitution. These are very important, but more for the draftsmen than for us. On some points we have gone into greater detail than on others. But this is more or less accidental. We have drawn freely on the constitutions of the dominions as well as on Dr. Besant's Commonwealth of India Bill and the drafts prepared by Messrs. Vijiaraghavachariar, Srinivasa Iyengar and Rangaswami Iyengar, and the committee of the Independent Labour Party, and also on the Government of India Act, but have found necessary in most cases to make some verbal and at times more important alterations. We have also omitted the preamble and the definitions excepting the definition of "citizen" which was settled by the first committee appointed by the All Parties Conference. We now give these recommendations under suitable headings :

Constitutional status of India

1. India shall have the same constitutional status in the comity of nations known as the British Empire,

as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and the Irish Free State, with a Parliament having powers to make laws for the peace, order and good government of India, and an executive responsible to that Parliament, and shall be styled and known as the Commonwealth of India.

Operation of the constitution and laws

2. This Act and all laws made by the Parliament of the Commonwealth thereunder shall be binding on the courts and people of every province, and of every part of the Commonwealth, notwithstanding anything in the laws of the Indian Legislature or of any province or in any Act of the United Kingdom extending to British India; and the laws of the Commonwealth shall be enforced in all Indian territorial waters.

Definition of citizen.

3. The word "citizen" wherever it occurs in this constitution means every person

(a) who was born, or whose father was either born or naturalised, within the territorial limits of the Commonwealth and has not been naturalised as a citizen of any other country;

(b) who is naturalised in the Commonwealth under the law in force for the time being.

Explanation:—No person who is a citizen of a foreign country can be a citizen of the Commonwealth unless he renounces the citizenship of such foreign country in the manner prescribed by law.

Fundamental Rights

4. (i) All powers of government and all authority, legislative, executive and judicial, are derived from the people and the same shall be exercised in the Commonwealth of India through the organisations established by or under, and in accord with, this constitution.

(ii) No person shall be deprived of his liberty nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law.

(iii) Freedom of conscience and the free profession and practice of religion are, subject to public order or morality, hereby guaranteed to every person.

(iv) The right of free expression of opinion, as well as the right to assemble peaceably and without arms, and to form associations or unions, is hereby guaranteed for purposes not opposed to public order or morality.

(v) All citizens in the Commonwealth of India have the right to free elementary education without any distinction of caste or creed in the matter of admission into any educational institutions, maintained or aided by the state, and such right shall be enforceable as soon as due arrangements shall have been made by competent authority.

(vi) All citizens are equal before the law and possess equal civic rights.

(vii) There shall be no penal law whether substantive or procedural of a discriminative nature.

(viii) No person shall be punished for any act which was not punishable under the law at the time it was committed.

(ix) No corporal punishment or other punishment involving torture of any kind shall be lawful.

(x) Every citizen shall have the right to a writ of *habeas corpus*. Such right may be suspended in case of war or rebellion by an Act of the central legislature or, if the legislature is not in session, by the Governor-General in Council, and in such case he shall report the suspension to the legislature at the earliest possible opportunity for such action as it may deem fit.

(xi) There shall be no state religion for the Commonwealth of India or for any province in the Commonwealth, nor shall the state either directly or indirectly endow any religion or give any preference or impose any disability on account of religious belief or religious status.

(xii) No person attending any school, receiving state aid or other public money shall be compelled to attend the religious instruction that may be given in the school.

(xiii) No person shall by reason of his religion,

caste or creed be prejudiced in any way in regard to public employment, office of power or honour and the exercise of any trade or calling.

(xiv) All citizens have an equal right of access to, and use of, public roads, public wells and all other places of public resort.

(xv) Freedom of combination and association for the maintenance and improvement of labour and economic conditions is guaranteed to everyone and of all occupations. All agreements and measures tending to restrict or obstruct such freedom are illegal.

(xvi) No breach of contract of service or abetment thereof shall be made a criminal offence.

(xvii) Parliament shall make suitable laws for the maintenance of health and fitness for work of all citizens, securing of a living wage for every worker, the protection of motherhood, welfare of children, and the economic consequences of old age, infirmity and unemployment.

(xviii) Every citizen shall have the right to keep and bear arms in accordance with regulations made in that behalf.

(xix) Men and women shall have equal rights as citizens.

Note : Notwithstanding anything to the contrary in article IV the Sikhs are entitled to carry kripans.

Parliament

5. The legislative power of the Commonwealth shall be vested in a Parliament which shall consist of the King; a Senate and a House of Representatives herein called the Parliament.

6. The Governor-General shall be appointed by the King and shall have, and may exercise in the Commonwealth, during the King's pleasure, but subject to this constitution, such powers and functions of the King as his Majesty may assign to him.

7. (a) There shall be payable to the King out of the revenues of India for the salary of the Governor-General an annual sum, which, until the Parliament of the Commonwealth otherwise provides, shall be as in the schedule hereof provided.

(b) The salary of a Governor-General shall not be altered during his continuance in office.

8. The Senate shall consist of 200 members to be elected by the Provincial Councils, a specific number of seats being allotted to each province on the basis of population, subject to a minimum. The election shall be held by the method of proportional representation with the single transferable vote. (The Hare system).

9. The House of Representatives shall consist of 500 members to be elected by constituencies determined by law. Every person of either sex who has attained the age of 21, and is not disqualified by law, shall be entitled to vote.

Provided that Parliament shall have the power to increase the number of members from time to time if necessary.

10. (1) Every House of Representatives shall continue for five years from its first meeting and every Senate shall continue for seven years.

Provided that—

(a) either chamber of the legislature may be sooner dissolved by the Governor-General; and

(b) any such period may be extended by the Governor-General if in special circumstances he so thinks fit; and

(c) after the dissolution of either chamber the Governor-General shall appoint a date not more than six months after the date of dissolution for the next session of that chamber.

(2) The Governor-General may appoint such times and places for holding the sessions of either chamber of the Indian legislature as he thinks fit, and may also from time to time, by notification or otherwise, prorogue such sessions.

(3) Any meeting of either chamber of the Indian legislature may be adjourned by the person presiding.

(4) All questions in either chamber shall be determined by a majority of votes of members present, other than the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

(5) The powers of either chamber of the Indian legislature may be exercised notwithstanding any vacancy in the chamber.

11. There shall be a president of each House of Parliament who shall be a member of the House and shall be elected by the House. There shall also be a deputy president of each House who shall also be a member of the House and be similarly elected.

12. The privileges, immunities and powers to be held, enjoyed and exercised by the Senate and by the House of Representatives and by the members thereof respectively shall be such as are from time to time defined by Act of Parliament of the Commonwealth.

13. Parliament shall, subject to the provisions of this constitution, have power to make laws

(a) for the peace, order and good government of the Commonwealth in relation to all matters not coming in the classes of subjects by this Act assigned to the legislatures of provinces ;

(b) for the nationals and servants of the Commonwealth within other parts of India as well as those without and beyond India ;

(c) for the government officers, soldiers, airmen and followers in his Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act or the Air Force Act ; and

(d) for all persons employed or serving in or belonging to the Royal Indian Marine Service or the Indian Navy.

For greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that notwithstanding anything in this Act the legislative authority of the Parliament of the

Commonwealth extends to all matters coming within the classes of subjects hereinafter enumerated and specified in Schedule I, attached hereto.

14. The powers of Parliament with respect to foreign affairs, not including the Indian States, shall be the same as exercised by the self-governing dominions.

15. Provision may be made by rules under this Act for regulating the course of business and the preservation of order in the chambers of the Indian legislature, and as to the persons to preside at the meetings of the House of Representatives in the absence of the president and the deputy president; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.

16. (i) Any bill which appropriates revenue or monies for the ordinary annual services of the Commonwealth government shall deal only with such appropriations.

(ii) Bills imposing taxation shall deal only with the imposition of taxes, and any provision therein dealing with any other matter shall be of no effect.

(iii) Bills affecting the public debt or for the appropriation of revenues or monies or for imposing taxation shall be introduced only by a member of the executive council and can only originate in the House of Representatives.

17. A money bill means a bill which contains only provisions dealing with all or any of the following subjects, namely the imposition, repeal, remission, alteration or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on public revenues or monies, or the variation or repeal of any such charges; supply, the appropriation, receipt, custody, issue or audit of accounts of public money; the raising of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this definition the expression "taxation", "public money" and "loan" respectively do not include any taxation, money or loan raised by local authorities or bodies for local purposes.

18. The question whether a bill is or is not a money bill will be decided by the president of the House of Representatives.

19. A money bill passed by the House of Representatives shall be sent to the Senate for its recommendations and it shall be returned not later than.....days therefrom to the House of Representatives, which may pass it, accepting or rejecting all or any of the recommendations of the Senate ; and the bill so passed shall be deemed to have been passed by both chambers.

20. (i) Subject to the provisions of this Act, a bill may be initiated in either House of Parliament and, if passed by the originating House, shall be introduced in the other House for being passed.

(ii) Except as otherwise provided under this Act, a bill shall not be deemed to have been passed by Parliament unless it has been agreed to by both Houses, either without amendments or with such amendments only as may be agreed to by both Houses.

(iii) If any bill which has been passed by the House of Representatives is not, within six months after the passage of the bill by that House, passed by the Senate, either without amendments or with such amendments as may be agreed to by both Houses, the Governor-General shall, on resolution passed by either House to that effect, refer the matter for decision to a joint sitting of both Houses. The members present at any such joint sitting may deliberate and shall vote together upon the bill as last proposed by the House of Representatives and upon amendments if any, which have been made therein by one House of Parliament and not agreed to by the other; and any such amendments which are affirmed by a majority of the total number of members of the Senate and the House of Representatives present at such sitting, shall be taken to have been duly passed by both Houses of Parliament.

21. (i) So soon as any bill shall have been passed, or deemed to have been passed by both Houses, it shall be presented to the Governor-General for the signification by him, in the King's name, of the King's assent, and the Governor-General may signify such assent or withhold the same or he may reserve the bill

for the signification of the King's pleasure.

(ii) A bill passed by both Houses of Parliament shall not become an Act until the Governor-General signifies his assent thereto in the King's name, or in the case of a bill reserved for the signification of the King's pleasure, until he signifies by speech or message to each House of Parliament, or by proclamation that it has received the assent of the King in Council.

Provided that the Governor-General may, where a bill has been passed by both Houses of Parliament and presented to him for the signification by him of the King's assent, or has been reserved by him for the signification of the King's pleasure, return the bill for reconsideration by Parliament with a recommendation that Parliament shall consider amendments thereto.

(iii) Any bill so returned shall be further considered by Parliament together with the amendments, recommended by the Governor-General, and if re-affirmed with or without amendments, may be again presented to the Governor-General for the signification in the King's name of the King's assent.

The Commonwealth Executive

22. The executive power of the Commonwealth is vested in the King and is exercisable by the Governor-General as the King's representative, acting on the advice of the executive council, subject to the provisions of this Act and of the laws of the Commonwealth.

23. (a) There shall be an executive council consisting of the Prime Minister and, until Parliament otherwise provides, not more than six ministers of the Commonwealth.

(b) The Prime Minister shall be appointed by the Governor-General and the ministers shall also be appointed by him on the advice of the Prime Minister.

(c) The executive council shall be collectively responsible to the legislature for all matters concerning the departments of the Commonwealth administered by members of the executive council.

24. Until Parliament otherwise provides, the appointment and removal of all other officers of the executive government of the Commonwealth shall be

vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council, or by a law of the Commonwealth to some other authority.

25. The Command-in-chief of the military, naval and air forces of the Commonwealth is vested in the Governor-General as the King's representative.

High Commissioner and Foreign Representatives

26. The Commonwealth shall have the power to appoint High Commissioners and other foreign representatives similar to that exercised by Canada and other dominions. Such appointment shall be made by the Governor-General in Council who shall also make provision by rules for his pay, powers, duties and conditions of employment.

Financial control

27. (1) The Auditor General in India shall be appointed by the Governor-General in Council who shall by rules make provision for his pay, powers, duties and conditions of employment, or for the discharge of his duties in the case of a temporary vacancy or absence from duty.

(2) Subject to any rules made by the Governor-General in Council no office may be added to or withdrawn from the public service and the emoluments of no posts may be varied except after consultation with such finance authority as may be designated in the rules, being an authority of the province or of the Commonwealth according as it is or is not under the control of a local government.

The Provincial Legislature

28. The legislative power of a province shall be vested in the King and the local legislative council.

29. There shall be a Governor of every province who shall be appointed by the King and represent his Majesty in the province.

30. There shall be payable to the King out of the revenues of the province for the salary of the Governor an annual sum of.....which, until Parliament of the Commonwealth otherwise provides shall be as in schedule.....hereof provided.

31. (i) There shall be one member of the Provincial Legislative Council for every 100,000 of the population of the said province, provided that in provinces with a population of less than ten millions there may be a maximum of 100 members.

(ii) Every member shall be elected by a constituency determined by law. Every person of either sex who has attained the age of 21 and is not disqualified by law shall be entitled to vote.

32. (i) Every Provincial Council shall continue for 5 years from its first sitting provided that—

(a) it may be sooner dissolved by the Governor;
(b) the term of 5 years may be extended by the Governor if in special circumstances he so thinks fit;

(c) after the dissolution of the Council the Governor shall appoint a date not more than 6 months after the date of the dissolution for the next session of the Council.

(ii) The Governor may appoint such times and places for holding the sessions of the Council as he thinks fit and may also from time to time, by notification or otherwise, prorogue such sessions.

(iii) Any meeting of the Council may be adjourned by the person presiding.

(iv) All questions in the Council shall be determined by the majority of votes of the members present, other than the presiding member, who shall however have and exercise a casting vote in the case of an equality of votes.

(v) The powers of the Council may be exercised notwithstanding any vacancy.

33. There shall be a president of every Council who shall be a member of the House and shall be elected by the House. There shall also be a deputy president who shall also be a member of the House and be similarly elected.

34. The local legislature of any province has power, subject to the provisions of this Act, to make

laws for the peace and good government of the territories for the time being constituting that province. The legislative authority of every provincial council extends to all matters coming within the classes of subjects hereinafter enumerated and specified in Schedule II, attached hereto.

35. The local legislature of any province may repeal or alter, as to that province, any law relating to a provincial subject made either before or after the commencement of this Act by any authority in British India.

36. Any measure affecting the public revenues of a province, or imposing any charge on the revenue, shall be introduced only by a member of the executive council of the Governor.

37. When a bill has been passed by a local legislative council, the Governor may declare that he assents to or withholds his assent from the bill.

38. If the Governor withholds his assent from any such bill the bill shall not become an Act.

39. If the Governor assents to any such bill, he shall forthwith send an authentic copy of the Act to the Governor-General, and the Act shall not have validity until the Governor-General has assented thereto and that assent has been signified by the Governor-General; and published by the Governor.

40. Where the Governor-General withholds his assent from any such Act, he shall signify to the Governor in writing his reason for so withholding his assent.

41. When an Act has been assented to by the Governor-General it shall be lawful for his Majesty in Council to signify his disallowance of the Act.

42. Where the disallowance of an Act has been so signified, the Governor shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

The Provincial Executive

43. The executive power of the province shall be vested in the Governor acting on the advice of the provincial executive council.

44. There shall be an executive council for every

province consisting of not more than five ministers appointed by the Governor.

45. In appointing the executive council the Governor shall select the Chief Minister and appoint others only on his advice.

The Judiciary

46. There shall be a Supreme Court which shall exercise such jurisdiction as Parliament shall determine. The Supreme Court shall consist of a Lord President, and so many other Justices, as Parliament may fix.

47. The Lord President of the Commonwealth, and all other Judges of the Supreme Court of the Commonwealth to be appointed after the establishment of the Commonwealth, shall be appointed by the Governor-General in Council, and shall receive such remuneration as Parliament shall prescribe, and their remuneration shall not be diminished during their continuance in office.

48. The Lord President of the Commonwealth and other judges of the Supreme Court of the Commonwealth shall not be removed from office except by the Governor-General in Council on an address from both Houses of Parliament in the same session praying for such removal on the ground of misbehaviour or incapacity.

49. The Supreme Court shall have original jurisdiction in all matters—

- (i) referred to the Supreme Court by the Governor-General in Council under section 85 ;
- (ii) in which the Commonwealth, or person suing or being sued on behalf of the Commonwealth, is a party ;
- (iii) affecting consuls or other representatives of other countries ;
- (iv) between provinces ;
- (v) arising under this constitution or involving its interpretation.

50. The Supreme Court shall have jurisdiction, with such exceptions and subject to such regulations as Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders and sentences—

- (a) of any Justice or Justices exercising the original jurisdiction of the Supreme Court;
- (b) of the high court of any province, or of any other court of any province from which at the establishment of the Commonwealth an appeal lies to the King in Council.

51. The judgment of the Supreme Court in all such cases shall be final and conclusive and shall not be reviewed, or be capable of being reviewed by any other court, tribunal or authority whatsoever.

Appeals to the King in Council

52. (i) No appeal shall be permitted to the King in Council from a decision of the Supreme Court upon any question howsoever arising, as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any province or provinces, or as to the limits *inter se* of the constitutional powers of any two or more provinces, unless the Supreme Court shall certify that the question is one which ought to be determined by the King in Council.

(ii) The Supreme Court may so certify if satisfied that for any special reason the certificates should be granted, and thereafter an appeal shall lie to the King in Council on the question without further leave.

(iii) Parliament may make laws limiting the matters in which such leave may be asked, provided that such laws do not impair any right which the King may be pleased to exercise by virtue of his royal prerogative to grant special leave of appeal from the Supreme Court to the King in Council.

High Courts—Constitution

53. The high courts referred to in this Act are the high courts of judicature for the time being established in British India.

54. Each high court shall consist of a chief justice and as many other judges as the Governor-General in Council may think fit to appoint. Provided as follows:

- (i) The Governor-General in Council may appoint persons to act as additional judges

of any high court, for such period, not exceeding two years, as may be required; and the judges so appointed shall, whilst so acting, have all the powers of a judge of the high court appointed by the Governor-General in Council;

(ii) the maximum number of judges of a high court including the chief justice and additional judges shall be 20.

55. A judge of a high court must be an advocate on the rolls of a high court of not less than ten years' standing provided that nothing herein contained shall affect the continuance of the tenure of office of the judges who may be holding appointments at the commencement of this Act.

56. (i) Every judge of a high court shall hold office during his good behaviour.

(ii) Any such judge may resign his office to the local government.

57. The chief justice and other judges of the high court shall not be removed from office except by the Governor-General in Council on an address by the Provincial Legislature.

58. (i) The Governor-General in Council may fix the salaries, allowances, furloughs, retiring pensions, and may alter them, but any such alteration shall not affect the salary of any judge appointed before the date thereof.

(ii) The remuneration fixed for a judge under this section shall commence upon taking upon himself the execution of his office.

59. (i) On the occurrence of a vacancy in the office of chief justice of a high court, and during any absence of such a chief justice the local government shall appoint one of the other judges of the same high court to perform the duties of chief justice of the court, until some person has been appointed by the Governor-General to the office of chief justice of the court, and has entered on the discharge of his duties of that office, or until the chief justice has returned from his absence, as the case requires.

(ii) On the occurrence of a vacancy in the office of any other judge of a high court, and during any absence of any such judge, or on the appointment of any such judge to act as chief justice, the local government may appoint a person, with such qualifications as are required in persons to be appointed to the high court; and the person so appointed may sit and perform the duties of a judge of the court, until some person has been appointed by the Governor-General in Council to the office of judge of the court, and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the local government sees cause to cancel the appointment of the acting judge.

Jurisdiction

60. (i) The several high courts are courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court as are vested in them by letters patent, and subject to the provisions of any such letters patent, all such jurisdiction, powers and authority as are vested in those courts respectively at the commencement of this Act.

(ii) The letters patent establishing, or vesting jurisdiction, powers or authority, in a high court may be amended from time to time by a further letters patent.

61. Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

- (a) call for returns;
- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;
- (c) make and issue general rules and prescribe forms for regulating the practice and pro-

ceedings of such courts ;

(d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts ; and

(e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts ;

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the local government.

62. (i) Each high court may, by its own rules, provide as it thinks fit for the exercise, by one or more judges of the high court of the original and appellate jurisdiction vested in the court.

(ii) The chief justice of each high court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the chief judge, are to constitute the several division courts.

63. The Governor-General in Council may, by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the high courts, and authorise any high court to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the high court was established, and also to exercise any such jurisdiction in respect of any British subject for the time being within any part of India outside the Commonwealth.

64. (a) The Governor-General, each Governor, each of the members of the executive council, whether in the Commonwealth or in the provinces, shall not be subject to the original, appellate or revisional jurisdiction of any high court, by reason of anything counselled, ordered or done, by any of them, in his public capacity only.

(b) The exemption shall extend also to the chief justices and other judges of the several high courts.

65. The Governor-General in Council may, if he sees fit, by letters patent, establish a high court of judi-

capture in any territory in the Commonwealth, whether or not included within the limits of the local jurisdiction of another high court, and confer on any high court so established, any such jurisdiction, powers and authority as are vested in, or may be conferred on, any high court existing at the commencement of this Act; and, where a high court is so established in any area included within the limits of the local jurisdiction of another high court, the Governor-General may, by letters patent, alter those limits, and make such incidental, consequential and supplemental provisions as may appear to be necessary by reason of the alteration.

Advocate General

66. The local government may appoint an advocate general for each of the provinces and may, on the occurrence of a vacancy in the office of advocate general, or during any absence or deputation of an advocate general, appoint a person to act as advocate general; and the person so appointed may exercise the powers of an advocate general until some person has been appointed by the Governor-General in Council and has entered on the discharge of his duties or until the advocate general has returned from his absence or deputation, as the case may be, or until the local government cancels the local appointment.

Property, Revenue and Finance

67. All property vested in, or arising or accruing from property or rights vested in, his Majesty or the Secretary of State in Council under the Government of India Acts, 1858, 1915 and 1919 shall vest in the Governor-General in Council.

68. The revenues of India shall vest in the Governor-General in Council and shall, subject to the provisions of this Act, be applied for the purposes of the Commonwealth alone.

69. The expression "the revenues of India" in this Act shall include all the territorial and other revenues of or arising in British India, and in particular,—

- (i) all tributes and other payments in respect of any territories which would have been re-

ceivable by or in the name of the East India Company if the Government of India Act, 1858, had not been passed ; and

(ii) all fines and penalties incurred by the sentence or order of any court of justice in British India, and all forfeitures for crimes of any movable or immovable property in British India ; and

(iii) all movable or immovable property in British India escheating or lapsing for want of an heir or successor and all property in British India devolving as *bona vacantia* for want of a rightful owner.

70. Parliament shall establish a Railway and Harbour Fund into which shall be paid all revenues raised or received by the Governor-General in Council from the administration of railways, posts and harbours, and such fund shall be appropriated by Parliament to the purposes of railways, posts and harbours on such conditions and in such manner as it may prescribe. There shall also be formed a consolidated revenue fund into which shall be paid all other revenues raised or received by the Governor-General in Council and such fund shall be appropriated by Parliament for the purpose of the Commonwealth in the manner prescribed by this Act or by rules made in that behalf and subject to the charges imposed thereby.

71. There shall be charged on the revenues of India alone—

(a) all the debts of the East India Company ;
and

(b) all sums of money, costs, charges and expenses which, if the Government of India Act, 1858, the Government of India Act, 1915, as amended by the Government of India Act 1919 or this Act had not been passed, would have been paid by the East India Company out of the revenues of India in respect of any treaties, conventions, contracts, grants or liabilities existing at the commencement of this Act ;
and

(c) all expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India ; and

(d) all other charges and payments under this Act (except so far as is otherwise provided under this Act).

72. (i) As soon as may be after the establishment of the Commonwealth the Governor-General in Council shall appoint a Commission consisting of one representative from each province and ... representatives of the government of the Commonwealth, and presided over by an officer of the Commonwealth, to institute an enquiry into (a) the sources of revenue which may be assigned to the government of the Commonwealth and to the governments of the provinces respectively with due regard to the efficient administration and development of the services or subjects under the respective control of either, and (b) the financial relations which should exist between the government of the Commonwealth and the governments of the provinces, and (c) for the means to be adopted for giving effect to such relations.

(ii) The said Commission shall appoint a committee to examine the whole question of the training of officers for the land, naval and air forces of the Commonwealth and the establishment of the requisite number of schools and colleges for military instruction.

(iii) The committee so appointed shall report to the Commission about the requisite number of such schools and colleges and their staffs, the places where they are to be established, and the standard of instruction to be imparted in each, and an estimate of the initial and maintenance cost of the said schools and colleges.

(iv) The said Commission shall also appoint a committee to investigate and report on the steps to be taken for the introduction of general primary education in the Commonwealth and the affording of special educational facilities for backward classes.

(v) The said Commission shall have the power to appoint such other committees as it may consider necessary, for the purposes of its inquiry.

(vi) The said Commission shall report to the Gover-

nor-General in Council on matters recommended in clause 1, and shall make special recommendations fixing minimum charges on the revenues of the Commonwealth and the provinces for the purposes mentioned in 2, 3 and 4.

73. The Governor-General in Council shall lay the entire report of the Commission together with his recommendations before Parliament for such legislative or other action as it may deem fit.

74. Pending the completion of the said enquiry, and until Parliament has taken action under clause 68, the existing sources of revenue and the financial relations shall continue to be in force.

Defence

75. (a) The Governor-General in Council shall appoint a Committee of Defence consisting of (1) the Prime Minister, (2) the Minister of Defence, (3) the Minister of Foreign Affairs, (4) the Commander-in-Chief, (5) the Commander of the Air Forces, (6) the Commander of the Naval Forces, (7) the Chief of the General Staff, and two other experts.

(b) The Prime Minister shall be the chairman of the committee; and there shall be a permanent staff including a secretary attached to this committee.

(c) The functions of this committee shall be to advise the government and the various departments concerned with questions of defence and upon general questions of policy.

(d) As soon as the committee is appointed the Governor-General in Council may take the advice of the Committee of Defence as to the practicability and means of effecting a retrenchment in the expenditure on defence compatibly with the safety of India. The estimates shall be framed according to the recommendations of the committee.

76. The proposals of the Governor-General in Council for the appropriation of revenues or monies classified as "Defence", shall be submitted to the vote of the House of the Representatives.

77. Notwithstanding anything to the contrary in

the foregoing provisions, the Governor-General in Council may, in the event of any foreign aggression on India by land, air or sea, or upon his being satisfied that there is a reasonable apprehension of such aggression, authorise such expenditure as may be necessary for the safety of British India or any part thereof. Such action taken by the Governor-General shall be reported by him immediately to the legislature, if in session, or if the legislature is not in session, to a special session to be summoned as soon as possible thereafter.

78. No measure affecting the discipline or maintenance of any part of the military, naval and air forces of the Commonwealth shall be introduced in Parliament except on the recommendation of the Committee of Defence appointed under this constitution.

The Civil Services

79. Subject to the provisions of the next succeeding section, all officers of the public services shall, at the establishment of the Commonwealth, become officers of the Commonwealth.

80. As soon as possible after the establishment of the Commonwealth, the Governor-General in Council shall appoint a Public Service Commission to make recommendations for such reorganisation and readjustment of the departments of the public services as may be necessary.

81. Parliament may make laws for regulating the classification of the civil services in India, the sources and methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. Parliament may also, to such extent and in respect of such matters as it may prescribe, delegate the power of making rules under the said laws to the Governor-General in Council or to local governments.

82. (i) After the establishment of the Commonwealth the Governor-General in Council shall appoint a permanent Public Service Commission with such powers and duties relating to the recruitment, appointment discipline, retirement and superannuation of public officers as Parliament shall determine.

(ii) Members of the permanent Public Service Com-

mission shall hold office for five years from the date of appointment.

83. Any officer of the public services who desires to retire within three years of the establishment of the Commonwealth, or is not retained in the service of the Commonwealth, shall be entitled to receive such pension, gratuity or other compensation as he would have received in like circumstances if the Commonwealth had not been established.

The Army Services

84. All officers, British and Indian, serving in the army, the navy, the Royal Indian Marine, or the Air Force of India, serving in India at the commencement of the new constitution, shall retain all their existing rights as to salaries, allowances or pensions or shall receive such compensation for the loss of any of them, as the Governor-General in Council may consider just and equitable, or as they would have received in like circumstances if the Commonwealth had not been established.

Further all such officers, British or Indian; who were in receipt of pensions at the date of the commencement of the new constitution, shall continue to receive the same pension from the revenues of India.

Indian States

85. The Commonwealth shall exercise the same rights in relation to, and discharge the same obligations towards, the Indian States, arising out of treaties or otherwise, as the Government of India has hitherto exercised and discharged.

In case of any difference between the Commonwealth and any Indian State on any matter arising out of treaties, engagements, sanads or similar other documents, the Governor-General in Council, may with the consent of the State concerned, refer the said matter to the Supreme Court for its decision.

