



# Indian Round Table Conference

12th November, 1930—19th January, 1931

PROCEEDINGS OF SUB-COMMITTEES

(Volume II)

[SUB-COMMITTEE No. II (Provincial Constitution)]

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## INTRODUCTORY NOTE.

Proceedings of the Indian Round Table Conference in plenary session, and in Committee of the whole Conference, are contained in a separate volume, the Introductory Note to which explains, briefly, the procedure adopted by the Conference.

Proceedings of Sub-Committees are contained in nine volumes as below :—

- Volume I.—Federal Structure.
- „ II.—Provincial Constitution.
- „ III.—Minorities.
- „ IV.—Burma.
- „ V.—North-West Frontier Province.
- „ VI.—Franchise.
- „ VII.—Defence.
- „ VIII.—Services.
- „ IX.—Sind.

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# INDIAN ROUND TABLE CONFERENCE

## SUB-COMMITTEE No. II.

### (Provincial Constitution.)

The Sub-Committee was constituted as follows:—

Mr. A Henderson (Chairman).	Raja of Parlakimedi.
The Marquess of Zetland.	Diwan Bahadur Ramachandra Rao.
Sir Robert Hamilton.	Sir A. P. Patro.
H.H. The Maharaja of Nawanagar.	Nawab Sir Ahmad Said Khan.
Sir Prabhashankar Pattani.	Mr. C. Y. Chintamani.
Rao Bahadur Krishnama Chari.	Mr. S. B. Tambe.
Sir Ghulam Hussain Hidayatullah.	Mr. Zafrullah Khan.
Mr. B. V. Jadhav.	Raja Narendra Nath.
Sir Chimanlal Setalvad.	Sardar Sampuran Singh.
Sir Cowasji Jehangir.	Maharaja of Darbhanga.
Sir Shah Nawaz Bhutto.	Mr. C. Barooah.
Sir Provash Chunder Mitter.	Sir Abdul Qaiyum.
Mr. Fazl-ul-Huq.	Mr. C. E. Wood.
	Mr. K. T. Paul.
	Mr. N. M. Joshi.
	Dr. B. R. Ambedkar.

with the following terms of reference:—

“The powers of the Provincial Legislatures.”

“The constitution, character, powers and responsibilities of the Provincial Executives.”

### PROCEEDINGS OF THE FIRST MEETING OF SUB-COMMITTEE No. II (PROVINCIAL CONSTITUTION) HELD ON 4TH DECEMBER, 1930.

*Chairman:* This Sub-Committee has been appointed, I understand, to deal with items 7 and 8 in the list of headings drawn up by Lord Shankey and submitted by him to the main Committee. I propose to ask you to give your consideration to the subjects that we should consider under the heading “The Provincial Executive and its relation to the “Legislature”. I understand that another Sub-Committee is going to be appointed to deal with the question

of the relation of the Provinces to the Centre, so that we need not trouble about that aspect of the case in our discussion. I therefore suggest we should consider the following questions, though I do not wish to rule out any other suggestions:—

1. Is it practicable to abolish the distinction between reserved and transferred subjects.

2. If so, what are to be—

(a) The constitution and composition of the executive,

(b) The powers of the Governor *vis-à-vis* (1) his executive,  
(2) the legislature?

What, if any, provisions are necessary to safeguard—

(1) The administration of law and order,

(2) The rights of minorities or any other interest?

3. Should all special powers be exercised by the Governor or should some be exercised by the executive as a whole?

4. How should the Governor obtain advice necessary for the exercise of his special powers?

5. Should any provision be made to enable the government to be carried on in the event of a breakdown in the normal constitution? If so, what emergency powers should be given—

(1) to the Governor,

(2) to the Executive, and

(3) what conditions should be requisite for the exercise of these powers, and

(4) under what safeguards should they be exercised.

I will have these suggestions circulated, if that has not already been done. I am sure they give us a number of points to begin upon, and unless any exception is taken I think it would be a good plan if we were to-day to have a general discussion on the whole of the points and on any other points which come within our terms of reference. Perhaps towards the end of to-day's sitting we could see whether there were any special points, or a special point, to which we should like to give our attention at the next meeting of the Sub-Committee.

I want you to understand that within those terms, the subject is entirely open, and I have submitted these suggestions only in order to give us some little guidance as to the points on which we should concentrate our attention, especially at the beginning of our proceedings.

*Sir P. C. Mitter*: May I enquire whether, with regard to item 7 of the Lord Chancellor's list of heads, the powers of the Provincial Legislatures, you propose to go into that matter at a later stage?

*Chairman*: It is not ruled out. We were appointed to deal with items 7 and 8, I think, and I should not rule it out of the general discussion.

*Sir A. P. Patro* : My objection is this. If we have had referred to us items 7 and 8 in the Lord Chancellor's lists of heads, I do not see what authority there is for excluding from our discussion the question of the relations of the Provinces to the Centre. We cannot properly consider the various points under these heads without knowing what would be the relations of the Provinces to the Centre, whether there should be correlation with the Centre or whether the Provinces themselves should decide the matter. All that comes in very directly in discussing the constitution of the Executive and the Provincial Legislatures, and I do not see any reason whatever for excluding that. I do not know who has excluded it, seeing that the general meeting referred items 7 and 8 to this Sub-Committee.

*Raja Narendra Nath* : In connection with what Sir A. P. Patro has said, I wish to ask if you propose to exclude from our discussion the list of Provincial subjects.

*Chairman* : No, I said I did not wish to exclude anything.

*Raja Narendra Nath* : It is nowhere mentioned in this Note.

*Chairman* : Do not let us have any misunderstanding at the beginning. I put these points down for your guidance, but I have also said that I will not exclude anything which is within our terms of reference.

*Raja Narendra Nath* : Can we then include the consideration of the Provincial subjects in this discussion, or are we to begin with this item of our proceedings? That is a very important matter.

*Chairman* : " Provincial subjects " is rather a wide term.

*Raja Narendra Nath* : I refer to Provincial subjects as they are given in the Schedule attached to the Government of India Act at present.

*Chairman* : I am in this position. There are other sub-Committees sitting, and it is the intention to set up further sub-Committees. I have to consider whether the subject to which you refer is not already being considered by another sub-Committee, and therefore I say that I am not excluding anything, but if we concentrate our general discussion on the points I have submitted this morning I think our hands will be fairly full. I do not wish to rule out from the purview of the sub-Committee on another occasion any subjects to which I have not referred here.

*Mr. Chintamani* : While concurring generally with the subjects you have put forward, Sir, I would suggest that as this list has only just been circulated we might go through it, the liberty being left to us to suggest additional subjects at subsequent meetings.

With regard to the suggestion of Raja Narendra Nath, it seems to me that when we consider whether the distinction between reserved and transferred subjects can be abolished we shall not be able to consider that matter fully without knowing what are the Provincial subjects and whether any of them will have to be reserved or whether all of them can be transferred. I think we can take the

list of Provincial subjects given in the Devolution Rules and suggest any modifications thereto we may think desirable. If any other sub-Committee is seized of this subject of the division into Central and Provincial subjects, our conclusions can be co-ordinated at a later stage.

*Diwan Bahadur Ramachandra Rao* : On item 1 in the list which has been circulated the whole question of Provincial subjects comes up for consideration because that item says, " Is it practicable to abolish the distinction between reserved and transferred subjects? " and on that all the subjects would come up for discussion and we should certainly have to consider whether this distinction should be maintained or whether there should still be a certain number of reserved subjects or whether all the subjects should be transferred. The question of Provincial subjects therefore, comes up for discussion on item 1.

*Chairman* : I have already said that I am ruling out nothing if I am satisfied that the subject raised is not being covered by another sub-Committee.

*Lord Zetland* : I do not think there is really much difficulty here. The question which has been raised, as I understand it, is whether this sub-Committee should discuss the advisability of transferring any additional subjects from the Centre to the Provinces. I do not think that is a matter which ought to interest this sub-Committee; cannot we take the list of Provincial subjects as it exists to-day?

*Raja Narendra Nath* : Quite right.

*Lord Zetland* : We should take them in accordance with the Devolution Rules in force and base our discussions on the assumption that, broadly speaking, those are the subjects with which we shall have to deal.

*Raja Narendra Nath* : That is exactly the suggestion which was made from this side.

*Chairman* : And I replied that nothing was ruled out.

*Sir Cowasji Jehangir* : May I point out that when this sub-Committee was being appointed the Prime Minister clearly stated it would have to work in consultation with sub-Committee No. I after we had gone as far as we could go without the assistance of the other sub-Committee?

*Chairman* : That is exactly the position. I wanted to be sure we were not going to take a lot of time discussing something we could not settle without regard to what was being done elsewhere.

*Raja Narendra Nath* : The conclusions of the two sub-Committees will have to be co-ordinated later.

*Sir Abdul Qaiyum* : Do I understand rightly that for the purposes of discussion by this sub-Committee the North-West Frontier Province will be treated as a Province, or does it come under a separate head and will it be dealt with by another sub-Committee?

*Diwan Bahadur Ramachandra Rao*: That should be a separate subject. There are no reserved and no transferred subjects in the North-West Frontier Province, and no Provincial Legislature and no Provincial Executive except the Chief Commissioner. It is an entirely different proposition.

*Sir Abdul Qaiyum*: I want to know whether we constitute a separate unit? Are we to regard the North-West Frontier Province as a Province and as coming, therefore, within the scope of our discussion?

*Chairman*: I understand that when the Lord Chancellor produced these headings he did not lay it down that they covered the North-West Frontier Province.

*Sir Abdul Qaiyum*: Then do I understand there is going to be a separate sub-Committee to deal with it, or is it going to be omitted altogether from the purview of this Conference?

*Chairman*: The answer to that question is that as it has not been included among the subjects to be considered by this sub-Committee, the main Committee will have to consider the question of appointing another sub-Committee to deal with that issue.

*Sir Abdul Qaiyum*: If we are going to consider the question of Provincial constitutions and their relations with the Centre, why should it be necessary to appoint a separate Committee?

*Chairman*: On that point I should have to ask the Lord Chancellor.

*Nawab Sir Ahmad Said Khan*: So far as this sub-Committee is concerned, we are here to make the future constitution of our Provinces—not any particular Province, but all the Provinces. Therefore I think that, so far as the question of Sir Abdul Qaiyum is concerned, we cannot say that it is or is not covered. With regard to the division of the subjects before us, I do not think that we should enter into the division of the subjects at this stage. If we start dividing subjects at once it will lead to confusion. We had better have a general discussion first of all.

*Sir Cowasji Jehangir*: The reference to us is as to the powers of Provincial legislatures and executives. The point is whether this refers to Provincial legislatures in existence to-day, or to those which will come into existence in the future. If that point is cleared up we shall get an answer to the question raised by Sir Abdul. The question is an open one, to ascertain exactly what the Lord Chancellor meant.

*Diwan Bahadur Ramachandra Rao*: There are many other administrations—minor administration—which, it seems to me, our present terms of reference do not contemplate. Our terms of reference seem to relate to Governors' Provinces where there are legislatures, but there are four or five administrations without legislatures.

*Chairman*: If the terms of reference submitted are too narrow, then I will consult the Chairman of the Conference and the Lord

Chancellor, and as we go on with our work, if it is the desire of the Committees to take up subjects that might not be included under the narrow interpretation. I shall ask their permission to see how far we may discuss them under a wider interpretation.

*Mr. Joshi*: Shall we be authorised to send our substitutes here when we cannot attend ourselves.

*Chairman*: I think that is the rule on all Committees.

*Dr. Ambedkar*: On looking through the heads you have circulated, I do not find anything which would give us the opportunity of discussing the composition of the Provincial Legislatures. I raised this point in the Conference, and the Prime Minister said it would be left to the Committee.

*Chairman*: There is a general feeling that this question should be considered under heading 9.

*Mr. Chintamani*: The Committee that will be set up to consider the problem of minorities will doubtless make its recommendation, but without prejudice to what recommendation it may make, and without considering the question of minorities, it is our province to consider the question of the electorates under the scheme.

*Chairman*: I do not propose to rule out anything in a general discussion, and if you can show us that there is something to be said for discussing the size and composition as well as the powers of these bodies, then I do not see why it should not be discussed. In the meantime I will have this question put as to whether we can regard No. 9 as covering the point which our friend has raised.

*Sir Chimanlal Setalvad*: The general points that arise are these. In the Provinces at present we have what I call reserved and transferred subjects. The question is whether in the future there should or should not be any distinction between reserved and transferred subjects. I submit the general feeling of India is that the time has now arrived when that distinction should go, and that all subjects should be transferred, and no subject reserved at all. All subjects in the Provinces, including law and order, should be transferred, and should be now administered by Ministers chosen from the elected members of the Legislative Council to which they would be responsible. Connected with that is a question which is of considerable importance. At present the Governor in the case of transferred subjects acts or is supposed to act on the advice of Ministers, but under the law, power is given to him to take action contrary to that advice if he so chooses. There is no limitation on that power, it is entirely at his own sweet will, if he thinks the particular action proposed by the Minister does not meet his approbation then he may take action contrary to the Minister's advice. I submit that that power should now go, and the Governor hereafter should be a constitutional Governor acting according to the advice tendered to him by his Ministers. When I say that I am quite willing that there should be some reserved power in the Governor, not in the ordinary day-to-day administration, but in emergencies when the security or tranquillity of the Province may be endangered

by any action the Minister proposes to take. But except in those circumstances, he should have no power, as he now has, to act contrary to the advice of the Ministers.

There is one other point of a general character which past experience has shown to be of considerable importance, namely, the control of the Services. No doubt the Services will form the subject of a separate investigation, because it is understood, as I said the other day, that the whole subject is Central as well as Provincial. But the feeling is, I submit, that the control of the Services should be in the Ministers in the Provinces. Whatever we may do about the recruitment of the Services, the feeling is that the recruitment should no longer be with the Secretary of State as at present. There are different notions as to how further recruitments should or should not take place, and whether it should be vested in a Central Government acting on the advice of the Public Service Commission which may be set up.

Whatever method may be adopted with regard to the future recruitment of the Services, it is felt that the discipline and control of those Services should be vested in the Provinces where the Civil Servants are engaged. At present if a Civil Servant or a Police Officer or any other member of a Service objects to any disciplinary action, for instance, which may be taken against him, he can go over the heads of the Ministers and appeal to the Secretary of State. That weakens the authority of the Ministers and of the Provincial Government, and therefore that question will have to be considered by this sub-Committee, though no doubt it forms the subject, or will form the subject, of a larger inquiry with regard to the Services as a whole.

A further question has regard to the composition of the Legislative Council. It is felt that the time has arrived when the official bloc should disappear. It may be that on a particular occasion where expert advice is needed certain experts, whether official or non-official, may be brought in for the particular purpose of the legislation concerned; but so far as the ordinary composition of the Legislative Council is concerned, the official bloc should entirely disappear and all the members of the Council should hereafter be elected members; and, as I have said, the Ministers should be chosen out of the elected members.

Further, it is felt that there should now be joint responsibility of the whole Ministry in the Provinces. At present it is a very divided responsibility, and the machine does not work as smoothly as it should. I consider, therefore, that the constitutional method should be followed; as soon as the elections have taken place and the Legislative Council is brought together, the Governor should send for any person or persons commanding a majority in the Legislature and select his Chief Minister. It should then be left, in the constitutional manner, for the Chief Minister to select his colleagues; and, as I have said, full responsibility of the Ministry to the Legislative Council should be established, and all subjects should hereafter be transferred in the manner I have suggested.

*Mr. Fazl-ul-Huq:* Before we proceed further, I deem it my duty to make one or two remarks in order that we may have the subjects of discussion strictly in view. I entirely agree with the last speaker, Sir Chimanlal Setalvad, that what he has now said represents the general feeling in India amongst all political classes. The difficulty is not with regard to the statement of general feeling in the country, but as to how to fit in the lines of advance with the various difficulties we shall encounter on the way.

Sir Chimanlal has said that the Governor's power of interference at discretion with the policy adopted by the Ministers should practically disappear. That is certainly very sound in principle, and it must be one of the bases on which full responsible self-government must be constituted. The difficulty however is—and we have got to face the fact, however unpleasant it may be to mention it—that in all the Provinces there are minority interests and other interests which at the present moment are distrustful of the manner in which the majorities or others may deal with their interests, if power is entrusted to them.

At the present moment I must admit that despite our efforts here in London, lasting over a month, we have not been able to arrive at any satisfactory solution so far as these complicated questions are concerned. Let us hope they may be solved, but they have not yet been solved; and to my mind some of the difficulties seem almost insurmountable. I submit that so long as those difficulties are not bravely faced and solved, not by British people but by the Indians themselves, it is absurd to say that the Governor's powers of interference should be taken away.

As an Indian, I feel greatly humiliated when I have got to say that I am forced by circumstances to take the view that the Governor's powers ought not to be taken away altogether. My friend himself has conceded that emergencies may arise when the safety of the Province itself is imperilled, and in those circumstances the Governor may have the power of veto. That is how the difficulty arises, for who is to judge whether a certain contingency of that character has arisen or not? Is it the Governor who is to judge, or the Ministers? Suppose the Ministers hold it is not an occasion where the Governor ought to interfere, and the Governor says that it is: who is to arbitrate between them? That shows at once that it is very difficult to draw a line of demarcation between the absolute disappearance of the Governor's power of interference and a limited power of interference vested with the Governor. That is a point which I think this sub-Committee ought to consider.

Sir Chimanlal has referred to the constitutional position, and he says that as soon as the elections are over the person who is the leader of the largest bloc, or the persons who may appear to command a majority, should be sent for and asked to form a Ministry. That is very good and sound in principle and very good in theory, and I do not see any particular difficulty about it; but there is one suggestion I should like to throw out for consideration by this



sub-Committee. I suggest we consider whether, in making recommendations to the Conference, we should not make a recommendation of this character: that the Ministry should never exclude minority interests or any other interests which it is necessary to have represented. It is not possible for me to formulate my point at the present moment; I speak subject to what may develop in the course of the discussion.

What I am afraid of is this. Take the case of a Province like the United Provinces, where the Hindus form 56 per cent., or the case of a Province like the North-West Frontier Province, where the Muhammadans form over 90 per cent. The Hindus in the United Provinces may form a Ministry without bestowing a single thought on the Muhammadans, and the Muhammadans in the North-West Frontier Province may form a Ministry without taking into account the Hindu members at all. Up to now, Ministry after Ministry has been formed in Madras without a single Muhammadan being included. I do not for a moment say that Muhammadan interests have been jeopardised, but we are coming in the future to a position where the official bloc will disappear or practically disappear; we are coming to a position where the interference of a third party is going to disappear; we are visualising conditions absolutely different from those which exist to-day.

It is no use pretending there are no difficulties in the way; do not let us deceive ourselves. I ask my friends here, as statesmen and practical politicians, to consider the difficulties and to look at every question not merely from their own point of view, but from the point of view of others. Let every Hindu member of this House consider every question from the Muhammadan point of view, and let every Muhammadan here consider every problem from the Hindu point of view. It is only by something of this description, by merging ourselves in the wills of others, so to speak, that we can really appreciate the difficulties and be in a position to suggest solutions for the problems which arise.

I submit it is no use repeating—and here let me emphasise that I mean no disrespect to Sir Chimanlal Setalvad—the theories which we read in the Nationalist Press. They are theories borrowed from England, many of which do not apply to our country. We must not be content with a slavish imitation of English institutions. There are many things in England I do not like; for instance, I do not like your weather! In the same way, there are some things I do not like in the English constitution. Let every difficulty be thrashed out frankly and sincerely, without prejudice and without heat. Do not let us hide from ourselves the difficulties which stand in our way. I submit that if we proceed in that way we shall come to some sort of satisfactory conclusion. I have indicated only one or two of the difficulties; possibly others will appear in the course of the discussion.

*Sir Chimanlal Setalvad:* With regard to what has fallen from my friend Mr. Fazl-ul-Huq, I should like to assure him that we are all very mindful of the difficulties that he has pointed out. It is

not that those difficulties are not present to our minds; they are, and we are determined to deal with them and surmount them.

So far as the interests of the Muhammadan and other minority communities are concerned, in the formation of the Cabinet, in the Services, and in many other ways, let me assure my Muhammadan friends and the other minorities that we are all of one mind with regard to the fact that ample provision and ample safeguards must be made to satisfy those minorities. If I did not refer to that, it was only on the ground that a separate Minorities Sub-Committee is going to be set up, and this will consider all these questions—safeguards with regard to the Ministry and safeguards with regard to many other matters which affect minorities. All that will be thrashed out in that other Sub-Committee, and ample provision will be made which will apply to the whole administration, from the Centre to the Provinces downwards.

Therefore, speaking for myself and for my friends who take the same view, I can take the liberty of assuring my Muhammadan friends and my friends from the other minority communities that every effort will be made to secure their satisfaction in the constitution we are going to evolve, and that they need not apprehend that any community, major or otherwise, will try to take any advantage over any other community. We are all here frankly to discuss the difficulties that exist, but we have the grim determination to surmount them all and to evolve something which will satisfy all sides.

*Lord Zetland:* May I venture to suggest that there is perhaps not really very much need for us to have a second reading discussion on the main question before this sub-Committee. The second reading discussion really only means this: Are the Provinces, possibly with certain reservations, to have autonomy. That is the main question before this sub-Committee. Surely it is no longer necessary to discuss that in principle; we may take it the principle is conceded. The Simon Commission Report laid it down in perfectly plain terms that the time had come when, subject to certain reservations, the Provinces of India should be granted autonomy. That being so, I merely rise to suggest that it is perhaps hardly worth while having a long second reading discussion on that main point, and that we should serve the interests of this sub-Committee best by coming down to the hard facts of the case and considering the heads which have been drawn up by our Chairman in the paper which he has circulated.

*Chairman:* I think there has been some misunderstanding. I did not invite a general second reading discussion on the big principle; I spoke of a general discussion on everything that is in this document. Rather than beginning with the first point and narrowing the discussion down to that, I thought it might be better if speakers could refer to the set of suggestions in this document as a whole. They might want to accept so many, to criticise others, or to put forward new suggestions. That is what I meant by a general discussion; it would have taken place on the basis of this document,

and I thought that after that we could begin on any of the points on which I had gathered the mind of the Committee. I am entirely in the hands of the Committee; I do not want to occupy your time and mine by having any unnecessary discussion. If you are willing now to start the consideration of this document, I welcome Lord Zetland's suggestion.

*Sir A. P. Patro:* I think there is no difficulty with regard to the principle; we all want Provincial autonomy. The Simon Commission, the Central Committee and the recommendations of the Government of India, as well as the All-Parties Report (the Nehru Report) all agreed that there should be Provincial autonomy. As to whether any safeguards are necessary in the exercise of Provincial autonomy, that is a question which we shall have to consider. Some of the points are put down in this paper which has been circulated, so I think we might as well go into the points which are there suggested and see whether we can accept or modify what is set forth or whether we can give any advice with regard to the difficulties which arise. The first question is, is it practicable to abolish the distinction between transferred and reserved subjects? Everyone accepts that there should be an abolition of such distinction. The next question is, what further subjects should be added to the provincial subjects? That will depend upon the decision of the Federal Committee. Next comes the question of what are to be the constitution and composition of the Executive. In that matter also there will be no difficulty, because we are all agreed, more or less. It should be composed of the members selected from the elected members; whether from groups or from a majority party is a matter for consideration. In a case where there is no party which has a large following the question becomes difficult as to whether the selection should be made from the various groups from one single party which happens to have a majority. Those are details which will have to be considered.

The powers of the Governor are well-defined in the Government of India Act at present. We have to consider which of those powers should be eliminated. There are several powers reserved in the Government of India Act. Those powers are hardly exercised in many of the Provinces. Therefore we have to see from experience what powers should be retained for the Governor. If we reserve certain powers to the Governor, he will have to consult his Ministry before he can exercise his special powers. Even now special powers are reserved, and the Government does not exercise them without consultation. It is a matter of procedure—of give and take between the Cabinet and the Governor. You can lay it down generally that in consultation with the Cabinet the Governor will have to exercise these powers, but you cannot say that in all circumstances this procedure must take place.

The question of Services is very much confused. There are not Public Service Commissions formed in every Province. When such Commissions are formed the difficulty of discipline and control largely disappears. The question of Services ought to be elimi-

nated from party politics as soon as possible. In Madras we have been very anxious to see that these Services should not be under party politics. It is necessary that we should have Public Service Commissions, but also the recruitment should be in the hands of a Central Agency, and the nature of that Central Agency, whether the Central Government or the Secretary of State, is a matter to be discussed. With regard to the position in the Legislative Council, the fears which have been just expressed by my friend Mr. Fazl-ul-Huq are quite unfounded so far as Madras is concerned. In spite of the very small minority of Mussalmans we have been able to secure Mussalman representation in the Executive Council. It is very necessary to have competent men on that body who would work efficiently, but Mr. Fazl-ul-Huq would not be justified in criticising Madras on the ground that there is no such representation of Mussalmans in the Ministry. The Madras Government has got a Mussalman in the Cabinet. As regards the official bloc the Simon Commission recommends its abolition. The Commission says that it is unnecessary and undesirable to have an official bloc. As regards nominations there are certain powers which should still remain with the Governor for nomination in certain contingencies. I agree with the recommendation that there should still remain a small number to be nominated by the Governor.

*Mr. Zafrullah Khan:* With regard to the general subject that is before us, I think I might express the same view as previous speakers on the first heading, as to whether it is practicable to abolish the distinction between reserved and transferred subjects. I hope the Chairman will be able to rule that there is such unanimity on this point that a conclusion may forthwith be arrived at, and that the time has come when such distinction should disappear. I trust it may be taken as the opinion of the sub-Committee that we need not go into detailed discussion of this question any further. As most of us, I hope, will realise, the Provinces of British India would in the future be autonomous in their government. They would be Provinces which as far as purely local or provincial matters are concerned, would have the fullest authority to deal with those matters, and liberty to develop along those lines. The general principle may now be accepted that in these Provinces the Executive should normally and ordinarily be responsible to the Legislature, the Legislature being truly representative of the people. Starting with that, we shall find that certain general principles will emerge upon which I trust there will be no difference of opinion whatsoever, as, for example; to begin with, that the Executive should be constituted of members called Ministers or Executive Councillors, who, although they are appointed by the Governor, are drawn from among the elected members of the Legislature, and are themselves representative of, or are supported by, the majority of the Legislature. I have been careful to put it that way because I do not at this stage want to go into the question as to whether the Ministers shall in all instances belong to the largest political group in the Legislature, or whether their selection shall also be made with regard to some other principle.

But it is obvious that for a Provincial Government to be carried on on the Cabinet system, the Ministers must be so chosen that when they form a Cabinet together they can command a majority of the members of the House. Ordinarily it would be possible for the Governor to choose his Ministers from one political group, if that political group happens to command the majority of the votes in the Chamber, and from that group he can draw such Ministers as will probably represent at least the major religious groups in the Chamber. If that were possible, perhaps no difficulty whatever would arise, but it is not necessary to go into details at the moment so far as these difficulties are concerned.

The one matter I wish to bring to the notice of the sub-Committee at this stage concerns the appointment of Ministers. I think it deserves the attention of the sub-Committee. The question is whether the Governor should have the power, not normally and ordinarily, but under any contingency when the Province is being carried on on normal or ordinary lines, to appoint as a Minister someone who is not an elected member of the Legislature. We are all aware that the Simon Commission made a recommendation that the Governor should have power, if he so chose, to appoint one or more officials as Ministers or one or more non-officials who are not elected members of the Chamber as Ministers. That is one matter with regard to which I think we shall have to record a conclusion, and my own opinion is that the Governor should not have that power. Taking the detailed criticisms which have been levelled against the recommendations contained in the Report of the Simon Commission, probably no recommendation has been so much criticised as the recommendation that the Governor should have this power.

We are all aware that at present the Governor has power to appoint a non-official as Minister even if at the time he is not an elected member of the Legislative Council, but it is necessary for such a Minister within six months of the date of his appointment to get elected to the Council or to vacate the office to which he has been appointed. I think that provision sufficiently secures to the Governor the power to bring in anyone whom, for any reason, he wishes to include in his Cabinet, provided such a Minister is able, within six months of his appointment, to secure election to the Chamber.

I hope the sub-Committee will be very clear on the point that subject to this the appointment of Ministers shall be confined to the selection of elected members of the Chamber. Ministers should be chosen either from one party or from groups of parties so as to represent the majority in the Chamber, and they will naturally carry on until the dissolution of the House, whether automatic under the time rule, whatever that may be, or an earlier dissolution at the discretion of the Governor. There would be the usual stipulation that if the Ministry were defeated or censured (according to the procedure laid down) and lost the confidence of the House, they should resign.

So much for the composition of the Executive. There are some matters which have been alluded to which may be regarded as practically axiomatic, such as that when Ministries are formed they should always in future be expected to accept joint responsibility for their actions. We are aware that in the past that has not been the rule. In some Provinces joint responsibility was voluntarily accepted by the Ministers, but in most Provinces the Ministers are responsible only for the Departments committed to their care. I do not think there will be any difference on the point that in future Provincial Cabinets shall be jointly responsible to the House and shall be censured only jointly and not individually.

I should prefer not to lay down among the recommendations of this sub-Committee anything so definite as the necessity of always having a Chief Minister or appointing a Chief Minister in each Province; that is a matter with regard to which discretion might still be left in the hands of the Governor. It is a doctrine which has not, perhaps, developed to such an extent in the working of the constitution during the last nine years that it can be definitely said that in future the usual method for the appointment of Ministers should be for the Governor to send for one member who happens to be the leader of the largest group, or to command the largest influence, and then necessarily to be bound by his advice in the choice of his colleagues as Ministers. I think it must be left to the Governor to select such persons as he thinks will be able to command the votes of a majority of the House.

With regard to the composition of the Legislative Council, there are some matters with regard to this subject which will have to be dealt with by the sub-Committee which I understand is going to be formed to deal with minorities and special interests. For instance, there is the question of nomination, and there is possibly the question of the numbers in each Province, and there is the question of the official bloc. There again I think this sub-Committee will probably be agreed that nominations must be reduced to an absolute minimum. It may be that for some years it will still be necessary to nominate members to represent certain interests which may not, under the franchise which may now be framed, be able to obtain representation by the ordinary method of election. One thing, however, must be clearly laid down, namely that nomination shall never be resorted to to augment the representation of any interest which is also being represented by election. Nomination should clearly be limited to securing representation for such interests whose representation may be considered necessary, but which cannot conveniently be grouped together in any constituency and given the right to send representatives to the local Legislative Chamber.

With regard to the official bloc there seems to be general agreement—I do not think any contrary view has been expressed anywhere—that in order to enable a Provincial Government to carry on on autonomous and responsible lines, the time has come when the official bloc as a voting bloc should disappear from the Provincial

Chambers. Permanent or temporary nomination may be necessary to secure a small number of expert members having the right to speak in the Chamber, and whose services it might be necessary to secure either on particular occasions or throughout the Session to give such information and advice to the Legislative Council as may be necessary, either on expert administrative matters or on such other technical matters as may arise for discussion, on which the members may not be so well equipped as the experts would be.

There is one very important matter which would require detailed discussion and with regard to which difficulties might arise, namely the special powers of the Governor both with regard to executive measures and also *vis-à-vis* the Legislative Council. In executive matters it has been stated by two previous speakers that it will still be necessary to invest the Governor with special powers of interference, or powers which may be described as overriding powers, having regard to the special circumstances which have to be faced in India. As a general statement that is no doubt true, but I hope the sub-Committee will come round to the view that the matters in respect of which such powers are left in the hands of the Governor must be very clearly defined, so that it can be easily ascertained (both by the Governor himself and by those who may be disposed to criticise his action) exactly what is the sphere in which his interference is permissible and whether his interference is or is not justified by the terms of the Statute or by the other instructions laid down. Such powers should not be left to any further definition or left very much to the discretion of the Governor himself to define. Naturally the question of whether to exercise those powers or to refrain from exercising them should be left to the discretion of the Governor, but there should be no ambiguity with regard to the spheres in which he can interfere when occasion arises.

One such occasion for interference which has been suggested is in order to secure the safety and tranquillity of the Province. I think those terms are rather vague, and I would far rather say that if necessary I think there is no harm in the Governor having power to override the action of his Ministers in the department of Law and Order. That is something definite, but "in order to secure the safety and tranquillity of the Province" is so indefinite and general that anything might be twisted into a matter affecting the safety and tranquillity of the Province, and thus justifying interference.

I do not mean in this general discussion by any means to try to exhaust the topic of the special powers of the Governor, but I put this matter forward as an instance that whereas all of us may be agreed that the Governor should have certain powers, we should also further agree that those powers should be strictly defined, so that no doubt may exist as to the meaning of the definition or the scope of the powers in question.

In the legislative sphere the Governor should certainly have the power of vetoing any piece of legislation which the Legislative Council has passed, as well as the usual power of referring it back for consideration and so on, which, with regard to legislation, he

at present possesses. With regard to the special power of certification which the Governor has at present, I think it would have to be reduced to certification with regard to items related to matters for which he has overriding powers. For instance, I have suggested that one sphere in which he should have overriding powers and powers of interference might be the department of Law and Order. If he has the power to override advice given to him by his Ministers in this department, it follows that, if he interferes in, for instance, the matter of the numbers or the equipment of the Police force in the Province, he must also have the power of certification with regard to it. Once having overridden the advice of his Ministers he will probably be faced with a crisis in the Legislative Chamber, for the majority who are supporting the Ministers would naturally resent the interference of the Governor; and if he has not the power to certify with regard to matters in which he possesses overriding powers, those powers would probably be rendered nugatory. I think, therefore, he must have the power of certification with regard to those matters, but his power should be limited to those matters.

Those are the general observations which I wish to put forward at the present stage of the discussion.

*Sir Cowasji Jehangir* : May I suggest that we proceed immediately to consider details? All these remarks which are now being made will have to be made when we consider the details.

*Chairman* : If that is a question on which you want my ruling, I do not accept it.

*Sir Cowasji Jehangir* : I do not ask for your ruling, Sir; I am merely making a suggestion.

*Chairman* : I think there is an advantage in having such speeches as that which has just been delivered. We shall find out the points where there is almost complete agreement, and when another stage is commenced I shall be able to say "Is it necessary to have further discussion on point A or point B, because everyone seems to be agreed?" and therefore those points would be disposed of. This procedure does not waste so much time as one might imagine.

*Sir Cowasji Jehangir* : There is one point on which I should like to ask for your ruling, Sir. I see "Rights of minorities" are put down here. If we are to discuss the rights of minorities on all these other sub-heads we shall be trenching upon the subject matter which has been referred to another sub-Committee. I should therefore like to know why the subject of the rights of minorities was placed in this list. Was there any particular right of minorities that we were expected to discuss, or are we to discuss the rights of minorities under all these sub-heads? I should like to know whether we are to confine our attention to rights of minorities as a whole or in regard to any particular matter.

*Chairman* : There are certain aspects of the minority question which must arise in connection with the discussion which is going on with regard to the Provinces, and to that extent it is permissible



to deal with the matter in this general discussion. When we come down to any special item it will of course be necessary for me to give a ruling as to whether the discussion is not one which is outside the province of this sub-Committee.

*Mr. Jadhav*: I am happy to say that I am in general agreement with the remarks made here by my friends who have had the opportunity of speaking before me, so that I need not take up unnecessarily the time of this sub-Committee by going over them again. I shall simply say that the distinction between the reserved and the transferred subjects ought to be abolished.

With regard to the second point, the constitution and composition of the executive, I agree with previous speakers that the executive should consist of Ministers chosen from amongst the elected members of the Council.

So far as the question of the powers of the Governor is concerned I should like to say a few words on that point.

The present discussion has led me to believe that many of the speakers favour the idea that the future head of the Executive should be the Governor and the Ministers should be his advisers. I do not subscribe to that view. In a case I have in mind the position of the Ministers was looked upon as inferior to that of the Executive Councillors, and there was constant friction on that account. The interference of the Governor led to the unpopularity of that system. In the future constitution the Governor should be more or less a constitutional Governor. The administration should be carried on by Ministers who are responsible to the Legislative Council, and the Governor's powers of interference or over-riding should come into operation only when there is a deadlock or serious trouble or breakdown of the constitution. In no other case, I think, should the Governor have power of interference. The administration should be carried on by Ministers who are responsible to the Legislative Council, and if their policy is not favoured by the public they will be driven out at the next election, or even, if their policy is not liked by their colleagues in the Legislative Council, a vote of "no confidence" may be passed and the Ministry turned out.

The powers of the Governor with regard to the Legislature should be confined to a very few things. I do not think that in future the power of certification will have to be used, or, if used, it will be very rarely. Provision should be made for such powers, but one may expect that they will lie dormant, and the convention may arise that the powers are not to be exercised.