New provinces

86. The redistribution of provinces should take place on a linguistic basis on the demand of the majority

of the population of the area concerned, subject to financial and administrative considerations.

Amendment of the Constitution

87. Parliament may, by law, repeal or alter any of the provisions of the constitution. Provided that the bill embodying such repeal or alteration shall be passed by both Houses of Parliament sitting together and at the third reading shall be agreed to by not less than two-thirds of the total number of the members of both Houses. A bill so passed at such a joint sitting shall be taken to have been duly passed by both Houses of Parliament.

Note :—The following are the recommendations on Communal and other controversial matters.

Communal representation

I. There shall be joint mixed electorates throughout India for the House of Representative and the provincial legislatures.

II. There shall be no reservation of seats for the House of Representatives except for Muslims in provinces where they are in a minority and non-Muslims in the N.-W. F. Province. Such reservation will be in strict proportion to the Muslim population in every province where they are in a minority and in proportion to the non-Muslim population in N.-W. F. Province. The Muslims or non-Muslims where reservation is allowed to them shall have the right to contest additional seats.

III. In the provinces

(a) there shall be no reservation of seats for any community in the Punjab and Bengal ;

(b) in provinces other than the Punjab and Bengal there will be reservation of seats for Muslim minorities on population basis with the right to contest additional seats,

(c) in the N.-W. F. Province there shall be similar reservation of seats for non-Muslims with the right to contest other seats.

IV. Reservation of seats where allowed shall be for a fixed period of ten years.

Redistribution and status of provinces

V. Sind should be separated from Bombay and constituted into a separate province after such enquiry about the financial position as may be considered necessary.

VI. Parts of Karnataka, except the small islands on the other side of the Mysore territory, should similarly be separated from the provinces in which they are at present included and formed into a single separate province.

VII. The N.-W. F. Province, and all newly formed provinces by separation from other provinces, shall have the same form of government as the other provinces in India.

MOTILAL NEHRU
ALI IMAM
TEJ BAHADUR SAPRU
M. S. ANEY
MANGAL SINGH
SHUAIB QURESHI*
SUBHAS CHANDRA BOSE
G. R. PRADHAN

* Mr. Shuaib Qureshi was unfortunately unable to be present at the last meeting of the Committee when the draft report was considered. The draft however was sent to him and he has informed us that in regard to the recommendations contained in chapter III he is of opinion that one third seats in the central legislature should be reserved for Muslims. Further, he says: "I agree with the resolution adopted at the informal conference of July 7th but do not subscribe to all the figures and arguments produced in its support".

Sir Ali Imam, Mr. Subhas Chandra Bose and Mr. G. R. Pradhan were also unable to be present at the final meeting of the Committee but they signified their concurrence with the report after reading the draft.

Note on the Informal Conference and after

The resolution of the informal conference, given on page 50 of the report, was passed on July 7th, 1928. It was signed by Dr. M. A. Ansari, Pandit Motilal Nehru, Pandit Madan Mohan Malviya, Sir Ali Imam, Sir Tej Bahadur Sapru and Messrs. Abulkalam Azad, Sachchidananda Sinha, C. Y. Chintamani, T. A. K. Sherwani, Mangal Singh, Mohammad Shafee Daudi, M. S. Aney, S. D. Kitchlew, Subhas Chandra Bose, Shuaib Qureshi, Khaliquz Zaman, D. R. Ranjit Singh, Syed Mahmud, A. M. Khwaja and Jawaharlal Nehru. Some others, who were present, agreed with this resolution but had left when signatures were taken.

This resolution was later considered by the All Parties Committee together with some non-members who had been invited. Extracts from the proceedings of the Committee are given below.

*Extract from the proceedings of the Committee,
dated 8th July.*

Morning session.

Present :

Pandit Motilal Nehru.
Mr. M. S. Aney.
Mr. Shuaib Qureshi.
Sardar Mangal Singh.
Mr. Subhas Chandra Bose.

The following non-members were also present by invitation :

Dr. M. A. Ansari.
Maulana Abulkalam Azad.
Mr. T. A. K. Sherwani.
Mr. Mohammad Shafi Daudi.
Dr. S. D. Kitchlew.
Mr. Khaliq-uz-Zaman.
Dr. Syed Mahmud and
Mr. Jawaharlal Nehru.

The question of reservation of seats for the Muslim minority in the central legislature was considered. It was stated however that under yesterday's agreement (first part) there could be no such reservation even for minorities. On the other hand

it was pointed out that without reservation it was probable that only about 30 or 40 Muslims may be returned to a central legislature of 500 members. This same result would be arrived at, it was shown, in the provinces where Muslims were in a small minority. A suggestion was made that this difficulty could be got over by a reservation of seats for small minorities in both central and provincial legislatures but not for majorities. This would mean a revision of yesterday's agreement. No decision was arrived at and the matter was postponed to the evening session.

July 8th.

Evening session.

Present as in morning session with the exception of Dr. S. D. Kitchlew and Dr. Syed Mahmud.

Also present Sir Tej Bahadur Sapru.

The question of minority representation left over at the morning session was then taken up. It was unanimously agreed to modify the first part of the resolution of the informal conference held on the 7th July so as to permit reservation of seats in the central legislature for minorities on population basis.

The question of reservation of seats for small minorities in the Provincial Council was then considered. The Committee, with the exception of Mr. Shuaib Qureshi, was of opinion that the reasons favouring such reservation in the central legislature apply with equal force to the provincial legislature also. This opinion was supported by non-members present. It was therefore agreed to report to the All Parties Conference that reservation of seats for small minorities in proportion to their population, with the right to contest additional seats, should be permitted in provincial legislatures.

SCHEDULE I
CENTRAL SUBJECTS

1. Trade and commerce with other countries and in India and the incorporation of trading, financial or foreign corporations in India.

2. Taxation, excluding the taxation assigned under this constitution to the provinces or parts of them ; but including customs, revenue, excise, income-tax, super-tax, corporation profits tax, opium, including control of its cultivation, manufacture, and sale, export duties.

3. Bounties on the production of export of goods.

4. Borrowing money on the credit, the assets and the property of the Commonwealth ; the public debt of the Government of the Commonwealth.

5. Currency, coinage and legal tender.

6. Banking and insurance and savings banks ; the incorporation of banks and the issue of paper money and stock exchanges.

7. Bills of exchange, cheques, *hundies* and promissory notes.

8. Shipping and navigation, including shipping and navigation on such inland waterways as may be declared to be of national importance ; harbours, major ports, lighthouses, beacons, lightships, buoys.

9. Railways, and roads of all India and military importance.

10. Aircraft and all matters connected therewith.

11. Posts, telegraphs and telephones including wireless communications and installations.

12. The defence of India and all matters connected with the naval, military and air forces of the Commonwealth, including militia, Indian Marine Service and any other force raised in India other than military and armed police wholly maintained by the provincial government ; naval and military works and cantonments ; schools and colleges for military, naval and air training.

13. Foreign and external relations including relations with States in India and political charges ; domicile, naturalization and aliens ; passports ; and pilgrimages beyond India.

14. Emigration and immigration.
15. Port quarantine and marine hospitals.
16. The Commonwealth Public Services and the Commonwealth Public Service Commission.
17. The Audit department of the Commonwealth.
18. The Supreme Court of India, and legislation relating to High Courts.
19. Civil Law including laws regarding status, contract, property, civil rights and liabilities and civil procedure.
20. Criminal Law including criminal procedure and extradition laws.
21. Bankruptcy and insolvency.
22. Legislation regarding marriage, divorce and matrimonial matters, parental rights, the custody and guardianship of infants ; their status and age of majority.
23. Copyright ; newspapers and books ; patents of inventions and designs and trade marks.
24. Land acquisition by or for the purposes of the Government of the Commonwealth.
25. Laws relating to registration of deeds and documents.
26. Laws relating to registration of births, deaths and marriages.
27. Census and statistics.
28. Control of arms and ammunition.
29. (a) Control of petroleum and explosives.
(b) Control of poisons.
30. The standards of weights and measures.
31. Fisheries in Indian waters beyond the three miles limit.
32. Survey of India ; geological survey and astronomical and meteorological observations.
33. Parliamentary elections.
34. The seat of the Government of the Commonwealth.
35. Inter-provincial matters.
36. Factory legislation.
37. Industrial matters :
(a) Welfare of labour.
(b) Provident fund.
(c) Industrial Insurance—General health and accident.
38. Control of mines.

39. Medical qualifications and standards.
 40. Stores and stationery for the Commonwealth.
 41. Central publicity and intelligence department.
 42. Zoological survey ; botanical survey ; archaeology.
 43. Central agencies and institutions for research (including observatories) and for professional and technical training or promotion of special studies.
 44. Territorial changes, other than intra-provincial, and declaration of laws in connection therewith.
 45. All property of the Commonwealth.
 46. Legislation regarding forests.
 47. Legislation relating to non-judicial stamps.
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SCHEDULE II

PROVINCIAL SUBJECTS

1. Land revenue including assigned land revenue ; any other tax that may be imposed on land or agricultural income ; charges for water ; survey and settlement ; disposal and colonisation of public land and management of government estates.

2. Excise, that is to say, the control of manufacture, transport, possession, purchase and sale of alcoholic liquor and intoxicating drugs (except opium), and the levying of excise duties and license fees on, or in relation to, such articles and other restrictive excises.

3. All local taxation, such as tolls ; cesses on land or land values ; tax on buildings ; tax on vehicles or boats ; tax on animals ; octroi and a terminal tax on goods imported into or exported from a local area ; tax on trades, professions and callings ; tax on private market ; tax on advertisement ; tax on amusements or entertainments ; tax on gambling ; taxes imposed in return for services rendered by the local authority.

4. Land acquisition by and within the province.

5. Administration of forests and preservation of game.

6. Agriculture, including research institutes, experimental and demonstration farms, protection against destruction by insects and pests.

7. Fisheries, excluding Commonwealth fisheries.

8. Water supplies, irrigation canals, drainage and embankment, water storage and water power except where they involve a matter of inter-provincial concern or affect the relations of a province with an Indian State or any other territory.

9. Public works and undertakings within the province including buildings, roads, bridges, ferries, tunnels, ropeways, causeways, tramways, light and feeder railways, inland waterways and other means of communications except :

(a) such railways, roads and inland waterways as are central subjects.

(b) all such works as extend beyond the borders of the province.

- (c) such works (although wholly situate within the province) as may be declared by Parliament to be of all India importance.
10. Co-operative societies.
 11. Development of mineral resources.
 12. Famine relief.
 13. Pilgrimages within India.
 14. Local self-government including constitution and powers of Municipal Corporations, Local Boards, Village Panchayats Improvement Trusts, Town Planning Boards and other local authorities in the province, and local fund audit.
 15. Medical administration including hospitals, dispensaries, asylums, and provision for medical education.
 16. Public health and sanitation and vital statistics.
 17. Education, including universities and technical institutes, provincial institutions for professional or technical training and for promotion of technical studies.
 18. Court of Wards and encumbered and attached estates.
 19. Land improvement and agricultural loans.
 20. Land tenures and landlord and tenant, rent law.
 21. Administrator-General and Official Trustees subject to legislation by central legislature.
 22. Development of industries, including industrial research.
 23. Police, including military and armed police maintained by the province and Railway Police, subject in the case of Railway Police to such rules as may be prescribed by Parliament as to limits of jurisdiction and railway contribution to cost of maintenance.
 24. Adulteration of foodstuffs and other articles.
 25. (a) Control of vehicles, subject in the case of motor vehicles to legislation by the central legislature as regards licenses valid throughout India.
(b) Control of dramatic performances and cinematographs.
 26. Prisons, prisoners and reformatories and vagrancy.
 27. Backward tribes and their settlements.
 28. Treasure trove.
 29. Administration of justice in the province, including the constitution, maintenance and organisation of courts of civil and criminal jurisdiction.
 30. Election for the legislature of the province.

31. Legislation imposing punishments by fine, penalty or imprisonment for breach of any law of the province in relation to any provincial matter.
32. The borrowing of money on the sole credit of the province, subject to sanction of central government; assets and property of the province.
33. Administration of the law relating to the registration of births, deaths and marriages.
34. Provincial law reports.
35. Minor ports.
36. Public libraries, except the Imperial Library at Calcutta ; museums, except the Indian Museum, the Imperial War Museum and the Victoria Memorial in Calcutta; zoological and botanical gardens and registration of societies.
37. Pounds and prevention of cattle trespass.
38. Civil Veterinary Department, including provisions for veterinary training, improvement of stock and prevention of animal diseases.
39. Factories, subject to legislation by central legislature.
40. Settlement of labour disputes.
41. Gas and electricity.
42. Boilers.
43. Smoke nuisances.
44. Housing of labour.
45. Coroners.
46. Provincial stores and stationery.
47. Provincial government press.
48. Provincial services and Provincial Services Commission.
49. The seat of the provincial government.
50. Control of elections, subject to regulation by central government.
51. Fees, including court fees; probate duties; succession or estate duties.
52. Control of production, supply and distribution, subject to rules made by the central legislature.
53. Development of industries, subject to rules made by the central legislature.
54. Religious and charitable endowments, subject to legislation by central legislature.
55. Regulation of betting and gambling, subject to legislation

by the central legislature.

56. Prevention of cruelty to animals and protection of wild birds and animals subject to legislation by the central legislature.

57. Non-judicial stamps, subject to legislation by the central legislature ; and judicial stamps, subject to legislation by the central legislature as regards amount of court-fees levied in relation to suits and proceedings in the high courts under their original jurisdiction.

58. Registration of deeds and documents subject to legislation by the central legislature.

59. Weights and measures subject to legislation by the central legislature as regards standards.

60. Control of poisons ; arms and ammunition ; petroleum and explosives ; subject to legislation by the central legislature.

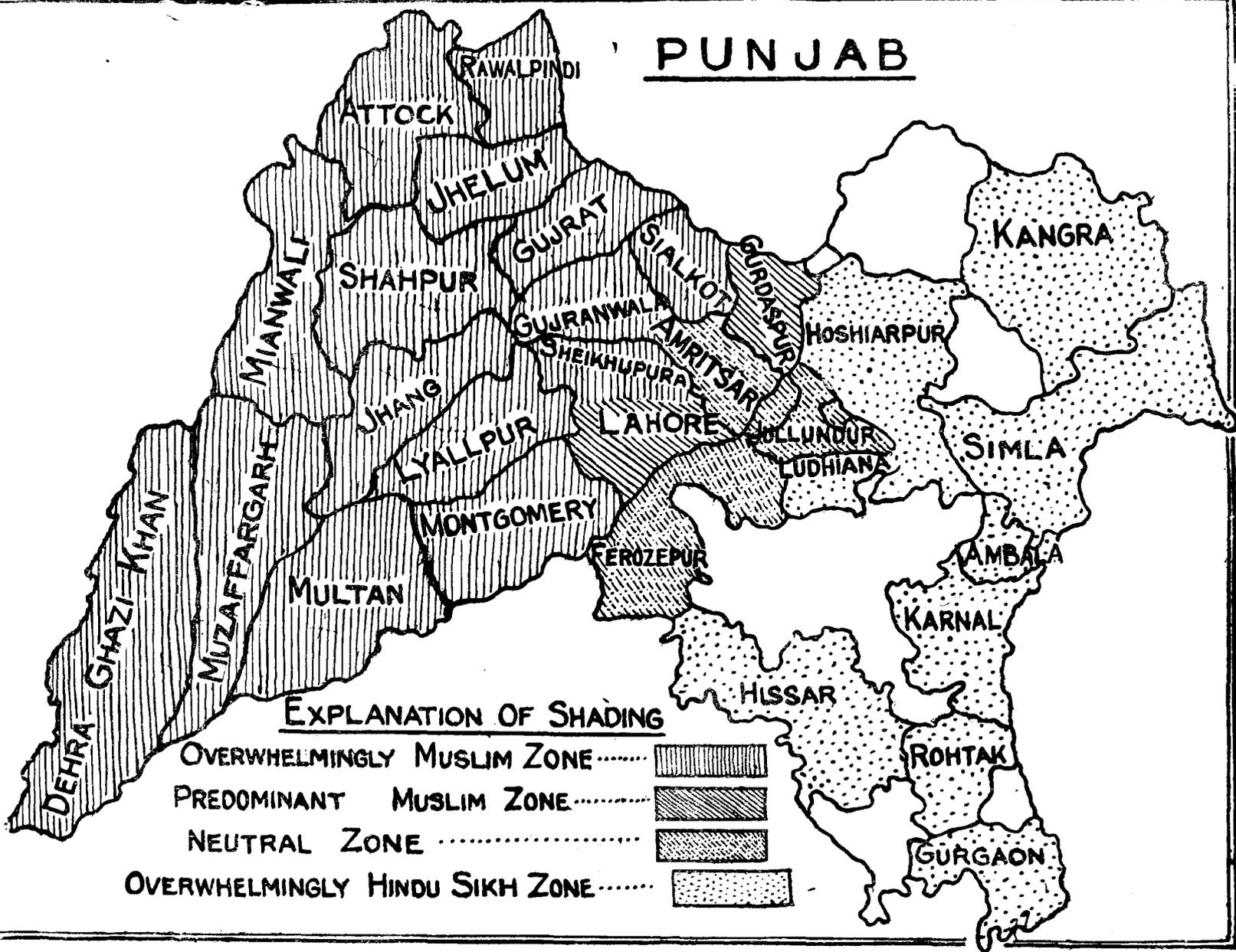
61. Control of newspapers, subject to legislation by the central legislature.

62. Regulation of medical and other professional qualifications and standards subject to legislation by the central legislature.

63. Local Fund Audit.

THE APPENDIXES

PUNJAB



EXPLANATION OF SHADING

- OVERWHELMINGLY MUSLIM ZONE [vertical lines]
- PREDOMINANT MUSLIM ZONE [diagonal lines]
- NEUTRAL ZONE [dotted pattern]
- OVERWHELMINGLY HINDU SIKH ZONE [stippled pattern]

APPENDIX A

An analysis of the population figures of the Punjab according to religion

*Being a note on the population figures of the Punjab with special reference
to the probable extent of the representation of various religious
groups in the legislature*

This note is based on the following assumptions :

1. That there is ordinary territorial representation with what are called joint or mixed electorates and without any reservation of seats.
2. That there is adult franchise, or at any rate some franchise which ensures that the numbers of electors of the various communities bear the same ratio to each other as the population figures of those communities.

The figures and calculations in these notes are based entirely on the 1921 census. It may be mentioned however that the ratio of increase of Muslims in the Punjab is slightly greater than that of Hindus. This according to the census report is not due now to conversions but to certain social causes—widow remarriage and a higher marriage age amongst the Muslims. Infantile mortality is greater amongst the Hindus owing to early marriages. Hence it is probable that the Muslim population in the Punjab today is slightly greater proportionately than is evidenced by the 1921 census figures. The next census may show this increase. This means that the calculations in these notes are conservative figures so far as the Muslims are concerned, and the actuality is more favourable to them.

It is not possible to arrive at any accurate conclusion regarding representation in legislatures on population figures from a census report. A great deal must depend on the grouping of constituencies. It is also by no means certain, and it certainly is most undesirable, that in a joint electorate a Hindu should always vote for a Hindu, and a Muslim for a Muslim. But it is not possible to make allowances for this in these calculations. As the question is being considered in its communal aspect we must presume that as a general rule votes will be cast on communal lines. The constituencies not having been formed the only alternative is to examine the figures for the individual districts. It is likely that either a whole district or a part of it will form a single constituency.

The population of the Punjab (excluding Indian States) in 1921 was 20,685,024. This was made up as follows:

Muslims	..	..	11,444,321	..	55.3%
Hindus	..	..	6,579,260	..	31.8%
Sikhs	..	..	2,294,207	..	11.1%
Others (mainly Christians)	..	..	367,236	..	1.8%
			<hr/>		
			20,685,024		100.0%

Thus the Muslims are in a clear but not a great majority over all others combined. If the distribution of population is more closely examined it will be seen that the Muslims are in an even stronger position than the all Punjab figures might indicate. This is due to the fact that the Hindus and Sikhs are present in large numbers in the southern part of the province—Ambala and Jullundur divisions. Muslims are in a minority in these two divisions but they make up for it by increasing their majorities elsewhere.

The Punjab can be divided roughly into three natural belts or areas (1) the predominantly Muslim area, (2) the neutral area but with Muslim majority and (3) the Hindu-Sikh area. If we take the existing divisions as corresponding approximately to these areas we have the following three belts:

- I. Rawalpindi and Multan divisions forming the Muslim zone with Muslims in very great majorities (86.9% and 76.9% respectively)
- II. Lahore division forming the neutral zone, but Muslims in a majority (57.0%) over all others combined.
- III. Ambala and Jullundur divisions forming the Hindu-Sikh zone. Muslims are in a minority (26.3% and 32.8% respectively).

We can form some rough idea of the representation in the legislature on the basis of these communal zones. Allowing one member for every hundred thousand of population we have:

		<i>Population in thousands</i>	<i>Members of legislatures</i>	
Punjab.....	..	20,685	..	207
I. {	Rawalpindi division	.. 3461	.. 35	} 77
	Multan division	.. 4218	.. 42	
II.	Lahore division	.. 4997	.. 50	50
III. {	Ambala division	.. 3827	.. 38	} 80
	Jullundur division	.. 4182	.. 42	
			<hr/>	207

We may presume that the Muslims will capture all the seats in the Muslim zone and Hindu-Sikhs all the seats in the Hindu-Sikh zone. In the Lahore division there may be a division of the spoils. This of course cannot and should not happen in its entirety. It is not desirable that each division should be represented by one community only. But in making a rough calculation one may presume this much—the seats gained by the Muslims in the Hindu-Sikh area will probably be counter-balanced by the seats gained by the Hindu-Sikhs in the Muslim area.

As a matter of fact there is more chance of the Muslims gaining a seat in the Hindu-Sikh area than the reverse, as the Muslim majorities in Rawalpindi and Multan divisions are tremendous (86.0% and 76.9%).

Thus we arrive at the conclusion that the Muslims are bound to get 77 seats in their zone and the Hindu-Sikhs combined, 80 seats in their zone. The third zone—Lahore division—will probably be divided between the two, but the division is likely to be very much in favour of the Muslims. They are 57.0% of the population, the Hindus being 20.7% and the Sikhs 16.2%. Christians etc. amount to 6.1% but they may be left out of consideration here as presumably they have no special affiliations to the major communities and can certainly not be considered as being anti-Muslim or as belonging to the Hindu-Sikh *bloc*. Hindus and Sikhs together amount to 36.9% as against the 57.0% of the Muslims. The Muslims are thus more than one and a half times stronger than the Hindu-Sikh group. The difference is considerable and the Muslim strength must make itself felt in an election. The Muslim majority in this division should ordinarily gain more seats than it is entitled to on basis of population. But even if it got seats exactly in proportion to its population in the division, it would have 29 seats. This added to the 77 seats in the Muslim belt gives the figure 106 which gives a small but clear majority in the legislature of 207, over all other communities and groups combined. The majority will really be much greater over the Hindu-Sikh *bloc* as the "others" may also be in the minority.

All this proceeds on the basis that Hindu and Sikh interests are identical and the two groups hang together on all occasions. This of course is not a justifiable presumption and it is more than likely that they may not always act together. In such a contingency each community's hopeless minority in the face of the solid Muslim majority will become even more obvious.

As the Lahore division is likely to be the critical one, it may be examined in greater detail. Out of the 6 districts in this division, three districts—Sialkot, Gujranwala and Sheikhupura—have very substantial Muslim majorities. And as "others" (Christians etc.) are present in appreciable numbers in these districts the Muslim majorities *vis-a-vis* the Hindu-Sikh *bloc* become even greater and are really overwhelming.

The figures are:

Sialkot district

Muslims	61.9%	} .. 9½ seats
Hindus	..	..	19.5%
Sikhs	..	..	8.0%
Others	..	..	10.5%

The Hindu-Sikh *bloc* totals 27.5% as against the 61.9% of the Muslims. The latter thus are considerably more than double the number of the Hindus and Sikhs combined.

Gujranwala district

Muslims	71.0%	} .. 6½ seats
Hindus	..	..	15.8%
Sikhs	..	..	8.2%
Others	..	..	5.1%

The Hindu-Sikh *bloc* totals 24.0% as against the 71.0% of the Muslims. The latter are thus nearly three times the number of Hindus and Sikhs combined.

Sheikhupura district

Muslims	63.3%	} .. 5½ seats
Hindus	..	..	16.0%
Sikhs	..	..	15.9%
Others	..	..	4.8%

The Hindu-Sikh *bloc* totals 31.9% as against the 63.3% of the Muslims. The latter are thus just double the number of the Hindus and Sikhs combined.

In these three districts the Muslims are in an impregnable position. Indeed they really form part of the Muslim zone and should be considered along with it. These districts will be entitled to send 21 members to the legislature. These can be added to 77 members from the Muslim zone giving the total 98.

In the other districts of Lahore division the position is as follows :

Lahore district

Muslims	57.3%	} .. 11 seats
Hindus	..	..	21.5%
Sikhs	..	..	15.9%
Others	..	..	5.3%

Here the Hindu-Sikh *bloc* totals 37.4% as against the 57.3% of the Muslims. The Muslim majority is not so great as in the northern districts but it is substantial. The Muslims greatly outnumber the Hindus and Sikhs, being over one and a half times their number.

Amritsar district

Muslims	45.6%	} .. 9 seats
Hindus	..	..	21.6%
Sikhs	..	..	30.9%
Others	..	..	1.8%

In this district the Hindus and Sikhs combined amount to 52.5% and are in a fair majority over the 45.6% Muslims.

Gurdaspur district

Muslims	49.6%	} .. 8½ seats
Hindus	..	..	26.0%
Sikhs	..	..	16.2%
Others	..	..	8.2%

Here the Muslims outnumber the Hindus and Sikhs combined—49.6% against 42.2%—but the majority is not great. The position in Amritsar district is reversed. There are a fair number of "others" here.

Thus in these three districts, the Muslim position is strong in Lahore, fair in Gurdaspur and weak in Amritsar. But even in the last mentioned place the Muslims are by far the strongest single community.

It is highly likely that Muslims will capture some seats in these districts, specially in Lahore.

The Lahore division will thus be largely represented by Muslims and this representation added to that from the Muslim zone in the north and west ought to give them a clear majority.

This question can be considered from another point of view. Instead of looking at the divisions as a whole the individual districts may be taken. This will probably give a more accurate idea of the result.

There are 29 districts in the Punjab. These may be divided into four groups (1) overwhelmingly Muslim districts where the Muslim position is impregnable; (2) predominantly Muslim districts, where there is a Muslim majority but not so great as in (1); (3) districts where there is no special predominance of any community; and (4) overwhelmingly or predominantly Hindu-Sikh districts.

I. Overwhelmingly Muslim districts

	<i>Percentage of Muslims given after districts</i>	<i>No. of members in legislatures</i>
1. Gujrat	86.2	8
2. Shahpur	82.8	7
3. Jhelum	88.7	5
4. Rawalpindi	82.6	6
5. Attock	90.9	5
6. Mianwali	86.3	4
7. Montgomery	71.8	7
8. Lyallpur	60.7	10
9. Jhang	83.3	6
10. Multan	82.2	9
11. Muzaffargarh	86.8	5½
12. Dera Ghazi Khan	88.3	5
13. Sialkot	61.9	9½
14. Gujranwala	71.0	6
15. Sheikhpura	63.3	5
		98

II. Predominantly Muslim districts

1. Lahore	H.	21.5	}	11
	M.	57.3				
	S.	15.9				
	O.	5.3				
2. Gurdaspur	H.	26.0	}	8½
	M.	49.6				
	S.	16.2				
	O.	8.2				
					19½	

III. Districts with no special predominance of any community

1. Jullundur	H.	29.4	}	8
	S.	25.1				
	M.	44.5				
	O.	1.0				

2. Ferozepur	H.	27·6	} 11
	S.	27·6			
	M.	43·9			
	O.	·9			
3. Amritsar	H.	21·6	} 9
	S.	30·9			
	M.	45·6			
	O.	1·8			
					28

Even in these three districts the strongest single community is the Muslim.

IV. Overwhelmingly or predominantly Hindu-Sikh districts

1. Hissar	H.	66·1			8
2. Rohtak	H.	78·0			8
3. Gurgaon	H.	66·7			7
4. Karnal	H.	67·5			8
5. Ambala	H.	53·8			7
6. Simla	H.	71·2			$\frac{1}{2}$
7. Kangra	H.	94·0			8
8. Hoshiarpur	H.	53·3			9
9. Ludhiana	H.	23·6	}	..	.. 6
	S.	41·5			
	M.	34·0			
	O.	·9			
					61 $\frac{1}{2}$

According to this the Muslims get from their special zone of 15 districts where they are impregnable 98

The Hindus similarly get from their zone.. .. 61 $\frac{1}{2}$

Two districts predominantly Muslim return 19 $\frac{1}{2}$

Three districts more or less neutral, but Muslims strongest single community in each 28

207

104 seats give an absolute majority in the legislature.

The result of the analysis of the figures for the districts leads us to the following conclusions:—

- From the Muslim zone alone, where the Muslim position is unassailable, the Muslims get 98 seats or 47·3 of the total seats.
- From the Hindu-Sikh belt where the Hindu-Sikh position is very strong the Hindus and Sikhs get 61 $\frac{1}{2}$ seats or 29·8 Do.
- In two districts where Muslims are predominant there are 19 $\frac{1}{2}$ seats or 9·4 Do.

4. In 3 districts the strength of the various communities is more or less evenly balanced but Muslims are the strongest single community in each, total 28 seats or 13.5 of the total 100.0 seats.

It is exceedingly likely that from group II above, which is predominantly Muslim, the Muslims will get at least 10 out of the 19½ seats. This added to their seats from their particular zone gives them 108 seats which is a clear majority in the legislature. In group III above the Muslims should also get some seats as they are the strongest single community. They might safely count on 12 out of the 28. This raises the Muslim number in the legislature to 120 out of 207 or 58% of the total. Thus on a conservative estimate Muslims are highly likely to have 58% of the seats in the legislature.

PUNJAB (BRITISH TERRITORY)

Detailed population figures

Punjab

Total population	..	20,685,024	..	100.0 per cent.
Muslims ..	..	11,444,321	..	55.3 "
Hindus ..	..	6,579,260	..	31.8 "
Sikhs ..	..	2,294,207	..	11.1 "
Others (mainly Christians)	..	367,236	..	1.8 "

PUNJAB DIVISIONS

(Population figures in thousands)

<i>Ambala Division</i>		<i>Populations</i>	<i>Percentage</i>	<i>No. of members in legislature I for 100,000</i>
Total	..	3827	100	} .. 38
H	..	2556	66.6	
M	..	1006	26.3	
S	..	158	4.2	
O	..	106	2.8	
Jullundur Division				
Total	..	4128	100	} .. 42
H	..	1893	45	
M	..	1370	32.8	
S	..	880	21.0	
O	..	40	.9	
Lahore Division				
Total	..	4997	100	} .. 50
H	..	1033	20.7	
M	..	2849	57.0	
S	..	813	16.2	
O	..	303	6.1	

Rawalpindi Division

Total	..	3461	100	} .. 35
H	..	296	8.5	
M	..	2973	86.0	
S	..	153	4.4	
O	..	38	1.1	

Multan Division

Total	..	4218	100	} .. 42
H	..	602	14.3	
M	..	3246	76.9	
S	..	290	6.9	
O	..	80	1.9	

Note :—H=Hindu M=Muslim S=Sikh O=Others

PUNJAB DISTRICTS**1. Overwhelmingly Muslim Districts**

<i>District</i>		<i>Population in Thousands</i>	<i>Percentage</i>	<i>No. of members in legislature</i>
1. Gujrat	.. T.	824	100	} .. 8.2
	H.	59	7.2	
	M.	710	86.2	
	S.	49	6.0	
	O.	6	.7	
2. Shahpur	.. T.	720	100	} .. 7.2
	H.	79	11	
	M.	596	82.8	
	S.	30	4.2	
	O.	15	2.1	
3. Jhelum	.. T.	477	100	} .. 4.8
	H.	33	6.9	
	M.	423	88.7	
	S.	19	4.0	
	O.	2	.4	
4. Rawalpindi	.. T.	569	100	} .. 5.7
	H.	55	9.7	
	M.	470	82.6	
	S.	32	5.6	
	O.	12	2.1	
5. Attock	.. T.	512	100	} .. 5.1
	H.	25.5	5.0	
	M.	465.5	90.9	
	S.	20	3.9	
	O.	1	.2	
6. Mianwali	.. T.	358	100	} .. 3.6
	H.	45	12.6	
	M.	309	86.3	
	S.	3	.8	
	O.	1	.3	

7. Montgomery..	T.	714	100	} .. 7.1
	H.	92	12.9	
	M.	513	71.8	
	S.	96	13.4	
	O.	13	1.8	
8. Lyallpur ..	T.	980	100	} .. 9.8
	H.	117	18.1	
	M.	595	60.7	
	S.	161	16.4	
	O.	47	4.8	
9. Jhang ..	T.	570	100	} .. 5.7
	H.	84	14.7	
	M.	475	83.3	
	S.	9	1.6	
	O.	2	.4	
10. Multan ..	T.	890	100	} .. 8.9
	H.	129	14.5	
	M.	732	82.2	
	S.	18	2.0	
	O.	11	1.2	
11. Muzaffargarh	T.	568	100	} .. 5.7
	H.	66	11.6	
	M.	493	86.8	
	S.	5	.9	
	O.	4	.7	
12. Dera Ghazi Khan (including Biloch tract).	T.	496	100	} .. 5.0
	H.	54	10.9	
	M.	438	88.3	
	S.	1	.2	
	O.	3	.6	
13. Sialkot ..	T.	938	100	} .. 9.4
	H.	183	19.5	
	M.	581	61.9	
	S.	75	8.0	
	O.	99	10.5	
14. Gujranwala ..	T.	624	100	} .. 6.2
	H.	98	15.8	
	M.	443	71	
	S.	51	8.2	
	O.	31	5.1	
15. Sheikhpura..	T.	523	100	} .. 5.2
	H.	84	16.0	
	M.	331	63.3	
	S.	83	15.9	
	O.	25	4.8	

 15 Districts.

 97.6 members

II.—Predominantly Muslim Districts

(Where Muslims are greater than Hindus and Sikhs combined but are not so many as in I above).

1. Lahore	.. T.	1131	100	} .. 11·3
	H.	243	21·5	
	M.	648	57·3	
	S.	180	15·9	
	O.	60	5·3	
2. Gurdaspur	.. T.	852	100	} .. 8·5
	H.	222	26·0	
	M.	423	49·6	
	S.	138	16·2	
	O.	70	8·2	
<hr/> 2 Districts.				<hr/> 19·8 members.

III.—Districts in which there is no special predominance of any community but Muslim community strongest single group

1. Jullundur	... T.	822·5	100	} .. 8·2
	H.	242	29·4	
	M.	366·5	44·5	
	S.	206	25·1	
	O.	8	1·0	
2. Ferozepur	.. T.	1098	100	} .. 11
	H.	303	27·6	
	M.	482	43·9	
	S.	303	27·6	
	O.	10	·9	
3. Amritsar	.. T.	929	100	} .. 9·3
	H.	201	21·6	
	M.	424	45·6	
	S.	287	30·9	
	O.	17	1·8	
<hr/> 3 Districts.				<hr/> 28·5 members.

IV.—Overwhelmingly or predominantly Hindu Sikh Districts.

1. Hissar	.. T.	817	100	} .. 8·2
	H.	540	66·1	
	M.	216	26·4	
	S.	46	5·6	
	O.	15	1·8	
2. Rohtak	.. T.	772	100	} .. 7·7
	H.	602	78·0	
	M.	125	16·2	
	S.	1	·1	
	O.	44	5·7	

3	Gurgaon	..	T.	682	100	}	..	6·8
			H.	455	66·7			
			M.	217	31·8			
			S.	1	·1			
			O.	0	1·3			
4.	Karnal	..	T.	829	100	}	..	8·3
			H.	560	67·5			
			M.	236	28·5			
			S.	12	1·4			
			O.	21	2·6			
5.	Ambala	..	T.	682	100	}	..	6·8
			H.	367	53·8			
			M.	206	30·2			
			S.	98	14·4			
			O.	11	1·6			
6.	Simla	..	T.	45	100	}	..	0·4
			H.	32	71·2			
			M.	7	15·5			
			S.	1	2·2			
			O.	5	11·1			
7.	Kangra	..	T.	766	100	}	..	7·7
			H.	722·3	94·0			
			M.	38·3	5·0			
			S.	2	·3			
			O.	3·4	·7			
8.	Hoshiarpur	..	T.	927	100	}	..	9·3
			H.	494	53·3			
			M.	289	31·2			
			S.	133	14·3			
			O.	11	1·2			
9.	Ludhiana	..	T.	568	100	}	..	5·7
			H.	134	23·6			
			M.	193	34·0			
			S.	236	41·5			
			O.	5	9			

 9 Districts.

 60·9 members.

These figures demonstrate that quite apart from any artificial reservation of seats there is a natural reservation in more than three-fourths of the Punjab. In less than one-fourth there is some chance of free play. The distribution of population favours the majority community, Muslims, considerably.

APPENDIX B

A note on the population figures of Bengal by religion

The population of the British territory in Bengal at the 1921 census was 46,695,536. This was divided up by religion as follows:—

Muslims	.. 25,210,802	.. 54·0 per cent.
Hindus	.. 20,203,527	.. 43·3 ..
Others	.. 1,281,207	.. 2·7 ..

“Others” are chiefly tribal religions and Christians, the former being found largely in the hill tracts. They also include Jains and Buddhists etc., but there are not many of these.

The Muslims thus have a slight majority of 4% over all the others put together. This majority however is not evenly distributed over the province. The Hindus are as a matter of fact largely concentrated in one part of Bengal—the Burdwan division and part of the Presidency division—with the result that the Muslim majority elsewhere is far more than 4%. Bengal like the Punjab, presents definite zones of Hindu or Muslim population. Examining these zones roughly by divisions we find that three divisions are overwhelmingly Muslim, one is overwhelmingly Hindu, and one is more or less evenly balanced but with a 4% Hindu majority.

*No. of members of legislature
1 per 100,000 population.*

A. Muslim Zone

1.	Chittagong division	60
	Muslims .. 72·6 per cent.	
	Hindus .. 23·8 ..	
2.	Dacca division	128
	Muslims .. 69·7 ..	
	Hindus .. 29·7 ..	
3.	Rajshahi division	103
	Muslims .. 61·4 ..	
	Hindus .. 33·7 ..	

B. Overwhelmingly Hindu Zone

4.	Burdwan division	80
	Muslims .. 13·4 ..	
	Hindus .. 82·4 ..	

C. Moderately Hindu Zone

5.	Presidency division	95
	Muslims .. 47·5 ..	
	Hindus .. 51·4 ..	

Total seats for Bengal on this ratio	466
--------------------------------------	-----

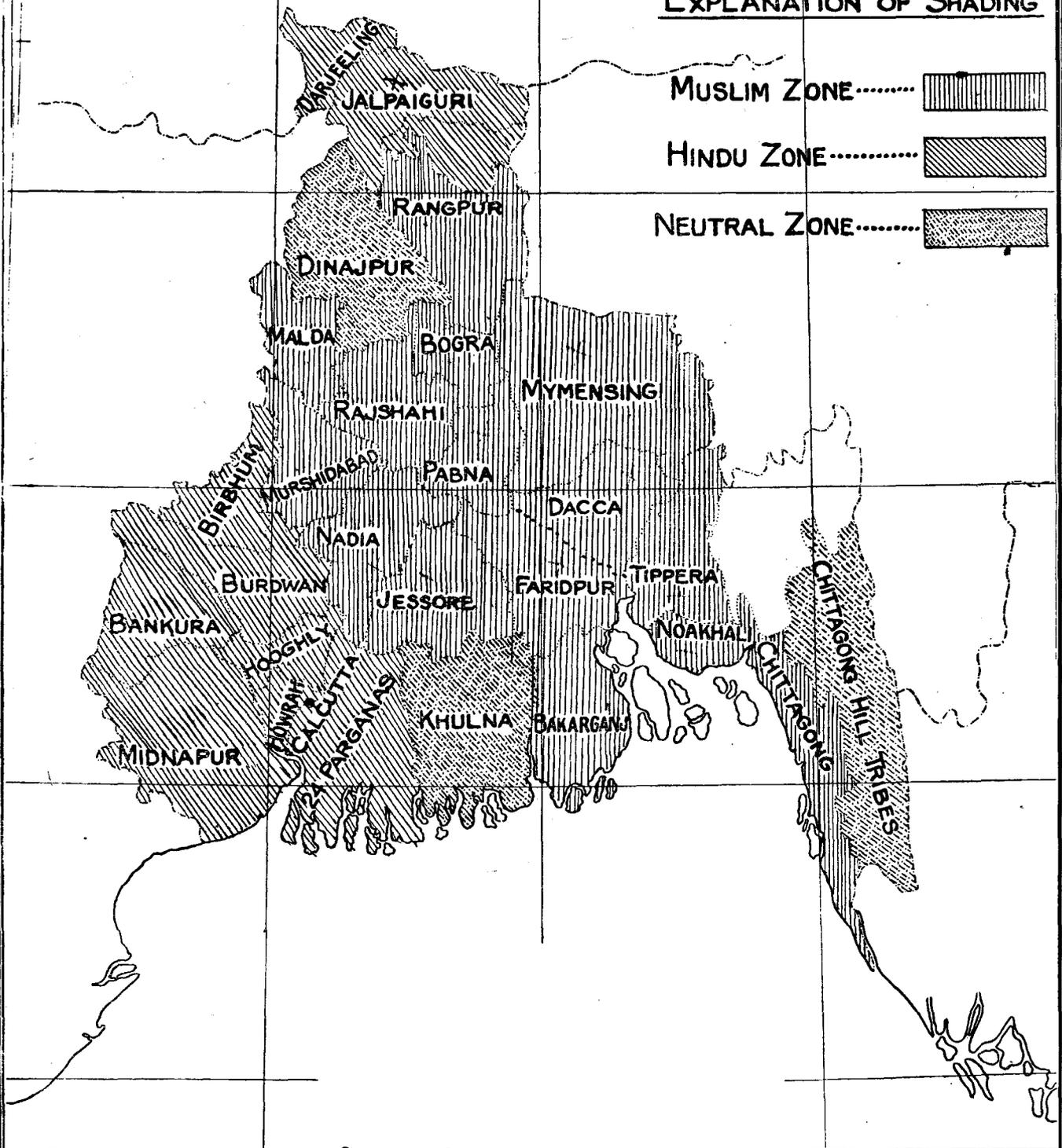
BENGAL

EXPLANATION OF SHADING

MUSLIM ZONE..... 

HINDU ZONE..... 

NEUTRAL ZONE..... 



We see that the Muslim zone has 291 seats in it; the strong Hindu zone 80 seats and the moderately Hindu zone 95 seats. The total number of seats if one member is to be given for every 1,00,000 population comes to 466. Thus 234 gives a clear majority. In the Muslim zone alone there are 291 seats, that is 57 more than are necessary for a majority. In the Presidency division however Muslims are 47.5% and it is not conceivable that they can be ignored. They are sure to get a number of seats there. The distribution of population is such that they are bound to get more seats than these numbers warrant. They may suffer from economic causes or educational backwardness but the loss from this cannot outbalance the gains from solid majorities in the Muslim zone.

The population figures can be examined in greater detail by districts. The actual figures by religions are given at the end of this note. These figures can be classified as follows :—

			<i>No. of members in legislature.</i>
A. Overwhelmingly Muslim Districts			
Chittagong	..	..	16
Noakhali	..	..	15
Tippera	..	..	27
Mymensing	..	..	48
Bakarganj	..	..	26
Faridpur	..	..	23
Dacca	..	..	31
Pabna	..	..	14
Bogra	..	..	10
Rangpur	..	..	25
Rajshahi	..	..	15
Jessore	..	..	17
Nadia	..	..	15
			282
B. Predominantly Muslim Districts			
Murshidabad	..	..	13
Malda	..	..	10
			23
C. Predominantly Hindu District			
Jalpaiguri	..	..	9
D. Neutral Districts			
Khulna	..	..	14
Dinajpur	..	..	17
Chittagong Hill Tribes	..	..	2
			33

E. Overwhelmingly Hindu Districts

Burdwan	..	..	14
Birbhum	..	..	8
Bankura	..	..	10
Midnapur	..	..	27
Hooghly	..	..	11
Howrah	..	..	10
24 Parganas	..	..	26
Calcutta	..	..	9
Darjeeling	..	..	3
			118

This analysis of district figures leads us to the same conclusion as the analysis of the division figures. The Muslim and Hindu zones are solid blocks which are natural areas of reservation if voting is to take place on religious lines. The Muslim zone including both groups A and B gives us as many as 305 seats. Even leaving out group B we have 282 seats which is far more than the number required to give a majority.

ANALYSIS OF POPULATION OF BENGAL BY RELIGION**A. Bengal Divisions**

	<i>Population in thousands</i>	<i>Percentage</i>	<i>No. of members in Legislature 1 per 100,000</i>
Burdwan Division			
Total	8050	100	} .. 80
Hindus	6607	82.1	
Mohammedans	1082	13.4	
Others	361	4.5	
Presidency Division			
Total	9461	100	} .. 95
Hindus	4864	51.4	
Mohammedans	4476	47.5	
Others	120	1.2	
Rajshahi Division			
Total	10345	100	} .. 103
Hindus	3487	33.71	
Mohammedans	6349	61.4	
Others	508	4.9	
Dacca Division			
Total	12837	100	} .. 128
Hindus	3813	29.7	
Mohammedans	8946	69.7	
Others	78	.6	
Chittagong Division			
Total	6000	100	} .. 60
Hindus	1432	23.8	
Mohammedans	4356	72.6	
Others	212	3.5	

All Bengal British Territory

Total	46695	100	} .. 467
Hindus	20203	43·3	
Mohammedans	25211	54·0	
Others	1281	2·7	

B. Bengal Districts

<i>Districts</i>	<i>Population in thousands</i>	<i>Percentage</i>	<i>No. of members in Legislature per 100,000</i>	
Burdwan Division				
1. Burdwan .. T.	1439	100	} .. 14	
	H.	1122		78·0
	M.	266		18·5
	O.	50		3·5
2. Birbhum .. T.	848	100	} .. 8	
	H.	577		68·1
	M.	213		25·1
	O.	58		6·8
3. Bankura .. T.	1020	100	} .. 10	
	H.	880		86·3
	M.	47		4·6
	O.	93		9·1
4. Midnapur .. T.	2667	100	} .. 27	
	H.	2352		88·2
	M.	181		6·8
	O.	134		5·0
5. Hooghly .. T.	1080	100	} .. 11	
	H.	885		81·9
	M.	173		16·0
	O.	22		2·1
6. Howrah .. T.	997	100	} .. 10	
	H.	791		79·3
	M.	202		20·3
	O.	4		·4
Presidency Division				
7. 24 Parganas.. T.	2628	100	} .. 26	
	H.	1687		64·2
	M.	910		34·6
	O.	31		1·2
8. Calcutta .. T.	908	100	} .. 9	
	H.	643		70·8
	M.	209		23·0
	O.	56		6·2
9. Nadia .. T.	1487	100	} .. 15	
	H.	582		39·1
	M.	895		60·2
	O.	10		·7

10. Murshidabad	T.	1262	100	}	..	13
	H.	569	45·1			
	M.	676	53·6			
11. Jessore	O.	17	1·3	}	..	17
	T.	1722	100			
	H.	656	38·2			
	M.	1063	61·7			
12. Khulna	O.	2	·1	}	..	14
	T.	1453	100			
	H.	727	50·0			
	M.	723	49·8			
13. Rajshahi	O.	3	·2	}	..	15
	T.	1489	100			
	H.	318	21·3			
	M.	1149	76·6			
14. Dinajpur	O.	31	2·1	}	..	17
	T.	1705	100			
	H.	752	44·1			
	M.	837	49·1			
15. Jalpaiguri	O.	116	6·8	}	..	9
	T.	936	100			
	H.	515	55·0			
	M.	232	24·8			
16. Rangpur	O.	189	20·2	}	..	25
	T.	2507	100			
	H.	791	31·5			
	M.	1706	68·1			
17. Bogra	O.	10	·4	}	..	10
	T.	1048	100			
	H.	174	16·6			
	M.	865	82·5			
18. Darjeeling	O.	9	·9	}	..	3
	T.	283	100			
	H.	201	71·0			
	M.	9	3·2			
19. Pabna	O.	73	25·8	}	..	14
	T.	1389	100			
	H.	334	24·1			
	M.	1055	75·8			
20. Malda	O.	1	·1	}	..	10
	T.	985	100			
	H.	400	40·6			
	M.	508	51·6			
21. Dacca	O.	77	7·8	}	..	31
	T.	3125	100			
	H.	1069	34·2			
	M.	2043	65·4			
	O.	13	·4			

Dacca Division

22. Faridpur ..	T.	2250	100	} .. 23
	H.	816	36·3	
	M.	1428	63·5	
	O.	6	·3	
23. Bakarganj ..	T.	2623	100	} ... 26
	H.	754	28·7	
	M.	1851	70·6	
	O.	18	·7	
24. Mymensing ..	T.	4838	100	} .. 48
	H.	1174	24·3	
	M.	3624	74·9	
	O.	40	·8	
Chittagong Division				
25. Tippera ..	T.	2743	100	} .. 27
	H.	708	25·8	
	M.	2033	74·1	
	O.	2	·1	
26. Noakhali ..	T.	1472	100	} .. 15
	H.	329	22·3	
	M.	1142	77·6	
	O.	1	·1	
27. Chittagong ..	T.	1611	100	} .. 16
	H.	364	22·6	
	M.	1172	72·8	
	O.	74	4·6	
28. Chittagong Hill tracts ..	T.	173	100	} .. 2
	H.	32	18·5	
	M.	7	4·1	
	O.	134	77·4	
TOTAL				465

T.—Total
H.—Hindus
M.—Mohammedans
O.—Others

APPENDIX C

Statement about elected members of the District Boards in Bengal (1927-1928)

<i>Names of districts</i>	<i>Total no. of seats</i>	<i>No. of Hindu members</i>	<i>No. of Moham- medan members</i>
1. 24 Parganas..	20	16 (64·2)	4 (34·6)
2. Bogra ..	15	4 (16·6)	11 (82·5)
3. Bakargunj ..	20	5 (1 Chris- tian) (28·7)	15 (70·6)
4. Midnapore ..	22	21 (88·2)	1 (6·8)
5. Rajshahi ..	18	7 (21·3)	11 (76·6)
6. Rangpore ..	18	7 (31·5)	11 (68·1)
7. Khulna ..	16	11 (50·0)	5 (49·8)
8. Hooghly ..	20	17 (81·9)	3 (16·0)
9. Darjeeling ..	20	18 (Non- Mohammedan) (71·0)	2 (3·2)
		Others 25·8	
10. Mymensingh	22	Nil (24·3)	22 (74·9)
11. Pabna ..	16	3 (24·1)	13 (75·8)
12. Noakhali ..	16	6 (22·3)	10 (77·6)
13. Jalpaiguri ..	16	14 (55·0)	2 (24·8)
		Others 20·2	
14. Tippera ..	19	13 (25·8)	6 (74·1)
		(3 nominated, elec- tion having failed in Ch and pur Sub-Division).	(2 nominated)
15. Nadia ..	20	15 (39·1)	5 (60·2)
16. Burdwan ..	16	14 (78·0)	2 (18·5)
17. Murshidabad	15	7 (45·1)	8 (53·6)
18. Faridpur ..	20	8 (36·3)	12 (63·5)
19. Malda ..	15	8 (40·6)	7 (51·6)

(Election failed-all nominated)

20. Howrah ..	12	10 (79·3)	2 (20·3)
21. Beerbhum ..	16	15 (68·1)	1 (?) (25·1)
22. Bankura ..	10	9 (86·3)	1 (4·6)
23. Jessore ..	16	1 (38·2)	15 (61·7)
24. Dacca ..	22	16 (34·2)	6 (65·4)
25. Chittagong ..	20	Nil (22·6)	20 (72·8)
26. Dinajpur ..	18	4 (44·1)	14 (49·1)

N. B.—The figures given in brackets are ratios to the total population.

SWARAJ CONSTITUTION

By

S. SRINIVASA IYENGAR, B. A., B. L.

President, Indian National Congress—1926.

Member, Indian Legislative Assembly.



*Verily, the Vedas are not dear, that you may love the Vedas ;
but that you may love the Atman, therefore the Vedas are dear."*

—Brih. Ar. Up.

S. GANESAN,
PUBLISHER, TRIPPLICANE, MADRAS.

1927

CONTENTS

	PAGE
Introduction	ix
Preamble	I
PART I	
1. Declaration of Rights	3
PART II	
2. The Commonwealth Executive Govern- ment	9
3. Indian Legislature	13
4. Both Chambers	19
5. Powers of Parliament	22
6. The Judicature	32
PART III	
7. Provincial Government	35
8. Provincial Legislature	38
9. Provincial Judicature	50
10. New Provinces	52
PART IV	
11. Finance, Trade, Property, and Contracts	53
12. Defence.	60
13. Electoral Regulations.	62
14. Miscellaneous	65
15. Amendment of the Constitution	66
16. Definitions.	67
Appendix	
A. Hindu-Muslim Resolutions	70
B. Proposed Solution of Communal Questions (Madras.)	71
C. The Legislative Assembly's Resolutions.	75

PUBLISHER'S NOTE

Mr. S. Srinivasa Iyengar was Advocate-General of Madras and ex-officio Member of the Madras Legislative Council from 1916 to February, 1920, when he resigned his office and re-entered public life. Towards the end of the year he was returned by the Madras University as its representative in the first general election that took place under the Reform Act. He resigned his seat in the Legislative Council as well as his Companionship of the Indian Empire towards the end of 1921 as a protest against the repressive policy of the Government. In the general elections of 1926 he was returned as a Member to represent the City of Madras in the Indian Legislative Assembly. He presided over the 41st Session of the Indian National Congress held in December, 1926, at Gauhati, Assam.

The scheme outlined and drawn up in the following pages is in essence one for the inauguration of what the author suggestively calls "a federal democracy." He dismisses the proposals made for the establishment of a unitary and centralised government. He suggests, as a matter of practical convenience as well as of experience, the acceptance of the modern democratic ideals underlying the Dominion Governments. He shows how through federalism alone can we reconcile certain apparently conflicting interests—those of Indian States and British Indian Provinces, those of the different communities and cultures, those of democracy and centralised despotism masquerading as democracy. He has closely examined and largely drawn upon the provisions of most modern constitutions, particularly those of the Dominions, the United States and the Irish Free State.

Being the production of an acute constitutional lawyer it is a valuable contribution to the literature on Indian constitution and will, we trust, be universally welcomed as such.

INTRODUCTION

The All India Congress Committee at its Bombay meeting in May, 1927 resolved as follows:—

“The A. I. C. C. calls upon the Working Committee to frame a Swaraj Constitution, based upon a declaration of rights, for India in consultation with the elected members of the Central and Provincial Legislatures and other leaders of political parties, and place the same before a special meeting of the A. I. C. C. with a view to its adoption by the Congress at its next session.”

The decision to frame a Constitution for Free India hardly requires justification. On the one hand, there are no immediate prospects of a settlement with the British Government. On the other hand, the fight for Swaraj will gain greater momentum and weight when it is backed up by a swaraj constitution either clearly and fully outlined or worked out to its last detail. If the Indian National Congress can adopt a constitution to which the country as a whole will agree, we shall be able to consolidate opinion and to accumulate pressure as against the Government. Another most important consideration is that it will enable us to make the necessary adjustments of all those differences between important interests, sections or communities that stand in the way of united action. Again we shall be depriving our critics and opponents of the excuse they are constantly putting forward that they do not know exactly what we want. This course has become all the more necessary as we have no faith

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whatever in the Statutory Commission. Above all, the time has come to determine and establish our own constitution independent of any question of demand or settlement. It will enable an intensive propaganda to be carried on that will of itself create or release sanctions for which every one is now hungering. On the basis of an agreed scheme of Self-Government for India the Congress should be able to absorb all important political parties in the country and to establish a Swaraj Government or what in effect will be one.

In this view and for the above reasons, the Congress should now proceed to settle a Swaraj constitution for India. Prominent amongst the various proposals are Dr. Besant's Commonwealth of India Bill and the Bill drafted by the Independent Labour Party in England which I think is a distinct improvement on the former.

But neither deals with one of the formidable problems that face us, namely, the position of Indian States either in, or in relation to, the constitution of Free India. I adhere to the view which I stated at Gauhati that the rulers of Indian States ought, in their own interests and in the interests of their subjects, to content themselves with the position of hereditary governors or administrators of their territories under a system of representative institutions and responsible government. If as is probable the Indian Legislature is to be bicameral, the rulers of Indian States should be members of the Senate. Matters relating to the affairs of the States or affecting the relations of one State to another or to the Government of India or of a Province ought not to be excluded from the consideration of the Central Legislature.

In framing a Swaraj Constitution for India one must keep in mind certain general principles. In the first place, we cannot surrender our right of self-determination: it follows that the constitution should not be put in the

form of a bill to be introduced into or passed by the British Parliament. The British and Indian Governments can take notice of our own constitution and treat it just as they choose either as our demand or as our scheme. But the constitution must be ours; and they can if they like come to a settlement with us on its basis by persuading us to agree to this or that alteration.