As to the provisions necessary to safeguard the administration of law and order and the rights of minorities, I need not say anything further after this subject has been so fully dealt with by my friend Sir Chimanlal Setalvad.

The third point is whether all special powers should be exercised by the Governor or whether some should be exercised by the Executive as a whole. The Executive will be responsible for the administration of the Province and its advice ought to be taken, but if the

action taken by the Executive collectively is to be set aside by the Governor, he will not get the support of the Executive, and, therefore, he will have to take the action independently on his own responsibility. If there is a clash between the Governor and the Ministry, then the Viceroy will have to set up arbitration.

As to the fourth heading, as to how the Governor should obtain advice necessary for the exercise of his special powers, I think this raises a question whether there should be a Second Chamber or a separate council of certain members. That has been hinted at in the Simon Report. I do not think there should be a Second Chamber in the Provinces. My Province has never supported that idea, and I for myself would not suggest that there should be a Second Chamber.

With regard to some special panel of officers to be created for the purpose of giving advice to the Governor, I must say that I also do not support that view. The Governor should take the whole thing on his own responsibility.

With regard to heading No. 5, I need not deal in detail with this, because the question of emergency powers will have to be determined in discussion later on.

*Mr. C. Barooah:* I rise merely to make mention of one point that has been touched upon by other speakers, though, I think, it has not been emphasised sufficiently, namely, the recommendation of the Simon Commission to give special power to the Governor to appoint Ministers from the officials. No part of the Simon Report has been so seriously objected to by all sections of the Indian people. It means the taking away with one hand what is given with the other. I beg you to report to the Conference that this Committee is very strongly against this recommendation. With regard to the Second Chamber, I have simply to state that neither the Government of my Province nor the people desire to have it. As regards the general observations, I support every word that has been said by Sir A. P. Patro.

*Dr. Ambedkar:* I propose to divide my remarks under three heads: (1) Provincial autonomy, (2) responsibility in the Provinces, (3) provincial services. I make a distinction between provincial autonomy and provincial Services. It seems to me that the question of provincial autonomy raises the definition of the relations of the provincial Executive and Legislature *vis-à-vis* the Central Government and the Central Legislature. The first remark I would offer on the subject of provincial autonomy is that I am in sympathy with the attitude of those who hold that the time has arrived when the provincial governments ought to be left with as complete an autonomy as is possible under the circumstances, and they should be free from such control as the Central Government now exercises. But, Sir, I cannot help making this further observation, that viewing the problem of provincial autonomy from the standpoint of the particular class I represent in this Conference and of the interests of India as a whole and the working classes in particular, I think that in any future constitution that we propose to devise for

endowing the Provinces with provincial autonomy we must take into consideration certain facts which are bound to limit the character of that autonomy.

The first limiting factor in the provincial autonomy is that it must be made subject to such questions of a provincial character which are, although provincial in nature, also of an All-India character. The Provinces may have their say with regard to these subjects, and yet the Central Government should not be excluded from its jurisdiction with regard to them. For instances, I would like to draw an illustration from labour legislation, legislation affecting tenants and affecting agriculture. These, no doubt, in a country like India, must become provincial subjects, yet I do not think they can be viewed entirely from such a small compass. They cannot be regarded as entirely provincial and without an All-India character. The Central Government must have some jurisdiction over subjects of this character, notwithstanding that it cuts across provincial autonomy.

Secondly, I should state that in dividing the powers of government between the Central and the Provincial Governments in the future constitution of India with a view to giving the Provinces as complete an autonomy as possible, it will also be necessary that such powers as remain undefined must be left with the Central Government. Well, I do not think that there is no other view on that point. But I say that in the present situation in India, where the separatist tendency exists to such an extent as we all know it, where provincial and local parochialism is more dominant than national feeling, while we are building up a Federated India with complete autonomy of the units, we still have the problem of making India as a whole a strong and united country. I would make this further observation, namely, that I do not think that the reservation of powers in the Central Government is likely to affect the autonomy of the Provinces. The reservation of powers as interpreted by the Judicial Committee of the Privy Council in the case of Canada has not had this overriding effect. It means a power that comes into existence in an emergency in a field not specifically allotted to the Provinces. I do not think that the Provincial autonomy should be really affected.

The second thing I should like to observe in connection with this question of Provincial autonomy is that that autonomy must be limited by the affording of protection for the interests of the minorities and of the Depressed Classes. As I visualise the situation in India as it will result from the new constitution, I find there will be certain Provinces in which some communities will be in a majority, but in all the Provinces the Depressed Classes, whom I represent, will be in a minority. They will be in a minority in every Province. I cannot understand how we can at this stage permit the Provincial majorities to have a complete, uninterrupted and undiluted sway over the destinies of these poor people, without any right of appeal being given to the latter in regard to mal-administration or neglect of their interests. There must be some authority

somewhere, over and above the Provincial Government, which will be in a position to intervene and rescue them from any adverse position in which they may be placed by the Provincial majorities.

These are the three things which, in my opinion at any rate, must limit the autonomy of the future Provincial Governments of India.

Coming to the question of the character of responsibility in the Provincial Governments, my first observation is that the whole question of responsibility in the Provincial Legislature is entirely dependent upon the kind of Legislature that you are going to get in the Provinces. If the Legislature that you are going to get in the Provinces is a Legislature which is going to be a mirror of the whole population of the Province, if it is going to be thoroughly representative and not merely representative as a museum is, where there are a few specimens of every species for the observation of the general onlooker; if every minority and every class which fears its existence will be jeopardised is placed on a position to make its influence felt, than I think in a Legislature of that sort there will be no harm in conceding the principle that Provincial responsibility may be introduced to the fullest extent. That is my first observation.

Making that a condition—that the Legislatures shall be fully and adequately representative of all the classes—I see no objection to the subjects which are now reserved being transferred to popular control.

Coming to the question of whether the responsibility in the Provinces should be joint or should be individual, I have not the slightest hesitation in saying that the responsibility not only should be joint but must be joint. I have been a member of a Legislative Council, and I have seen how Ministries in the Provinces have worked. It has been a most painful experience for me, as it has been the experience, I believe, of many of those who have had the misfortune or the good fortune to be members of a Legislative Council, to find that Ministries have been working as a kind of loose confederation, without having any complete or unanimous view on a particular policy which they adopted. There have been divided counsels, and cases of Ministers not being very willing to support each other.

What has been the result? The result is this, that in no instance have we had any considered policy put forward by the Cabinet as a whole, worked out in detail and placed before the Legislative Council. Things have been done by fits and starts, and I do not think we want our responsibility in future to be bungled in that fashion.

Turning now to the question of communal representation in the Cabinets, I must confess that I am not very much drawn to the suggestion which is often made that there should be communal representation in the Cabinet. I am not, of course, oblivious of the fact—in fact, I am very conscious of it—that if the minority communities are not represented in the Cabinet it is very possible, and

even very likely, that in matters of administration which affect their daily lives their interests may be affected very prejudicially by the policy of Ministers whose dominant interest is communalism. I do not forget that for a moment, but my submission is that there is a better way of dealing with that sort of evil, and it seems to me that if the minorities could get constitutional and statutory guarantees laid down in the Constitutional Act itself against anything likely to injure their interests being done or left undone by the Cabinet, the danger which most of us apprehend from the fact that the Cabinets may be communally dominated will vanish, and we shall not have much cause to insist on communal representation in the Cabinet.

Although I am very desirous that the Chief Minister, whoever he is, should recognise or should be made to recognise the interest of having most of the important minorities represented in the Cabinet, we cannot for the moment forget that, after all, a Cabinet office is a very responsible office. A Cabinet Minister has not merely to look after the interests of the minorities; he has to see to the safety and interest of the Province as a whole. That demands ability and competence; it does not merely demand a communal outlook, and it is from that point of view that I look at the matter. I should like to have the interests of the minorities and the Depressed Classes safeguarded in such a manner that constitutionally it would be impossible for Ministers drawn from the majority communities to do anything prejudicial to the minorities or to neglect their interests.

Coming to the question of the relations between the Governor and his Ministry, I think one thing is obvious, namely that no constitution, if it is really to embody full responsible government and collective responsibility, can permit the Governor the power to interfere in the day-to-day administration of the country. That would run quite across the system of responsible government and collective responsibility. The Ministry must be allowed to carry on the day-to-day administration on the basis of joint responsibility.

When we come to the question of the emergency powers which it is suggested should be left with the Governor, I find myself in a somewhat difficult position, because I do not understand exactly what is meant. Is it meant that when an emergency arises the Governor should simply dismiss the Ministry and have nothing to do with it, and should promulgate whatever laws, ordinances or measures he thinks are necessary to meet the situation, notwithstanding the fact that they are opposed by the Ministry? I do not know what is wanted. I can quite understand the Governor should have the absolute, undoubted and unrestricted power of dismissing a Ministry which he thinks is not acting in the best interests of the country, but I cannot understand how there can be responsible government in a Province in which the Governor is allowed to do a thing without a Ministry. It is one thing to say that the Governor should have a Ministry with which he agrees in a particular

emergency, but it is quite a different thing to say that when an emergency arises the Governor should simply disregard the Ministry altogether. I think this point will have to be worked out in some detail, for, as I say, I do not quite understand it.

Coming to the question of the Services, there is one observation I am bound to make. I quite agree in principle that with provincial autonomy the power of regulating the Services in a Province should belong to that Province, and that the Provinces should have full liberty to Indianise the Services as they desire and according to their means and circumstances. The observation which I feel bound to make, however, is this: I cannot forget that Indians are communally minded. We do hope—it is only a hope—that a time will come when all Indians will cease to look at problems from a communal point of view in administering matters which are left to their charge, but that is only a hope; it is not a fact. The fact is that Indians do discriminate between class and class, community and community, in administering such discretion as is left to them in their administration of the law. That is a fact I cannot get over; it is a fact from which I have suffered immensely. My fear with regard to the future constitution of India is that having regard to the present position of the depressed classes, having regard to the fact that education is not widely spread amongst them, and having regard to the fact that there is hardly a single individual holding a gazetted post in the Bombay Presidency, for instance,——

*A Member:* There is one.

*Dr. Ambedkar:* Yes, there is one, and that is the exception which proves the rule. You know how much trouble I had to get him in! I very much fear that this Indianisation may work out as a tyranny, and therefore, from my particular point of view, I should like to emphasise that at any rate for some time it will be necessary to maintain a British element in the Services. I do not say there should be no Indianisation, but I do say that, having regard to our interests, it should be rather slower than some people desire it to be.

These are the general remarks that I wish to offer from our point of view.

*Raja Narendra Nath:* I did not intend to make any remarks in this general discussion, but after hearing the speeches to which I have listened I cannot remain silent. I am fully aware of the general demand for the transfer of responsibility, and I am in full agreement with the majority of the speakers who have given expression to their opinions.

The question of joint responsibility has been dealt with, and most of the speakers have advocated the propriety of that principle. I myself think that there can be no responsible government in the proper sense of the term unless the principle of joint responsibility is fully enforced. But I am in agreement with the last speaker

when he says that so far the principle of joint responsibility has only been nominal. If the principle of joint responsibility has anywhere worked satisfactorily it is in the Province of Madras, but in other Provinces this principle cannot work under the existing structure. I do not wish to anticipate the recommendations of other sub-Committees, and I wish to avoid questions of a controversial nature, but in most of the speeches I have heard to-day nothing beyond what has been proposed by the Government of India in their Despatch has been advocated. Even in that Despatch I draw your attention to the concluding words of paragraph 46: "It has been admitted that in some Provinces we anticipate that cabinets may for some years to come require to be formed definitely on coalition lines." I do not wish to go into details, nor, as I have said, to anticipate the recommendations of other sub-Committees, but this concluding sentence of paragraph 46 is full of meaning, and I wish to remind those gentlemen who have advocated the principle of joint responsibility that if the structure of the Council remains what it is, joint responsibility will not be enforced in all Provinces; it will not be possible to enforce it.

The last speaker has referred to the case of minorities, and although between the minority which I represent and the minority which he represents there is a great distance, still I am in full sympathy with him that the interests of the minorities are apt to be neglected unless proper safeguards are adopted. The inclusion of persons in a Cabinet representing minorities is no doubt a sound principle, and one way of safeguarding minority interests, but it is inadequate. The appointment of Public Service Commissions has been suggested by the Simon Commission, and also recommended by the Government of India, but even that, in my opinion, is not sufficient. There must be some definite pronouncement in the constitution itself declaring minority rights unassailable by a majority community, whether that majority is of race or of creed. I know that on the question of minorities there can be no difference from the religious or racial point of view; we are all united on that point. I hope that the present discussion will help to dispel any mutual suspicions and unite the minorities all on one point.

Sir Chimanlal Setalvad dwelt on the necessity of the vesting of disciplinary action in the Ministries. He was of opinion that if the Services under a Ministry were to work in proper subordination, the power of disciplinary action should be vested in the Ministry. That was perfectly true, but there is one exception. It depends upon the source of recruitment. If the recruitment is from abroad, and persons have come on a certain covenant and agreement it will be difficult to have the same rules of discipline over them as over the Services recruited locally. As the discussion develops I may be able to contribute something further.

*Chairman:* The hour has arrived when we should terminate this sitting. If it meets your convenience I would suggest that the sub-Committee meet again tomorrow morning at 11 o'clock. (Agreed.) I may add that the sub-Committee should reconcile itself to sitting

on the morning and afternoon of Monday and probably on other days of next week.

*(The sub-Committee adjourned at 1 p.m.)*

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PROCEEDINGS OF THE SECOND MEETING OF SUB-COMMITTEE No. II  
(PROVINCIAL CONSTITUTION) HELD ON 5TH DECEMBER, 1930.

*Chairman:* I want to make a statement with regard to some of the points that were raised at our sitting yesterday. A point was raised, I think, with regard to the list of Provincial subjects. These questions are primarily for the Federal Structure Sub-Committee and should only be discussed in the Provincial Constitution Sub-Committee to the extent which is absolutely essential to get a clear picture of the Provincial constitution. As proposed by the Prime Minister, co-ordination on this subject between the two sub-Committees can be achieved only by a joint meeting at a later stage. That is the position so far as that question is concerned.

I think something was said with regard to the franchise. So far no provision has been made for the consideration of this subject, but I think it is clear a sub-Committee will have to be set up, and I am hoping that that sub-Committee will be set up at an early date, possibly at the next meeting of the Business Committee.

With regard to the composition of Provincial Legislatures, sub-Committee No. II cannot well avoid considering such points as the size of the Provincial Legislature and the elimination of the official bloc, but questions of communal representation and the representation of special interests in the legislature ought, I think, to be deferred for the consideration of the Minorities sub-Committee.

I think there was a question raised yesterday morning with regard to the North-West Frontier Province. The question of the constitution contemplated for this Province could be dealt with by sub-Committee No. II after it has accomplished its main work, but on the whole it seems better, subject to the agreement of the Committee of the whole Conference, to set up a separate sub-Committee to deal with this question after sub-Committee No. II has reported, the terms of reference being: "What modifications, if any, are to be made in the general Provincial constitution to suit the special circumstances of the North-West Frontier Province." I hope that will be accepted.

With regard to our proceedings to-day, taking item 1 of the list I submitted yesterday, namely, "Is it practicable to abolish the distinction between reserved and transferred subjects?" I think we can say there is general agreement that that distinction should be removed.

*Lord Zetland:* On that point, of course, one very important question arises, namely the question of the transfer of Law and Order. Surely that is a question which will have to be considered?



*Chairman:* That is so. Speaking generally I think we could agree that the distinction should be removed, but anything that we do in this sub-Committee must fit in to the whole scheme that will eventually emerge from the other sub-Committees, and the question of Law and Order might be one of the subjects that would have to be fitted into the whole scheme. I do not know that I can say at this moment that that subject should be definitely reserved.

*Lord Zetland:* My point is this. The first point you have put down, is "Is it practicable to abolish the distinction between reserved and transferred subjects?" I should certainly say with regard to some subjects that it is practicable, but I should not be prepared at this stage to say that it is practicable with regard to all subjects, and the important subjects which I have in mind, of course, is that of Law and Order. That is one of the most important questions of all, and I should have thought that question arose for discussion under this heading, unless you suggest, Sir, that it should be discussed under some other head.

*Chairman:* If the general statement that I have just made is not acceptable, then of course we will discuss it now, because I was going to pass on—keeping in mind that everything must eventually fit into the whole scheme—to discuss items (a) and (b) under No. 2. Unless there is general agreement with regard to what I have said on the first paragraph, then of course we must discuss it.

*Mr. Wood:* If the general discussion were allowed to proceed for a short time longer, these points might be brought out. We have heard only about four people, and no points such as Lord Zetland has raised have really emerged. I thought the idea of the general discussion was to bring out points of difference so that we might then decide whether we could accept the general principle of the transfer of all subjects. Personally I should like to say a word or two in the general discussion and refer briefly to this question of Law and Order which Lord Zetland has raised and possibly he himself wishes to speak on that subject, before we can say whether we accept the general principle of transfer.

*Chairman:* I gathered yesterday there was a feeling we might pass away from the general discussion and get down, as Lord Zetland suggested, to dealing with the various points that are raised in this list of subjects which I put before the sub-Committee at its opening meeting yesterday morning. Whatever has to be said with regard to the question of Law and Order can be said on this first item just as well as in the general discussion. I feel sure I interpreted the wishes of the Sub-Committee correctly when I said we were satisfied we could accept the suggestion Lord Zetland made yesterday morning and commence to take these questions separately.

*Mr. Wood:* I think there are several people who would like to raise certain points which they would wish to have specially discussed later on, with the object of concentrating attention on those particular points.

*Chairman:* You will not be debarred from doing that as you go through the separate questions. I am quite in the hands of the sub-Committee, and if you want to give up more time to a general discussion I must accept your view, but it seems to me you are with me in thinking that we should now proceed to deal with these questions one by one.

*Mr. Wood:* If that is the case may I ask about a subject which was dismissed yesterday as accepted. A certain opinion seemed to be accepted without any argument on the subject of Second Chambers.

*Chairman:* I beg your pardon; no question was dismissed at all. It may have been referred to in some of the speeches, but there has been no question of dismissing anything.

*Mr. Wood:* I mean, referred to in the speeches.

*Chairman:* Yes, but that does not mean that anything has been dismissed; at the appropriate time you can raise that issue. We will now discuss the question of whether it is practicable to abolish the distinction between reserved and transferred subjects.

*Mr. Chintamani:* Have you invited discussion on this point?