In the second place, having regard to the need for the largest possible unity consistent with national self-respect, the constitution need not necessarily be framed on the lines of fullest national independence. We may content ourselves with framing it on the basis of full Dominion Status which for almost all practical purposes is equivalent to it. For, as the Inter-Imperial Relations Committee of the Empire Prime Ministers has stated, the position of these Dominions is that of "autonomous communities within the British Empire equal in status and in no way subordinate one to another in any aspect of their domestic or external affairs though united by common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations." Further, as that Committee rightly adds, "every Dominion now and always must remain the sole judge of the nature and extent of its co-operation." If as is not improbable and as is indeed already evident, our demand is rejected, fullest national independence should be our goal, and must therefore be expressly reserved in the constitution.

In the third place, having regard to the history of the development of the Indian Constitution, such as it is, we must proceed to frame it on the model of the constitutions of western democracies. Today the fundamental principles governing their political institutions are of international and universal validity; they transcend racial, linguistic and geographical boundaries. And, after the Montagu-Chelmsford Act, have sprung into existence Indian political parties in full

contact with electorates, with written and unwritten rules of discipline and leadership, with expressed or implied programmes and policies and able and willing to carry on electoral campaigns in accordance with upto-date methods of approach and propaganda. The rules of debate and of business have easily been assimilated even by members of the Indian legislatures who have had no prior experience. The Presidents of the Indian Legislative bodies have discharged their duties efficiently and ably, and have given rulings with decorum and impartiality, with full understanding and decision. The debates in these legislatures have demonstrated our political aptitudes, our gifts of parliamentary expression, alertness and skill, our devotion to council work and our business-like grasp of principle and detail. These are things of which the English Parliament or any other legislature in the world can be proud. The technical literature of two continents relating to parliamentary government has been mastered by numbers of Indians. A comparison between the official and the non-official benches, if we put aside those who contribute to the fashionable apotheosis of power, has been far more favourable to the Indian elected and nominated members than to the European officials and un-officials drawn from the highly trained democracy of the United Kingdom. And the intelligent exercise by a majority of voters under the Montagu Act of their right to choose their representatives has been the salient feature of the elections held under it, especially of the general elections of 1926. Office, power, wealth and all the other usual influences did not prevent those who openly opposed the Government and fought for Swaraj from obtaining striking success at the polls, severely handicapped as they were. For good or for ill therefore we have accustomed ourselves thoroughly to representative institutions of the western type. It is therefore a futile task to inquire whether Indians can live under and successfully work a

constitution providing a full responsible government for India on western lines.

It has been suggested that our constitution should take the form of amendments to the Government of India Act. This proceeds upon an erroneous view. We have to determine our own constitution and the Government of India Act cannot serve as a model for a constitution giving full expression to Dominion Status.

The question has been debated whether the Swaraj Constitution should be on the federal model or should be of a unitary government. Here again we must avoid thinking in terms of the calculated centralisation to which we have become accustomed under the British Government and which is so convenient to those that deny us our freedom. The British Government and the Bureaucracy assert that a strong centralised government is indispensable and therefore full provincial independence cannot be given. Some Indian publicists fall into this trap and favour a unitary government with concurrent powers for the central and provincial legislatures in provincial subjects or equivalent contrivances all resulting in a material diminution of full provincial responsible government. But the British Government and the Bureaucracy assert with far greater emphasis that in order to have a strong centralised government the retention of their own steel-frame is necessary and the central government cannot therefore be converted into a full responsible government. The safest and easiest way of breaking through this vicious circle is to accept the principle of provincial autonomy in its two-fold sense of the freedom of the provincial government from an external control by the Government of India and the status of full provincial responsible government. The reconciliation between a strong Central government and regional autonomy is at all times and in all countries difficult but the division

of functions on the federal plan is, in Indian conditions, the shortest and surest way to Swaraj.

The advantages of a Unitary Government are said to be (1) less expense, (2) less conflict between central and provincial authorities and (3) freedom from the domination of one community over another. The first is more imaginary than real; the second is largely avoidable by adopting an appropriate safeguard; and the third is wholly founded in error. On the other hand, the disadvantages of the Unitary system are obvious. In the first place, it is necessary to establish a system of government which will provide for the gradual inclusion of the Indian States. A free Federal India can easily fit into its system such States on the condition that, while they adopt in whole or in part one or other form of responsible government, they retain their full domestic independence of the Central Government. Unless in our scheme we find a place for Indian States with their histories and treaties and varied constitutions, it will be extremely difficult to make India a stable Swaraj India. The second advantage of the Federal system is undoubtedly the consummation of that provincial autonomy to which everyone is naturally attached in a vast and varied country like India. In the conditions of India, which are in the minds of us all and which need not therefore be stressed, lasting equilibrium can best be maintained only by the grant of full responsible government to the provinces more or less on the Federal plan. In the third place, if the settlement which must come sooner or later between the British Government and ourselves, delays or diminishes a full responsible central government, the provinces will not have gained that advantage which they would have obtained on the basis of full independence in provincial matters but would continue to be, as they are now, in alien leading strings. In the fourth place, any dominant caucus, communal, political, or dynastic, ruling the Central

Government of a Swaraj India will be able to disturb the equipoise more easily in a unitary system than in a federal system and might bring about the impairment or destruction of Swaraj as the history of mediæval governments in India illustrates. In the fifth place, neither neighbouring States, Indian or Asiatic, nor European States will on the Federal plan be able to dominate India as a whole even if they continue to get the members of the Central Executive Council under their influence.

In the sixth place, communities, religious or other, cannot exist, and indeed must give up any such hope, as politically distinct communities if they accept the rule of democracy which after all is the rule of the majority. Let us realise that a too anxious attempt at protection of minorities against majorities only serves to defeat its own purpose and either retards or prevents that fusion and merger of communities into a single secular and homogeneous nation which shall be scrupulous alike in the safeguarding of the freedom of conscience and of religion and in keeping the civic and political activities of a nation free from the serious disturbances due to the intrusion of sectarian zeal or religious antagonism. It should not matter to us, therefore, which community, religious or other, is or will be in a majority and in which province.

Lastly, and above all, a highly centralised government leads always to exploitation and often to wars. A Federal Democracy is a much-better safeguard against the springing up of ambitious oligarchies, commercial or militarist. In the nature of things a Federal Democracy is of a higher order and is on a higher plane than a strong centralized unitary Government, democratic more in form and theory than in actual working and result. For, the former has as its roots the largest possible self-government and the largest possible justice, freedom and equality. Perfect and equal circulation in the extremities

is necessary for the permanent well-being of a democratic state, particularly in Asia, with its geographical, racial and cultural peculiarities.

The truth is, the Eastern conception of Law as above the Sovereign, of Dharma as above the King, has made indigenous Indian and Chinese institutions democratic in operation though autocratic in form. (Manu XII, 50; Prof. Giles, Chinese Civilization, p. 41). The passionate plea through the ages for Dharma and Justice as the highest spiritual duties of man has made the Indians too democratic to be able to live happily except in a perfect democracy or under a King who, through humility and strenuous self-examination, has conquered his senses and who is therefore the visible embodiment of the Law and Justice. (Manu VII, 39 to 46). "Justice, being violated, destroys; justice being preserved, preserves; therefore justice must not be violated, lest violated justice destroy us": this has been a perpetual admonition to Indians. (Manu VII, 15). Therefore either a secular democracy with fullest regional autonomy or the autocracy of a self-controlled King, above whom Dharma shines as a star, has alone suited the psychology of India in particular and of the East in general. The latter is impossible to our modern minds and the former is therefore the only alternative. A Federal Democracy, therefore, is to India, with its immense distances, and to the Indian mind with its sensitiveness, a far better expression of justice, and will therefore be far more successful than a unitary democracy with dependent provincial councils. The latter will not satisfy the passion for justice of Indians in each province, and will be held to be an immoral concentration of power. The centripetal and balanced federalism of Canada is however preferable to the perfect federalism of the United States or of Australia (2 Marriott p. 412.)

The spheres of legislation and of finance as between the Central and the provincial Governments should un-

doubtedly be clearly defined, and the residuary power should as in the case of Canada be vested in the Federal parliament. The view however of the Minority Report of the Muddiman Committee and of others that the requirement of the Central Government's sanction to provincial legislation is not inconsistent with full responsible provincial Government does not appear to be sound. The doctrine of previous sanction cuts not only at the root of provincial independence and development but it is open to the objection that it is vicious in principle; for it makes a fully elected provincial legislature subordinate to an executive government not responsible to itself. Its application, as our experience has demonstrated, has been only conducive to endless dilatoriness, obstruction and the imposition of a secret and external control. In short, if it is frequently exercised, it will be destructive of any scheme of full responsible government in the provinces.

As the Minority Report of the Muddiman Committee rightly says it is vital to any scheme of provincial autonomy that the finances of the provinces must be separated from those of the Central Government. Some of the recommendations of the Taxation Enquiry Committee appear to me to be sound and should be embodied in the Swaraj Constitution. Beyond however laying down certain general rules governing the financial arrangements of the Commonwealth and the financial relations between the Central and the Provincial Governments, it were a fruitless expenditure of time and an invitation to pedantic controversy to attempt to provide in detail for all those matters which are now dealt with in parts (ii) and (iii) of the Devolution Rules. Opinions will differ as to what taxes should be assigned to the Federal Government and what to a provincial government, just as they will differ as to which should be, for legislative purposes, a provincial subject and which a central. In these matters,

there can be no question of finality or of theoretic perfection. As the Taxation Enquiry Committee points out, there is no federal government in which the distribution of taxes between the central and provincial governments is based on considerations of pure theory. The Parliament of Swaraj India therefore can and should with the consent of provincial legislatures alter any scheme of distribution which may in the first instance be embodied in our Constitution.

The disputes between the Central and the Provincial Governments are easily avoided by a provision that no act of the Central legislature shall be open to question in any legal proceedings on the ground that it affects indirectly or inferentially only a provincial subject.

Is it necessary that the Swaraj constitution should provide minutely for every possible subject or case? The declaration of the fundamental rights of the Indian nation as against others and of Indians themselves as against their Government must indeed form the most important feature of the constitution. We must provide for the fullest control over the services and for the transfer to Free India of the existing jurisdiction of the present government in relation to Indian States. For the rest, the Constitution Acts of the several Dominions as well as the constitution of the United States furnish us with most useful models. And on most matters, the Irish Free State Constitution, the British North America Act and the Commonwealth of Australia Act are as good teachers as any. Mrs. Besant's Commonwealth of India Bill and the draft bill sent to us by Mr. A. Fenner Brockway, the secretary of the Independent Labour Party rightly follow them. It will be quite sufficient, if, in addition to the declaration of rights, we approve of an outline of a constitution embodying a full Dominion Status.

By far the most important points to be settled relate to the electoral qualifications, the formation of

constituencies, the formation of provinces and the constitution of the legislatures.

The strength of the Provincial and Central Legislatures should be very largely increased.

The strength of the Senate should be fixed at one member for each million of the population of Free India as ascertained at the previous census, in other words, at 247. The strength of the Legislative Assembly should be fixed at one member for each half-million of the population of Free India as ascertained at the previous census, in other words, at 494. In the provinces the strength of each Legislative Council should be fixed at one member for each two hundred thousand* of the population of the Province as ascertained at the previous census. I should certainly prefer it should be at the rate of one member for each hundred thousand, but it may be objected to on the ground that it would be very expensive.

By this plan the unwieldiness and inequalities both in area and in the number of voters of the constituencies will be either eliminated or substantially reduced. A very large increase in the strength of the existing legislative bodies will meet the objections of the advocates of communal electorates and will result in a just redistribution of seats and in the satisfaction of legitimate political ambitions. Above all, the constituency and its representative will be much more in touch with each other and there will be real representation.

Nominated officials and unofficials can find no place in the legislature of a self-governing country: they represent and are responsible to none but the Government. As our experience has demonstrated, the existing system of

* On this plan, Bengal would have 233 members; U. P., 226 members; Madras 211 members; Bihar and Orissa 170 members; Punjab 103 members; Bombay 96 members; C. P., 69 members; Burma 66 members; Assam 38 members. This shows how a redistribution of provinces on the linguistic basis will not result in greater inequalities.

nominations has effectively retarded constitutional development, the formation of national character and the consolidation of public opinion. It has been responsible for more mischief than any single feature of alien rule. Nominations are, in principle and in actualities, the very negation of democracy and responsible Government and no legislature can function as a representative institution which contains officials and unofficials nominated, not by the people, but by the Government. Besides, nominations to a body for which elections are provided, corrupt everyone alike : the giver, the recipient, and the neighbour. A nominated member feels, as a gentleman, deeply indebted to the Government : he has been spared considerable expense and trouble and the risk of defeat. And rarely, indeed he refrains from desiring re-nomination : his good behaviour is therefore ensured. Talent, character, energy and public spirit preferring the secret entrance become corrupted which, had they stormed the front gates of the fortress, might have produced a great leader of men, a great statesman, a tribune of the people, a Gandhi or a Das. The nominated member's average neighbour in the council or in the district, often feels that he has foolishly chosen the arduous and expensive path of a contested election instead of the pleasant short-cut of paying court to the government : in such moments the seeds of corruption are sown in him. As to the giver, when the government discovers how much a nomination is coveted whether it is to the Council of State or the Assembly, to a Municipal Council or a Taluk Board, instead of adjusting itself to the elected representatives of the people, it adopts in order to defeat them, the cheap and certain method of raising quite an army of concealed followers who, wearing the clothes of unofficials, are politically far more useful to it than its standing army of highly paid officials. Without wholly elected legislatures, it is impossible to enjoy to any extent the benefits of self-government or to shoulder

its responsibilities. Nominations, therefore, should not be permitted to continue to any extent or for any purpose.

The electorates should, without exception, be general and common electorates. Communal distinctions can neither be recognised nor perpetuated; for, they are destructive of democracies. Our experience since the Lucknow Pact has demonstrated that communal electorates are fraught with disaster as well to communal advancement as to national solidarity. The volume of opinion in favour of joint electorates among Mussalmans is distinctly on the increase. The interests of peace and order and active co-operation between Indian communities necessitates a common electorate which besides is the surest foundation of Swaraj.

Thanks entirely to the Montagu scheme, separate electorates by perpetuating communal distinctions have artificially deepened communal feeling till in less than a decade political parties have become religious sects full of mistaken zeal, misunderstanding and bitterness. Nor do separate electorates confer any protection upon minorities. For, a minority community must, in order to have an effective protection, be in a majority in each legislative body, or must at least be in equal strength with the other community, which is a *reductio ad absurdum*. Again, the communal electorate isolates the minority community and consolidates the majority community and instead of being a protection to the former is a source of danger to it. As has been said: "Minorities, as plain matter of fact, have under a popularly elected House of Commons no protection whatever for their legal rights". (Mc Kechnie, *The New Democracy and the Constitution* p. 164). In one sense this is true; but the fallacy in this line of reasoning is the assumption that a majority is permanent and unchangeable and its sense of power will not be tempered by justice and goodwill, or weakened by its own internal differences. The fact is frequently

overlooked that no power which is abused can escape the long arm of consequences. Paradoxical as it may seem, the best protection for a minority is, for it not to harden itself into a sect and sulk in isolation or attempt reprisals, but to work in the faith that it will soon become itself a majority or have its support. Each community has not a separate legislature of its own and its members go to the common legislature to work together with members of other communities; co-operation between members of several communities must therefore begin at the base of the common legislature which is the electorate. The mistrust of one another which finds expression in a separate electorate is a mistrust of the common legislative body itself. Confucius said: "If you mistrust a man do not employ him; if you employ a man do not mistrust him". And that saying might well apply to those who mistrust their fellow members belonging to the other communities and must not therefore enter the councils. On the one hand, a common electorate compels all the communities to co-operate together and eliminates the extremist who will exploit the communal differences. On the other hand, a candidate belonging to the majority community and competing with other members of his own community, desires to secure the vote of the minority community and becomes more humanised in the process. In that way, on the common electorate plan, every member of a legislature belonging to a majority community seeks to secure and retain the goodwill of the minority community and therefore to represent its views and feelings. When the balance is struck, it will be found that a common electorate distinctly favours the minority communities in India and a separate electorate decisively favours the majority community in India. Accordingly, the better mind of the Muslim, Sikh, Parsi and Christian communities has realised the wisdom of a common electorate.

As to Europeans in India, if they regard themselves

as a community, not in, but of India, only racially and culturally different from the others, they should not claim a separate electorate. If, however, they claim to be the agents or representatives of the British people with interests adverse to those of the people of India, they cannot, on principle, be entitled to any representation. Those Europeans in India, again, who wish, or profess the wish, to help Indians in building up an Indian Democracy can have no objection to a common electorate as in that case they are certain to be returned. The case of Anglo-Indians cannot be distinguished from that of Muhammadans, Sikhs, Parsis or Christians and in their own interests they should welcome a common electorate.

No provision by way of separate electorates should, therefore, be made in the Swaraj Constitution for Mussalmans, Sikhs, Parsis, Christians, Europeans, Anglo-Indians or others. But, as a transitory measure, a system of common electorates may well provide for reservation of seats in favour of all or any of the communities in India. Alternatively, the method of election by the single transferable vote may be adopted. But it appears to me, the better plan is, in Indian conditions, either the cumulative vote or the List system. By the former each voter is given a number of votes equal to the number of representatives to be elected and is allowed to distribute his votes in any way he likes giving one to a candidate, all to a candidate or otherwise. The List system, of which a definition has been attempted in the last chapter, is "now used for various elections in Norway, Sweden, France, Germany, Ireland and most of the Cantons of Switzerland." It has been described by one writer as "the simplest and justest of the many systems that have been proposed" (Holt's Modern Government p. 158). Anyone of these four methods, namely, reservation of seats, the single transferable vote, the cumulative vote or the system of list or ticket, is a better and safer method than

the crude and disruptive one of separate electorates which is neither helpful to the country in general nor to the minorities in particular.

Nor does it appear to me to be sound that there should be special electorates to represent interests. They are open to all the objections to which separate electorates are open. Such electorates will be inconsistent with sound democratic principles and will detract from the justice and purity of an enlightened state. Vested interests will become a close corporation and will disturb the equilibrium of the body politic; the hardening will result in class war and will injure the special interests themselves. Our experience of the Montagu and still earlier reforms has demonstrated the futility of special electorates to represent interests. Landholders, for instance, cannot gain anything by isolation, and on the other hand are certain to lose by it. If they want to influence a legislature they cannot do so directly in the legislature itself but have to influence the electorates which send the majority of the representatives to that legislature. The wiser amongst them have already realised it and therefore seek to represent the general electorates. I was at one time inclined to think that Universities may, perhaps stand on a different footing, and, as the most distinctive civilising agencies, they may require special attention in the bustle and levelling of a modern democracy. But the truth is, that the special provisions relating to Universities are historical survivals and have no justification except in sentiment. And what is it that two or three representatives of the Universities can do? Universities are or must be more or less self-governing bodies and they command, or ought to command the general esteem of the community. And education does not require to be specially represented; for it will be the common property of a very considerable number of the representatives of any legislature.

Neither Industry and Commerce nor Labour requires special representation in India anymore than they do in western democracies. No separate provision by way of nomination should or can be made for members of the "depressed classes." They must realise that they are the backbone of the agricultural and industrial democracy of India and that they will have no difficulty whatever, social or otherwise, in being members of the Indian Nation and in having and in exercising an equal right to take part in its affairs. The State can neither treat nor allow to be treated as untouchable any community or person. A fundamental rule to that effect should be adopted. If, however, there be still any difficulty in the matter, it can and must be met by a reservation of seats for members of such communities on the basis of a common electorate. I can only repeat what I have said elsewhere that we must make an end of untouchability apart from any question of Swaraj and whether we ever win it or not. Judged by any test humanitarian, rational or spiritual, patriotic or democratic, we cannot countenance the dogma of untouchability. There is a saying* among Vaishnavite schools in Southern India :

द्वालये समीपस्थान् देवसेवार्थमागतान् ।

चण्डालान्पतितान्वापि स्पृष्ट्वानस्नानमाचरेत् ॥

Members of the so-called untouchable classes are rapidly becoming indistinguishable from the mass of the population. There are many capable and educated men among them and they are making their mark on all departments of national life. And separate electorates will but emphasise their social, religious and economic difficulties and will impede their advancement. It is short-sighted leadership that

* One should not bathe after touching those persons who are standing near a temple or have come for the worship of the deity, even if they happen to be chandalas or outcasts.

will insist on special electorates or a system of nominations for them.

The question of electoral qualifications is amongst the most vital questions. Whilst our goal may be adult franchise, we are constrained to put it aside for the present as impracticable. The existing rules relating to electoral qualifications have enfranchised only 7·4 million citizens, the unenfranchised population consisting of 239·6 millions. The total literate population of British India is reckoned at 18·6 millions. On the whole, the safest electoral qualification for the present appears to me to be literacy which will confer a right to vote on over 18 million citizens. There is the further advantage that if literacy is made the electoral qualification a most powerful impetus will be given to elementary education. The present scheme of franchise devised by the British Government is open to the most serious objection which Lord Birkenhead on behalf of the British Government brings forward against us instead of admitting it as a serious demerit of their own administration and as a contrived feature of the British-made constitution. He asks his audience to remember "of the fractional percentage who vote in the elections, how large a proportion consists of the illiterate class who mark their papers because they are unable to read." The test of literacy is, therefore, the right test to apply. It will prevent a repetition of by far the greater part of those scandalous irregularities that have been in painful evidence during the last three general elections. The payment of any tax, cess or assessment, the holding of any land or house of a minimum value, the receipt of any prescribed income as labourer, trader, agriculturist or clerk or otherwise might well be alternative or restrictive franchises. But they are all open to the objection that they are not co-extensive with a franchise based on literacy. Again if the payment of a tax, the receipt

of an income or the possession of property, conditioned by literacy, is to be the electoral qualification, it may not be fair to either the literate or the tax-payer or to the unemployed democracy of India.

The next question is whether the electoral qualifications should be identical for the Senate, the Legislative Assembly and the Legislative Council of a province or should be different. I would prefer them to be the same for all the three bodies ; for it will mean a great saving in expense as the same registers will suffice ; and the elections also will be much simpler. There is no special virtue in prescribing different qualifications for the provincial and the central legislatures. The voter who is entitled to be represented in the province is equally entitled to be represented in respect of the national purposes, for the two legislatures complement one another and represent the total interests of the voter, both as a citizen of the Commonwealth and of the province. There may, however, be other considerations; therefore each legislative body may be empowered to superimpose the payment of tax, the possession of property or the receipt of an income on the basic qualification of literacy, if it is judged necessary to discriminate between the three electorates.

A re-arrangement of provinces either on the linguistic basis or on the basis of equal population or equal area or on the basis of equal cultural or political efficiency is necessary as well in the interests of a decisive reduction of expenditure as in the interests of an accelerated democracy. Madras and the United Provinces are too large and function badly. Bombay is too small and her wealth and enterprise should be available for a larger area. On the whole, the linguistic basis is the safest for the proper functioning of Indian democracies, and for the minimising of inter-communal friction. It is the natural solvent of religious and communal differences and is

amongst the most powerful of unifying agencies. It is by far the best foundation for India's Swarajya.

I think that the Central Legislature should be bicameral while the Provincial Legislature should continue to be unicameral. (Marriott, Mechanism of the Modern State, Vol. I p. 409.) The former is in accordance with the almost universal practice of the countries of the world. A two-chamber council however is, for a component province, neither necessary nor useful. It will result in greatly increased expense and dilatoriness. Besides it is a needless duplication of machinery and, at the best of times, the proceedings in the one House will be merely repeated in the other. It is bound however to lead to deadlocks and might even be dangerous. Opinions will not, I think, differ on this matter. I have, however, little doubt that the British Government will seek to force it upon the provinces in India.

The devices of the Referendum, the Initiative and the Recall are still in the stage of experiment and can be adopted by India only after the full use, for a period, of the ordinary apparatus of representative and responsible government. The first two provide for the direct exercise by the electorates of legislative powers. They embody the principle of Direct Democracy. The device of the Recall of its elected representatives by the electorate, is not required when as here the duration of a provincial council or of the Assembly is only three years. It may perhaps be occasionally required in the case of the Senate if the term of office of a Senator is to be, as has been suggested, six years. The Recall may not be necessary in Swaraj India in any case though it has often been felt that it is required to-day for the legislatures under the Government of India Act. All the three devices proceed upon the distrust of its representatives by the electorates. As has been observed, neither the Referendum nor the Initiative is "theoretically appropriate to the mecha-

nism of representative government." (I Marriott p. 465). But the former is on occasions necessary. The Swaraj Constitution, however, may empower the Parliament to institute, after ten years from the commencement of the constitution, the Referendum, the Initiative and the Recall.

It is important that the Swaraj Constitution should provide for its own revision or amendment. The Continental and South African constitutions provide for it as a matter of ordinary legislation requiring, however, a two-thirds majority vote. The South African Act further provides a period of time before which some of its provisions may not be amended. The American Constitution requires that an amendment of it should be proposed by a two-thirds vote in each House of the Congress and adopted by the legislatures of three-fourths of the States. The provision in the Commonwealth of Australia Act differs from both and requires an alteration of the constitution to be passed by an absolute majority of each House of the Parliament and to be submitted within six months to the electors qualified to vote for the election of the members of the "Lower House" and approved by a majority of the electors voting in a majority of states being also a majority of all the electors voting. It is not advisable that the Swaraj Constitution of India should be lightly or frequently changed nor is it advisable to make it too rigid. Avoiding the two extremes, contained in the Continental and the Australian Constitutions respectively, I have preferred to adopt as the best the suggestion of the Independent Labour Party on this matter.

In drafting the Swaraj Constitution, wherever consistently with our requirements I could, I have adopted the provisions of the constitutions of the Irish Free State, Australia, Canada and the United States and of the Government of India Act, with or without modifications. Dr. Besant's Commonwealth of India Bill and Mr. A. Fenner

Brockway's draft have been very helpful to me ; and my grateful acknowledgments are due to both. To Dr. Besant is due every credit for focussing attention upon the necessity of framing a Swaraj Constitution for India and for presenting a very valuable political document as well as for her splendid help to us in our fight for Swaraj. The system of graded franchise which has been adopted in the Commonwealth of India Bill is, however, open to the objection that it is neither satisfactory in itself nor consistent with the principles of popular representation. And, while I agree with her on the vital importance of village panchayats, I do not think that a constitution which provides for a full responsible government and for elected legislatures with plenary powers, in that behalf, should or need contain a code of local self-Government dealing with village panchayats, local boards and municipalities. It is necessary to realise clearly that there can be no genuine autonomous panchayats except in a Swaraj India and that it is the alien rule that has been responsible for their atrophy and extinction. While the panchayat has its uses, care should be taken that it is not stressed at the expense of full responsible government for India and for the provinces.

To Mr. A. Fenner Brockway and the Independent Labour Party, the greatest credit is due for clearly visualising a Swaraj Government under which a free self-respecting Democracy can live and work and for presenting a very useful and attractive draft based on the best models and an actual experience of western Systems. His picture, however is defective in some important matters and details. His division of subjects as between the central and the provincial legislatures is not satisfactory and he gives no clear definition of central and provincial finance. I have made my own suggestions on these and other matters and have also supplied some omissions.

Turning to the resolution of the Legislative Assembly dated the 8th September, 1925, it has been most valuable in the direction of concentrating attention on a Round Table Conference or Convention to settle India's Constitution. Beyond it, however, it can hardly be regarded either as a correct or as a sufficient basis for a satisfactory constitution of a self-governing India. It is not in entire accordance with the demand of the Congress for Swaraj or with its conception of Swaraj. Further, the resolution of the All India Congress Committee directs a framing of a Swaraj Constitution on the basis of a declaration of rights. Nothing short of a constitution providing full responsible government for India such as self-governing dominions enjoy, should be agreed to by the Congress or the country or can satisfy our requirements. The resolution of the Assembly falls far short of it. Clauses (b), (d) and (f) of that resolution refer only to the Governor-General in Council under the Government of India Act and beyond asking for a Minister to assist in the Indianising of the Army cadre do not insist on a cabinet of Ministers responsible to the legislature. The Governor General is by himself to have decisive residuary powers and transitional reservations in vital matters and a power to overrule the vote of the Assembly upto a fixed maximum in connection with the expenditure on defence. Again, the resolution of the Assembly in September, 1925 only expresses the minimum requirements on which the parties in the Assembly were then able to agree. Much water has flowed under the bridges since then. Our judgment of the British government and our vision of Swaraj are much clearer today. We cannot in framing a Swaraj Constitution, lower our demand or our ideal. We should not, therefore, subscribe to the very ambiguous and defective formula with its obscurities, limitations and reservations that was moved in 1925 in the Assembly as the minimum formula of

a momentary expediency in order to secure the support of a majority of the members of the assembly at that time. We would be less than just to that resolution if we did not remember that it contemplated an almost immediate settlement with the Government which neither came then nor has come now. On the other hand we are face to face with the gravest situation in the history of our struggle for freedom which has now become a struggle for life and death. It is therefore neither right nor wise for the Congress and the country, indeed it will be suicidal for them, when they have to frame a Swaraj Constitution for India, to look back to that resolution. We are seeking to exercise our right of self-determination for the first time and should not, by hasty or personal commitments, pledge or embarrass the future. Therefore, as I said at Gauhati, we should clearly think out what Swaraj involves and requires and should not abate an iota in our demand for full self-government. Our Swaraj Constitution must be that of a genuine Swaraj state and not of a half-way house. Mr. Fenner Brockway's draft and mine proceed on those unambiguous lines.