*Chairman:* Certainly.

*Mr. Chintamani:* I think there can only be one answer to this question, and that answer is in the affirmative. I go further and say that it is not only practicable to abolish the distinction between reserved and transferred subjects but that it is desirable to do so; indeed, it is necessary and indispensable.

One very interesting point in connection with the working of Provincial Governments under the present constitution is this. Dyarchy has succeeded in the Provinces in the measure in which in actual administration there has been no dyarchy. Wherever a Governor has treated the whole of his Government, Members of the Executive Council and Ministers, on a common footing, and has placed before meetings of the entire Government all important questions which have come up for consideration, and has abided by the judgment of the majority of his colleagues, by whatever name they were known, there, in that Province, the Government have succeeded in carrying on the administration smoothly and with the maximum of support from the Legislative Council.

Where, on the other hand, the letter of the Dyarchical constitution was strictly adhered to and Ministers were kept at arm's length, they had trouble with their Council and their measures were unpopular in the Province.

There is another peculiar feature in connection with the working of the system of dyarchy to which I think I should invite your attention. Under the present constitution the Governor is left as the sole and absolute master to determine in connection with what questions he will take the Ministers into consultation, and at what stage he will not do so. It depended on the varying mind and

mood of the Governor whether Ministers were throughout in consultation or throughout kept out, or whether, in connection with the self-same subject, they were brought in at intervals and kept out at other times.

Responsibility was blurred, as it were, and at different times Ministers were in and out, and the Legislative Council could not definitely know to what extent those members of the Government who in law were responsible to it could be held accountable for the decisions of the Government or of the Governor in Council. As was pointed out by the Governments when the Montagu reforms were under consideration, there is so much inter-dependence of subjects under all Provincial Governments that it is impossible to make a clear cut. Take, for instance, the financial question. It was understood at the beginning that finance would be neither Reserved nor Transferred, but common to both halves of the Government. Finance was made a Reserved subject and it was laid down that no Minister should hold the Financial Portfolio. Therefore the Transferred subjects and the Ministers in charge of them were at a considerable disadvantage in comparison with executive councillors and the subjects under them, when it came to the distribution of Provincial Governments between one branch and another. It has been almost an insulting provision in the rules under the Act that a man, however competent, should be ineligible to hold the position of Finance Member simply because he was a Minister and not a member of the Council. One reason that was given was that it would be difficult to find in the ranks of the elected members of the Legislative Councils men competent to hold the position of Finance Member. But, Mr. Chairman, if you run your eye through the names of various Provinces during the last ten years, and take a little more trouble to find out the results of financial administration, in Province after Province, you will inevitably come to the conclusion that it has not been such a pleasant thing to the Provinces to have I.C.S. financial pundits as finance members, and to have debarred every Minister from the charge of that subject. The people of the Provinces have made up their minds, first of all, that there shall be an end of this plague of a Dyarchical system, which does not work as a strictly Dyarchical system, and if it is not worked as a Dyarchical system leads to chaos and confusion. Another point on which the people have made up their minds is that the Unitary Government to which they aspire shall be a Government representative of, and responsible to, the Legislature. I do not think that any difficulty will be experienced in actual administration in working this proposition into details of rules or provisions of the Act. I was glad and relieved yesterday to find that the noble Marquess—who, if he will permit me to say so, was such a highly successful and popular Governor of one of the most difficult Provinces in India, and who most pleasantly belied the apprehensions which had existed by the manner of his administration—said yesterday that it was common ground that the distinction between the Reserved and the Transferred subjects was impracticable and should be abolished. The Simon Com-

mission had, he said, recommended it and the Government of India had approved of it in their Despatch. He will, however, pardon my saying that the kind of responsible Government that the Simon Commission recommended is, in truth, nothing but a bogus Provincial autonomy with reservations, qualifications and safeguards recommended by the Commission. All representative powers were to be in the hands of the Government, as was also the election of other members, and the I.C.S. Secretary would be more like a spy upon a minister than anything else. Thus, taken all together, these provisions negative the value of the kind of autonomy which the Commission recommended. When we unofficial Indian public men speak of autonomy and Provincial Government, we have in mind something very different from what the Simon Commission contemplated. I hope this point will be borne in mind all along the line, when the assumption is made that the Simon Commission and we are on common ground in regard to Provincial autonomy. Moreover, no revision of the Government of India Act will be of any value whatsoever unless the provision is made that we shall have unitary responsible governments in the Provinces, unhampered by restrictive provisions in the name of safeguards. Let not reform be afraid of itself!

*Sir Chimanlal Setalvad*: I agree with my friend concerning the proposals of the Simon Commission with regard to Provincial autonomy. If we are going to have it, let it be a real Provincial autonomy, and not merely a name. I am afraid that the proposals of the Simon Commission reduce it merely to a name. If the Government is to have all the Reserved powers that they recommended; if a considerable portion of the budget items are still to be non-votable; if officials are to be ministers, and if all the rest of the provisions are to be put into effect; then it is no longer possible to call such an administration Provincial autonomy. I therefore submit that the time has arrived when that distinction ought to go entirely.

With regard to the point raised by Lord Zetland concerning Law and Order, I venture to submit that it falls into two divisions. In one there is the general principle of whether this distinction should be abolished. If that conclusion is once arrived at, then what are to be the safeguards? For this reason Law and Order are specifically mentioned. This should therefore wait for a later stage, when we have arrived at a general agreement that this distinction should be abolished, and that all subjects should be transferred. It will then be possible to consider certain exceptions.

At present what happens with regard to ministers is this. No doubt the Montagu-Chelmsford reforms intended, when certain subjects were to be transferred and administered by the ministers, that the ministers, and the Legislative Council who have elected them, should have real control over the transferred Departments. In practice, however—and partly as a result of a certain provision of the Act to which I shall allude later—although the members of the Council were each in charge of a Department, nevertheless every action that was taken was taken in the name of the Governor in

Council. The result was that, if a member in charge of a department disagreed with the Governor, he had the right to have the matter brought up for discussion before the whole Council. If he could persuade his colleagues to adopt his view, he could thus secure a majority in the Council.

Further, in certain instances, that Member of Council had the privilege, if the majority was against him, of having his view on certain matters submitted to the Indian Government.

Contrast that position with regard to reserved subjects with the position of a minister with regard to transferred subjects. In matters concerning transferred subjects, the Governor is the person who conducts the administration. It is said that he conducts it "with the advice of the Ministers," but if the Governor disagrees with their advice, it is entirely open to him to act contrary to it, and the minister has not even the safeguard of convening the whole Ministry, as a member of the Council can convene the Council. The Governor, therefore, became, in respect of transferred subjects, practically an autocratic ruler who was not bound to follow the advice of the minister, and the minister had no redress. The position is very clearly put in Section 52, clause 3, of the Government of India Act:—

"In relation to transferred subjects, the Governor shall be guided by the advice of his ministers unless he sees sufficient cause to dissent from their opinion."

There is no qualification there; he must see sufficient cause to dissent. If he sees cause he is not bound to follow their advice, in which case he may require action to be taken otherwise than in accordance with their advice. In practice, this position rendered the ministers absolutely impotent in matters of policy where the Governor took a different view; they were over-ridden and the Governor's view prevailed. The result was that the Legislative Council, whose confidence the ministers possessed, was also in effect set aside. I submit that, if there is to be real popular responsibility and real Provincial autonomy in the right sense, these provisions must go, and in departments transferred—and we say that they should all now be transferred—the ministers, with a joint responsibility, should have the final voice in carrying out the administration, the Governor being merely a constitutional Governor.

No doubt it may be necessary in certain matters to have a reserved power—as my friend pointed out—in Law and Order or with regard to any matter which may affect the peace and tranquillity of the Province. This should be clearly defined. It might be necessary to reserve certain emergency powers to the Governor. But beyond that, in the ordinary day-to-day administration of the Province, in settling the policy to be pursued in various matters, the Minister's voice should prevail, the Governor only acting as constitutional Governor.

*Chairman:* I should like to know whether, in view of the two speeches which we have heard, we could not dispose of Question 1,

seeing that almost any point concerned in it can be dealt with under the sub-headings of Question 2. I do not know whether his Lordship would like to discuss his point on Question 1, or whether he would defer it until we consider sub-heading 2 (1), The Administration of Law and Order.

*Lord Zetland*: I am quite prepared to defer my point until the discussion of Question 2, if you think that is more convenient. It makes no difference to me.

*Chairman*: I think that the general opinion would be that Question 1 should be accepted: that we agree that, generally speaking, it is desirable to remove the distinction. We can therefore now discuss Question 2 (a): The Constitution and Composition of the Executive. I do not know whether the sub-Committee would like to discuss (a) separately from (b), or whether (a) and (b) should be the subject of one discussion. That, again, is entirely in the hands of the sub-Committee.

*Sir A. P. Patro and Mr. Jadhav*: They should be discussed separately.

*Sir Chimanlal Setalvad*: If we had decided on Question 1, would it not be more convenient to take the second part of Question 2 first?

*Chairman*: I should prefer to take the questions in the order in which they appear. I think that considerable advantages are to be obtained by first deciding on the Constitution and Composition of the Executive.

*Sir Ghulam Hussain Hidayatullah*: Yesterday, in the general discussion of this point, there arose divergence of opinions. In my opinion the powers of the Governor in regard to the Constitution and Composition of the Executive may be left unrestricted, provided that he form a ministry out of the elected members. It is generally said that we have not developed parties on principles of policy. That may be true in some places, but there are Provinces where parties exist. In those Provinces a Governor can elect a Chief Minister from a party knowing that that party enjoys the confidence of a large section of the Legislature, and can, in consultation with the Chief Minister, elect the other ministers. At the same time, he ought to have the liberty, in those Provinces where he cannot form a powerful ministry which can enjoy the confidence of most of the members of the Legislature, to form a ministry out of various groups; that is, a sort of coalition. In both cases, however, the ministries should be jointly responsible to the Legislatures.

*Sir P. C. Mitter*: The relevant points are: first, whether there should be official ministers. That is the recommendation of the Simon Commission concerning the Executive. We are all of opinion—at any rate I am, and I believe that many of my friends here will agree with me—that the scheme of the Simon Commission with regard to an official minister will never work. The official bloc

will no longer be there. The very existence of the official minister will place him and his colleagues in a position of great difficulty.

Incidentally, I should like to draw the attention of the Sub-Committee to the Report of a Committee which sat in London and was presided over by Sir John Kerr, and whose secretary was Mr. Pilcher. That Committee came to the unanimous conclusion that official ministers would not work. I merely ask the Sub-Committee to peruse that document. The members of that Committee had many of them had long Indian experience, and many were Indian officials.

As regards the respective merits of a Chief Minister or a coalition ministry: here again, we should remember that in all probability we shall not have an official bloc. If there is no official bloc—as is the desire of the Indian Section—then, whoever may be the Chief Minister or whoever may form the ministry must be able to carry a majority of the House with him. At the present moment, to take my Province of Bengal, we have an official bloc of 26 out of a House of 140, and, over and above that, a team of non-official British and Anglo-Indians, who, in 95 per cent. of cases, vote with the official bloc. Therefore, in a House of 140, the ministry starts with a solid bloc of 44; and if it can, from the different groups, obtain 26 more votes, it possesses a majority. With the disappearance of the official bloc and of the nominating element, there will remain only the European and Anglo-Indian group, who may not agree with the ministry. Assuming that a ministry be formed of my friends of to-day, I may safely assume in future that the European group will not agree with the ministry unless they are willing to see eye to eye with it. Again, our Province contains Hindus and Muslims fairly equally divided and, further, there are the backward classes. A true party system under these conditions will be difficult to run for some years to come. I am, however, one of those whose past experience justifies them in the belief that, as the work is carried on, the elements of the party system will emerge, more according to the realities of each Province than according to the theoretical politics with which we are more familiar. Our party will probably be the rural party, as I understand exists in the Punjab. Therefore, on the relevant point we are discussing on Question 2 (a), I think it is futile to lay down as a hard and fast proposition that there must be a Chief Minister who must be consulted in the election of the other ministers. It would be equally futile to lay down a hard and fast proposition that there should be no Chief Minister. A Governor who knows his business will try to act as much as possible as a Constitutional Governor. The instructions to the Governor—Instruction No. 6—say (even under present conditions), that, in considering a minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion, the Governor shall have due regard to his position and to the wishes of the people of the Presidency as expressed therein. No doubt, Section 52 (3) makes it competent for a Governor to disregard the advice of his minister. Constitutionally, he has the liberty to do so. Never-

theless, a minister who knows his work and can be firm, and a Governor who knows his duty, need not come into conflict.

I had the privilege of holding every portfolio in the transferred departments—barring the Excise Department—and I can say that there was no occasion on which I was overruled by a Governor or on which a Governor did not accept my advice. I have worked with three Governors, including Lord Zetland, and only on one occasion did a certain Governor suggest that my advice should not be accepted. All that I had to do then was to point out this Instruction No. 6, and he at once gave in. Then, however, I was not only minister at a time when I was one of the leaders of a party in a ministry in Bengal with a solid following, but I also held office in more difficult days when, with the Swaraj group in power in great numbers, and without an official bloc, I was powerless. Without an official bloc under the command of the Governor, I could not get my policy passed. Even under those circumstances there was no occasion on which I was overruled. That being so, it is most important for the future—Dyarchy or no Dyarchy—and it will be of greater importance when there is no Dyarchy—and when every department will be transferred—not to lay down cast-iron rules, for they will never work. A good deal must be left to the judgment of the ministers and of the Governor. If, for example, you lay down a rule that the Governor must accept the advice of his minister, and at the same time you say—as is, no doubt, our Indian Nationalist demand—that the Governor must be a true Constitutional Governor, what will happen with regard to cases such as those mentioned by my friend Sir Chimanlal Setalvad? When there is a serious breakdown we all agree that the Governor should intervene. Cannot a true constitutional monarch intervene in your country when there is a breakdown of Law and Order? We should try to act up to that ideal, but it will best be attained if we work with more elasticity, and that the Governor should discuss questions at length with the ministers with whom he has to deal. If the ministers are in a majority, to overrule them will set the whole country ablaze. My Province has a population of 46 million and other provinces are also large. If the whole country is ablaze, the Governor should remember that he will come into serious conflict with the people. If he comes into conflict with the people owing to his doubtful orders and there is a breakdown of Law and Order, then he will have to rely on martial law and a Governor who knows his job will hesitate to employ this measure. Those of us who believe in evolution have great faith in the maintenance of law and order. Without it our education cannot progress. Our masses are in a very backward condition, and can never improve unless the structure of society be maintained. That being so, why should there be that distrust of the ministry? I realise that at times passions may be roused. I come from a Province where, unfortunately, in recent years there have been communal conflicts between Hindus and Muslims. When such conflicts occur it is the tendency of some Governors to think that the mere presence of a few British officers is sufficient. I say emphatically that, in such



cases, a few British officers are powerless, for this reason. We all know how a particular British officer—Mr. Blandy—was severely castigated in the Legislative Council because he took a certain action with regard to the Muslims and exasperated their feelings. Similarly, in the disturbances at Dacca and Mymensingh, Hindu feelings were inflamed and exasperated, and a British officer was severely criticised on the platform, by the press and in the Legislative Council. With complete transfer and one party in power, what can a British officer do? We are perhaps too much obsessed with the conditions which obtain at the present moment, but when passions are aroused the Governor ought to have certain reserve powers. These powers should, however, take note of Nationalist sentiment.

If the Governor on the slightest provocation can set at nought his Ministers, then the constitution will never run smoothly. On the other hand, law and order have to be maintained. There must be some means available which will give reasonable people time to reflect, and I am one of those who think that one way of achieving this end and giving reasonable people time to reflect is the setting up of Second Chambers. I do not say that Second Chambers should be set up in every Province; there is no need to set them up in Provinces which do not want them, and where there is no risk of communal or other conflicts; but I think they will be found useful in certain Provinces and that they will be wanted there. A Second Chamber, however, must not be an aristocratic Chamber, a blind copy of your House of Lords. If a Second Chamber has to be established, it should be more on the lines of those found in some modern constitutions.

My contention is that neither giving reserve powers to the Governor and allowing him to intervene at the slightest provocation, nor giving no powers to the Governor, will do. You must give the Governor time to think and you must give the people time to think. A Second Chamber is not being discussed here on its own merits; I merely indicate that that is one way of doing it, and that the Second Chamber which I for one would advocate would never be a Second Chamber of stakeholders.

It may be that such men as Mr. Chintamani and Sir Chimanlal Setalvad will not be elected to the Lower House. I myself have given more than 36 years to public life, and I may not be elected. I think if possible we should have some chance of contributing our wisdom to the State. I see Mr. Joshi laughs, but he may never be elected and it might be an advantage to have him in a Second Chamber.

*Mr. Joshi:* I have no such ambition.

*Sir P. C. Mitter:* I have the ambition to serve my country in the Legislature. So far as the composition of the Executive is concerned, we have seen that it will not do to have official Ministers.

With regard to the representation of minorities, there again it is a question whether, in forming a Ministry which will have the

support of a majority, a minority can be taken in or not. If the taking-in of a minority will make a Ministry a minority and not a majority Ministry it would not work, but whenever possible minorities should be included. I would give a good deal of elasticity to the Governor and to the Ministers. I should amend Section 52, Clause 3, and I should also amend the Instructions to the Governor, though I am not going into details about that, so that on the one hand elasticity should be left to the Governor and on the other hand the powers of the Ministers should be properly safeguarded.

*Chairman:* It seems to me the speech to which we have just listened indicates the difficulty of taking these points separately. I want to guard against having each of these subjects discussed twice over; we cannot afford the time for that. If you feel you cannot discuss the constitution and composition of the Executive without encroaching upon some of the other points which are mentioned in item 2, I should like to know whether it would not be better to discuss the whole of item 2 at the same time. I have listened to the last speech very carefully, and I could not rule the speaker out of order because indirectly, I think, nearly every point he raised had some reference to the constitution under which the Executive is going to work. If you want to narrow the discussion down strictly to (a) I am quite agreeable, but I am afraid you will go over the whole thing many many times before the discussion on these various points is concluded.

*Sir Cowasji Jehangir:* I should like to discuss (a) only and confine my attention strictly to it, so as to get it out of the way.

*Chairman:* Very well.

*Sir Cowasji Jehangir:* It concerns the constitution and composition of the Executive. As to the composition, I think many of the Delegates who have already spoken have clearly indicated that it should be constituted only of elected members of the Council, and that no power should be given either to a Chief Minister or to a Governor to appoint a Minister who is not an elected member of the Legislative Council. That rules out the suggestion made in the Report of the Simon Commission.