The resolution passed by the Assembly on the 8th of September, 1925 demands that the Council of the Secretary of State for India should be abolished but retains the Secretary of State for India whose position and functions are to be assimilated to those of the Secretary of State for self-governing dominions. I am quite clear that we should not have a separate Secretary of State for India alone. For, it is far better that the Secretary of State for the self-governing dominions should represent India also along with the rest in the British Parliament. There is safety in numbers, in precedents, and in a common form. India must therefore be exactly on the same footing as the other self-governing dominions in her relations to the Crown and the British Parliament.

Nor do I agree with that part of the resolution of the Assembly which deals with the Indian Army and recognises the over-riding power of the Governor-General in Council to appropriate upto a fixed maximum any sum which he may consider necessary for expenditure under the head "Defence". For, in the matter of defence more than in other matters we should be in exactly the same constitutional position as other self-governing dominions with powers, rights and obligations similar to theirs. It is not advisable that in our written constitution we should provide for any material modification of that position for any period of years, though we may, by mutual agreement, employ the British Army and find funds for it. Articles 6 to 9 of the Irish Free State Agreement, 1922, furnish a useful precedent. Lord Birkenhead arrogantly asks: "Do you desire that the British Army should be withdrawn from India? Do you desire that the Civil Service should be withdrawn from India? Do you desire that the protection of the British Navy should be withdrawn from the Indian shores? I have never found one Indian however hostile to this Government, however critical of our proposals in relation to the Indian development, who desired that the Army should be withdrawn, that the Indian Civil Service should be withdrawn, or that the protection of the Navy should be withdrawn." We certainly repudiate the insinuation and we unequivocally desire that the Army and the Civil Service and the protection of the Navy be withdrawn from India. We have no objection whatever to their withdrawal by the British Government and no *arriere pensee* on the subject. For, Free India can buy and man a fleet and maintain an army on the most modern lines at least as well as a Bond India. We know that it is nothing but a question of finance and the training of men. We know that Indian Sepoys and Indian Officers have distinguished themselves in innumerable fields, quite as well

as European soldiers and officers, both before and during the British regime. We are confident as to the future, for, the army of a Free India will be filled with a new spirit, as the army of liberated France was, and, if it becomes necessary, will surpass the present Indian army in valour, endurance and training.

The crushing expenditure of the present Government due to a too highly paid and too elaborate system of public services calls for a drastic revision. The heavy taxation and the impoverishment of the country are primarily due to it. The unedifying spectacle as well of the unpatriotic competition for equality in the matter of pay between Indians and Europeans as of the endless competition amongst Indians themselves for posts and places and of the gravest communal differences and disturbances and the supposed ease with which a handful of foreigners rule us are almost entirely due to the costliest hierarchy of services in the world which is maintained by the British administration and to the fatal obsession, division and demoralization consequent on it. The deadly eminence of the services, their intoxication and apotheosis, must go if freedom is to win as against salaried ambition and salaried contentment. Therefore, it must be a fundamental rule that no office or place in British India shall carry with it a salary exceeding Rs. 2000 a month. If Indians demand that their maximum salary should be reduced to Rs. 2000 a month what a powerful swaraj lever it would be! The bureaucracy and the British Government must be made to feel that a high salary is no longer a temptation to an Indian official. The members of the Civil Services will then realize that in an India where equally efficient Indian officials are available for much less remunerations than their own, they can have no place. The whole apparatus of a responsible government and the formation of a larger number of provinces so essential for the fulfilment of democracy, require us to reduce

the salaries in all the services all along the line except in the matter of salaries below, say, Rs. 250 or Rs. 300. The only exceptions to the rule of maximum salary that we can make must be the offices of Governor-General or Governor and the highest offices in the Indian Army. Special contracts for the temporary employment of alien experts by a Swaraj India should not, where strictly necessary in our own interests, be affected.

The preamble to the constitution that I have suggested explains itself. It is necessary in that form or in another to a constitution framed in exercise of the right of self-determination and for the purposes we have in view,

The expression "Commonwealth of India" is used after the Commonwealth of Australia both in Dr. Besant's draft and in the draft of the Independent Labour Party. "Swaraj India" or, after the Irish Free State, "Free India" would perhaps be a better name.

In Appendix A are given the texts of the resolutions on Hindu-Muslim Unity in the one case passed by the A. I. C. C. meeting at Bombay in May, 1927, and in the other passed by the Unity Conference at Calcutta in October, and approved by the meeting of the A. I. C. C. that followed it. The Calcutta resolutions proceed on the principles that no community in India should be allowed to impose its religious views or obligations on any other community and that the free profession and practice of religion should subject to public order and morality be guaranteed to every community and person. They should, therefore, with such modifications and improvements in substance and in form as may seem necessary, be embodied as an integral part of India's Swaraj Constitution. Hinduism forbids, while Islam permits, cow sacrifice. But both Hinduism and Islam permit sacrifices of other animals such as goats or sheep. For myself, I am wholly against all animal sacrifices in the name of any religion.

as Ahimsa must be its supremest aim. And I, firmly believe the proposal, if adopted, will conspicuously minimise cow slaughter as freedom will replace the sting of domination. But neither the present State nor the Swaraj State can interfere with the respective observances of any religion in India and must leave them to be altered by the processes of internal reform which each religion must undergo under modern conditions. (See Raja Rajendralala Mitra's "Indo-Aryans" Vol. I, Ch. VI for Ancient India.) In pleading for the general acceptance of these Unity resolutions, I would repeat the truest and wisest of Asoka's sayings: "He who does reverence to his own sect while disparaging the sects of others wholly from attachment to his own, with intent to enhance the splendour of his own sect, in reality by such conduct inflicts the severest injury on his own sect." If there are moments when we are inclined to resist Asoka's teaching of religious tolerance, we cannot do so when, from the divine lips of Lord Krishna, we hear it as the sublime message of spiritual identity:

येऽप्यन्यदेवता भक्ता यजन्ते श्रद्धयान्विताः ।

तेऽपि मामेव कौन्तेय यजन्त्यविधि पूर्वकम् ॥

"Even those, O son of Kunti! who being devotees of other Gods worship with faith, worship me only, though irregularly."

Appendix B contains my proposals—they were published a month ago—for the solutions of the communal questions in the Province of Madras which may possibly have even a wider application. In them, I have adopted the principle of perfect equality of all castes as the golden mean between a formal total abolition of all castes which may not yet be practicable and the maintenance of a crumbling hierarchy of castes which is no longer possible.

In conclusion, I would only remind my countrymen of Lord Birkenhead's insolent challenge to us in 1925, not

INTRODUCTION

xxxvii

“to shrink from the conclusive test.” And with him, too, I would say, but in a far different spirit from his :

“He either fears his fate too much ;

“Or his deserts are small,

“Who dares not put it to the touch,

“To win or lose it all.”

12th Dec. '27.

S. SRINIVASA IYENGAR.

SWARAJ CONSTITUTION

SWARAJ CONSTITUTION

PREAMBLE

Whereas Swarajya or Self-Government is the inherent and inalienable right of the people of India, and their right of self-determination was solemnly recognised by the Prime Minister of England on behalf of the British Government on the occasion of the Great War when India was called upon to make and made heavy sacrifices in men and money, whereas the people of India have protested, without redress, against the Government of India Act 1919 as altogether inadequate and unsatisfactory and have been incessantly demanding without any satisfactory response a Swaraj Constitution for India, whereas the Indian Legislative Assembly by its resolutions dated the 18th February, 1924 and 8th September, 1925 requested the Government to take steps to establish full responsible government in India and to summon a representative Round Table Conference or Convention to frame a detailed scheme of a Constitution for India, whereas the British Government have not only refused to accede to all or any of the said demands but have denied the right of the people of India to self-deter-

SWARAJ CONSTITUTION

mination and have further constituted, in defiance of the will of the people, a Commission to report as to whether and to what extent it is desirable to establish in India responsible government or to extend, modify or restrict the degree of responsible government existing in India, and whereas, in order to secure to themselves and their posterity the blessings of liberty, to insure domestic tranquillity and to promote the general welfare, it is necessary to establish full responsible government in India; the people of India acting through the scheduled political bodies and associations and in exercise of their right of self-determination have finally resolved to, and do hereby, ordain and establish the following Swaraj Constitution for India and do further hereby enter into a solemn league and covenant amongst themselves to carry it into effect by all peaceful and legitimate means :—(Cf U. S. preamble.)

PART I

I. DECLARATION OF RIGHTS

1. (1) India shall have the same constitutional status in the community of Nations forming the British Commonwealth of Nations, as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and the Irish Free State, with a Parliament having power to make laws for the peace, order and good government of India, and an Executive responsible to that Parliament, and shall be styled and known as the Commonwealth of India. (Art. I of the Irish Constitution.)

(2) Nothing herein contained shall affect the right of India as a self-governing dominion to remain now and always the sole judge of the nature and extent of her co-operation with the other communities associated with her as members of the British Commonwealth of Nations or the right of the people of India to claim the fullest national independence in case no settlement is agreed to by the British Government on the basis of this Constitution.

2. In the matter of defence, India shall have exactly the same constitutional position, the same powers and the same rights and obligations as other self-governing dominions:

Provided that nothing herein contained shall affect any treaty or arrangement in that behalf that may become to, or that may be recognised as subsisting, between the Parliament of India and the Government of the United Kingdom.

3. The powers of the Parliament and the Executive Government of the Commonwealth with respect to Foreign Affairs shall be the same as those exercised by the other self-governing Dominions. (I. L. P. draft.)

4. (1) The powers of the Parliament and of the Governor-General in Council with respect to Indian States shall be the same as those exercised by the Parliament of the United Kingdom or by the King in Council or by the Governor-General in Council or by the Governor-General or by all the said authorities at the establishment of this Constitution.

(2) Subject as aforesaid and subject to the powers hereinafter conferred on the Parliament, nothing herein contained shall affect the provisions of the existing Treaties and Arrangements between His Majesty and any Indian States. (§ 132 Govt. of India; Whyte p. 313.)

5. All powers of Government, and all authority, legislative, executive and judicial, are derived from the people and the same shall be exercised in the Commonwealth of India through the organisations established by or under, and in accord with, this Constitution. (Art. 2 of the Irish Constitution.)

6. All laws made by the Parliament shall be binding on the Courts, Judges and people of every Province and of every part of the Commonwealth, notwithstanding anything in the laws of British India or any part of British India or in any Act of the United Kingdom extending to British India, and the laws of the Commonwealth shall be enforced in all Indian territorial waters. (Prelim. § 5 Austr.)

7. The right of the citizens of the Commonwealth to form a well regulated militia for its defence is declared and guaranteed. (2nd Amendment to the American Constitution.)

8. The national language of the Commonwealth is the Hindustani language, but the English language shall be equally recognised as an official language. Nothing in this section shall prevent special provisions being made by Parliament for Provinces, districts or areas in which

neither or either only is in common use. (Art. 4 of the Irish Constitution.)

9. Every person domiciled in the Commonwealth of India at the time of the coming into operation of this Constitution who was born in India or who has been so domiciled in the area of the jurisdiction of the Commonwealth of India for not less than seven years is a citizen of the Commonwealth of India and shall, within the limits of the Commonwealth, enjoy the privileges and be subject to the obligations of such citizenship, provided that any such person being a citizen of another State may elect not to accept the citizenship hereby conferred; and the conditions governing the future acquisition and termination of citizenship in the Commonwealth of India shall be determined by Act of Parliament. (Art. 3 of the Irish Constitution.)

10. No title of nobility or honour in respect of any services rendered in or in relation to the Commonwealth of India may be conferred on any citizen of the Commonwealth of India except with the approval or upon the advice of the Executive Council of the Commonwealth; or, in the case of members of the Executive Council, except with the consent of the Legislative Assembly; nor shall any present, emolument, office, or title conferred by the British or any foreign Government be accepted by a citizen of the Commonwealth employed by the government of the Commonwealth or of a province or holding any office of profit, honour, or trust under them, except with the consent of the Legislative Assembly. (Art. 5 of the Irish Constitution; sec. IX U. S. Cons.)

OR

(1) Privileges or discrimination due to birth or rank and heretofore recognized by law are hereby abolished.

(2) Titles may be conferred only when they designate an office or profession; but academic degrees shall not be affected by this provision.

(3) Orders and honorary insignia shall not be conferred on the citizens of the Commonwealth.

(4) No citizen of the Commonwealth shall accept a title or order or other distinction or office of profit, emolument, or reward from either the British Government or a foreign government. (Art. 109 of the German Republican Constitution.)

11. No person shall be deprived of his liberty nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law and by a duly constituted Court of Law. (Art. 6 Irish Constitution, 5th Amendment to American Constitution, 6 Hals. Sec. 557.)

12. The right of free expression of opinion, as well as the right to assemble peaceably without arms, and to form associations or unions, is hereby guaranteed for purposes not opposed to public order or morality, or the law relating to defamation for the time being. (Art. 9 of the Irish Constitution and 1st Amendment, American Constitution; I. L. P. Draft.)

13. (1) Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, hereby guaranteed to every person. (Art. 8, Irish Constitution and 1st Amendment, American Constitution.)

(2) The Commonwealth shall not allow any community, caste or sect in India to impose its religious views or obligations upon any other community, caste or sect.

(3) There shall be no state religion for the Commonwealth of India or for any province in the Commonwealth. No law may be made either directly or indirectly to endow any religion, or prohibit or restrict the free exercise thereof, or give any preference, or impose any

disability on account of religious belief or religious status, or affect prejudicially the right of any child to attend a school receiving public money without attending the religious instruction at the school, or make any discrimination as respects state aid between schools under the management of different religious denominations, or divert from any religious denomination or any educational institution any of its property except for the purpose of roads, railways, lighting, water or drainage works or other works of public utility, and on payment of compensation. (Art.8, Irish Constitution and 1st Amendment, American Constitution.)

(4) No Bill, Resolution, Motion or Amendment regarding inter-communal matters shall be moved, discussed or passed in any legislature, central or provincial, if a three-fourths majority of the members of any community affected thereby in that legislature oppose the introduction, discussion or passing of such Bill, Resolution, Motion or Amendment. (A.I.C.C Resolution, May, 1927.)

14. (1) All citizens of the Commonwealth of India shall be in all respects equal before the law and shall enjoy the same civil and political rights. And no distinction of Court or Judge shall be made between one class of persons and another with respect to similar civil or legal matters and offences. (I. L. P. Draft.)

(2) There shall be no disqualification or disability on the ground only of sex. (Ir. F. S. Art. 3.)

(3) All persons have an equal right to the use of roads, Courts of Justice and all other places of business or resort dedicated to the public, provided they do not disturb public order or disobey any lawful notice issued by a competent authority. (I. L. P. Draft.)

(4) All persons in the Commonwealth of India have the right to free elementary education, and such right shall be enforceable as soon as due arrangements shall

have been made by the competent authority. (I. L. P. Draft ; Ir. F. S. 10.)

15. Differences of religion, creed, faith or language shall not prejudice any citizen of the Commonwealth of India in any way, within the limits laid down by the general laws particularly in regard to public employments, offices of power or honour and the exercise of any trade or calling. (vide Czecho Slovakian Constitution and Sec. 96, Government of India Act.)

16. (1) All castes are hereby declared and guaranteed to be on a footing of perfect equality; no superiority or inferiority of any caste and no hierarchy of castes shall be recognised or given effect to by the State for any purpose.

(2) The State shall not treat or allow to be treated any community in India as an untouchable community but shall recognise it as having the same status as other communities.

17. A citizen of the Commonwealth, resident in any province, shall not be subject in any other province to any disability or discrimination which would not be equally applicable to him if he were a citizen of the Commonwealth resident in such other province. (Austr. S. 117).

18. All judges shall be independent in the exercise of their functions and subject only to the constitution and the law. A judge shall not be eligible to sit in a legislature and shall not hold any other office or position of emolument. (Ir. F. S. art: 68.)

19. No person shall be tried on any criminal charge without a jury save in the cases of charges in respect of minor offences triable by law before a court of summary jurisdiction. (Art. 71 Ir. F. S. art. 3 (2) U. S.)

Nor shall any person be indefinitely detained in custody or interned in any place except upon a charge and without being brought to trial within a reasonable time before a duly constituted court of law.

PART II

2, THE COMMONWEALTH EXECUTIVE GOVERNMENT

20. The Executive Government of the Commonwealth of India is vested in the King and shall be administered by His Majesty in person or by the Governor-General as his representative in accordance with the law and practice and constitutional usage governing the exercise of such authority in the case of a self-governing dominion. (S. Africa Act. S. 8; British N. America Act S. 9; Irish Free state Art. 50; Austr. Act S. 61; C. f., Govt. of India Act S. 33; 2 Keith, page 950 points out that the South African provision for personal exercise avoids the King's otherwise anomalous position of inferiority in constitutional status to his representative.)

21. The Governor-General of India shall be appointed by the King in like manner as the Governor-General of Canada and in accordance with the practice observed in the making of such appointments and shall have and may exercise in India during the King's pleasure, but subject to this constitution, such powers and functions of the King as His Majesty may be pleased to assign to him. (Sec. 2 Austr.; S. 9 S. Africa Act; Irish Free State S. 58.)

22. The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General for the time being or such person as the King may appoint to administer the Government of India. (S. 4. Aust; Ss. 10 and 14 Br. N. America Act; S. 11 S. Africa Act.)

23. (1) There shall be an Executive Council of India to aid and advise the Governor-General in the Government of India. (Irish Free State Art. 50; Austr. S. 62; S. Africa Act Ss. 12 and 14; Br. N. America Act, S. 11.)

(2) The Executive Council shall consist of not less than five and not more than nine Ministers of the Commonwealth (of State for India) appointed, (from amongst

members of the Parliament), by the Governor-General to administer such departments of State as the Parliament may establish or in the absence of such provision as the Governor-General directs. (Irish Free State Art. 50; Austr. Ss. 64 and 65; S. Africa Act S. 14; Government of India Act S. 52.)

(3) Every Minister so appointed shall hold office during the Governor-General's pleasure: provided that no Minister shall hold office for a longer period than 3 months unless he is or becomes a member of the Senate or the Legislative Assembly. (Govt. of India Act S. 52 makes it 6 months; S. Afr. S. 14 and Austr. S. 64 make it 3 months.)

(4) In appointing the Ministers, the Governor-General shall select one as the Prime Minister and appoint the others only on his advice.

(5) Every Minister shall receive such salary as may be provided by vote of the Parliament.

24. (1) The Prime Minister shall be the President of the Executive Council of India. (See Art. 51 Irish Free State Constitution).

(2) If any difference of opinion arises on a question brought before a meeting of the Executive Council, the decision of the majority of the members present shall prevail and if they are equally divided the Prime Minister or other Minister presiding shall have a second or casting vote.

(3) The Executive Council may make rules and orders for the more convenient transaction of its business subject to the approval of the Governor-General and every order made, or act done in accordance with those rules and orders shall be treated as being the order or the act of the Government of India. (C. f. Government of India Act S. 40 (2) and S. Africa Act S. 82.)

(4) All orders or other proceedings of the Government of India shall be expressed to be made by the

Governor-General in Council and shall be signed by a Secretary to the Government of India or otherwise as the Governor-General in Council may direct. (Govt. of India Act S. 40 (1).)

25. (1) The members of the Executive Council shall be collectively and severally responsible to the Parliament for every legislative and executive act of the Government, for its general policy and for its measures.

(2) A Minister of State shall be responsible to the Parliament for the advice which he gives to the Governor-General, for the administration of the department over which he presides and for acts done under his authority. (7 Hals. paragraphs 70 and 107; Irish Free State Art. 54; 1 Keith Ch. 7;)

(3) The Prime Minister and the other Ministers when they do not retain the confidence of a majority in the Legislative Assembly shall either retire from office or advise the Governor-General to dissolve the Assembly; but shall in either case continue to carry on their duties until their successors have been appointed. (Ir. F. S. Art. 21; I. L. P. Draft.)

OR

The Ministers shall be severally responsible to the Parliament for the conduct of their own departments and shall be jointly responsible to the Parliament for the general policy of the Government. (1 Lowell's Govt. of England, page 73.)

26. (1) The Governor-General may appoint from amongst the members of the Parliament, parliamentary secretaries who shall hold office during his pleasure and discharge such duties in assisting the Ministers of State as he may assign to them.

(2) There shall be paid to parliamentary secretaries so appointed such salaries as may be provided by vote of the Parliament.

(3) A parliamentary secretary shall cease to

hold office if he ceases for more than 3 months to be a member of the Senate or the Legislative Assembly as the case may be. (C.f. Govt. of India Act S. 52.)

27. Subject to the provisions of any law passed by the Parliament regulating the classification of the public services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct, the appointment and removal of all officers of the public services in India shall be vested in the Governor-General-in Council except in cases and to the extent they are vested by this Constitution or by any Act of Parliament or by a resolution of the Governor-General in Council in the Government of a Province or in any other authority. (Ss. 15 and 83 of S. Africa Act ; S. 67 Austr. 96 B(2) Govt. of India Act.)

28. All powers, authorities and functions which at the establishment of this constitution are vested in the Governor-General or the Governor-General in Council shall as far as the same continue in existence and are capable of being exercised after the establishment of this constitution be vested in the Governor-General in Council except such powers and functions as are by this Constitution or may by an Act of the Parliament be vested in some other authority. (c. f. S. 16 of S. Africa Act; S. 70 Austr. Act ; S. 12 Br. N. America Act.)

29. (1) Subject to this constitution the superintendence, direction and control of the Military Government of India is vested in the Governor-General in Council and the Command-in-Chief of the Military, Naval and Air forces in India is vested in the Governor-General as the King's Representative. (§ 33 Govt of India, S. Africa S. 17 ; Austr. § 68 ; Br. N. Am. act § 15.)

(2) Without the consent of Parliament the Armed Forces of the Commonwealth shall not be employed beyond the frontiers of India. (Govt. of India § 22.)

(3) All appointments to offices in the Military,

Naval and Air Forces of the Commonwealth and to Commands in India and all promotions in the said services shall be made by the Governor-General in Council or by any other authority in accordance with the rules made by him. (Gov. Ind. § 95.)

30. (1) There shall be established in India a public service commission, consisting of not more than five members, of whom one shall be chairman, appointed by the Governor-General in Council. Each member shall hold office for five years, and may be re-appointed. No member shall be removed before the expiry of his term of office, except by order of the Governor-General in Council. The qualifications for appointment, and the pay and pension (if any) attaching to the office of chairman and member, shall be prescribed by rules made by the Governor-General in Council.

(2) The public service commission shall discharge, in regard to recruitment and control of the public services in India, such functions as may be assigned thereto by rules made by the Governor-General in Council. (Government of India Sec. 96 C.)

31. An auditor-general in India shall be appointed by the Governor-General in Council, and shall hold his office during good behaviour. The Governor-General in Council shall, by rules, make provision for his pay, powers, duties, and conditions of employment, or for the discharge of his duties in the case of a temporary vacancy or absence from duty. (Government of India Sec. 96 D.)

3. THE INDIAN LEGISLATURE

32. The legislative power of the Commonwealth of India shall be vested in the Parliament of India which shall consist of the King, a Senate and a Legislative Assembly. (See Govt. of India Act S. 63; Br. N. America Act S. 17; S. Africa Act S. 19; Austr. S. 1; New Zealand Constitution Act S. 32; and Irish Free State Con-

stitution Act S. 12. The legislature is bicameral in "all the important countries of the world:" Holt p. 47; (2 Bryce pp. 438-9, Lowell); e.g. in France (Art. 1), in Switzerland (Art. 71), in Italy (Art. 3), in the New German Republic (Arts. 20 and 60), and in Norway, Sweden, Holland and Belgium (Holt. p. 50). Also in the United States of America (Art. 1) and the United States of Brazil (Art. 16).

33. The Governor-General shall have the right of addressing the Parliament and may for that purpose require the attendance of the members of both the chambers. (Ss. 63 A (3) and 63 B (3) of the Govt. of India Act; May. p. 539; "the whole Parliament is assembled in one chamber").

34. The Governor-General may appoint such times and places for holding the sessions of the Parliament as he thinks fit on the advice of his Executive Council and may also from time to time by proclamation or otherwise prorogue on the advice of his Executive Council the Parliament and may on like advice and in like manner dissolve the Senate and the Legislative Assembly simultaneously or the latter alone. (S. 20 S. Afr.; S. 5. Austr. and S. 63-D of Govt. Ind.)

35. In case of the dissolution of the Parliament or of the Legislative Assembly as the case may be, the writs shall be issued within 10 days from such dissolution.

At a general election the day fixed for receiving nominations shall be the same in all constituencies and all polls shall be held on one day which day shall be not later than 30 days after the date of dissolution and shall be proclaimed a public holiday. The Parliament or the Legislative Assembly as the case may be shall be summoned to meet not later than 30 days after the day appointed for the return of the writs. (Ss. 5 and 12, Austr. Art. 27 Irish Free State; Representation of People Act 1918, S. 21).

36. There shall be a session of the Parliament once

at least (twice at least) in every year so that a period of 12 (6) months shall not intervene between the last sitting of Parliament in one session and its first sitting in the next sessions. (S. 22 S. Afr. and S. 6 Austr)

THE SENATE

37. The Senate shall be composed of members for each province directly elected by the electors of the province according to the principles of proportional representation by the method of the single transferable vote or on the *list system* or by such other method as may be prescribed by the Governor-General in Council in the case of the first general election and thereafter by the senate. Each province shall be either a single constituency or divided into suitable constituencies. (Austr. S. 7; both Irish Free State Art. 31 and S. Africa Act 134 recognise proportional representation for the Senate.)

38. (1) The total number of members of the Senate shall be fixed at one member for each million of the population of the Commonwealth of India as ascertained at the previous census. (American Constitution Art. 2 gives one for every thirty thousand, and the Irish Free State gives not less than one for each thirty thousand and not more than one for each twenty thousand but these relate to the "lower" House.)

(2) The number of members of the Senate elected in the several provinces shall be in proportion to the respective numbers of their population ascertained as aforesaid.

39. (1) Subject to the provisions of sub-section (2) a person is eligible for election as a member of the Senate who,

(a) is or has been an elected member of a Provincial Legislative Council or of either chamber of the Indian Legislature constituted under the Government of India Act 1919, or under this constitution.

(b) is or has been a non-official President or Chair-

man or Vice-President or Vice-Chairman of a Municipal Council or District Board or a Local Board in any Province;

(c) is or has been a Fellow or Honorary Fellow of any University constituted by law in India; or

(d) is or has been a Governor of the Imperial Bank of India, or the non-official President or the Vice-President of any Central Bank or Banking Union which is a registered society under Section 2 of the Co-operative Societies' Act; or

(e) has done honour to the nation by reason of eminent public services or, because of special qualifications or attainments, represents any great branch of knowledge or important aspect of national life such as Science, Art, Letters, Medicine, Education, Law, Engineering, Agriculture, Commerce, Manufacturing industry or Banking and Finance. The list of persons qualified under clause (e) and resident in each province shall be made by the Executive Council of the Province and laid before its Legislative Council; or

(f) is or has been the President or Vice-President of any Chamber of Commerce, Indian or European; or

(g) is a retired officer of His Majesty's Indian Army or of the Commonwealth Forces of such rank or distinction as may be prescribed in that behalf by the Governor-General in Council.

(h) is a landholder who pays either an annual assessment of not less than rupees three thousand or holds an estate of which the annual income is not less than rupees thirty thousand or is a person who is assessed to income-tax on an income of not less than rupees thirty thousand.

(2) No person shall be eligible as a member of the Senate to represent a constituency unless he is:—

(a) not less than 30 years of age; and

(b) registered as a voter for the election of members of the Legislative Assembly in any constituency in the

Province. (S. Afr. S. 26; U. S. 3; Br. N. Am. 23; Irish Free State Art. 30 makes the age 35. French law makes it 40.)

40. The term of office of a member of the Senate shall be six years from its first meeting. (Austr. S. 7; but Art. 30 Irish Free State makes it 12 years; S. 63 D Gov. Ind.)

41. (1) As soon as may be after the Senate first meets and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide, by lot, ballot or otherwise, the members elected for each province in two classes as nearly equal in number as practicable and the places of the members of the first class shall become vacant at the expiration of the third year, and the places of those of the second class at the expiration of the 6th year from the beginning of their term of service. And afterwards, the places of the Senators shall become vacant at the expiration of 6 years from the beginning of their term of service. (Austr. S. 13; Irish Free State makes it one-fourth every 3 years, Art. 31; American Constitution Art. 3 makes it one-third every 2 years.)

(2) A person elected to fill a casual vacancy shall continue as member for the remainder of the term of office as above determined.

42. (1) The Senate shall, before proceeding to the despatch of any other business, choose a Senator to be the President of the Senate and as often as the office of the President becomes vacant the Senate shall again choose a Senator to be its President.

(2) There shall be a Deputy President of the Senate who shall preside at meetings of the Senate in the absence of the President and who shall be a member of the Senate elected by it.

(3) A President or Deputy President shall cease to hold office if he ceases to be a Senator. He may be removed from office by a vote of the Senate or he may

resign his office by writing addressed to the Governor-General. (S. Afr. S. 27; Austr. S. 17.)

43. Until the Parliament otherwise provides, the presence of at least thirty members of the Senate shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

(In the Australian Senate, the quorum is one-third of the whole number, in the South African it is twelve, in the Canadian it is fifteen; but these Senates are not large. In the House of Lords, the ordinary quorum is three and for divisions on Bills it is thirty.)

THE LEGISLATIVE ASSEMBLY

44. The Legislative Assembly shall be composed of members directly elected by the electors of the several provinces divided into suitable constituencies.

45. (1) The total numbers of members of the Legislative Assembly shall be fixed at not less than one member for each half million of the population of the Commonwealth of India as ascertained at the previous census.

(2) The number of members elected in the several provinces shall be in proportion to the respective numbers of their population ascertained as aforesaid.

46. (1) A person is eligible for election as a member of the Legislative Assembly to represent a constituency, who

(a) is not less than 25 years of age; and (present rule)

(b) is registered as a voter for election of members of the Legislative Assembly in the constituency or in any other constituency situated in the same Province.

47. Every Legislative Assembly shall continue for 3 years from its first meeting and no longer but may be sooner dissolved by the Governor-General. (Austr. S. 28; S. Afr. S. 45; Govt. Ind. S. 63.)

48. (1) The Legislative Assembly shall, before proceeding to the despatch of any other business, choose a

member to be the President of the Chamber, and as often as the office of the President becomes vacant the Assembly shall again choose a member to be the President. (S. 63 C (1) Govt. Ind.; S. 46 S. Afr. S. 35 Austr.)

(2) There shall be a Deputy President of the Legislative Assembly who shall preside at meetings of the Assembly in the absence of the President and who shall be a member of the Assembly elected by it. (S. 63 C (2) Govt. Ind.)

(3) Any President or Deputy President shall cease to hold office if he ceases to be a member of the Assembly. He may be removed from office by a vote of the Assembly or he may resign his office by writing addressed to the Governor-General. (S. 63 C (4) Govt. Ind.)

49. Until the Parliament otherwise provides, the presence of at least 40 members of the Legislative Assembly shall be necessary to constitute a meeting of the Assembly for the exercise of its powers. (The present rule is 25; the House of commons rule is 40 including the Speaker.)

4. BOTH CHAMBERS

50. Every Senator and every member of the Legislative Assembly shall, before taking his seat, make at a meeting of the chamber of which he is a member an oath or affirmation of his allegiance in the following form:

"I, A. B., having been elected a member of this House, do solemnly swear (or solemnly and sincerely affirm and declare) true faith and allegiance to the Constitution of the Commonwealth of India as established, and that I will be faithful to His Majesty, King George V, his heirs and successors by law, in virtue of the common citizenship of India with Great Britain and her adherence to and co-equal membership of the group of nations forming the British Commonwealth of Nations." (Ir. F. S. 17.)

51. Any meeting of either Chamber of Parliament

may be adjourned by the leave of the Chamber, or in the event of grave disorder or want of quorum, by the person presiding. (Govt. Ind. S. 63 D; May, pp. 52, 204 and 207.)

52. All questions in either chamber shall be determined by a majority of votes of members present other than the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

53. The powers of either Chamber of the Indian Legislature may be exercised notwithstanding any vacancy in the chamber.

54. If any person is elected a member of both chambers of the Indian Parliament, he shall before he takes his seat in either chamber signify in writing the chamber of which he desires to be a member, and thereupon his seat in the other chamber shall become vacant. (S. 63 E (3) Govt. Ind.)

55. When a vacancy occurs in the case of a member of either chamber by reason of his election being declared void or his seat being declared vacant or by reason of death, resignation, disqualification or failure or inability to attend to duty, the Governor-General shall, until Parliament otherwise provides, by notification in the Gazette call upon the constituency concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by him in accordance with law. (present rule.)

56. A member of either chamber may by writing addressed to the President or if there is no President to the Governor-General, resign his seat which shall thereupon become vacant. (Austr. Ss. 19 & 37; S. Afr. Ss. 29 & 48.)

57. A member of either chamber shall be incapable of being elected or of sitting as a member of the other chamber provided that every minister of state shall have the right to sit and speak in the Senate and the Legisla-

tive Assembly but shall vote only in the chamber of which he is a member. (S. 53 S. Afr; S. 43 Austr.)

58. The President and the Deputy President of the Senate and the President and the Deputy President of the Legislative Assembly shall respectively receive such salaries as may be determined by an Act of the Parliament. (S. 63 C (5) Govt. Ind.)

59. (1) The powers, privileges and immunities of the Senate and of the Legislative Assembly and of the members and the committees of each chamber, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom and of its members and committees at the establishment of this constitution. (Austr. S. 49.)

(2) Subject to the rules and standing orders affecting the chamber there shall be freedom of speech in both chambers of the Indian Legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote or notice given in either chamber, or by reason of anything contained in any official report of the proceedings of either Chamber. (S. 67(7) of the Gov. Ind. (1896) A. C at 612; 3 & 4 Vic. C. 9; (1909) 2 K. B. 958.)

60. (1) Each chamber of the Parliament may make rules and orders with respect to the order and conduct of its business and proceedings.

(2) Without prejudice to the generality of the foregoing power, each House of Parliament may make rules and orders with respect to:—

(i) The mode in which its powers, privileges and immunities may be exercised and upheld.

(ii) The order and conduct of its business and proceedings either separately or jointly with the other House.

(iii) The issue of writs for vacancies.

(iv) The vacation of seats and resignation of members.

(v) Any other matter necessary for the conduct of business therein. (I. L. P. draft.)

(3) Such rules may provide for questions and resolutions on any matter affecting the relations of the Government of the Commonwealth or of a Province with any Indian State and the relations or of one State with another or any matters touching such States or their Rulers which are within the area of powers now exercised in or in connection with such States by the British Parliament, the Governor-General or the Governor-General in Council. (Whyte p. 313.)

(4) Until such rules and orders are made, the rules and orders of the Council of State and the Legislative Assembly at the establishment of this Constitution shall *mutatis mutandis* apply to the Senate and the Legislative Assembly respectively.

(5) If a joint sitting of both chambers of the Parliament is required under the provisions of this constitution, it shall be convened by the Governor-General by message to both chambers. At any joint sitting the President of the Legislative Assembly shall preside and the rules of that Assembly shall as far as practicable apply. (S. 58 of S. Afr.; S. 67 (3) Gov. Ind.)

5. THE POWERS OF PARLIAMENT

61. (1) The Parliament of India shall, subject to this constitution, have full power to make laws for the peace, and good government of India.

(2) Without prejudice to the generality of the foregoing power, the Parliament shall have exclusive power to make laws in relation to all matters coming within the following classes of subjects, namely;

(i) Trade and commerce with other countries and in India and the incorporation of trading, financial or foreign corporations in India. (Austr. 51; B. N. Am. 91; D. R. I (17 & 18).)

(ii) Taxation excluding the taxation assigned under this Constitution to the provinces, but so as not to discriminate between provinces or parts of them ; but including customs, revenue excises, income-tax, super tax, corporation profits tax, revenue from salt including control of its manufacture and sale ; opium including control of its cultivation, manufacture, sale ; export duties ; excises on cigars, cigarettes and pipe-tobacco. (Austr. 51, B. N. Am. 91. D. R. I (11). Tax. Enq. Rep. 376-84.)

(iii) Bounties on the production or export of goods but so that such bounties shall be uniform throughout India. (Austr. 51)

(iv) Borrowing money on the public credit ; the assets and property of the Commonwealth ; the Public Debt of the government of the Commonwealth. (Austr. 51 ; B. N. Am. 91 ; D. R. I. (13)).

(v) Currency, coinage and legal tender. (B. N. Am. 91 ; Austr. 51 ; and D. R. I (12))

(vi) Banking and Insurance and Savings Banks ; the incorporation of Banks and the issue of paper money and Stock exchanges ; (B. N. Am. 91 ; Austr. 51 ; German Sec. I, Art. 7, 14 ; D. R. I (17 and 14)).

(vii) Bills of exchange, cheques, hundies and promissory notes. (B. N. Am. 91 ; Austr. 51).

(viii) Shipping and navigation including shipping and navigation on such inland waterways as may be declared by the Governor-General in Council to be of national importance ; harbours, major ports, light-houses, beacons, light-ships, buoys. (B. N. Am. 91 ; Austr. 51 ; D. R. I (6) & (7)).

(ix) Railways. (B. N. Am. exception (a) to Sec. 92 (10) Austr. 51 ; S. Afr. Sec. 85. (7) ; D. R. I (5) ; and German Sec. I (7)).

(x) Aircraft and all matters connected therewith. (D. R. I (5) (b) ; German Sec. I (7)).

(xi) Posts, Telegraphs and Telephones including

wireless installations. (D. R. I (10); B. N. Am. 91; and Austr. 51).

(xii) The Defence of India and all matters connected with the naval, military and air forces of the Commonwealth including militia, Indian Marine Service and any other force raised in India other than military and armed police wholly maintained by the provincial governments; naval and military works and cantonments; schools and colleges for Military, Naval and Air training. (D. R. I. (1); Austr. 51; B. N. Am. 91).

(xiii) Foreign or external relations including relations with States in India and political charges; naturalisation and aliens; passports; and pilgrimages beyond India. (D. R. I (2), (3) & (4); Austr. 51; B. N. Am. 91; German Sec. I (6)).

(xiv) Emigration, immigration and inter-provincial migration. (D. R. I (29); and Austr. 51).

(xv) Port quarantine and Marine hospitals. (D. R. I (8); B. N. Am. 91; and Austr. 51);

(xvi) Public services under the government of the Commonwealth; the public service commission of the Commonwealth. (D. R. I. 40 and 45).

(xvii) The Supreme court of India and any other court established by the government of the Commonwealth.

(xviii) Civil law including laws regarding status, contract, property, civil rights and liabilities and civil procedure. (D. R. I. (16); B. N. Am. 92 makes all except status provincial; but uniformity on these is essential; German Sec. I, Art. 7.)

(xix) Criminal law including criminal procedure and extradition. (D. R. I (30); B. N. Am. 91 (27); German Sec. I, Art. 7).

(xx) Bankruptcy and Insolvency. (Austr. 51; B. N. Am. 91).

(xxi) Marriage, Divorce and Matrimonial causes;

parental rights, the custody and guardianship of infants ; their status and age of majority. (Austr. 51 ; B. N. Am. 91 D. R. I. (16)).

(xxii) Copyright ; Newspapers and books ; patents of inventions and designs and trade-marks. (D. R. I (27) & (28) ; B. N. Am. 91 ; and Austr. 51).

(xxiii) Land acquisition in or outside India for the purposes of the government of the Commonwealth. (D. R. II (15) makes it provincial but subject to Indian legislation).

(xxiv) Regulation of the registration of deeds and documents excluding its administration in the provinces. (D. R. II 21)

(xxv) The rights and duties of religious communities and of religious associations. (German Sec. I Art. 10).

(xxvi) The regulation of the registration of births, deaths and marriages excluding its administration in the provinces. (D. R. II. 22)

(xxvii) Problems of population including census and statistics ; protection of maternity and infancy. (German Sec. I, Art. 7.)

(xxviii) Control of arms and amunition. (D. R. I 32).

(xxix) The standards of weights and measures. (Austr. 51. B. N, Am. 91 ; D. R. II (29) makes it provincial subject to Indian legislation as to standards.)

(xxx) Fisheries in Indian waters beyond territorial limits (Austr. 51).

(xxxi) Survey of India ; geological survey ; and astronomical and meteorological observations. (D. R. I (35) (24) (38) ; Austr. 51).

(xxxii) Commonwealth agencies and institutious for research for professional or technical training and for promotion of special studies. (D. R. I. (33)).

(xxxiii) Chiefs' Colleges and any institution main-

tained by the government of the Commonwealth for the benefit of the members of the forces of the Commonwealth. (D. R. I. 5).

(xxxiv) Parliamentary elections. (D. R. II. 44 makes it provincial.)

(xxxv) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one province. (Austr. 51).

(xxxvi) The seat of the government of the Commonwealth and all places acquired by the Commonwealth for public purposes and all matters relating to them. (Austr. 52.)

(xxxvii) Inter-provincial matters requiring legislation by the Parliament.

(xxxviii) Administration of Provinces or territories directly under the government of the Commonwealth and all laws and matters relating to them.

(xxxix) The service and execution throughout India of the Civil and Criminal process and the judgments of the courts of the Provinces; and the recognition throughout India of the laws, the public acts and record and the judicial proceedings of the Provinces. (Austr. 51.)

(xl) Matters in respect of which this constitution makes provision until the Parliament otherwise provides or subject to the power of the Parliament. (Austr. 51.)

(xli) Matters incidental to the execution of any power vested by this constitution in the Parliament or in either chamber thereof, or in the Government of India. (Austr. 51.)

(xlii) All other matters not assigned by this constitution to the Legislatures of the Provinces.

(3) The validity of any Act of the Parliament shall not be open to question in any legal proceedings on the ground that the Act affects indirectly, or inferentially only, a Provincial subject.

62. The Parliament shall have exclusive power to make laws:—

(a) for all subjects of His Majesty and servants of the Crown within the territories of any State whatever in India;

(b) for all citizens of the Commonwealth without and beyond as well as within India;

(c) for the government officers, soldiers, airmen and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the English Army Act or the Air Force Act; and

(d) for all persons employed or serving in or belonging to the Indian Marine Service. (S.65 (1) Gov. Ind.)

63. (1) Subject to this constitution, each House of Parliament may make rules for, (a) the qualification of electors, the constitution of constituencies, the number of members for each constituency, the method of election for the chamber and any matters incidental or ancillary thereto; (b) the final decision of doubts or disputes as to the validity of an election; and (c) the manner in which the rules are to be carried into effect; Provided that the effect of such rules is not to increase the total number of members for each province as ascertained with reference to the provisions of this constitution. (cf. S. 64 (1) C. Gov. Ind.

(2) (a) The Parliament may by Act, Resolution or Motion admit any Ruler or Rulers of Indian States or their Ministers or delegates as members of the Senate:

Provided that the number of such Rulers, their Ministers or delegates in the Senate at any time shall not exceed the figure computed at one member for each million of the population of Indian States as ascertained in the previous census.

(b) The Parliament may by an Act, subject to such conditions, electoral qualifications and disqualifications as it may lay down, confer upon the subjects of

any Indian State or States with the consent of the Ruler or Rulers concerned, the right to elect, and be elected as, members of the Legislative Assembly.

(c) The number of members assigned to the subjects of an Indian State shall be fixed at one member for each half-million of its population :

Provided that where the population of a State is less than half a million, Parliament may group together two or more states for the purpose.

64. The Parliament may repeal or alter any Act of the British Parliament relating to or applicable to India or any laws made by any of the legislative authorities in India which may be in force at the time of the commencement of the constitution. But the Parliament shall not unless expressly authorised by this constitution have power to make any law repealing, altering or affecting any Act of the Legislature of any province that may be made after the commencement of this constitution.

65. The Parliament may enact all such provisions as may be necessary or desirable to supplement or to give effect to the provisions of this constitution but so as not to be inconsistent with them nor so as to derogate from the rights, powers and status of the provinces.

66. It shall not be lawful, without the previous sanction of the Governor-General in Council to introduce at any meeting of either chamber of the Parliament any measure affecting :—

(a) the public debt or public revenues of India or imposing any charge on such revenues ; or

(b) the religion or religious rites and usages of any class of men in India ; or

(c) the discipline or maintenance of any part of the Military, Naval or Air-Forces or other forces of the Commonwealth ; or

(d) the relations of the Government with foreign or

Indian rulers or states or with a Provincial Government.
(S. 67 (2) Gov. Ind.)

67. (1) The estimated annual expenditure and revenue of the Government of India shall be laid in the form of a statement before both chambers of Parliament in each year. (Govt. of India Act S.67 (1).)

(2) The Legislative Assembly shall as soon as possible thereafter consider such statement and, save in so far as may be provided by specific enactment in each case, the legislation required to give effect to the budget of each year shall be enacted within that year. (Irish Free State Art. 35.)

(3) The proposals of the Governor-General in Council for the appropriation of revenue and other moneys of the Government of India in any year shall be submitted to the vote of the Legislative Assembly in the form of demands for grants. (Govt. of India Act S. 67 A (5) and 72 D (2).)

(4) The Assembly may assent or refuse its assent to any demand or may reduce the amount therein referred to either by reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed. (Govt. of India Act S. 67 A (6) and S. 72 D (2).)

68. (1) Any money Bill shall originate only in the Assembly, but no Bill shall be deemed to be a money Bill by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties or for the demand or payment of fees for licences or fees for services under such Bill,

*Explanation:—*A money Bill means a Bill which in the opinion of the President of the Assembly contains only provisions dealing with all or any of the following subjects, namely the imposition, repeal, remission, alteration or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on public

revenue or monies, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this definition, the expression "Taxation", "Public Money" and "Loan" respectively do not include any taxation, money or loan raised by local authorities or bodies for local purposes. (Irish Free State Art. 34 and Parliament Act 1911: c.f. S. 60(1); Austr. S. 53; and B. N. Am. S. 53.)

(2) A Money Bill passed by the Assembly shall be sent to the Senate for its recommendations and it shall be returned not later than 14 days therefrom to the Assembly which may pass it accepting or rejecting all or any of the recommendations of the Senate; and the Bill so passed shall be deemed to have been passed by both chambers. (Irish Free State Art. 37; Parliament Act 1911 S. 1; c. f. S. Afr. S. 60 (2); Austr. 53.)

(3) No vote, motion, resolution or Bill for the appropriation of any revenues or other moneys for any purpose shall be passed except upon the recommendation of the Governor-General communicated to the Legislative Assembly in the same session. [Govt. of India Act S. 67 A (2); Irish Free State Art. 36; B. N. Am. 54; Austr. S. 56; S. Afr. S. 62.]

69. (1) Except as provided in the last preceding section, any Bill may be initiated in either chamber and the Senate shall have equal power with the Assembly in respect of all Bills. (Irish Free State Art. 37, 38; c. f. Austr. S. 53).

(2) A Bill passed by either chamber and accepted by the other chamber either without amendments or with such amendments as are agreed to by the two chambers shall be deemed to be passed by both chambers.

70. If any Bill which has been passed by one chamber is not within 3 months after the passage of the Bill by

that chamber passed by the other chamber, either without amendments or with such amendments as may be agreed to by the two chambers, the Governor-General may convene a joint sitting of both chambers. The members present at any such joint sitting may deliberate and vote together upon the Bill as last proposed and upon amendments, if any, which have been made therein by one chamber and not agreed to by the other. And if the Bill with the amendments, if any, is passed by a majority of the members of the Senate and the Assembly present at such sitting, it shall be deemed to have been duly passed by both chambers. [Govt. of India Act, S. 67 (3); S. Africa S. 63; Austr. S. 57; Irish Free State Art. 37 only permits debating but not voting at joint sitting.]

71. When a Bill has been passed by both chambers of the Parliament, the Governor-General may declare that he assents to the Bill or that he withholds assent from the Bill or that he reserves the Bill for the signification of the King's pleasure thereon: provided that the Governor-General shall in withholding his assent to or reserving the Bill as aforesaid act in accordance with the constitutional practice applicable thereto in self-governing dominions. [Govt. of India Act. S. 68 (1); Irish Free State Art. 40; Austr. Act. S. 58; S. Africa S. 64; B. N. Am. S. 55.]

72. A Bill passed by both chambers shall not become an Act until the Governor-General has declared his assent thereto or in the case of a Bill reserved for the signification of His Majesty's pleasure until His Majesty in Council has signified his assent and that assent has been notified by the Governor-General. (Govt. of India Act S. 68 (2))

73. The King may disallow any act of the Parliament of India within six months from the Governor-General's assent and, on such disallowance being notified by the Governor General, the Act, as from the date of notifica-

tion, shall become void. (Govt. of India Act. S. 69; S. Afr. S. 65; Austr. S. 59; B. N. Am. S. 59.)

6. THE JUDICATURE

74. There shall be a Supreme Court which shall exercise such jurisdiction as Parliament shall determine. The Supreme Court shall consist of a Chief Justice, and so many other Justices, not less than two, as Parliament prescribes. (Austr. S. 71.)

75. The Justices of the Supreme Court :—

(i) shall be appointed by the King;

(ii) shall not be removed except by the King on an address from both Houses of Parliament in the same session, praying for such removal on the grounds of proved misbehaviour or incapacity;

(iii) shall receive such remuneration and pensions as Parliament may fix; but the remuneration of a Justice shall not be increased or diminished during his continuance in office.

Any such Justice may resign his office to the Governor-General in Council (S. 102 Government of India. Austr. S. 72.)

76. The Supreme Court shall have jurisdiction, with such exceptions and subject to such regulations as Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders and sentences :—

(i) of any Justice or Justices exercising the original jurisdiction of the Supreme Court;

(ii) of the High Court of any Province, or of any other Court of any Province from which at the commencement of this constitution an appeal lies to the King in Council. (Austr. S. 73.)

The judgment of the Supreme Court in all such cases shall be final and conclusive and shall not be reviewed or capable of being reviewed by any other court, tribunal or authority whatsoever. (I. L. P.)

But no exception or regulation prescribed by Par-

liament shall prevent the Supreme Court from hearing and determining any appeal from the High Court of a Province in any matter in which, at the establishment of this constitution an appeal lies from such High Court to the King in Council.

Until Parliament otherwise provides, the conditions of and restrictions on appeals to the King in Council from the High Courts of the several Provinces shall be applicable to appeals from them to the Supreme Court. (Austr. S. 73.)

77. (a) No appeal shall be permitted to the King in Council from a decision of the Supreme Court upon any question, howsoever arising, as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any Province or Provinces, or as to the limits *inter se* of the constitutional powers of any two or more Provinces, unless the Supreme Court shall certify that the question is one which ought to be determined by the King in Council.

(b) The Supreme Court may so certify if satisfied that for any special reason the certificate should be granted, and thereafter an appeal shall lie to the King in Council on the question without further leave.

(c) Parliament may make laws limiting the matters in which such leave may be asked, provided that such laws do not impair any right which the King may be pleased to exercise by virtue of His Royal prerogative to grant special leave of appeal from the Supreme Court to the King in Council. (Austr. S. 74.)

78. The Supreme Court shall have original jurisdiction in all matters—

- (i) arising under any treaty;
- (ii) affecting consuls or other representatives of other countries;
- (iii) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;

(iv) in which a writ of mandamus or prohibition or injunction is sought against an officer of the Commonwealth. (Austr. S. 75.)

79. Parliament may make laws conferring original jurisdiction on the Supreme Court in any matter:—

(i) arising under this Constitution or involving its interpretation;

(ii) arising under any laws made by Parliament;

(iii) of Admiralty and maritime jurisdiction;

(iv) relating to the same subject-matter claimed under the laws of different Provinces.

(v) between Provinces or residents of different Provinces, or between a Province and a resident of another Province. (Austr. S. 76)

80. With respect to any of the matters mentioned in the last two sections, Parliament may make laws:—

(i) defining the jurisdiction of any court, other than the Supreme Court;

(ii) defining the extent to which the jurisdiction of any such court shall be exclusive of that which belongs to or is invested in the courts of the Provinces.

81. Parliament may make laws conferring rights against the Commonwealth or a Province in respect of matters within the limits of the judicial power. (Austr. S. 78.)

82. The jurisdiction of any court may be exercised by such number of judges as Parliament may prescribe.

83. (1) Any dispute between any two provinces or between a province or provinces and the Commonwealth relating to their boundaries, jurisdictions or powers or financial or other relations or any other matters what so ever may be referred by the Governments concerned or any of them to the Supreme Court whose decision thereon shall be final and conclusive.

(2) Whenever the validity of an Act of Parliament or of a Provincial Legislature or any of its

provisions is impugned on the ground that the Act or the provision contravenes this constitution or any of its provisions, the Governor-General in Council or the Governor in Council of a Province or the High Court of a province of its motion or at the instance of any Court or person within that province, may state a case thereon to the Supreme Court for its decision which shall be final and conclusive.

(3) The Supreme Court may make rules to carry into effect the provisions of this section.

PART III.

7. PROVINCIAL GOVERNMENT

84. Every Province which is not under the immediate authority of the Governor-General in Council and the Parliament shall be governed by a Governor in Council.

85. The Governor of every such Province shall be appointed by His Majesty by warrant under the Royal Sign Manual after consultation with the Governor-General. (Gov. Ind. Sec. 46 (2)).

86. The Governor as the King's representative in the Province shall have and may exercise therein, during the King's pleasure, but subject to this constitution, such powers and functions as His Majesty may be pleased to assign to him. (1 Keith p. 83 at S. 99; 2 Keith p. 811; (92) A. C. 437.)

87. The provisions of this Constitution relating to the Governor shall extend and apply to the Governor for the time being or such person as the King may appoint to administer the Government of the Province. (Austr. S. III; Br. N. Am. S. 62.)

88. (1) There shall be an Executive Council of the Province to aid and advice the Governor in the government of the Province.

(2) A Provincial Executive Council shall consist of

not less than three and not more than five ministers for the Province appointed (from amongst the members of the Legislative Council) by the Governor to administer such departments of government, subject to this Constitution, as the Provincial Legislature may establish or, in the absence of such provision, as the Governor directs.

(3) Every minister so appointed shall hold office during the Governor's pleasure: provided that no Minister shall hold office for a longer period than 3 months unless he is or becomes a member of the Legislative Council. (Gov. Ind. S. 52; S. Afr. S. 14 and S. 78 (1); Ausr. 64.)

(4) In appointing the Ministers, the Governor in Council shall select one as the Chief Minister and appoint others only on his advice.

(5) Every minister shall receive such salary as may be provided by vote of the Legislative Council.

89. (1) The Chief Minister shall be the President of the Executive Council of the Province. (See Irish Free state Art. 51. The administrator corresponding to a Governor has no right to vote at meetings of the Provincial executive committee: S. Afr. S. 79.)

(2) If any difference of opinion arises on a question brought before a meeting of the Executive Council, the decision of the majority of the members present shall prevail and, if they are equally divided, the Chief Minister or other Minister presiding shall have a second or casting vote. (S. Afr. S. 82; Gov. Ind. S. 50 (1))

(3) The Executive Council may make rules and orders for the more convenient transaction of its business subject to the approval of the Governor and every order made, or act done in accordance with those rules and orders shall be treated as being the order or the act of the Government of the Province. (S. Afr. S. 82; Government of Ind. 49 (2).)

(4) All orders or other proceedings of the Government of the Province shall be expressed to be made by

the Governor in Council and shall be signed by the Secretary to Government or otherwise as the Governor in Council may direct. (Gov. Ind. S. 49 (I).)

90. (1) The members of the Executive Council shall be collectively and severally responsible to the Legislative Council for every legislative and executive act of the government, for its general policy and for its measures.

(2) A Minister of State shall be responsible to the Legislative Council for the advice which he gives to the Governor, for the administration of the department over which he presides and for acts done under his authority. (7 Hals. paras 70, 107; Ir. F. S., Art. 54; Keith, Ch. 7)

OR

The Ministers shall be severally responsible to the Legislative Council for the conduct of their own departments and shall be jointly responsible to the Legislative Council for the general policy of the Government. (I Lowell's Government of England, p. 73.)

(3) The Chief Minister and the other Ministers shall either retire from office when they do not retain the confidence of a majority in the Legislative council or advise the governor to dissolve the council. In either case they shall continue to carry on their duties until their successors have been appointed. (Ir. F. S. Art. 21; I. L. P. draft.)

91. (1) The Governor may appoint from amongst the members of the Legislative Council, Council Secretaries who shall hold office during his pleasure and discharge such duties in assisting the Ministers as he may assign to them.

(2) There shall be paid to Council Secretaries so appointed such salaries as may be provided by vote of Parliament.

(3) A Council Secretary shall cease to hold office

if he ceases for more than 3 months to be a member of the Senate or the Legislative Council as the case may be (c. f. Gov. Ind. S. 52.)

92. Subject to this Constitution and to any law passed by the Legislative Council of a province regulating the classification of public services in the Province, the methods of their recruitment, their conditions of service, pay and allowances and discipline and conduct, the appointment and removal of all officers of the public services of the province shall be vested in the Governor in Council unless it is delegated by him or by a law of the provincial Legislature to some other authority.