I do not desire to go into this question at any great length; so many speakers have dealt with the subject. Merely in passing, however, I should like to say that I agree the appointment of an official as a Minister would be an impracticable proposition in a constitution as we visualise it at present; it would bring in dyarchy all over again. We may argue that that official Minister would have to resign with the whole Ministry on account of there being joint responsibility. You will quite realise, Sir, the difficulties of such a situation. A paid Government official is appointed a Minister, and has charge of certain very important portfolios. He will naturally have charge of the most important. Within six months the Ministry may go out and he has to resign, but the result will be that the Governor will re-appoint him.

*Sir Chimanlal Setalvad*: That is what the Simon Commission Report says.

*Sir Cowasji Jehangir*: The result will be that in practice the vote of censure will not apply to him, he will go out with the others, but he will come in again with the next Ministry. That is one point. Moreover, how can he be responsible to the Legislature for his own Department when he has been appointed directly by the Governor? It will be a form of dyarchy which may turn out to be worse than the present form, and therefore we rule it out; and, if we rule it out, I do not think there is anything further to be said as to the composition of the Executive.

I am not going to touch on the question of the minorities in connection with the composition of the Executive, because I understand it is a question which will be discussed by another sub-Committee.

*Chairman*: But the rights of minorities can also be discussed here.

*Sir Cowasji Jehangir*: I am quite prepared to express an opinion on this matter.

*Chairman*: Not at this moment, however.

*Sir Cowasji Jehangir*: No, but with regard to the composition of the Executive it does come in.

*Chairman*: Yes.

*Sir Cowasji Jehangir*: But I am deliberately leaving it out, and for two reasons. It forms a very important reference to the sub-Committee which is dealing with it. We know that one important minority in India—we may call it a minority, although its population is seventy millions—has claimed that in every Government formed in India it shall be represented. I think the best place for considering that claim is in the Minorities sub-Committee, because there are delegates who are not members of this sub-Committee but who will play a very important part in the discussion of that matter; and therefore without their presence here I personally do not desire to go into this question. My feelings and my sympathies may be with the minorities to a certain extent, or I may consider that sometimes they go too far; but there will be nobody here to rebut those arguments, and therefore in the absence of some delegates who will play an important part in this discussion I do not think we can usefully debate this matter here. We might come to one conclusion and the Minorities Sub-Committee might come to another. Therefore I not only beg to be allowed to leave out all reference to this question, but I appeal to all the other delegates not to touch on it at this stage. I leave out this question when discussing the composition of the Executive.

Coming to the constitution of the Executive, so far as I can see there has not been the absolute unanimity I should have expected; one or two of our friends have expressed some doubt as to whether the principle of always appointing a Chief Minister will

work in all Provinces. When we talk of a Chief Minister, I think we must carry that suggestion to its logical conclusion. The appointment of a Chief Minister means that that Chief Minister will advise the Governor as to the appointment of all the other Ministers. If it means that the Governor makes his choice and, after having chosen the Ministers, chooses one as Chief Minister, and that Chief Minister merely becomes the Leader of the House, in my opinion that is placing a wrong construction on the term "Chief Minister"; you might as well call the person so selected the Leader of the House. It would mean that the Governor would appoint the Ministry and would appoint one man as Leader of the House. My conception of a Chief Minister is that the Chief Minister should not only be the leader of the House but should have a very substantial voice in the appointment of the Ministers.

I would go a step further and say that the advice of the Chief Minister should not be turned down by the Governor in the appointment of Ministers; I would make the Governor a constitutional Governor in the right sense of the term. I know there is a school of thought which believes that the Chief Minister should not even submit the names of the Ministers to the Governor for approval, but I think that is carrying things a little too far. I quite agree the names should be submitted to the Governor for approval, and that unless the Governor can see very strong reasons for objecting he should accept those names; but, if he does not accept a particular name, what will be the consequence? There can be only two results. The Chief Minister may leave out the name and substitute another for it, seeing the reasonableness of the Governor's objection, or the Chief Minister can refuse to form a Ministry, and the Governor must find another Chief Minister. Those are the two alternatives, and I think that should be the position. If the Governor cannot agree to a name submitted by his Chief Minister he must find another man as Chief Minister who will submit other names. That should be the constitutional position.

I realise that in some Provinces and at certain times it may be very difficult for the Governor to find a man amongst the elected members who will be in a position to submit names for a Ministry with any confidence that his Ministry would last for any length of time. I fully realise the difficulties, but I am not going to exaggerate them. There are difficulties, and none of us round this table who has had any experience of government in India desires to minimise those difficulties. We all hope—and I believe we have some foundation for the hope—that with the new constitution as we visualise it those difficulties will decrease.

But we must face the facts. Let us suppose a situation does arise when the Governor cannot find a suitable Chief Minister who is in a position to submit a list which the Governor feels with confidence will be a list acceptable to the House. What will be the position then? Well, Sir, in those circumstances I think the Governor should be under the control, direction and supervision of the Viceroy, and he should not form a Ministry or appoint Ministers

on his own, choosing one man as Chief Minister merely as Leader of the House, without the approval of the Viceroy. By that I imply that the Governor must make every effort to find a Chief Minister who can submit names, but failing that I can see at present no alternative to the Governor appointing a Coalition Ministry drawn from the various groups. In most cases the Chief Minister himself will do that, but I am thinking of a contingency which may conceivably arise. I think it is a remote contingency; I do not think it is a contingency which will arise in every Province on every occasion. I do not agree with Sir P. C. Mitter that this contingency will continually arise.

*Sir P. C. Mitter*: In my Province it will continually arise.

*Sir Cowasji Jehangir*: Under the new circumstances I do not think it will continually arise, but I am prepared to consider any safeguards which may be necessary in the contingency of the Governor not being able to find a Chief Minister.

My friend Sir Chimanlal Setalvad has referred to Clause 3 of Section 52 of the Act. It has been my unfortunate duty to have to protest against that Section on more than one occasion, because I felt that in my experience it had been misinterpreted. I never could bring myself to believe that that Section meant that the Governor could interfere with a Minister upon every possible occasion, as has been the case in some Provinces. Petty appointments have been refused by the Governor under that Section. Reading the Report of the Joint Committee, I have always held that that Section of the Act should be interpreted more or less in the spirit in which Section 50 of the Act is interpreted with regard to the Executive Council. In Section 50 the Governor is given the power to overrule his Executive Council if the "safety, tranquillity or interests" of the Province are likely to be affected. He has to submit his reasons for having done so in writing, and each Member of the Executive Council has to put down his reasons in writing for the decision he has come to.

I have always considered that Section should be interpreted like Section 50, but unfortunately it was not. The result was that dyarchy became a failure. I desire that we should not run any risks of that sort in the future, but I think that may be discussed under a separate heading, and therefore I do not desire to express my views on that very important point.

*Mr. Joshi*: May I say, Sir, without making a long speech, that I think hereafter we should have an Executive which will be wholly unitary in form. The Governor should be under an obligation to appoint a Chief Minister, and that Chief Minister should appoint his own Ministry. It is quite true there will be several communities to be represented, but what the Governor is expected to do in that connection will be done by the Chief Minister. No Chief Minister can run his Government if he neglects the principal groups in the Legislature. If a minority is represented or a particular interest such as landlords or labour, if they are sufficiently represented, that is, in the Legislature, no Chief Minister will be able to

form a Ministry commanding a majority unless he takes into consideration the claims of the different communities and the different interests.

Personally, I think there is nothing very special in the mind or the heart of the Governor which entitles him better than a Chief Minister to take into consideration the claims of the different communities. As a matter of fact, the Governor will be more or less an irresponsible individual so far as the formation of the Ministry is concerned. It is the Chief Minister who is responsible for conducting the Government, and therefore the Chief Minister will be more careful in forming his Ministry than the Governor would be. If you once give power to the Governor to appoint any Minister he likes, the Governor will have the power of making mischief. By choosing men from different groups he may try for some time to paralyse the Government. The Chief Minister, on the other hand, who will have the responsibility of conducting the Government, would not in those circumstances be responsible. I therefore think it would be wrong to give the power to the Governor to appoint the Ministers from different groups, because it would mean a temptation to the Governor to try to rule by selecting men from different groups. I do not think the Governor will succeed in such an attempt, because he will have to get a majority for his Ministers, and the Ministers will not be able to obtain a majority in such circumstances.

With regard to reserving seats in the Cabinet for the minorities, I do not think that is necessary. If a minority has a sufficient number of votes in the Council, no Chief Minister can neglect that minority. After all, there will be a Ministry of about 10 people, and if a minority has 10 per cent of the votes I do not think it will be possible for anyone to form a Ministry stable enough to continue for a month if a minority of that kind is neglected.

The Council is not going to be divided by communities, because it will not be considering—except perhaps once in six months—communal questions; it will be considering questions affecting the interests of landlords, merchants, labour and so on. The Council is bound to be divided on those lines, and therefore no community can be kept out. Moreover, a substantial minority has always in its hands all the Parliamentary methods of making it difficult for any Chief Minister to carry on his government. That can be done even by a small minority; even a small minority can make it difficult for a Chief Minister to carry on unless he satisfies its desires.

With regard to the question of official Ministers, it would be a great mistake to appoint a man as a Minister who is not an elected member of the Council. I cannot myself see how such a man could really play the part of a responsible Minister.

Finally, I should like to refer to one matter which has not yet been dealt with by anyone. When discussing the constitution and composition of the Executive, I feel that hereafter active members of the Civil Service should not be appointed as Governors. If a member of the Civil Service retires after five years at home he might

come back as a Governor, but at the time he is working in the Service under the Government he should not be appointed Governor.

*Mr. Zafrullah Khan:* I think we should be clearer as to what is meant with regard to the different points if the members of this sub-Committee would realise that in framing proposals for the constitution we should keep in mind the fact that there are some matters which must necessarily go into the Act, and with regard to which there would be no question of discretion, while there are other matters which might be dealt with by being included in the Instrument of Instructions to the Governor, and there are other matters on which, though we may arrive at unanimous conclusions and record those conclusions, yet they can only be allowed to grow by way of conventions. It is not every matter that we can insist on being included in the Act, and whenever we speak of a discretion being left to so and so and so and so, and yet say that our wishes are that such and such a thing should be done, we must understand that those matters must be allowed to come in by conventions.

Once we realise that distinction, it should be easier to arrive at unanimous conclusions and have them recorded than if each of us insists that our views with regard to any particular matter should form part of the rigid constitution on that point.

Several points have been discussed this morning with regard to the composition and constitution of the Provincial Executive which are matters where a certain amount of discretion would have to be left, say, to the Governor, and therefore those matters should be approached from that point of view. There are one or two matters with regard to which, however, I am sure all of us would wish to have no discretion left to the Governor.

With regard to these matters which concern the constitution and composition of the Ministry, having recorded our general conclusion under the first head that all subjects may now be transferred, we immediately arrive at the conclusion that the Cabinet shall consist of what are known as Ministers, and we have unanimously expressed the opinion, so far, that the Ministers shall be chosen from among the elected members of the Legislative Chamber of the Province.

There are one or two matters with regard to which I do wish to go into detail, although there is practical unanimity on those points. For instance, there is the recommendation contained in the Report of the Simon Commission that there may be—not that there necessarily shall be—one or more officials appointed as Ministers, or that possibly non-officials who are not elected members of the Chamber may be appointed as Ministers. Some aspects of this question have already been discussed, but in my opinion it is not enough for each of us one after the other, to stand up and say we do not like this provision.

I wish to draw attention of the Committee to one more aspect of the matter which further demonstrates the impracticability, and almost the mischief of having such a provision in the constitution, of leaving such a power to the Government. The recommendation

is that, in any Province, the Governor shall be at liberty, if he so chooses, to include in his cabinet one or more officials—presumably from his own Province—and that he may entrust any portfolios to them. No doubt this recommendation is coupled with the recommendation that every minister shall accept the doctrine of responsibility. We must look at this provision initially from the point of view of its practical effect upon the accepted doctrine that Dyarchy shall disappear. Under the present system we have certain subjects that are definitely transferred subjects, and none of them can possibly be entrusted to any minister, official or non-official, who may be in charge of reserved subjects—for instance, education, public health, or medicine. Under the present constitution transferred subjects are bound to be administered by ministers. Now the effect of this provision in the new constitution would be that an official, although called a minister, could be put in charge of any of the portfolios of a Provincial Government. There is nothing in the recommendation to prevent such a minister being put in charge, for instance, of education. The result would, in effect, be that education, which has been transferred for so many years in the Provinces, would become practically a reserved subject. The first objection to this recommendation is, therefore, that this shadow of the official minister would hover over the whole field of transferred subjects, and that any subject could, at the option of the Governor, be made a reserved subject in the sense of being committed to the care of the official minister. Although he might go out with one ministry, he could come in again with the next and be put in charge of the same portfolio or any other. Again, there is no limit to the number of official ministers who have been recommended. As a matter of fact, if the Governor so chooses and there is a recommendation, there is no obligation upon him to appoint any elected member as minister. He can appoint officials and non-officials who are not elected members of the Chamber, and form a cabinet with them. That would mean a mere shadow of responsibility in the cabinet.

Another objection, which is perhaps a corollary of the position already stated, is that the minister would really not be responsible at all, as he can go out with one ministry and come in with another, and therefore can, if he so chooses, have a ministry turned out and then come in with a fresh one. Supposing, in any particular Province, four out of five ministers are elected members of the Chamber and one is an official, occasion may arise when these four are equally divided and the vote of the official ministry makes a majority in favour of a certain policy. Their policy must then be accepted by the whole cabinet as its joint policy. Suppose that that policy does not commend itself to a majority in the Legislature and the ministry is censured, then the whole ministry must go out and the four elected members would not come back again; the minister responsible for the defeat of the ministry would, however, come in again and be put in charge of the portfolio he had held before, or of any other to which the Governor chose to appoint him. This instance, together with others, makes it perfectly clear that there



exists general apprehension that this recommendation would actually take away even that character of responsibility with regard to transferred subjects with which ministers are—even under the present defective system—invested, and would give the Government such wide powers of making that responsibility nugatory that this provision cannot in any way be acceptable to persons interested in the future constitution of the Provinces. Nor can it be described as an advance towards responsibility if this provision were to continue as a part of the Provincial constitution.

I will now consider the question of the constitution of the ministry from the point of view of the parties or groups from which the minister should ordinarily be drawn; and also the question of whether there should or should not be a chief minister. So far this matter can be dealt with by statute, and it is desirable that it should be so dealt with and that it should be made obligatory upon the Governor to draw his ministers from among the elected members of the Chamber. That is a matter with regard to which no discretion can be left to the Governor, because if it is so left the recommendation will operate which lays down that it is open to him to appoint anyone whom he chooses. In regard to the other question of the parties or groups from which he shall be drawn and whether there shall be a chief minister or not, a certain amount of discretion would—at least in the beginning—have to be left to the Governor, and the matter would not be capable of being dealt with rigidly under a section of the new statute.

With regard to the chief minister, I agree that the ideal position and the correct constitutional position would be that the Governor should select his chief minister, who would ordinarily be the leader of the largest group in the Legislative Chamber, and entrust to him the task of forming a ministry, subject to the approval of the Governor. No one would deny that that is the ideal constitutional position. There is only one point of doubt: is it necessary, at this stage, that the position should be expressed in the statute itself and that no discretion whatsoever should be left to the Governor? If that is done, then constitutional crisis may be repeated and new ministries formed far more rapidly than would otherwise occur. I wish to endorse this view, that every Governor should endeavour to make his choice of ministry in that fashion and should try as far as possible to form a ministry under the recommendation of the chief minister, and that he should select the chief minister himself, but I should leave the other matter to be laid down in the Instruments of Instructions rather than in the Act itself. When this ideal cannot be achieved, the Governor should have discretion so to form the ministry or cabinet that they command the majority of members in the Legislative Chamber and can carry on the government without a crisis.

With regard to the question of a minority being represented or unrepresented in the cabinet: no doubt there is, in a subsequent part of the Agenda, a reference to the rights of minorities. I submit, however, that this reference means that, once we have reached

conclusions on what shall be the rights and safeguards of minorities, we must in this Agenda take a further step and decide on the machinery that shall be set up to safeguard those rights. I therefore hold that the question of whether there shall or shall not be minority representation in the cabinet falls for discussion under the present head. No doubt it also forms part of the larger question of the rights and safeguards of minorities and other special interests, a question which would form part of the reference to a sub-Committee which might be set up to discuss Question No. 9. Without going into detail, however, I would again respectfully submit that this, again, is a matter which might be left to the Instruments of Instructions, and to conventions which might be established in each Province. The Governor should be called upon to endeavour so to form his ministry that it represents as far as possible all the men interested, communally or racially; and, in the Provinces, divided into two sub-Provinces; that it represents the sub-Provincial units. That is being done in other countries. In Canada, for instance, a convention has been established by which ministers are drawn from representatives of different Provinces no doubt belonging to the same party and there is due representation of Roman Catholics, French-speaking members of Quebec Province and of other communities. I understand that a similar convention has been established in Czechoslovakia. There is no difficulty in administering such a system. This is, however, a matter which, for a far greater reason, should be omitted from this statute, and dealt with by convention. I fail to understand the suggestion that where a Governor is unable to select a chief minister and leave the formation of the cabinet to him, then the selection could be left to the Governor-General. I cannot understand how the Governor-General could be more intimately in touch than the Governor with the feelings of the groups and parties in the Legislative Chamber. I cannot see that this provision would constitute a safeguard for anybody, and I am strongly of the opinion that the choice of ministers should be left to the Governor.

*Chairman*: I want to consult the wishes of the sub-Committee. I understand that it might be the desire of certain members to leave at 12-30.

*Mr. Zafrullah Khan*: We wish to adjourn at that hour on Fridays.

*Chairman*: I only wish to consult everybody's feelings. If there is such a desire, I think that we should all wish to respect it.

*(The sub-Committee adjourned at 12-30 p.m.)*

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PROCEEDINGS OF THE THIRD MEETING OF SUB-COMMITTEE NO. II  
(PROVINCIAL CONSTITUTION) HELD ON 8TH DECEMBER, 1930.

*Chairman*: Unfortunately the speaker on whom I was going to call first has not arrived. I will, therefore, ask Lord Zetland to address us, but before calling on him I should like to say this.