93. In regard to all such matters as are not within the jurisdiction of the Legislative Council of a Province, the Governor in Council shall act on behalf of the Governor-General in Council when required to do so (S. Afr. S. 84; D. R. 46.).

94. All powers, authorities and functions which at the establishment of this constitution are vested in or exercised by the Governor in Council or by a Governor acting with Ministers shall as far as the same continue in existence and are capable of being exercised after the establishment of this constitution be vested in the Governor in Council except such powers and functions as are by or under this Act, or may by an Act of Parliament, be vested in the Executive Government of the Commonwealth or in some other authority. (S. Afr. S. 81.)

8. PROVINCIAL LEGISLATURE

95. (1) There shall be a Legislative Council in every province except where it is directly subject to the Parliament and the Executive Council of India.

(2) The Governor shall have the right of addressing the Council and may for that purpose require the attendance of its members.

96. The total number of members of the Legislative Council of a Province shall be fixed at not less than one member for each two hundred thousand, and not more than one member for each hundred thousand, of the population of such province as ascertained in the previous census.

97. A person is eligible for election as a member of a Legislative Council to represent a constituency who:—

(a) is not less than 25 years of age; and

(b) is registered as a voter for election of members of such Legislative Council in the constituency or in any other constituency in the same Province.

98. Every Legislative Council shall continue for three years from its first meeting, and no longer, but may be sooner dissolved by the Governor. (S. 72 B Gov. Ind.)

99. The Governor acting on the advice of his Executive Council may appoint such times and places for holding the sessions of the Legislative Council as he thinks fit and may also from time to time by notification or otherwise prorogue the Council and may in like manner dissolve it. (S. 72 B (2) Gov. Ind.)

100. (1) In case of the dissolution of the Council, the writs shall be issued within 10 days from the notification of such dissolution.

(2) At a general election, the day fixed for receiving the nominations shall be the same in all constituencies and all polls shall be held on one day which shall be not later than 30 days after the date of dissolution and shall be proclaimed a public holiday. (Ir. F. S. 27)

(3) The Legislative Council shall be summoned to meet not later than 30 days after the day appointed for the return of the writs.

101. There shall be a session of the Legislative Council twice at least in every year so that a period of 6 months shall not intervene between the last sitting of the Council in one session and its first sitting in the next session.

102. (1) The Legislative Council shall, before proceeding to the despatch of any other business, choose a member of the Council to be the President and as often as the office of the President becomes vacant, the Council shall again choose a member to be its President.

(2) There shall be a Deputy President of the Legislative Council who shall preside at meetings of the Council in the absence of the President and who shall be a member of the Council and elected by it.

(3) A President or Deputy President shall cease to hold office if he ceases to be a member. He may be removed from office by a vote of the Council or he may resign his office by writing addressed to the Governor.

(4) The President and Deputy President shall receive respectively such salaries as may be determined by an Act of the Legislature of the Province. (S. 72 C. Gov. Ind.)

103. Until the Legislative Council otherwise provides, the presence of at least 30 members of the Council shall be necessary to constitute a meeting of the Council for the exercise of its powers.

104. Any meeting of the Legislative Council may be adjourned with the leave of the Council or, in the event of grave disorder or for want of quorum, by the person presiding. (S. 72 B (3) Gov. Ind.)

105. All questions in a Legislative Council shall be determined by a majority of votes of the members present, other than the person presiding, who shall, however, have and exercise a casting vote in the case of an equality of votes. (S. 72 B (4) Gov. Ind.)

106. The powers of a Legislative Council may be exercised notwithstanding any vacancy in the Council.

107. Every person who is elected a member of the Council shall before taking his seat make at a meeting of the Council an oath or affirmation of his allegiance in the following form :

“I, A. B., having been elected a member of this House,

do solemnly swear (or solemnly and sincerely affirm and declare) true faith and allegiance to the Constitution of the Commonwealth of India as established, and that I will be faithful to His Majesty, King George V, his heirs and successors by law, in virtue of the common citizenship of India with Great Britain and her adherence to and co-equal membership of the group of nations forming the British Commonwealth of Nations."

103. A member may, by writing addressed to the President or if there is no President to the Governor, resign his seat which shall thereupon become vacant.

109. When a vacancy occurs in the case of a member of a Legislative Council by reason of his election being declared void or his seat being declared vacant or by reason of death, resignation or disqualification or failure or inability to attend to duty, the Governor, until the legislative council otherwise provides, shall by notification in the Gazette call upon the constituency concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by him (in accordance with law).

110. (1) Until it otherwise provides, the powers, privileges and immunities of a provincial legislative council and of the members and committees of the House shall be those enjoyed by the British House of Commons and by its members and committees at the time of coming into operation of this constitution. (Austr. 49).

(2) Subject to the rules and standing orders affecting the council there shall be freedom of speech in a Legislative Council. No person shall be liable to any proceedings in any court by reason of his speech or vote or notice given in any such Council or by reason of anything contained in any official report of the proceedings of any such council. (Gov. Ind. 72 D. (7))

111. (1) Every Legislative Council may from time

to time make rules and orders with respect to the order and conduct of its business and proceedings.

(2) Without prejudice to the generality of the fore-going power, each provincial Legislative Council may make rules and orders with respect to

(i) the mode in which its powers, privileges and immunities may be exercised and upheld ;

(ii) the order and conduct of its business and proceedings ;

(iii) the vacation of seats and resignation of members ;

(iv) the issue of writs for vacancies.

(3) Until such rules and orders are made the rules and orders in force at the establishment of this constitution shall as far as practicable apply to the Legislative Council.

112. Subject to this constitution, the Legislature of a Province shall have, in and for the territories for the time being constituting that Province, exclusive power to make laws in relation to matters coming within the following classes of subjects, namely,

(1) Land revenue including any income-tax that may be imposed on agricultural income and charges for water; survey and settlement ; alienation of land revenue; disposal and colonisation of public lands and management of estates. (D. R. II. r. 8 (a), (b), (f), (g) ; Br. N. Am. § 92 (2) and 5 ; S. Afr. § 85 (1))

(2) Excise, that is to say, the control of manufacture, possession, purchase and sale of alcoholic liquor and intoxicating drugs, except opium and the levying of excise duties and license fees for or in relation to such articles ; and other restrictive excises. (D. R. II. r. 16 ; Br. N. Am. § 92 ; Tax. Enq. p 577)

(3) Taxes on transactions other than those levied under the Stamp Act ; fees including court-fees ; revenue

from the licensing of the sale of tobacco ; probate duties; succession or estate duties. Tax. Enq. Rep. 378)

(4) All local taxation, such as tolls, taxes or cesses on land or land values; tax on buildings, tax on vehicles or boats; tax on animals; octroi and a terminal tax on goods imported into or exported from a local area ; tax on trades, professions and callings; tax on private markets; tax on advertisements; tax on amusements or entertainments; tax on gambling; taxes imposed in return for services rendered by the local authority. (Sch. Tax Rules.)

(5) Land acquisition by and within the Province.

(6) Forests and preservation of game. (D. R. 2, r. 14; B. N. Am. S. 92 (5).)

(7) Agriculture including research institutes, experimental and demonstration farms, protection against destruction of insects and pests. (D. R. 2, r. 10; S. Africa 85 (iv).)

(8) Fisheries excluding Commonwealth Fisheries. (D. R. 2, r. 12; S. Africa 85 (x); Austr. 51 (x); but otherwise B. N. Am. 91 (12).)

(9) Water-Supplies, Irrigation, Canals, Drainage and Embankment, Water Storage and Water-Power, except where they involve matters of inter-provincial concern or affect the relations of a Province with an Indian State or any other territory. (D. R. 2, r. 7.)

(10) Public Works and Undertakings within the province including Buildings, Roads, Bridges, Ferries, Tunnels, Ropeways, Causeways, Tramways, Inland Waterways, and other means of communication except :

(a) Railways and Harbours ; and

(b) all such works as extend beyond the borders of the Province; and

(c) subject to the power of the Parliament to declare any work (although wholly situate within the Province) a national work and to provide for its construc-

tion by arrangement with the Government of the Province or otherwise. (D. R. 2, r. 6; B. N. Am. 92 (10 a,b,c); S. Afr. 85 (vii).)

(11) Co-operative Societies. (D. R. 2, r. 13.)

(12) Development of mineral sources including regulation of mines (D. R. 2, r. 24)

(13) Industry, Industrial research, technical education and other industrial matters such as factories, settlement of labour disputes, electricity, gas, boilers, smoke nuisance, welfare of labour including provident fund and industrial insurance and housing. (D. R. 2 rules 25 & 26.)

(14) Famine Relief. (D. R. p. 2, r. 9.)

(15) Pilgrimages within India. (D. R. p. 2, r. 4.)

(16) Local Self-Government including constitution and power of Municipal Corporations, Local Boards, Improvement Trusts, Town-Planning Boards, Mining Boards, Boards of health and other local authorities in the province and Local Fund audit. (D. R. p. 2. r. 1; S. Afr. 85 (vi); B. N. Am. 92 (8).)

(17) Medical administration including hospitals, dispensaries, Asylums and provision for medical education and medical qualifications and standards. (D. R. p. 2, r. 2; B. N. 92 (7) S. Afr. 85 (v))

(18) Public Health and Sanitation. (D. R. p. 2, r. 3.)

(19) Education excluding Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces. (D. R. p. 2, r. 5; B. N. Am. S. 93; but S. Afr. 85 (iii) excludes higher education.)

(20) Court of Wards and incumbered and attached estates. (D. R. p. 2, r. 8 d.)

(21) Land Improvement and Agricultural Loans D. R. p. 2 r. 8 e.)

(22) Land Tenures and Landlord and Tenant and Rent Law. (D. R. pt. 2, r. 8.)

(23) Administrator-General and Official Trustees.
(D. R. p. 2, r. 19.)

(24) Police, including Military and armed police wholly maintained by the province and Railway Police, subject in the case of the Railway Police to such rules as may be prescribed by the Parliament as to limits of jurisdiction and railway contributions to cost of maintenance. (D. R. p. 2, r. 32.)

(25) Adulteration of food-stuffs and other articles in the province. (D. R. p. 2, r. 28.)

(26) Religious and charitable Endowments.

(27) (a) Control of petroleum and explosives. (D. R. I, 23 makes it central.)

(b) regulation of betting and gambling ;

(c) prevention of cruelty to animals ;

(d) protection of wild birds and animals ;

(e) control of motor vehicles ;

(f) control of poisons, (D. R. II 33.)

(g) control of dramatic performances and cinematographs. (D. R. 2, r. 33.)

(28) Prisons, prisoners and reformatories and criminal tribes and settlements and vagrancy (D. R. p. 2, r. 39.)

(29) Treasure trove. (D. R. p. 2, r. 41.)

(30) Administration of the law and department of registration of deeds and documents. (D. R. II. 21.)

(31) Administration of justice in the province including the constitution, maintenance and organisation of courts of Civil and Criminal jurisdiction. (D. R. 2, 2 r. 50; S. Afr. 85 (xi); B. N. Am. 92 (15).)

(32) Elections for the legislature of the Province.

(33) Imposition by legislation of punishments by fine, penalty or imprisonment, for enforcing any law of the province in relation to any matter assigned by or under this or any other section of this Constitution to the Legislature of the Province.

(34) The borrowing of money on the sole credit of

the province; provincial public debt; assets and property of the province.

(35) Any court within the province not being the High Court therein or a court within the jurisdiction of the Government of the Commonwealth.

(36) Provincial institutions for research, for professional or technical training and for promotion of technical studies.

(37) Zoological survey, Botanical survey; Archæology; Historical and ancient monuments.

(38) Administration of the law relating to the registration of births, deaths and marriages. (D.R. II. 22)

(39) Provincial Law Reports.

(40) Minor Ports.

(41) Public Libraries, Museums Zoological and Botanical gardens and Registration of Societies.

(42) Pounds and Prevention of Cattle Trespass.

(43) Civil Veterinary Department including provision for Veterinary training, improvement of stock and prevention of animal diseases.

(44) Coroners.

(45) Provincial Stores and Government presses.

(46) Provincial services and provincial services commission; the seat of provincial government.

(47) Generally, all matters which are of a merely local or private nature within the Province. D.R. 2, r. 51; S. Afr. S. 85 (xii) B. N. Am. 92 (16.)

(48) Matters pertaining to a Commonwealth subject in respect of which powers have been conferred by any other section of this constitution or by or under any act of the Parliament upon Provincial Legislatures of Governments.

113. A provincial legislature may make any law repealing or altering any Act of the British Parliament applicable to India which may be in force in the province at the commencement of this constitution so far as rela-

tes to that province, and shall also have power to make any law repealing or affecting any law of any of the legislatures in India which may be in force at the commencement of this constitution, so far as relates to that province, but it shall not have power to make any law repealing, or affecting any Act of the Parliament that may be made after such commencement.

114. A provincial legislature may establish any such functional or vocational councils representing branches of the social and economic life of the people in the province and any such sub-provincial authorities as it may think fit for the better and more complete development of local self-government, education and public health, with such functions, powers, rights and duties and subject to such conditions as it may lay down. (Ir. F. S. 44 ; I. L. P. draft. The Irish provision will include a Labour Council.)

115. The Legislative Council of a Province may enact all such provisions as may be necessary or desirable to supplement or to give effect to the provisions of this constitution applicable to the province but not so as to be inconsistent with them nor to affect the rights, powers and property of any other province or of the Commonwealth.

116. Subject to this constitution, the legislature of a province may make rules for the qualifications of electors, the constitution of constituencies, the number of members for each constituency, the method of election for the legislative council and any matters incidental or ancillary thereto ; (b) the final decision of doubts or disputes as to the validity of an election ; and (c) the manner in which the rules are to be carried into effect :

Provided that the effect of such rules is not to increase the total number of members fixed for each province under this constitution.

117. It shall not be lawful for any member of any

Provincial Legislative Council to introduce without the previous sanction of the Governor in Council any measure affecting the public revenues of a Province or imposing any charge on those revenues. (Govt. of Ind. S. 80 C.)

118. (1) The estimated annual expenditure and revenues of every Province shall be laid in the form of a statement before its Legislative Council in each year. (Govt. of Ind. S. 72 D (2))

(2) The Legislative Council shall, as soon as possible thereafter, consider such statement and, save in so far as may be provided by specific enactment in each case, the legislation required to give effect to the budget of each year shall be enacted within that year. (I. F. S. Art. 35.)

(3) The proposal of the Governor in Council for the appropriation of provincial revenues and other moneys in any year shall be submitted to the vote of the Council in the form of demands for grants. The Council may assent or refuse its assent to a demand or may reduce the amount therein referred to either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed. (Govt. of Ind. S. 72 D (2).)

119. No vote, resolution or bill for the appropriation of any revenues or other moneys for any purpose shall be passed except upon the recommendation of the Governor communicated to the Legislative Council in the same session. (Govt. of Ind. S. 72 D (2) (c).)

120. (1) When a Bill has been passed by a Provincial Legislative Council, the Governor may declare that he assents to or withholds his assent from the Bill or that he reserves the Bill for the consideration of the Governor-General: provided that the Governor shall in withholding his assent to or reserving the Bill as aforesaid act in accordance with constitutional practice applicable thereto in self-governing dominions.

(2) If the Governor withholds his assent from any such Bill, the Bill shall not become an Act.

(3) If the Governor assents to any such Bill he shall forthwith send an authentic copy of the Act to the Governor General and the Act shall not have validity until the Governor General has assented thereto and that assent has been signified by the Governor General to, and published by, the Governor.

(4) Where the Governor General withholds his assent from any such Act, he shall signify to the Governor in writing his reason for so withholding his assent.

(5) Any Bill reserved for the consideration of the Governor General shall, if assented to by him, within a period of 6 months from the date of reservation, become law on due publication of such assent in the same way as a bill assented to by the Governor; but if not assented to by the Governor General within such period of 6 months, shall lapse and be of no effect.

121. The Governor General may (except where the Bill has been reserved for his consideration), instead of assenting to or withholding his assent from any Act passed by a local legislature, declare that he reserves the Act for the signification of His Majesty's pleasure thereon, and in such case, the Act shall not have validity until His Majesty in Council has signified his assent and his assent has been notified by the Governor General. (Gov. Ind. Sections 8I & 8IA.)

122. The King may disallow any Act of a Provincial Legislature within six months from the Governor-General's assent and on such disallowance being notified by the Governor, the Act, as from the date of the notification, shall become void. (Govt. of Ind. S. 82. 2. Keith p. 1019.)

9. PROVINCIAL JUDICATURE

123. In each province there shall be a High Court which shall consist of a Chief Justice and as many other Judges as his Majesty may think fit to appoint :

Provided that the maximum number of Judges of a High Court including the Chief Justice and additional Judges shall not exceed fifteen.

124. The Judges shall receive such remuneration and pension as the provincial Legislature may fix, but the remuneration of any Judge shall not be increased or diminished during his continuance in office.

125. (1) Every Judge of a High Court shall hold his office during good behaviour, and may be removed by the King on an address from the provincial Legislature praying for such removal on the grounds of proved misbehaviour or incapacity. (Austr. 72)

(2) Any judge of the High court may resign his office to the governor in council. (§ 102 Gov. Ind.) .

126. The several High courts are superior courts of records and have such jurisdiction, original and appellate, and all such powers and authority, over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them and, subject to the provisions of their constitution, all such jurisdictions, powers of authority, as are vested in those courts respectively at the time of the coming into operation of this constitution. (Gov. Ind S. 106).

127. Each of the High Courts has superintendence over all courts for the time being, subject to its appellate jurisdiction and may do all or any of the following things.

(i) call for returns ;

(ii) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction ;

(iii) make and issue general rules and prescribe

forms for regulating the practice and proceedings of such courts.

(iv) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts ; and

(v) settle tables of fees to be allowed to the Sheriff, Attorneys, and all clerks and officers of courts :

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force and shall require the previous approval of the provincial Legislature. (Gov. Ind. § 107)

128. (a) Each High Court may by its own rules provide as it thinks fit for the exercise, by one or more judges or by Division Courts constituted by two or more judges of the High Court, of the original and appellate jurisdiction vested in the Court.

(b) The Chief Justice of each High Court shall determine what judge in each case is to sit alone, and what judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts. (Gov. Ind. § 108.)

129. The Governor-General in Council may, by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the High courts, and authorise any high court to exercise all or any portion of its jurisdiction in any part of the commonwealth not included within the limits for which the high court was established, and also to exercise any such jurisdiction in respect of any British subject for the time being within any part of India outside the Commonwealth. (S. 109 (1) Gov. Ind.)

130. (1) The Legislative Council of a Province may by law invest the High Court therein with original or appellate jurisdiction or other powers which are conferred upon courts, in respect of any matter arising within the province and within its own legislative power .

(2) The Parliament may also invest the High Court with jurisdiction or powers in respect of matters within its legislative authority.

10. NEW PROVINCES

131. (1) Parliament shall, as soon as may be, after the coming into operation of the Constitution, and if the same shall be deemed necessary, reconstitute the Provinces on the basis of language groupings. (A. L. C. C. Resolution; I. L. P. draft.)

(2) The official language of the Legislative Council after the Provinces shall have been reconstituted as aforesaid shall be in the case of each Province, the language most in use in such reconstituted Province, or Hindustani as an alternative; but the English language shall be equally recognised as an official language. (I. L. P. draft; Ir. F. S. art 4.)

132. (1) Parliament may admit to the Commonwealth or establish new Provinces and may, upon such admission or establishment, make or impose such terms and conditions, including the extent of representation in either House of Parliament as it thinks fit. (Austr. 121. as to Canada-34 Vict. C. 28)

(2) Parliament may by an Act admit to the Commonwealth any Indian State as a new Province on such terms and conditions or in accordance with such treaties as may be entered into between the Governor-General in Council and the State.

133. (1) Parliament may alter the boundaries of any province, divide a province into two or more provinces, or form a new province out of provinces within the commonwealth, on the application and with the consent of the legislative council of every province affected thereby. (S. 149 S. Afr; Austr. 123)

(2) A new province may be formed by separation of territory from a province, but only with the consent of

the legislative council of the province affected. (Austr. 124)

134. Parliament may make laws for the Government of any territory surrendered by any province to, and accepted by, the Commonwealth, or of any other territory otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of Parliament to the extent and on the terms which it thinks fit. (Austr. 122)

PART IV. GENERAL.

II. FINANCE, TRADE, PROPERTY AND CONTRACTS

135. All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund to be appropriated for the purposes of the Commonwealth in the manner prescribed and subject to the charges and liabilities imposed by this Constitution. (Austr. 81; S. Af. 117; Br. N. Am. ch. viii; Gov. Ind. S. 20.)

136. (1) The expression "the Revenues of the Commonwealth" in this Constitution shall include all the territorial and other revenues of, or arising in, the Commonwealth; and in particular:

(a) Customs; export duties; revenue excises; revenue derived from the manufacture, sale and export of opium; salt revenue; excises on cigars, cigarettes and pipe-tobacco; the revenue from non-judicial stamps; and the revenue from income-tax and super-tax and corporation profits tax deducting the share thereof assigned under this constitution to the provinces; and

(b) All tributes and other payments in respect of any territories which would have been receivable by or

in the name of the East Indian Company, if the Government of India Act had not been passed.

(2) All property vested or arising or accruing from property or rights vested in His Majesty under the Government of India Act shall be applied in aid of the revenues of the Commonwealth or of the provinces or of both as may be determined by the Parliament. (Gov. Ind. § 20; Rep. Tax. Enq. pp. 376-84)

137. (a) The costs, charges and expenses incident to the collection, management and receipt of the Consolidated Revenue Fund shall form the first charge thereon; and the revenues of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

(b) There shall be charged on the revenues of the Commonwealth :

(i) All expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India; and

(ii) all the debts of the East India Company and

(iii) all sums of money, costs, charges and expenses which, if the Government of India Acts had not been passed would have been payable by the East India Company out of the revenues of India in respect of any treaties, covenants, contracts, grants or liabilities existing at the commencement of those Acts and

(iv) all payments except so far as otherwise provided under this Constitution. (Gov. Ind. S. 20.)

138. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

But until the expiration of one month after the first meeting of Parliament the Governor-General in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department

belonging to the Commonwealth and for the holding of the first elections for Parliament. (Austr. S. 83.)

139. Trade, commerce, and intercourse among the Provinces, whether by means of internal carriage or ocean navigation, shall be free.

140. The Commonwealth shall not, by any law or regulation of trade, commerce or revenue, give preference to one Province or any part thereof over another Province or any part thereof.

141. All revenues or moneys raised or received by the executive government of a Province shall be paid into a Provincial Consolidated Fund of which the Governor in Council shall be the custodian. They shall be appropriated for the purposes of the province in the manner prescribed and subject to the charges and liabilities imposed by this constitution. The following sources of revenue are hereby assigned to the Provincial Government as sources of provincial revenue, namely;

(a) Land revenue including any income-tax that may be imposed on agricultural income and charges for water; taxes on transactions other than those levied under the Stamp Act; fees including court-fees; revenue from the licensing of the sale of tobacco; probate duties and succession or estate duties; restrictive excises; the provincial share of the income-tax, super-tax and corporation profits tax, and any other taxes that may lawfully be imposed for provincial purposes by the provincial government under this constitution or under any Act of the Parliament of the Commonwealth;

(b) balances standing at the credit of the province at the commencement of this constitution;

(c) receipts accruing in respect of any provincial subject;

(d) recoveries of loans and advances given by the provincial government and of interest paid on such loans;

(e) payments made to the provincial government by the Governor General in Council or by other provincial governments either for services rendered or otherwise;

(f) the proceeds of any loans which may be lawfully raised for provincial purposes;

(g) all fines and penalties incurred by the sentence or order of any Court of Justice and all forfeitures for crimes, of any movable or immovable property in the province; and

(h) all movable or immovable property in the province escheating or lapsing for want of an heir or successor and all property in the province devolving as *bona vacantia* for want of a rightful owner:

Provided that moneys paid over by the Governor General in Council to the Government of a province for particular purposes shall be appropriated for such purposes only. (Rep. Tax. Enq. pp. 376-8; S. Afr. § 89; Whyte 306-7; D. R. 14; Gov. Ind. § 20)

142. (1) The executive government of the Commonwealth shall, subject to such alterations in the method of apportionment of income-tax as may be made by the Parliament, pay into each Provincial Consolidated Fund the proceeds of such a basic rate as may be agreed upon between the Government of the Commonwealth and the Province on personal incomes graduated proportionately to the general rate. (Rep. Tax. Enq. p. 384; D. R. 15).

(2) The Parliament may, when the revenues of a province are insufficient to meet its requirements, vote a grant of money to the province. (Cf. Austr. 96; Br. N. A. 118)

143. (a) The costs, charges and expenses incident to the collection, management and receipt of the Consolidated Revenue Fund shall form the first charge thereon; and the revenue, of the province shall in the first instance be applied to the payment of the expenditure of the province.

(b) There shall be charged on the revenues of the province:

(i) All expenses, debts and liabilities lawfully contracted and incurred on account of the Government of the province; and

(ii) All provincial payments except so far as otherwise provided under this Constitution.

144. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

But until the expiration of one month after the first meeting of the Legislature the Governor in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department belonging to the province and for the holding of the first elections for the Legislative Council. (S. Afr. 89)

145. The Legislature of a Province may itself impose or authorise any local authority to impose for its purposes the following taxes:—

A toll; a tax or cess on land or land values; a tax on buildings; a tax on vehicles or boats; a tax on animals; an octroi; a terminal tax on goods imported into or exported from a local area; a tax on trades, professions and callings; a tax on private markets; a tax on advertisements; a tax on amusements or entertainments; a tax on betting or gambling; a tax imposed in return for services rendered by the local authority such as a water rate, a lighting rate, a scavenging, sanitary or sewage rate, a drainage tax and fees for the use of markets and other public conveniences. (Gov. Ind. 80-A (3) a; Sch. Tax Rules)

146. Each Provincial Government shall establish and maintain out of the provincial revenues a Famine Insurance Fund in accordance with its requirements and shall control and administer such fund in accordance with

the rules to be approved by the Provincial legislature. (D. R. 39)

147. The Governor General in Council may in his own name sell or dispose of any real or personal estate in the Commonwealth not belonging to the Provinces or raise money on any such real or personal estate on mortgage or otherwise, or raise moneys on the security of the revenues of the Commonwealth and make proper assurances for any of these purposes and purchase or acquire property in the Commonwealth and make any contract for the purposes of this Act. Every assurance or contract made for the purpose of this section shall be executed by such person and in such manner as the Governor General in Council by resolution directs or authorises and if so executed may be enforced by or against the Governor General in Council. (Gov. India § 30.)

148. (1) The Governor in Council of a Province may in his own name, sell or dispose of any real or personal estate belonging to the province or raise money on any such real or personal estate on mortgage or otherwise or raise moneys on the security of provincial revenues and make proper assurances for any of these purposes and purchase or acquire any property in the province and make any contract for the purposes of this Act.

(2) The Governor in Council and any other person authorised by him may make any grant or disposition of any property accruing to the Government of the province by forfeiture, escheat or lapse or by devolution as *bona vacantia* to or in favour of any relative or connection of the person from whom the property has accrued to or in favour of any other person. (Gov. Ind. § 31.)

(3) Every assurance or contract, made for the purposes of this section shall be executed by such person and in such manner as the Governor in Council by reso-

lution directs or authorises and if so executed may be enforced by or against the Government of the province.

149. Neither the Governor General nor any member of the Executive Council of India, neither the Governor of a province nor any member of the Executive Council of a province shall be personally liable in respect of any assurance or contract made by or on behalf of the Governor General in Council or the Governor in Council as the case may be or any other liability incurred by the Governor General or the Governor General in Council or by the Governor or the Governor in Council, in his or their official capacity, nor shall any person executing any assurance or contract on behalf of the Governor General in Council or the Governor in Council be personally liable in respect thereof; but all such liabilities and all costs and damages in respect thereof shall be borne by the revenues of the Commonwealth or of the Province as the case may be. (C.f. Gov. India § 32(4))

150. (1) The Government of the Commonwealth may sue or be sued by the name of such officer as may be appointed by the Governor General in Council in that behalf.

(2) The Governor in Council of a province may sue and be sued in his name as a body corporate. (C. f. Gov. India § 32.)

151. There shall be paid to the Governor General of India, the Governor of each Province, the Commander-in-Chief of His Majesty's forces in India and the members of the Executive Council of India and of each province, out of the revenues of the Commonwealth or of the province as the case may be, such salaries as shall be fixed by the Parliament in that behalf.

The salary of a Governor General or a Governor shall not be altered during his continuance in office.

Suitable provision shall be made out of the revenues of the Commonwealth or of the province as the case may

be for the maintenance of the official residence and establishment of the Governor General or the Governor. (C.f. Gov. India § 85. Ir. F. S. Art. 58).

152. Notwithstanding anything contained in this constitution or in any Act of Parliament or of any Provincial Legislature the maximum salary payable to any minister, judge, secretary, the holder of any public office, or any member of the public services of the Commonwealth or of a province shall not exceed Rs. 2000 a month: Provided that nothing herein shall apply to the salaries payable to the Governor General, Governor, Commander-in-Chief or to any officer in His Majesty's Forces or to any one employed by the Government of India or of a province temporarily under a special contract.

153. The rights of the State in and to natural resources, the use of which is of national importance, shall not be alienated. Their exploitation by private individuals or associations shall be permitted only under state supervision and in accordance with conditions and regulations approved by legislation. (Ir. F. S. Art. 11).

12. DEFENCE

154. (1) The Parliament has the exclusive right to regulate the raising and maintaining of such military, naval and air forces as may be required for the defence of the Commonwealth; and every such force shall be subject to the control of the Parliament. (Ir. F. S. Art. 45. 3 Keith Ch. X.)

(2) For the purposes aforesaid, the Governor General in Council may with the consent of Parliament raise moneys on the security of the revenues of the Commonwealth and if necessary and with the consent of a majority of the provincial Governments also on the security of the revenues of the provinces.

155. The parliament may vote such moneys as may

be required not only for the Commonwealth forces but for such other military, naval or air forces of His Majesty as may with its consent be employed for the defence of the Commonwealth.

156. (a) The Government of the commonwealth shall afford to His Majesty's Imperial Forces such harbour and other facilities as may from time to time be agreed upon between the British Government and the Commonwealth Government.

(b) The ports of Great Britain and the Commonwealth shall be freely open to the ships of the other country on payment of the customary port and other dues.

157. Save in the case of actual invasion, the Commonwealth shall not be committed to active participation in any war without the assent of the Parliament. (Ir. F. S. Art. 48).

158. The Commonwealth shall protect every province and every Indian State against invasion and, on the application of the executive government of the province or of the State, against domestic violence. (Austr. S. 119).

159. The jurisdiction of courts martial shall not be extended to or exercised over the civil population save in time of war, and for acts committed in time of war, and in accordance with the regulations to be prescribed by law. Such jurisdiction shall not be exercised in any area in which the civil courts are open or capable of being held, and no person shall be removed from one area to another for the purpose of creating such jurisdiction. (Ir. F. S. Art. 69.)

160. A member of the armed forces of the Commonwealth not on active service shall not be tried by any court martial or other military tribunal for an offence cognisable by the civil courts, unless such an offence shall have been brought expressly within the jurisdiction of courts martial or other military tribunal by any code of laws or regulations for the enforcement of military dis-

cipline which may be hereafter approved by Parliament. (Ir. F. S. Art. 70; I. L. P. draft.)

161. The Commonwealth is empowered to assume any lands or public property in any province required for any purposes in connection with the defence of the country or for any other national purpose which the Parliament may declare to be necessary in the interests of the Commonwealth. (Br. N. Am. S. 117.)

13. ELECTORAL RIGHTS, DISABILITIES AND OFFENCES

162. Every person shall be entitled to have his name registered on the electoral roll of a constituency who is able to read and write and has the qualifications prescribed for an elector of that constituency and who is not subject to any of the disqualifications hereinafter set out, namely,

(a) who is a deaf-mute or a leper or has been adjudged by a competent court to be of unsound mind; or

(b) who is under 21 years of age; or

(c) who is not a British subject or is under an acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or

(d) who has been convicted of treason to the Swarajya of the Commonwealth of India.

163. No person shall be eligible for election, or capable of sitting as a member of the senate or of the Legislative Assembly or of a Provincial Legislative Council who

(a) is a deaf-mute or a leper or has been adjudged by a competent court to be of unsound mind; or (c. f. present rule; S. Afr. S. 52 (c))

(b) is an undischarged bankrupt or insolvent; or (Austr. S. 44 (iii); S. Afr. S. 53 (c); present rule.)

(c) is not a British subject or is under any acknow-

ledgment of allegiance, obedience or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power ; or (Austr. S. 44 (ii)).

(d) who has been convicted of treason to the Swarajya of the Commonwealth of India; or (Austr. S. 44 (iii.))

(e) holds any office of profit under the Crown or under the Government of the Commonwealth or of a province or any pension payable during the pleasure of the Crown or the Government of the Commonwealth or of any province ; or (Austr. S. 44 (iv) ; S. Afr. S. 53 (d) ; Government of India S. 63 E.)

(f) has any pecuniary interest in any contract entered into with the Government for the service of the Commonwealth or of any province otherwise than as a member and in common with the other members of an incorporated company consisting of more than 25 persons: (Austr. S. 44 (v)).

Nothing in clause (e) shall apply to the office of any of the Ministers of State for the Commonwealth or for a province or to the receipt of pay, half-pay or a pension by any person as an officer or member of the King's navy or army or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth whose services are not wholly employed by the Commonwealth.

164. If a member of either House of parliament or a provincial Legislative Council becomes subject to any of the disabilities mentioned in the last preceding section or ceases to be qualified as required by law or fails for a whole ordinary session to attend without the leave of the Senate or the Assembly or the Legislative Council as the case may be his seat shall thereupon become vacant. (S. Afr. S. 54 ; Austr. S. 45.)

165. (a) No person who is a member of either House of parliament shall be capable of being chosen or

of sitting as a member of a provincial Legislative Council.

(b) No person who is a member of a provincial Legislative Council shall be capable of being chosen or of sitting as a member of either House of parliament or of another provincial Legislative Council.

166. If any person who is by law incapable of sitting as a member of any legislative body shall while so disqualified and knowing or having reasonable grounds for knowing that he is so disqualified sit or vote as a member of that legislative body, he shall be liable to a penalty of Rs. 500/- for each day on which he shall so sit or vote to be recovered on behalf of the Government of the Commonwealth or of the province as the case may be by action in any principal Civil Court of Original Jurisdiction. (S. Afr. S. 55.)

167. (1) Votes shall in every case be given by ballot and in person.

(2) No person shall vote at any general election in more than one constituency.

168. Until the Parliament otherwise directs, the provisions of the Indian Election Offences and Enquiries Act 1920 and the rules relating to corrupt practices now in force, shall be deemed to be part of this constitution and apply to election offences and enquiries.

169. (1) Members of all legislative bodies shall be elected by territorial electorates and no communal electorates shall be constituted either by the Parliament or by a Provincial Legislature.

(2) But each legislative body may, in any province or area or in any class of cases or for any community or interest, when the ordinary method of election will in its opinion fail to do justice, authorise the reservation of seats or the use of the single transferable vote, the cumulative vote, the List system or any other method of election as it may think fit.

170. Both Houses of Parliament and each Provincial Legislative Council shall revise their respective constituencies at least once in every ten years, but any alteration in the constituencies shall not take effect during the life of the chamber or the council sitting when such revision is made. (Ir. F. S. Art. 26).

14. MISCELLANEOUS

171. Subject to the provisions of the next succeeding Section, all officers now in the public services of the Government of India shall, become officers of the Commonwealth.

172. (a) As soon as possible after the commencement of this constitution, the Governor-General in Council shall appoint a Public Services Commission to make recommendations for such re-organisation and re-adjustment of the departments of the Public Services as may be necessary. The Commission shall also make recommendations in regard to the assignment of officers to the several Provinces. (I.L.P.)

(b) The Governor General in Council, may, after such Commission has reported, assign from time to time to each Province such officers as may be necessary for the proper discharge of the functions reserved or delegated to it, and such officers, on being so assigned, shall become officers of the Province. (I.L.P.)

173. Any officer of the Public Service of the Government of India or of any other provinces at the commencement of this constitution who is not retained in the service of the Commonwealth or assigned to that of a Province, shall be entitled to receive such pension, gratuity or other compensation as he would have received in like circumstances if the Commonwealth had not been established. (I.L.P.)

174. Any officer of the Public Services of the Government of India or of any of the Provinces who is retained in

the service of the Commonwealth, or assigned to that of a Province, shall retain all his existing rights, and shall be entitled to retire from the service at the time at which he would have been entitled by law to retire, and on the pension or retiring allowance to which he would have been entitled by law in like circumstances if the Commonwealth had not been established. (I. L. P.)

175. All rules that may be made by the Government of the Commonwealth, the Government of a province, or any authority executive, legislative, Judicial, or local, established by, under or in pursuance of the provisions of this constitution shall be duly published in the prescribed official gazette.

176. The Governor-General and the members of his executive council, the Governor and the members of his executive council, the president and deputy president of every legislative body, the Justices of the supreme Court, the Judges of the High court, the Secretaries to every department of Government and the heads of every department of the administration and the members of the public Services commission shall, each of them, before he enters upon the execution of his office, make the following oath or affirmation:

“I do solemnly swear (affirm) that I will faithfully execute the duties of my office and will faithfully and to the best of my ability preserve, protect and defend the constitution of the Commonwealth of India”.

15. AMENDMENT OF THE CONSTITUTION

177 (a) This Constitution shall not be altered except in the following manner:—

The proposed alterations must be passed by an absolute majority of each House of Parliament, and not less than two nor more than six months after its passage through both Houses of Parliament shall be submitted to the Provincial Legislatures,

But if either House of Parliament passes any such Bill by an absolute majority, and the other House objects or fails to pass it, or passes it with any amendment to which the first mentioned House will not agree, and if after an interval of three months, the first mentioned House, in the same or the next session again passes the Bill by an absolute majority, with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it, or passes it with any amendment to which the first-mentioned House will not agree, the Governor General may submit the Bill as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the Provincial Legislatures.

If in a majority of the Provinces a majority of the members of the Provincial Legislatures approve the Bill, and if a majority of all the members of the Provincial Legislatures voting also approve the Bill, it shall be presented to the Governor General for assent.

(b) No alteration diminishing the proportionate representation of any Province in either House of Parliament or the number of representatives of a Province in the Legislative Assembly, or increasing or diminishing or otherwise altering the limits of a Province, or in any matter affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the members of the Legislature of the Province voting on the Bill approve it. (Austr. 128 U. S. Art. 5; Cf. Ir. F. S. Art. 49; S. Afr. 152. I. L. P. Draft is followed).

16. DEFINITIONS

178. The provisions of this Constitution referring to the King shall extend to His Majesty's heirs and successors

in the sovereignty of the United Kingdom of Great Britain and Ireland. (S. 2 Austr. and S. 3 S. Afr.)

(2) *Self-Governing Dominion** means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State or Newfoundland. (See Finance Act 1923, Sec. 19 (4); 3 Keith, p. 1313; c.f. definitions in Naval Discipline (Dominion Forces) Act, 1911, Sec. I and Copyright Act, 1911, Sec. 35.)

(3) *The Parliament* means the Parliament of India.

(4) *The Governor-General in Council* means the Governor-General acting with the advice of the Executive Council of India.

(5) *Governor-in-Council* means the Governor of a Province acting with the advice of the Executive Council of the Province.

(6) *Province* means such part of the Commonwealth of India as has, by or under this Act, a responsible government consisting of a Governor, a Legislative Council and an Executive Council responsible to that legislature, and includes any part of India which is directly subject to the Parliament of India and to the executive responsible to that Parliament.

(7) *Constituency* means any area rural, urban or territorial returning one or more members to serve in either

* The Irish Free State Constitution Act, 1922, Section 4 says "Nothing in the said Constitution shall be construed as prejudicing the power of Parliament to make laws affecting the Irish Free State in any case where, in accordance with constitutional practice, Parliament would make laws affecting other self-governing Dominions". But when a Dominion parliament has plenary powers including a power to alter its own constitution and to a certain extent extra-territorial jurisdiction, the residuary power of the British Parliament has reached the vanishing point and can only be exercised in respect of inter-Dominion or quasi-federal matters. For all practical purposes, "since the middle of the nineteenth century the relation of the Imperial Government to the dominions has been essentially federal" (A. P. Newton, "Federal and Unified Constitutions," p. 37.)

chamber of the Parliament or in a Provincial Legislative Council (S. 8 Austr.)

(8) *Transferable vote* means a vote—(a) capable of being given so as to indicate the voter's preference for the candidates in order; and (b) capable of being transferred to the next choice when the vote is not required to give a prior choice the necessary quota of votes, or when, owing to the deficiency in the number of the votes given for a prior choice, that choice is eliminated from the list of candidates. [Representation of People Act, 1918, Sec. 41 (6)].

(9) The "Cumulative vote" means that system by which each voter has a number of votes equal to the number of representatives to be elected and is entitled to distribute his votes in any manner he likes giving one vote to a candidate, all votes to one candidate or otherwise. (Marriott, p. 491; Holt, p. 161.)

(10) The "List system" means that by which each voter may cast as many votes as there are candidates to be elected but is required to distribute his votes among them and each vote cast is counted both for the individual candidate and for the party nominating him, giving to each party representation in proportion to the number of votes given to its candidates and to each individual in it the total personal vote he receives. (French Senate Law arts. 4 & 5; Holt, pp. 157-8.)

(11) The territories which at the time of the commencement of this constitution are administered under the Government of India Act, 1919, shall constitute the Commonwealth of India.

APPENDIX A

Resolutions passed by the A. I. C. C. at Bombay in May, 1927.

HINDU-MOSLEM UNITY

The All India Congress Committee approves and adopts the report of the working Committee on the Hindu-Moslem question and the recommendations contained therein and calls upon all Congress organisations to take necessary steps to have the following recommendations carried out:

(1) *Joint Electorates.*—That in any future scheme of constitution, so far as representation in the various legislatures is concerned, joint electorates in all the provinces and in the Central Legislature be constituted.

(2) *Reservation of seats.*—That, with a view to give full assurances to the two great communities that their legitimate interests will be safeguarded in the Legislatures, for the present, and if desired, such representation of the communities should be secured by the reservation of seats in joint electorates on the basis of population in every province and in the Central Legislature:

Provided that reciprocal concessions in favour of minorities including the Sikhs in the Punjab may be made by mutual agreement so as to give them representation in excess of the proportion of the number of seats to which they would be entitled on the population basis in any province or provinces, and the proportions so agreed upon for the provinces shall be maintained in the representation of the two communities in the Central Legislature from the provinces.

(3) (a) *N.W. F. Province and British Baluchistan*—That the proposal made by the Muslim leaders that reforms should be introduced in the N. W. F. Province and British Baluchistan on the same footing as in other provinces is in the opinion of the committee, a fair and reasonable one, and should be given effect to, care being taken that simultaneously with other measures of administrative reform an adequate system of Judicial administration shall be introduced in the said provinces.

(3) (b) *Separation of Sind from Bombay.*—

(i) That with regard to the proposal that Sind should be constituted into a separate province, this Committee is of opinion that the time has come for the redistribution of provinces on linguistic basis—a principle that has been adopted by the constitution of the Congress.

(ii) The Committee is also of opinion that such readjustment of provinces be immediately taken in hand and that any province which demands such reconstitution on linguistic basis be dealt with accordingly.

(iii) The Committee is further of opinion that a beginning may be made by constituting Andhra, Sind and Karnatak into separate provinces.

(4) *Liberty of conscience.*—That in the future Constitution, liberty of conscience shall be guaranteed and no legislature, central or provincial, shall have power to make any laws interfering with liberty of conscience.

“Liberty of Conscience” means liberty of belief and worship, freedom of religious observances and association and freedom to carry on religious education and propaganda with due regard to the feelings of others and without interfering with similar rights of others.

(5) *Inter-communal matters*.—That no Bill, Resolution, Motion or Amendment regarding intercommunal matters shall be moved, discussed or passed in any legislature, Central or Provincial, if a three-fourths majority of the members of either community affected thereby in that legislature oppose the introduction, discussion or passing of such Bill, Resolution, Motion or Amendment.

“Inter-communal matters” means matters agreed upon as such by a Joint Standing Committee of both communities, of the Hindu and Moslem members of the legislatures concerned, appointed at the commencement of every session of the legislature.

Resolutions passed by the Unity Conference and modified and approved by the A. I. C. C. at Calcutta in October, 1927.

HINDU-MOSLEM UNITY.

(i) *Conversion*.—The All India Congress Committee resolves that every individual or group is at liberty to convert or reconvert another by argument or persuasion but no individual or group shall attempt to do so, or prevent its being done, by force, fraud or other unfair means such as the offering of material inducement. Persons under eighteen years of age should not be converted unless it be along with their parents or guardians. If any person under eighteen years of age is found stranded without his parents or guardian by persons of another faith, he should be promptly handed over to persons of his own faith. There must be no secrecy as to the person, place, time and manner about any conversion or reconversion, nor should there be any demonstration of jubilation in support of any conversion or reconversion.

Whenever any complaint is made in respect of any conversion or reconversion, that it was effected in secrecy or by force, fraud or other unfair means, or whenever any person under eighteen years of age is converted, the matter shall be enquired into and decided by arbitrators who shall be appointed by the Working Committee either by names or under general regulations and their decision shall be final.

(ii) *Cow and Music*.—The All India Congress Committee while approving of the following resolution on the Cow and Music question as a fair settlement of opposite demands and points of view, authorises members of the Congress to carry on propaganda among Hindus and Moslems along the lines indicated in the resolution and calls upon the Working Committee to appoint a Committee for the purpose of carrying on such propaganda;

And further resolves that the resolution do come up for confirmation at the meeting of the All India Congress Committee and the Congress to be held in Madras :

“Whereas no community in India should impose or seek to impose its religious obligations or religious views upon any other community but the free profession and practice of religion should, subject to public order and morality, be guaranteed to every community and person,

Hindus are at liberty to take processions and play music before any mosque at any time for religious or other purposes but there should be no stoppage of the processions nor special demonstrations in front of a mosque nor shall the songs or music sung or played in front of a mosque be of such a character as is calculated to cause annoyance or special disturbance to the worshippers in the mosque.

Moslems are at liberty to sacrifice cows or, subject to existing municipal laws regulating the slaughter of animals for purposes of food, to slaughter cows, in any town or village, in any place not being a thorough-fare, nor one in the vicinity of a temple or a *mandir* nor one exposed to the gaze of Hindus.

Cows should not be led in procession or in demonstration for sacrifice or slaughter.

Having regard to the deep-rooted sentiment of the Hindu community in the matter of cow-killing, the Moslem community is earnestly appealed to, so to conduct the cow sacrifice or slaughter as not to cause annoyance to the Hindus of the town or village concerned."

Whenever a complaint is made that any of the provisions of this resolution have been contravened, it shall be enquired into and decided by arbitrators appointed by the Working Committee by names or under general regulations and their decision shall be final.

Appendix B.

MY PROPOSALS FOR SOLVING THE COMMUNAL PROBLEMS OF SOUTH INDIA (18—11—27).

An attempt must I think be made now to solve the outstanding differences as between the several Hindu castes in the Province of Madras. I am sure all will agree that any solution that may be suggested must be a fair and just settlement of opposite points of view. In my individual capacity, I make the following suggestions tentatively and only as a basis for discussion. I propose to interview representative members of all castes with a view to see whether any stable and lasting adjustment is feasible on these or on other lines, and then I propose to convene a representative Unity Conference for the purpose of a full and final discussion to be followed, if possible, by an authoritative settlement. In making these wholly tentative proposals I have kept in view the principle that politics and public life should unreservedly be secularised and that freedom and equality and justice are the pillars of nationalism, democracy and swaraj which constitute our goal.

GENERAL

1. Whereas the interests of a Modern State and, in particular of a Swaraj State such as India ought to be, require that there should be peace and order and active co-operation as between the several castes, sub-castes and sects of Hindus, and whereas therefore no caste sub-caste or sect or member of it shall be held to be superior or inferior to any or all the other castes, sub-castes or sects by reason of birth, all castes are declared to be on a footing of perfect equality and no superiority or inferiority of any caste and no hierarchy of castes nor any domination by one caste or community over another shall be recognised or given effect to by the State for any purpose.

SERVICES

2. Differences of caste or sect shall not prejudice any citizen of the Commonwealth of India in any way, within the limits laid down by the general laws, particularly in regard to public employments, offices of profit or honour and the exercise of any trade or calling.

3. No caste or sub-caste or sect of Hindus shall have a monopoly or be in preponderant numbers in any particular branch or department of public service or in any particular office. The public services shall be open to all the castes and each caste shall have equal right and be given equal opportunity and treatment in connection therewith. Without reference to any theory of communal representation in services and without any reference to any arithmetical proportion, each caste, sub-caste or sect shall be given, in fact, a fair and just share in the public services.

4. When any complaint is made more or less generally, and not at the instance of or on behalf of any particular applicant for a post, that a particular caste, sub-caste or sect is not justly treated in the matter of public services, the matter shall be enquired into and redressed by a Board of Conciliation and Adjustment on which all the castes shall be represented.

SOCIAL

5. Each caste or sect is at liberty to retain its existing caste or sect name or to choose for itself any new caste or sect name which alone and no other shall be employed by the other castes and by the State in referring to the caste or sect concerned. In particular, the Brahmin castes shall not refer to the members of any other Hindu castes as Sudras. Neither in the records of the State nor in other public records, nor in journals nor in meetings or assemblies of any description, shall the expression Sudras be used. The castes other than the Brahmin castes shall not call themselves or be called Non-Brahmins, it being a word of exclusion. Nor shall the expression Non-Brahmins be employed in the records of the State or in public records or journals or in meetings or assemblies of any description.

6. No Brahmin or any member of any other caste shall claim any social superiority over members of other castes by reason of his or her caste. By reason of any alleged caste superiority, no one should claim first Thambulam or first seat or any similar or other preference or privilege. No Brahmin or any member of any other caste shall insist on members of other castes saluting them in a particular way or on their uncovering their head or body or on their keeping the road at a particular distance. No Brahmin in particular is to use towards members of any other castes unless permitted by friendship or familiarity or by the usage of menial or domestic service, the singular number. Courtesy between one caste and another should be the invariable rule and no person either belonging to any caste or members of it may make any disparaging remarks or use any insulting or vulgar expression in respect of the caste criticised or the caste of the person criticised or as regards the origin or name of the caste. Nor shall vulgar and insulting names for castes be employed to any extent or in any manner.

7. While every member of any caste is at liberty to interdine or

not with members of any other caste or to partake or not of food prepared by members of any other caste no propaganda against or of condemnation of interdining nor condemnation of the food partaken, on the ground that the one caste or the other is superior or inferior shall be allowed, but such propaganda or condemnation shall be declared to be defamatory.

8. As regards intermarriage, each individual is to be at liberty to contract or not as he likes an intermarriage with a member of another caste, sub-caste or sect. No propaganda against or condemnation of an intermarriage proposed or effected shall be permitted to the extent to which it proceeds upon the basis that one caste or the other is superior or inferior but shall be declared to be defamatory.

9. No existing caste shall be described or referred to in any context, other than a strictly scientific or historical one, as either exclusively Aryan or exclusively Dravidian; nor shall any other racial distinction be urged for any contemporary purpose between one caste and another.

10. Tamil, Telugu, Malayalam and Canarese are declared to be respectively the mother tongues of the communities speaking those languages, whatever their castes. Samskrit shall not be considered as the special language of any caste or community or of any Province, and the study of Samskrit literature, including the *Vedas*, shall not be considered as the special privilege of any caste but is open to all.

LEGAL.

11. The rules of Hindu Law determining the rights of illegitimate offspring of the castes described in the Smritis as Dwijas shall apply equally to every such family belonging to any other caste as declares its acceptance of such rules.

12. The rules of Hindu Law in the matter of adoption applicable to the castes described in the Smrities as Sudras shall apply to every such family belonging to any other caste as accepts such rules.

13. All persons have an equal right to the use of roads, Courts of Justice and all other places of business or resort dedicated to the public, provided they do not disturb public order or disobey any lawful notice issued by a competent authority.

RELIGIOUS.

14. Freedom of conscience and the freedom of profession and practice of religion, are subject to public order and morality hereby guaranteed to every person, caste, sub-caste, sect or community.

15. No caste, sub-caste, sect or community shall impose or seek to impose its religious obligations or its religious views or practices upon any other caste, sub-caste, sect or community.

16. Each caste, sub-caste, sect, family or person is at liberty to have any member of any caste as *Purohit*, Priest or *Guru*, and no caste, sub-caste or sect shall coerce or compel a person, family, caste, sub-caste or sect to accept any person as *Purohit*, Priest or *Guru*.

17. No law may be made either directly or indirectly to endow any religion, or prohibit or restrict the free exercise thereof, or give any preference, or impose any disability on account of religious belief or religious status, or affect prejudicially the right of any child to attend a school receiving public money without attending the religious instruc-

tions at the school, or make any discrimination as respects state aid between schools under the management of different religious denominations, or divert from any religious denomination or any educational institution any of its property except for the purpose of roads, railways, lighting, water or drainage works or other works of public utility, and on payment of compensation.

18. No caste, or community shall be treated by the other castes or communities or by the State as untouchable. Nor shall any caste or community be called or referred to as Chandalas, Neechas or Pariahs.

Appendix C.

Resolution passed by the Legislative Assembly on 18th Feb. 1924.

(Ayes 76-Noes. 48)

"This Assembly recommends to the Governor-General in Council to take steps to have the Government of India Act revised with a view to establish full responsible Government in India and for the said purpose :

(a) to summon at an early date a representative Round Table Conference to recommend, with due regard to the protection of the rights and interests of important minorities, the scheme of a constitution for India; and

(b) after dissolving the Central Legislature, to place the said scheme for approval before a newly elected Indian Legislature for its approval and submit the same to the British Parliament to be embodied in a Statute."

Resolution passed by the Legislative Assembly on the 8th September, 1925.

(Ayes 72-Noes 45)

"This Assembly while confirming and reiterating the demand contained in the Resolution passed by it on the 18th February 1924, recommends to the Governor-General in Council that he be pleased to take immediate steps to move His Majesty's Government to make a declaration in Parliament embodying the following fundamental changes in the present constitutional machinery and administration of India :

(a) The Revenues of India and all property vested in or arising or accruing from property or rights vested in His Majesty under the Government of India Act, 1853, or the present Act or received by the Secretary of State in Council under any of the said Acts shall hereafter vest in the Governor-General in Council for the purposes of the Government of India.

(b) The Governor-General in Council shall be responsible to the Indian Legislature and subject to such responsibility shall have the power to control the expenditure of the Revenues of India and make such grants and appropriations of any part of those Revenues or of any other property as is at present under the control or disposal of the Secretary of State for India in Council, save and except the following which shall for a term of years remain under the control of the Secretary State for India:

(i) Expenditure on the Military Services up to a fixed limit.

(ii) Expenditure called as political and foreign.

(iii) The payment of all debts and liabilities hitherto lawfully contracted and incurred by the Secretary of State for India in Council on account of the Government of India.

(c) The Council of the Secretary of State for India shall be abolished and the position and functions of the Secretary of State for India shall be assimilated to those of the secretary of State for the self-governing Dominions save as otherwise provided in clause (b).

(d) The Indian Army shall be nationalised within a reasonably short and definite period of time and Indians shall be admitted for service in all arms of defence and for that purpose, the Governor-General and the Commander-in-Chief shall be assisted by a Minister responsible to the Assembly.

(e) The Central and Provincial Legislatures shall consist entirely of members elected by constituencies formed on as wide a franchise as possible.

(f) The principle of responsibility to the Legislature shall be introduced in all branches of the administration of the Central Government subject to transitional reservations and residuary powers in the Governor-General in respect of the control of Military, Foreign and Political affairs for a fixed term of years:

Provided that during the said fixed term the proposals of the Governor-General in Council for the appropriation of any revenue or moneys for military or other expenditure classified as 'Defence' shall be submitted to the vote of Legislature; but that the Governor-General in Council shall have power, notwithstanding the vote of the Assembly, to appropriate up to a fixed maximum any sum he may consider necessary for such expenditure and in the event of a war to authorise such expenditure as may be considered necessary exceeding the maximum so fixed.

(g) The present system of dyarchy in the Provinces shall be abolished and replaced by unitary and autonomous responsible Governments subject to the general control and residuary powers of the Central Government in inter-provincial and All-India matters.

(h) The Indian Legislature shall after the expiry of the fixed term of years referred to in clauses (b) and (f) have full powers to make such amendments in the constitution of India from time to time as may appear to it necessary or desirable.

This Assembly further recommends to the Governor-General in Council that necessary steps be taken:

(a) to constitute in consultation with the Legislative Assembly a convention, round table conference or other suitable agency adequately representative of all Indian, European and Anglo-Indian interests to frame with due regard to the interests of minorities a detailed scheme based on the above principles, after making such inquiry as may be necessary in this behalf;

(b) to place the said scheme for approval before the Legislative Assembly and submit the same to the British Government to be embodied in a Statute."

ERRATA.

PAGE	LINE	<i>For</i>	<i>Read</i>
x	28	States of	States
xv	8	even if	even if, as in the past,
"	28	much-better	much better
xxii	4	insolation	in isolation
"	14	Confucious	Confucius
xxiv	last line	of any	in any
xxv	23	दवालये	देवालय
xxix	26	regid	rigid
xxx	24	and	of
xxxv	8	affected	be affected
xxxvi	2	proposal	proposals
"	26	solutions	solution
I	8	against	against
14	I	Act S.	Art.
22	6	relations or	relations
50	5	additional	other