I detected from the speeches that we had the other day that we were not confining ourselves strictly to the one point, and it seems to me we had far better, in the remainder of this discussion on item 2, consider anything that arises under that item on the Agenda. That will enable you to speak on the constitution and composition of the Executive, on the powers of the Governor *vis-a-vis* his Executive and the Legislature, on the administration of Law and Order and on the rights of minorities in the Provinces. The general discussion had better cover any of those points.

*Lord Zetland*: On Friday Mr. Chintamani referred to a remark of mine made at the first session of this sub-Committee, and as I listened to him it seemed to me that he had perhaps derived an impression from what I said which was not wholly correct. He quoted me as saying that since the question of autonomy for the Provinces had been generally conceded, there was not much use discussing the question further in a second reading debate. That was not quite what I said; what I actually said was this, that the question of autonomy for the Provinces *with certain reservations*—and, if I may say so, those were the important qualifying words—had been conceded both by the Simon Commission in their Report and by the Government of India in their Despatch. I suggested that therefore, since that was so, it might save the time of the sub-Committee if instead of having a second reading debate upon the main question we came straight to the heads of subjects which had been drawn up by our Chairman.

I had glanced through the heads of subjects, and I had seen they covered practically all the reservations which I had in mind. What I was afraid of was that if we had a second reading debate first and then came to the heads of subjects we should merely be discussing the same questions twice over; and it seemed to me, therefore, that it would save the time of the sub-Committee if we came straight down to the heads of subjects. I think, if I may say so, the experience of our discussions both on Thursday and Friday suggested there was some justification for the view which I then took.

We are now discussing, as the Chairman has pointed out, item 2 of the Heads of Subjects, and particularly sub-section (a) of item 2, namely the constitution and composition of the Executive, by which is meant the Executives in the Provinces. Some members of the sub-Committee have suggested that the Chief Minister should not be entitled to go outside the elected members of the Legislative Council in his search for Ministers. Sir, I hope that this sub-Committee will not decide to restrict the discretion either of the Chief Minister or of the Governor in that way. To begin with, if we were to so decide we should be departing very widely from the practice prevailing in this country. I speak subject to correction by our Chairman, but I think I am right in saying that there is a member of His Majesty's present Government over here who has no seat in Parliament at all, namely the Solicitor-General. The

Chairman reminds me that he himself became Home Secretary in the Government of 1924 without a seat in Parliament.

*Mr. Joshi:* It is for six months only.

*Lord Zetland:* The Chairman reminds me that the Solicitor General has not been appointed very long, but I should like to say that six months is not a statutory limit. However, we will not argue about that.

Quite apart from that, in this country the Prime Minister has a much wider field to go to than is provided by the members of the House of Commons. He invariably selects from the House of Lords persons with administrative experience, and perhaps with other experience of public life, of a type which he cannot always count upon finding in the House of Commons. That, of course, raises the question of Second Chambers in the Provinces. Beyond saying that personally I am in favour of establishment of Second Chambers in the Provinces, even if, to borrow a phrase used by my friend Sir P. C. Mitter, they are not "blind copies" of the House of Lords, I do not wish at this moment to complicate my argument by going into that particular question at this stage in detail.

My argument is a plea for leaving to the Chief Minister and to the Governor a discretion—I do not put it higher than that—to go on occasion beyond the elected members of the Legislative Council if either of them considers it desirable so to do when forming a Ministry.

Some will agree with me on that point and some will not. Personally, I would, at any rate for a time, allow the discretion to extend to the extent of appointing even an official as a Minister if it was thought desirable.

This raises the very important question of the treatment of the portfolio of Law and Order. I should certainly not be acting fairly towards this sub-Committee if I were not to say quite plainly that there is a substantial body of opinion in this country, more particularly perhaps in the party to which I myself belong, which does view with a good deal of anxiety the proposal immediately to transfer to the control of a Minister responsible to the elected Legislature the portfolio of Law and Order.

But, having said that, let me say equally frankly that personally I believe the advantages, whatever they might be, of reserving a single portfolio when all the other portfolios are transferred would be outweighed by the disadvantages. I think that if dyarchy is to go in every other subject, dyarchy must go in all subjects, including Law and Order. However, as I have pointed out, that is not to say I could agree to Law and Order necessarily being administered straight away by a Minister selected from the elected members of the Legislative Council. After all, this really does bring us up against some very hard realities, which we cannot ignore. I imagine, for example, that if in the case of Bengal the Chief Minister was not entitled to go outside the elected members of the

Legislative Council to find a colleague to administer Law and Order, he would practically be obliged to appoint either a Hindu or a Muhammadan.

*Mr. Jadhav:* There are some Europeans elected.

*Lord Zetland:* I am afraid the non-official Europeans are far too busy to be able to take on a Government portfolio. I am assuming for the purpose of my argument—and I think I am right in so assuming—that almost certainly a Hindu gentleman or a Muhammadan gentleman would have to be appointed in those circumstances to administer that portfolio. Now, do not suppose for one moment I am suggesting that either a Hindu administrator or a Muhammadan administrator would be less capable than an English administrator. It is not that at all; the advantage which the English administrator possesses in this particular case is derived from his neutrality as regards the two great communities in India; and his neutrality has a profound influence upon both the conduct of the police and upon the general public.

That is not a purely official view. We know perfectly well that that view is held by large bodies of Indian non-official opinion in India, and it will be within the recollection of the members of this sub-Committee that the Indian Central Committee, which, after all, was a body almost wholly Indian in its composition (I think there was one English member), did definitely recommend in its Majority Report that in the case of Bengal the portfolio of Law and Order should not be transferred.

*Mr. Paul:* That was only in the case of Bengal.

*Lord Zetland:* I am speaking now about Bengal I say in the case of Bengal they definitely recommended that the portfolio of Law and Order should not be transferred.

I should like to give the sub-Committee an illustration from my own personal experience of the kind of situation which may very easily arise. In the Autumn of 1917 there were very grave disturbances at Shahabad across the borders of Bengal. In the Autumn of the following year, 1918, Muhammadan opinion throughout India was very gravely stirred by events which took place outside India in connection with the Great War—the fall of the Turkish Empire and so on—and an immense demonstration was planned to be held in Calcutta. I would remind the sub-Committee that in the case of the Shahabad riots in the Autumn of 1917 the Muhammadan population had been very severely dealt with by the Hindus. This great Muhammadan demonstration which was planned to take place in Calcutta in the Autumn of 1918 happened to come just about the time of the celebration of two of the great festivals of the Muhammadans and Hindus respectively, the Bakr-id and the Durga Puja, always potential sources of trouble. It was quite obvious that if the vast demonstration was to be held at such a time there was a grave danger of serious disorder and possibly of bloodshed. Among the Muhammadan millhands of Calcutta—a large and for the most part uneducated class—word

had gone round that the demonstration was to provide the opportunity for the assertion of the rights of Islam and for the satisfaction of Muhammadan grievances. They were exhorted to remember the events of Shahabad the year before.

It was quite clear, therefore, that it was essential in the interests of peace that the demonstration should not take place, and the demonstration was accordingly prohibited. My point is this. Suppose in those circumstances the portfolio of Law and Order in Bengal had been in the hands of a Muhammadan administrator. I think the pressure which would have been brought to bear on him by his co-religionists outside, and more particularly inside the Legislative Council, would have been so great that he could not have resisted it. He would have been obliged to allow the demonstration to take place; and, as I say, I think in all probability with disastrous results. On the other hand, suppose the portfolio had been in the hands of a Hindu administrator, and suppose he had decided that the demonstration must be prohibited, as I think undoubtedly on the merits of the case he would have decided. In that event it would have been believed, and widely believed, that he was actuated by communal bias. In either case there would have been a grave danger that the impartiality of the administration would become suspect with the public, with the most unfortunate results not only on the morale of the police force but also upon the attitude of the public towards the administration.

I would beg this sub-Committee, therefore, not to limit too rigidly for the present the discretion either of the Chief Minister or of the Governor in the matter of selecting persons to occupy Ministerial posts. May I say just this one word more? It seems to me that both parties to this controversy—that is to say the party that desires that the Chief Minister should have complete control of the appointment of his Ministers independently of the Government and the other party which desires that the Governor should have completely discretion in the appointment of the Ministers independently of the Chief Minister—that both these parties have in their minds an entirely false picture of what the relations between the Chief Minister and the Governor will be. Surely the relations between the Minister and the Governor will not be relations of antagonism and distrust. They will be relations of mutual confidence. Neither will desire to press unduly his own view against the strongly held view on the part of the other. They will wish to come to an agreed solution of their problems. They will wish to discuss matters in a friendly and accommodating spirit. And indeed, if those are not to be the relations between the Chief Minister and his Governor I really fail to see how the successful working of the system which it is proposed to set up can possibly be expected.

*Chairman:* Before I call on the next speaker I should like to say for the benefit of those who arrived late that speakers are at liberty to refer to any question coming under item 2 of the Agenda upon which we are working.

*Diwan Bahadur Ramachandra Rao*: May I ask whether there will be a separate debate on the items the constitution and composition of the executive and the powers of the Governor *vis-a-vis* (1) His executive and (2) the legislature?

*Chairman*: No, we are taking them all together. I found when I tried to narrow the discussion to the first point that speakers would insist upon including more than the one point.

*Sir Ahmad Said Khan*: Mr. Chairman, on the first point I can only say that I agree with those speakers who are in favour of abolishing dyarchy from the Provinces. I may say in reference to what Lord Zetland has just said on the subject of the transfer of law and order that although I agree with him to some extent it is not for the reasons stated by His Lordship. He said that if the portfolio of law and order is in charge of an Indian such a Minister would not be able to administer the department as impartially as a European could. I do not agree with that nor do I think there would be any lack of efficiency. Here I may say that in one of the major Provinces which stands next only to Bengal as far as population is concerned the portfolio of law and order has remained in charge of an Indian for the last ten years. Fortunately the leader of the opposition of my council is also a member of this sub-Committee and I think he will be able to bear me out when I say that not once has any criticism been made in the House or outside it about the impartiality of the Member in charge of law and order. Therefore, I beg to assure members of the sub-Committee who have any misgivings in their mind of that kind that that is not the fact and that those of us who have had experience in India of Indian members being in charge of law and order know that the arrangement has succeeded. Of course, there may be other grounds for misgivings on the part of the minority, but to meet those misgivings I am sure safeguards can be embodied in the constitution instead of perpetuating dyarchy in the Provinces. I am glad that you, Mr. Chairman, have allowed us to deal with all the points coming under heading No. 2, because they are so inter-dependent on each other that it would be very difficult to deal with them separately. One may agree with one point but not with the other point, or may agree with one point if the other point was also carried. Therefore it is much better to deal with them collectively, and I will deal with them now in a collective manner. In regard to the composition of the legislative council I think there should be no official bloc, but I think it would be desirable if we allowed official members to come to the House and explain the position whenever necessary. My experience has shown me that sometimes it happens that questions of such detail are asked in the House that it is difficult for the member in charge of the department to be able to reply without the help of the officials of the Department. It would be of great help, therefore, if officials were allowed to explain the matter in the House, but they should have no right of voting. As to the composition of the Ministry, in my opinion the appointment of the Chief Minister should be

left to convention. I for one would not like to have that put in the constitution and made rigid. I know that in practice there must always be a Chief Minister. The Governor will have to consult the most influential man and that man automatically will become Chief Minister. But if we were to make that rigid by stating in the Constitution that there shall be a Chief Minister it is quite possible there might be difficulty in forming a Ministry in India. The reason is this, it is perfectly easy to do that if there is a party system as there is in England. You have two parties or three parties. You take the leader of the majority party and make him Chief Minister. But in India, political parties have not crystallised yet. In the legislative councils as far as my experience goes there is the group system. There is a group of ten or twenty here and a group of ten or twenty-five there, representing various schools of thought. There is no party system. If we insisted that there should be a chief Minister we might, therefore, have some difficulty I for one would much prefer to leave the matter open as is done in many other constitutions. For instance, in the English constitution I do not think there is any mention of a Prime Minister. In many constitutions there is no mention of a Prime Minister or a Chief Minister. I think it would be much better to leave it to convention instead of putting it definitely into the Constitution. As to the question of officials becoming members of a Ministry, I am entirely opposed to any official Minister. It is simply impracticable. It will create weakness inside the Government. It will not be a source of strength in any way. Let me take a very obvious objection. Suppose there is an official Minister. Within the Cabinet he would inaugurate a certain policy. His Indian colleagues would agree to his policy. But in the House, a Vote of Censure is moved on that particular policy. What will be the result? The Indians who had the misfortune of agreeing with him will go out if the Vote of Censure is carried but the official will remain. The reply to that may be that he also should go out. If he is also to go out, then where should he go to? He cannot go back as Commissioner after having been a Member of the Government and he could not work as a subordinate to those who were recently his own subordinates. The only course left for him would be to retire. What would be the effect of that? Perhaps some of our very best officials would have to retire before their normal time, we should have to pay them compensation and we should lose the benefit of their experience in administration. I do not say that it would happen but one could conceive that some people might regard that as being a possible way of getting rid of all experienced officials in India. Therefore, I think it would create many difficulties all of which I cannot mention now. As to the question of appointing non-official non-elected Members of the Ministry I am doubtful. I am not keen about it but I have doubts because I remember an occasion when it was very difficult to get any Minister from among the elected Members. The Governor offered the post to an outsider who could not accept it. Then we had to take a man from the Council. I think it would be



just as well to leave the hands of the Governor free in this matter, but I should wish to make it quite definite that his selection should be confined in such a case to non-elected, non-official men. I am strongly against official Ministers. If non-elected Members are taken into the Cabinet such an action may be very much resented by members of the Council and I admit that this is another difficulty which has to be taken into account. There is one other point upon which I should like to lay stress and that is about the safeguarding of minorities, by giving some seats in the Cabinet to minorities. I think there would be difficulty in putting such a provision into the constitution, but I think it could easily be put into the Instrument of Instructions to the Governors. It may be against the notion of democratic government but there are special circumstances in India and we must try to create a feeling of security in the minds of minorities. Therefore, I think it would be desirable—indeed, I think essential—that in the Instrument of Instructions we should make it quite clear that the Governor would do his very best to include members of a minority in the Cabinet. This question of minorities, if I may be allowed with your permission to say so, need not be regarded as a question of Mussalman minorities. It is not so. If we seek to protect the rights of minorities we do not seek in that way to favour Mussalmans. In that respect I was very much impressed by the speech of Raja Narendra Nath from the Punjab who is a very zealous member of the Hindu Mahasabha. The question of minorities is simply a question of doing justice to the weaker party, whether Hindu or Muhammadan. For this reason I think that it would be desirable that the Instrument of Instructions should contain definite instruction to the Governor that minorities should be represented in the Cabinet.

*Lord Zetland:* All minorities?

*Sir Ahmad Said Khan:* Important minorities.

*Dr. Ambedkar:* What is an important minority?

*Sir Ahmad Said Khan:* I will leave that to the discretion of the Governor. As far as constitutions in the British Commonwealth are concerned I think that this is the practice in New Zealand and Canada. In New Zealand they always have one or two representatives of Maoris in the Cabinet. I think therefore that it will be nothing new if we have it in the Indian constitution also. I wish to say one word in regard to Second Chambers. Personally I am in favour of a Second Chamber for my province. My idea is that we should give a Second Chamber for my provinces as have been recommended by the Simon Commission or which have been recommended by the Local Government or by the Government of India. I do not wish to say that every Province should have a Second Chamber but where the people of the province are in favour of a Second Chamber I do not say that it should not be given to them. The reasons for giving a Second Chamber in such cases are obvious and I do not wish to take up your time by giving all the reasons. I may perhaps give one reason—that as far as the special powers of

the Governor are concerned the less they are used by the Governor the better and in time we hope they shall become a dead letter being out of use. A Second Chamber in certain circumstances may obviate the use of such powers by the Governor.

*Mr. Chintamani:* Mr. Chairman, the various subjects covered by the present discussion are of so far reaching importance, and with reference to all of them I hold such strong convictions based upon experience and observation, that I trust I shall have the indulgence of yourself and my colleagues if I take up a few minutes of your time. I shall endeavour to make my observations as brief and businesslike as possible. First of all, I should like to deal with some of the observations made by the noble Marquess who has spoken on the basis of his experience as a British Governor in an Indian province—a British Governor not an Indian Minister, an important distinction which I wish you to remember. He had not to work, as a Minister, the constitution in the conditions that existed.

The noble Marquess has cited the authority of the Indian Central Committee, and my noble friend Nawab Sir Ahmad Said Khan has also fallen back upon the same authority in support of his plea for the establishment of Second Chambers. We know very well indeed how the Simon Commission was constituted, what reception it had in India, and who were the classes of persons who agreed to co-operate with that body either as members of Central and Provincial Committees, or as witnesses before it. Let us argue the question on the merits instead of falling back upon the support of a body of which I do not speak because it is difficult to do so within the limits of moderation and courtesy.

I wish to enlarge on the conditions in the United Provinces, where, since 1921, the subject of law and order has been in charge of an Indian member of Government. The subject has also been in charge of an Indian member in the Central Provinces, and has been and still is in charge of such a member in Madras.

With regard to the constitution and composition of the executive, let us bear in mind that nearly all of us have come here with a demand for Dominion Status for India, and nothing less. That demand can have no reality or meaning if we are not prepared for complete responsible Government in the Provinces. It will not do to pay lip homage to the doctrine of responsible government in the Provinces and then proceed by various means to evade that responsibility by suggesting fancy devices with regard to the composition of the executive or the reservation of powers in the hands of the Governor which will make him anything but a constitutional Governor. If we meant what we said when we asked for Dominion Status and responsible government, let us be courageously prepared for all the implications and consequences of that demand. I for one am prepared for all of them, with the certainty that that will make for the good of India, and will not produce any deleterious consequences. It follows from this that the executive in every Province

must be a responsible executive. We have decided under the first head to do away with the distinction between reserved and transferred subjects. It follows therefrom that the executive must be unitary, and also that it must be responsible to the legislature. If it is at the mercy of the Governor, or so composed as to include diverse elements not having a common policy and programme, or if it is an executive which includes elements with divided allegiance, then it cannot be a unitary and responsible executive. In order to have such an executive, we must have a ministry with collective responsibility in every matter. To bring this about there must be a chief minister selected by the Governor from among those who command the largest support in the legislative council, and he should have freedom to recommend to the Governor who should be his colleagues, the Governor to accept his recommendation except in such rare cases as occur also in this very country.

The question was raised with regard to the safeguarding of minorities, and it was suggested that one of the leaders of a minority should be included in the executive. The safeguard for ensuring this lies in the composition of the legislature itself. Every legislative council included not only members of one community which may be the majority community, but members of all communities, in varying numbers no doubt, but at all times and in all circumstances members of all communities. That being so, I should like to see the chief minister, unless he is entirely devoid of commonsense or fitness for his position, who can flout the opinion or the will of any substantial minority in the council, and constitute a ministry against which the minority will swear hostility from the first days of its existence. I appeal to you, Mr. Chairman, with your experience of public life in this country, whether you could imagine a Prime Minister who could give effect to his despotic wishes without bearing in mind the state of opinion in general, and not merely that of the party on whose support he relies to carry on his government. Can you ever expect a chief minister of ordinary commonsense who will ignore substantial minorities in his legislative council when composing his ministry? Or, if you get such a one, will his official life be worth two days purchase? The safeguard for all minorities lies in this essential circumstance, that there never can be a chief minister who can disregard those communities and interests without imminent peril to his own official existence. If we are not prepared to rely upon the reality of this safeguard we must admit that we are not prepared for the implications and consequences of responsible government, and are demanding something without understanding what it really means. None of my colleagues here will plead guilty to the charge that he is unaware of this implication and the consequences.

I need not add that it necessarily follows that the ministry must not include a permanent official or one not in the legislative council, and if some one is chosen who is not in the council he must get himself elected thereto within a prescribed time. In this

country if a minister does not secure a seat in one or other House of Parliament within a reasonable period he must resign his office. The permanent officials in office will, if I may be pardoned for saying so, be nothing but a constitutional abomination. They will not be able to work with their colleagues or to get on with the legislative council.

The noble Marquess has adverted very rightly to the valuable experience possessed by Englishmen and the beneficial results of having an English ministry. By all means, I have not the slightest race prejudice, let the Englishmen come forward, officials or non-officials, who sympathise with and will work for the political progress of India. I could name many, both officials—Sir Henry Cotton was one example, and there are many others—and non-officials in this connection. We Indians will be the first to take advantage of the services of such Englishmen in the government of our country. But not merely because they are Englishmen.

The next point concerns the powers of the Governor *vis-a-vis* his executive and the legislature. On this point I speak with a special degree of earnestness. I am convinced that few things have contributed more largely to the failure of the Montagu-Chelmsford reforms than the indefinite and extensive powers vested in Governors of Provinces under the present Government of India Act. I am aware that the Governors themselves have often complained publicly and privately that they have not got the requisite powers adequate to the discharge of their enormous responsibility. I am afraid I cannot sympathise very much with that complaint. On reading the relevant section of the Act, it will be found that the Governor as the head of the transferred half of the Government is in a perfectly autocratic position, accountable only to his own conscience and to God Almighty. He cannot be taken to task by any official superior, because the Act makes him the official authority. If we mention the name of the Governor we must mention him as a sacred personality, not to be criticised. He occupies a position of perfect despotism in respect of administration of transferred subjects. His permanent officials have direct access to him as a right, and their point of view is more often identical with his than dissimilar. The majority of Governors in India belong to the permanent service and not to the Parliamentarians. The Governor should be, in fact, a constitutional Governor. He should be no less, but he ought not to be any more.

I come now to the next question: What, if any, provisions are necessary to safeguard the administration of law and order, the rights of minorities, or any other interests? It is my conviction that the Governor need not have any reserve power to safeguard law and order. I know of no subject in connection with Indian politics upon which a greater amount of fiction has been written or taught, or more utterly misleading statements made in this country than with regard to the attitude of the Indian public man to law and order. The people of England are told tales as if we Indian public men were not in the least concerned for the maintenance of

law and order in our country. Where offences against the State, real or alleged, are concerned, the Indian public men do not see eye to eye with the permanent officials, with regard to the number of prosecutions to be instituted, or the severity of the sentence to be inflicted. On that point I need not say much, for I can appeal to you, Mr. Chairman, as to whether the detached critic or the permanent official is more likely to be in the right when he thinks of offences against the State such as alleged seditious speeches or writings in the Press. You, Sir, and others in your position have had to spend a good deal of time in protecting the liberty of the subject against encroachments by the executive even in a constitutionally governed country like yours. How much more so must the public man of India be called upon to take steps in a country autocratically governed and governed by an alien executive.

With regard to ordinary crime, because of the combination of judicial and executive functions, injustice has often resulted against which we protest, and then we are held before you people of England as being opponents of law and order. I protest against the implications of this accusation and deny it *in toto*.

As regards the rights of minorities, here I have not the slightest objection to what has been proposed, because I want a new Government of India to start in an atmosphere not of contention or distrust, but of agreement, friendliness, confidence, and hope. Therefore I have not the slightest objection to the suggested clause giving instructions to the Governors asking them to see that minorities are treated with justice and fairness. If this is a derogation of the Governor's position as a constitutional Governor, I am prepared to sacrifice theory to this extent—but only to this extent—to practical ends. There is no other interest with regard to which the Governor need have emergency powers.

*Mr. C. E. Wood:* There are only two subjects to which I propose to refer, one being the transfer of law and order, and the other the question of Second Chambers. I think the real point of view from which we should consider this question of the transfer of law and order is how to retain the willing co-operation of the police. That seems to me to be the view-point from which we should consider this matter, because the police are and have been, especially recently, a very highly tried body. They are very badly paid, and they have proved staunch in all emergencies. There is no doubt from what one can gather from the police themselves that they do very much fear what may happen to them in future if this transfer is made. It was expressed by Sir A. P. Patro, when he said that care must be taken to remove them from party politics. That is really what it comes to. They do not fear—and the non-official Europeans certainly do not fear—transfer to an Indian as against a European. I myself have seen the department of law and order controlled by an Indian for many years, and there has never been the slightest fault to find with that control in any way. But—and I think Lord Zetland was speaking from that aspect—there may be some Provinces where it may be necessary to make

exceptions, and I think possibly that Bengal should be considered on its own merits.

This question of the portfolio of the police being held by someone who is not an elected member of the Legislature is an important one. If at the discretion of the Governor the portfolio may be held by someone who is not a member of the Legislature I think it will invariably cause friction. At the same time, I think it may be found necessary in such a province as Bengal to place the portfolio in what may be called neutral hands, but I should not leave it entirely to the Governor. Lord Zetland has remarked that unless the Governor and the Chief Minister work closely together the Government cannot be carried on—or words to that effect—and it seems to me if that is accepted it should also be accepted that the Chief Minister should give his consent to the portfolio being administered by someone who is not an elected member of the House.

A very important point, especially in a Province like Bengal, is to keep administrative matters away from the politicians, for I am perfectly certain that no Government will be able to carry on if there is interference by politicians. The police will not stand it. If law and order cannot be administered properly the Government cannot be administered properly, and future Governments will be only riding for trouble unless they are prepared to make some sort of provision in that respect. It seems to me that the placing of large statutory powers in the hands of the Inspector-General of Police in the matter of discipline, appointments and promotion would be a very great safeguard so far as the administration is concerned. I believe that in England such powers exist in the case of the County Constabulary. In each administrative county there is a force commanded by a Chief Constable, who appoints, promotes and dismisses the other members of the force and has the general government of them, subject to the police authority, which is a non-political standing joint committee.

Sir A. P. Patro has suggested that the Public Services Commission will be a safeguard in this respect; but, with all due respect to him, I do not think the Public Services Commission can possibly attend to matters of discipline, administrative matters and enquiries where the conduct of the police is in question. They are more an advisory body to assist in the matter of promotion from the lower to the higher grades, and in selection for appointments. That is all I have to say about the police.

I now wish to refer to Second Chambers. I am very glad to see that the question of Second Chambers has now been brought up; I was a little afraid at one time it would be dismissed without consideration by the members here. It is not correct to say, as one member has said here, that the Provinces have turned down the suggestion, because in the United Provinces, Bihar and Orissa, Bengal, Assam and Madras the Provincial Committees have all spoken in favour of Second Chambers. We have to remember that we are going to make a very large step forward, if only by

the removal of the official bloc, and one benefit of a Second Chamber will be the protection of the Executive from hasty action by the House since it will give the House time to reconsider its decisions.

Dr. Ambedkar, whilst stating that he is quite prepared to agree to the transfer of all subjects and to placing the minorities in the hands of an Executive responsible to the House, seems to contradict himself by saying he is very much afraid that a majority party will treat the minorities unfairly. I suppose Dr. Ambedkar knows his own business best, but I do not see how he can place those two views side by side and make them agree. All authorities that I have read recommend Second Chambers as an antidote when there is a fear of unfair or unsympathetic treatment of minorities by majorities. I am quite sure Dr. Ambedkar will consider whether his salvation does not lie in a Second Chamber rather than in a coalition Ministry, which personally I think is an impossible suggestion. He has great responsibility for the interests of his community, and I am quite sure he will look after them satisfactorily.

One important point with regard to Second Chambers which I should like to stress is that if they are to be of assistance to the minorities they must be properly constituted. There is a fear of landlord domination.

*Mr. Joshi:* Hear, hear.

*Mr. Wood:* There must be a careful selection of representatives of all communities, and I would suggest electoral colleges for the minorities. I think a Second Chamber can be made a Chamber on which the minorities can rely as a safeguard for their interests.

*Mr. Zafrullah Khan:* And the commercial people?

*Mr. Wood:* I said the minorities, and the depressed classes. A Second Chamber, moreover, may, as one speaker has already suggested, possibly be a substitute for placing too much reserve power in the hands of the Governor.

Some Provinces say that there is not the material for a Second Chamber in their Province, but I think, taking the country as a whole, India can surely find the material for Second Chambers. It can hardly be said of any country which is ripe for self-government that it has not the material from which to form Second Chambers which are capable of protecting the minority interest.

We have to remember, when we are talking about Second Chambers not being usual in Provinces, that India is not one nation. I should have dared to say that myself here, but I am quoting Dr. Ambedkar, who did say it, and I am in perfect agreement with it. India, with its population of 230 millions, cannot be treated in the same way as a country of 40 millions; there are Provinces in India with a population of 40 millions, and what applies in other countries cannot be taken as a precedent.

There is one thing I should like to suggest with regard to a Second Chamber which may be pleasing to minorities, namely that there should be constitutional statutory power to abolish such a Chamber if a large majority—say a three-quarters majority—of each community in the Lower House was in favour of such a step. That is to say, if three-quarters of every group or community in the Lower House were in favour of abolishing the Upper House they could bring it about. The majority parties are usually in favour of the abolition of an Upper House, and this would mean that if the minorities made up their minds that the Upper House was of no value to them and was not protecting their interests they could combine with the majority parties and get rid of it. It seems to me that the Upper House, feeling that its life was in the hands of the minorities, would consider very seriously any problems which specially affected the minorities. I would ask for very careful consideration of this subject, because I do think in that form, together with separate electorates, the minorities will get the safeguards they seek much more effectively than by thinking of coalition Executives.

*Dr. Ambedkar:* May I make a suggestion? It seems to me this question of Second Chambers is so important that it cannot be discussed properly and adequately by being tacked on to the series of heads we are now discussing. In my opinion a special day ought to be allotted to this subject. I see very little connection between the subject of Second Chambers and that of the protection of minorities, or any of the other matters enumerated in items 1 and 2. It seems to me this is a very important question. I find nothing in this list of heads dealing with the composition of the Legislature; if you were to add a head "Composition of the Legislature" we should have a proper opportunity of discussing the whole subject.

*Chairman:* I cannot see how you can separate this whole subject and split it up.

*Dr. Ambedkar:* The question of Second Chambers can certainly be separated from that of minorities.

*Chairman:* Not entirely. Whether there is to be a Second Chamber or not affects almost every other subject that comes up—the powers of the Governor *vis-a-vis* the Executive and the Legislature, the powers of the Legislature and so on. I think you had better let us go on, and if at the end we find the discussion has not been adequate, we will try to arrange for a further discussion on this subject by itself.

*Sir A. P. Patro:* I regret my friend Mr. Chintamani has been overcome by the fashionable disease of crying down those who co-operated with the Simon Commission. My friend seems for the moment to have forgotten that there are as strong, disinterested and genuine patriots as himself who co-operated with the Statutory Commission to make sure that India and the Provinces obtained full responsible self-government. It is ridiculous to pretend that



patriotism is confined to anyone particular individual or set of individuals. Strong language can never build a sound constitution. We must have control over ourselves and remember that though we may have been divided temporarily there are others who are as genuinely and sincerely patriotic as ourselves. I regret very much, therefore, that Mr. Chintamani should have referred as he did to the five or six of his colleagues here who co-operated with the Simon Commission. We had the honour and privilege of co-operating with that Commission and of doing our best to place before it what we considered the best and the just evidence in support of the cause of India and the cause of the Provinces.

With regard to the composition and constitution of the Executive, the main point has already been dealt with by my friend the Nawab of Chhitari, with whose practical observations I am in general agreement. The question has only to be considered for the answer to be almost unanimous, namely, that there should not be an official on the Executive. There is universal agreement that when a Ministry is formed no outside official shall be included in it, though, as the noble Marquess has pointed out, discretion may sometimes be vested in the Governor, for there may be a Province or there may be an occasion where it may not be possible to find a Minister, as the Nawab of Chhitari pointed out occurred in his own case. Discretion may perhaps be allowed in such a case, but there should not be general discretion to allow an official to come into a Ministry; the disadvantages are too many, and it would quickly ruin the principle for which we now stand, the principle of joint responsibility. The answer to that question therefore, is that the Executive should be constituted from the elected members of the Legislature, that the Executive should not have an official amongst its members, and that the principle of the joint responsibility of the Executive should be established.

With regard to the Chief Minister, I agree it cannot be laid down definitely that there shall be a Chief Minister in every Province. Conditions differ and circumstances vary, but as a general rule there should be a Chief Minister. Wherever it is not practicable to have a Chief Minister that rule need not be adhered to, but there must be a Chief Minister wherever possible.

With regard to the powers of the Governor *vis-a-vis* his Executive and the Legislature, that has an inseparable connection with the question of the formation of Second Chambers. Most of the powers now vested in the Governor under the Government of India Act remain a dead letter and are not exercised at all; most of the overriding powers provided in the Government of India Act are not used at all in many Provinces. The question is whether the Statute should allow such overriding powers to the Governor. If we have a Second Chamber, as was recommended by many Provincial Committees, then the drastic powers which are now vested in the Governor would not be at all necessary. It is in that way that the question of a Second Chamber comes in when we are discussing the powers of the Governor. The Governor should have

emergency powers so as to be able to preserve the peace and tranquillity for which he is ultimately responsible; it is necessary that safeguards should be adopted for the ultimate security and tranquillity of the Province, but otherwise the Governor ought to be guided by the advice of his Ministers.

The provisions relating to the control of the Governor over the Ministers will altogether disappear, because the distinction between the Ministers and the Executive Councillors will disappear. The powers which the Governor has now with regard to the Executive Council will further be modified by establishing that the Governor shall be guided ordinarily by the advice of his Ministers. It is only in cases of special emergency, where there is a question of communal troubles or other factors, that he may have to exercise overriding powers, but in that case he will ultimately have to appeal to the country; he cannot be an autocratic Governor any longer. There need therefore be no fear of having some safeguards in that matter.

The other question is as to the powers of the Governor over his Executive and the Legislature. The powers over the Legislature consist of administrative interference with the Executive and Legislative interference. At present the sanction of the Governor has to be obtained before certain legislative measures can be introduced in the Council, and he has the power ultimately of vetoing legislation or referring the matter to the Governor-General under the reservation powers. All these powers of the Governor in matters of legislation are to be found in every State in the Dominions, and therefore they are not extraordinary powers at all, but ordinary powers vested in the Governors in these States.

With regard to the administration of Law and Order, I differ entirely from the observations made by Lord Zetland. Law and Order must be administered by Indian Ministers without any regard to communal disturbances. The particular instance Lord Zetland referred to may be an exception, but even in such a case if a Muhammdan or a Hindu happens to be in charge of Law and Order he will conduct himself strictly in accordance with the popular will and do what is necessary in the interests of the peace and order of the country. Therefore peace and order is not a subject that is the exclusive field of any particular community or race. There should be no suspicion whatever either in Britain or anywhere else that order would be disturbed or law not properly administered if there were an Indian Minister in charge of that very important department. The rights of minorities have been referred to. It is very necessary that the rights of all important minorities should be safeguarded but I do not think that safeguards should be put into the statutes. Safeguards should be established either, as has been pointed out, by instructions to the Governors or by establishing some convention in the matter. No legislative enactment that I have seen contains any definite safeguards as has been suggested in certain quarters. They should be established by instructions to the Governors when

they are appointed or by convention. The rights of minorities must receive recognition and minorities must feel that their interests are safe under the new Government. For that purpose safeguards will have to be provided. I submit that in reference to these matters coming under (1) and (2) of number two on the Agenda answers have already been given very fully. What we want is real responsibility introduced into the Provinces. I come from a Province in which the portfolio of law and order has been held for the last ten years by three Indian gentlemen one after the other. All those three gentlemen have been Muhammadans, but no one has ever accused any of those gentlemen of ever having yielded to any communal pressure. I thank the noble Marquess, Lord Zetland, for kindly pointing out to us what he thinks might be a difficulty, but I can assure His Lordship that in any Province in India Ministers, either Hindu or Muhammadan may be found who are above all communal feelings.

If I remember aright, Sir, we had some talk at our meeting on Friday on the matter of having Members to represent minorities in the Cabinet. I yield to no one in my desire for the protection of the rights and privileges and interests of minorities but I am afraid it will not be practical to insist that they should be represented in the formation of a Cabinet. There are practical difficulties in the way. If a Chief Minister is required to include in his Cabinet some persons who will be there to represent the rights of minorities it means that he will be required to include in his Cabinet some persons who hold views quite different from his own. I do not think that such a Cabinet could last for a very long time. After all a Cabinet is not formed to represent groups or minorities or communities, or whatever you may call them. It is formed to carry on the work of administration and in order to do that it must be able to work smoothly. If a Cabinet has to be formed by including heterogeneous elements it will hardly be workable at all. What I submit, therefore, is that you should include minorities by all means whenever it is possible, but I do say for heaven's sake do not make it obligatory. It is always desirable to have in the Cabinet representation of minorities whenever it is possible and I think the Chief Minister should always attempt to do so when he thinks that with such a composition of his Cabinet he would be able to carry on administration smoothly. But he should be under no compulsion to form a heterogeneous Ministry at the risk of its being broken up at any time.

*Diwan Bahadur Ramachandra Rao*: In rising to make a few observations on Item 2 on the Agenda I think I may say at the outset that the number of questions involved in this item involve so many points of view that I am afraid that some of them are bound to be omitted in the discussion. I feel that the question of Second Chambers ought to be separately dealt with. There are many questions relating to the Second Chambers which in a cursory discussion like this can have only a casual reference. It seems to me that there cannot be ade-

quate treatment of the subject. For example, we have to consider what should be the nature of the Second Chamber, should it be purely a revising body, or should it have co-ordinating powers, should it have power in financial matters, should the budget be discussed in both Houses? Then, assuming there is a conflict between the two Houses, should there be powers similar to those given in the Parliament Act 1911. Again we have to consider whether Ministers should be responsible to both chambers or only to the lower House, the popular House. These and other questions have to be very carefully considered apart from the question of the composition of the Second Chamber. Therefore, I think that in addition to whatever remarks may be made in the course of this discussion sometime later there should be given an opportunity of discussing all these subjects, because the question involves very complicated issues and the question of the extent of the responsibilities of Ministers will also have to be considered. Therefore, I respectfully suggest that this question should be taken up again later. For the present I am disposed to think that the Second Chambers are likely to complicate the constitutional machinery rather than help it. On this question I may perhaps be allowed to invite the attention of my colleagues here to what was said in reference to this proposal by the Simon Commission. Several of the local Governments have expressed their opinions on this matter. Five of the eight Provinces have taken the view that a single-chamber legislature would be quite enough. Among the other three there are some differences of opinion. All the opinions are summarized in the Government of India Despatch at pages 20-21. One of the arguments in favour of Second Chambers advanced by two of my colleagues here is that a second chamber would afford protection for minorities. That is Mr. Wood's view. I think it has also been suggested that the Governors' powers of over-riding the legislature would be curtailed by the establishment of a Second Chamber. I am not disposed to agree with that. I think the protection of minorities would be no greater if a Second Chamber is instituted than it is now. I think that the protection of minorities ought to be dealt with by embodying in the Statute certain fundamental rights and also possibly conferring some power on the Governor to protect their interests. If neither of those methods is sufficient to protect minority interests then I do not know how the constitution of a Second Chamber—whose composition we have not yet discussed is going to do anything to protect minorities. As regards the Governors' powers perhaps I might be allowed to invite the attention of Members to the over-riding powers of the Governors discussed—in paragraph 50 of the Simon Report. The Report says: "We are not attempting to settle the draft clause but we should be disposed to describe these two as matters in which in the Governors opinion we must give such directions:—(1) in order to preserve the safety and tranquillity of the Province." I do not see how a Second Chamber is going to help in the matter so long as the Governor has this power. The Governor's exercise of this power would certainly not be affected by the constitution of

the Second Chamber. The Simon Report goes on “(2) In order to prevent serious prejudice to one or more sections of the community as compared with other sections.” The Simon Report then proceeds to deal with other purposes for which they think the Governor should possess over-riding powers. They say: “We are not referring to financial safeguards which we shall deal with separately nor to the powers which the Governor must have in reserve in respect of certain classes of legislation.

There are three other purposes for which we think the Governor should possess over-riding powers, and it is convenient to mention them at once, though their importance is mainly technical and connected with other aspects of the constitution:—

(3) To secure the due fulfilment of any liability of Government in respect of items of expenditure not subject to the vote of the legislature.

(4) To secure the carrying out of any order received by the provincial Government from the Government of India or the Secretary of State. (The degree of control of these authorities is discussed hereafter.)

(5) To carry out any duties which may be statutorily imposed on the Governor personally, such as duties in connection with some service questions and responsibility for backward tracts.”

Apart from whether these powers should be possessed by the Governor or not I do not think any of them will be affected by the constitution of a Second Chamber. I do not wish to deal further with the subject except to say that the majority of the provincial governments who have some experience in this matter have recommended that there should be no Second Chamber. Three Provinces think there should be a Second Chamber and the Government of India have stated that in those Provinces where it is recommended there should be no Second Chambers, there should be no Second Chambers, and in those Provinces where it is recommended there should be a Second Chamber, there should be a Second Chamber. Therefore I think the solution of the question is that there should be some authority given to the new legislatures to adopt what I may call a constitutional resolution for the constitution of a Second Chamber. There should be during the first ten years such a power given to the single chamber, and the question might be solved in that way namely by arming the single legislature with power to adopt a constitutional resolution for the constitution of a Second Chamber. To go beyond that now, and to decide that Second Chambers are necessary, would seem to be rather complicating our future machinery of government in the Provinces. As to the question of whether there should be a Chief Minister, you will permit me to say a few words. The point has always to be remembered that a Chief Minister is necessary because otherwise the Governor would be dragged into controversy. If the selection of Ministers is left to the Governor he will have to make enquiries as

regards communal groups, and I think one thing which is very necessary is to keep the Governor out of the arena of party politics. That is most necessary. I can say that in more than one Province the Governor has been accused of having taken sides or of having interested himself in one group as against another in selecting Ministers who would not work together. All those difficulties arise once you have no Chief Minister. For that one reason I venture to think it is necessary to have a Chief Minister. Undoubtedly as has been pointed out, the Chief Minister would discuss constitutional questions with the Governor and take his advice and assistance but the final word as regards the composition of the Ministry should be with the Chief Minister who would submit names for acceptance to the Governor. Otherwise I am certain the Ministry would not be a harmonious whole striving to work the machinery of Government in the proper way. It has been suggested that there may be communal tension because the Ministers may all belong to one of the two communities in India. That cannot be helped. I think that the sooner we devise machinery that will make both parties have confidence in each other the better it will be. To invite the Governor to make appointments of Ministers who would hold themselves individually responsible to him would be the very negation of responsibility. I should like to say a few words on that point with regard to the over-riding powers of the Governor in financial and administrative matters. It has been suggested that the Governor should have the power of restoring grants in regard to matters in which he has over-riding powers and that he should have also, the power of certification of Bills. I am strongly of opinion that if these powers are conceded to the Governor it will be the negation of the responsibility and the legislative council will be helpless as regards these matters. I think there should be a Chief Minister and that everything should be done to give real responsibility to the legislative council. On the question of official members of Cabinets I think that it has been very clearly shown in the case of local governments that the large majority of them are opposed to such a measure. They are of opinion that that also will infringe on the principle of responsibility. You would introduce into the Cabinet a person who is not responsible to any popular constituency. He would be a man with no constituency behind him who would look to the Governor for support. He would have no party in the House and he would certainly be isolated from the rest of the Ministers forming the Government. For that reason he would not be able to work in harmony with popularly elected Members. I think it would tend to undermine the whole scheme of responsibility if somebody who had not received the support of a popular constituency but who was only interested in administrative work was made a member of the Government. Lord Zetland said that in the peculiar circumstances of Bengal he thought that an official Minister would be a person in whom perhaps both sections of the community would have great confidence. Here again I must repeat my argument—an official Member would not be a responsible Member. You must

face the problem and I think you must come to the conclusion that such a scheme would be fatal. It has been suggested that in present circumstances it might happen that there would be more confidence if such a person held the portfolio of law and order. I doubt it. Experience in Madras, where an Indian was always in charge of law and order, and experience in other Provinces, has shown that there have been no deleterious results. Therefore I submit that whatever may be the present circumstances of Bengal on which of course Lord Zetland is so great an authority, it is far better to entrust this portfolio of law and order to an ordinary member of the Government rather than to an official member. There is only one other point upon which I wish to deal, that is, the representation of minorities. This question has been discussed at great length in some of the provincial governments. They have generally come to the conclusion that the inclusion of representatives of minority communities is desirable. No Chief Minister forming his Ministry would be so foolish to neglect important minorities and not to take men from those minorities into his Cabinet. But it would be unnecessary to provide for that in the Statute. It should be done either in the Instrument of Instructions or it should be left to convention to grow up. It seems to me that these are very sound views, and that nothing further can be done to provide representation of the minorities in the executive government of the Provinces except in the way that has been suggested—that is, not by Statute but by Convention.

*Sardar Sampuran Singh*: I should like to make a few observations on two points, namely, the chief minister and the official minister. In my opinion, there will be always a chief minister in the cabinet. The question is really, who is to select the appointed ministers, whether the chief minister is going to be selected first and then to make his ministry, or the ministers are to be first selected by some other authority and the chief minister appointed afterwards. In my opinion it may be practicable in some of the Provinces that the chief minister should be appointed in the beginning and make his own ministry, but I am aware that there are Provinces in India where it is necessary that the ministers should be from all the communities, and here, it is necessary that they should be appointed by the Governor. I agree that there is some difficulty, but we cannot lose sight of the fact that there are places in India where such differences exist, and in order to minimise them and keep them subdued it is absolutely necessary that for some time at least the power should rest in an altogether neutral person. The responsibility will be in the cabinet when once appointed, and, moreover, no Governor can afford if he wants to run his Province, to appoint any ministers who have not the support of the majority in the Council. From the very fact that the cabinet has to rule in the Province and has to run the Province it is absolutely necessary that they should have the support of the Council, and that means that they will have the support of the whole of the Province and be representative of the people in the real sense of the word. I do not agree that if the ministers are

appointed by the Governor and they select their own chief minister afterwards, the principle of responsibility in that cabinet is in any way impaired.

The second point on which I want to say a few words is with regard to the official minister. The noble Marquess has given the reason that in some cases it may be necessary for the Governors to appoint ministers from amongst the officials so that they may be able to administer the department of law and order in a way in which the people have confidence. I beg to submit that that is just the reason—because the department of law and justice should not be left in the hands of the officials—why there should not be any official minister in the cabinet. We cannot shut our eyes to the fact that just at present faith in the administration of justice, as it is going on in India, is shaken. Some years ago I was reading Lord Macaulay's Essay on Lord Clive, where he says, in effect, that British Government in India is based on faith in British justice and not upon the British Army in India. I beg to submit, Sir, that that faith is being shaken, and to re-establish that faith and to establish British rule in the heart of the people of India, it is absolutely necessary to bring back the faith in British justice. One reason perhaps for the shaking of confidence is that there is disturbance in the country, and because there is disturbance the British officers have to depend upon very lowly paid police officers, and it is a well-known fact that these subordinate police officers are very corrupt. In order to subdue that agitation and to carry out the policy of the present Government, the Government has to depend upon those police officers, who do not hesitate to fabricate evidence, or to bring in false witness in the courts. It is because justice is not being properly administered in the country that it is absolutely necessary to have strong Indian ministers—a strong administration to handle law and order in India. In my view it is just for that reason that it is absolutely necessary there should not be an official minister in the Cabinet.

*Maharaja of Darbhanga:* We are in favour of the transfer of law and order. With regard to the possibility of trouble on such transference, we have had Indians who have been in charge of law and order in different Provinces, and if they can manage to keep it, and if there has been no trouble during their time as Members of Council, there is no reason for us to think that they cannot maintain law and order under the new conditions.

I should like to add a few words about the Second Chamber. The fears of some of our friends are that Second Chambers are not desirable, because they are likely to be entirely composed of, or dominated by, the landlords. That is not the type of Chamber we contemplate. In the Second Chamber we should have the representatives of other interests, representatives of minorities. The Second Chamber, I venture to think will be a necessity for safeguarding the interests endangered by hasty legislation on the part of the lower house. The Provinces that already want it, and for which the Government of India recommend it, should have a Second



Chamber right away, and there should be a clause in the constitution that other Provinces may have Second Chambers if and when they think it desirable. The composition of the Second Chambers may be left to be decided at a later stage, and we need not go into details with regard to that subject at the moment.

*(The sub-Committee adjourned at 12-55 p.m. and resumed at 3 p.m. with Lord Zetland in the Chair.)*

*Sir Shah Nawaz Bhutto:* This morning I found that most of the arguments employed in reply to the speech of Lord Zetland went to show the capacity of Indian members to deal with the subject of Law and Order, but I should like to point out that, if I correctly understood Lord Zetland, he never disputed the ability and the capacity of Indian members to take charge of the subject of Law and Order. The point is that such members are nominated by the Government and are not responsible to a constituency or to the Legislature or subject to outside influence, as is the case with Ministers.

I was very much amused yesterday by the arguments of my friend from Bombay, Sir Chimanlal, when he was making out a case for the difference in treatment between Ministers and Members of the Executive Council. My own experience has been that the position of an Executive Member is quite different from that of a Minister. As soon as a member is appointed he has a safe life of five years, and he is not responsible to a constituency or to the Legislature. Whether a European or an Indian he becomes an autocrat, and therefore he is not open to argument or susceptible to the influence of public opinion at all. He has a regular policy and experts to guide him, and in 99 cases out of a 100 he follows that particular policy and is guided by his experts, so that there is very seldom occasion for a Governor to disagree with him. We have, of course, had Ministers of whom much the same could be said, and we should be proud of them; but there have been others of whom the less said the better. They allowed themselves to be influenced by their constituencies, by their communal feelings and by their parties. If the Governor had no power to restrain them, I think, had they been free to follow their own will, we should not be able to ask for Dominion Status or full responsible self-government if our fitness to obtain it were to be judged by the capacity those men showed for the positions they filled.

Unfortunately we have very short memories, and I find that by the time we pass Aden we have forgotten the real circumstances which exist in India and how we have left them. I am not less anxious than any of my colleagues to secure full responsible government or Dominion Status for India, but the facts have to be faced. We are all accustomed to say that the facts must be faced, but we often find it convenient to ignore them.

Leaving Madras aside—for my colleagues from Madras can be proud of the way they have worked the constitution and of the circumstances that prevail in that province—I should like to take

the case of the Bombay Presidency, which is one of the most advanced Presidencies. What are the circumstances there? Even now we have communal trouble; a month or two ago we had communal trouble in Sind, and last year we had trouble in Gujerat. It was not only a question there of asking for Europeans as magistrates, judges and officials, but they even protested against the public prosecutor belonging to either of the communities, and said that the prosecutor who conducted the cases should not belong to either community. It is very regrettable that that should be so, but things are in that bad condition. Each community lacks confidence in the other. I am not going to accuse any particular community, but those are the facts.

In these circumstances it is little use saying, "Oh, we shall be able to manage"; we may create disasters. I should like to go very fast; I should like to go 120 miles an hour rather than 60 if it were possible to do so; but some solution must be found for this problem; for it is a very delicate one. Most of the Provincial Committees when faced with this problem did not know what to do. We were very anxious to do something one way or the other so that we might have full responsible government in our provinces but at the same time we were faced with difficulties. We shall have to put our heads together and try to arrive at some solution.

With regard to having a Chief Minister, some of the delegates have expressed the fear that if the Governor is left free to make his own choice or selection he may do mischief, but I dispute that. Surely the Chief Minister, if he is left himself to make a selection or form a Cabinet, will do the greater mischief. The Governor has no axe of his own to grind. Unfortunately we cannot compare the circumstances which at present prevail in India with the situation in Parliament here. You have not communal parties here; your parties are on quite a different basis. Most of our able and influential leaders in India are Liberals, but they are left without any following because they are fair and straight; it is only communal leaders at present, whether they belong to the Mahasabha or Congressor are Muhammadans or whatever it may be, who have an influence and a following.

It is in the interest of the Chief Minister himself that the selection should be left to the discretion of the Governor. If the circumstances are as favourable as are those which prevail in Madras, as a Parliamentary man the Governor will himself select a Chief Minister and on his advice form a Cabinet, but he should not be bound down to do that if the circumstances are not favourable. He may not have a Chief Minister at all, or he may form the Cabinet himself and appoint a Chief Minister, or he may appoint a Chief Minister and then select the rest of the members of the Cabinet. Even if he does select a Chief Minister that Chief Minister will be able to tell his party that the Governor has had the last voice in the matter; otherwise even if he is the leader of the majority party he will be thrown out the next day and his own party will desert him if he does not work

on communal lines. It is said that the Chief Minister can do what it is proposed the Governor should do, but that is not the case as things are at present. Twenty years hence we may have parties on a different basis, but as things are to-day everything is done on a communal basis and in every walk of life we show this communal narrow-mindedness. If the Chief Minister is anxious to have a representative Cabinet selected from the different groups, I am positive, from my experience of twelve years in the Legislature and ten years in the Bombay Council, he will be left next day by his followers. That has happened in our Council. Where the Government has been weak and has given way to the Ministers they have ignored the Depressed Classes, the Muslims, and everybody else. In view of that experience I think it would be in the interest of the Minister who considers himself Chief Minister that he should not have the last voice in forming the Cabinet, but that the Governor should have the last voice.

As for a Second Chamber, I will not say what our community has decided, since I had the privilege of being chairman of my Provincial Committee. We considered this question very minutely and carefully, and came to the conclusion it was in the interests of the Presidency and of all the communities and of all classes, whether agriculturists, labour or capitalists, that we should have a Second Chamber in our Province, and I stick to my views in that respect.

With regard to the protection of minority interests, I do not think we could be satisfied merely by a convention, which might take about thirty years, or by something in the Instrument of Instructions; I think it ought to find a place in the Statute itself. I am very keen on the overriding powers recommended by the Statutory Commission for the Governor being accorded.

*Sir P. C. Mitter*: Previous speakers have referred to special difficulties with regard to Law and Order in Bengal. Speaking with a full sense of responsibility, I wish to say there is no case for treating Bengal on a different footing on this matter or for accentuating the difficulties of Bengal with regard to Law and Order. However, as certain observations were made by the noble Marquess who is now presiding, and in whose judgment I have the utmost confidence, I desire to say something with regard to what fell from him. He referred to an incident which occurred in 1917. As a member of the Legislative Council as it was then I remember that incident, but I would point out that there is a great difference between 1917 and even 1921, and certainly, I hope, 1931. Having worked as a Minister and as a Member, I can say with confidence that whatever communal differences there may have been outside, there has always been an endeavour inside between Hindus and their Muhammadan colleagues to settle those communal differences inside the Cabinet. I am sure every Governor will bear me out in that. We have recently had communal trouble in Bengal; there can be no question about that; but so far as communal troubles of which we have had notice in advance are concerned, I can bear testimony to the fact that the Muslim, whether a Minister or a

Member, and the Hindu, whether a Minister or a Member, has always tried with his colleague to settle those differences. Happily in many instances where there was notice in advance those differences were settled at the instance not only of the Muslim or Hindu Member or Minister but of their respective followings in the Legislative Council.

I quite admit, however, that these communal troubles may come all of a sudden. If these communal troubles do come all of a sudden, and if the particular Minister in charge of Law and Order has to deal firmly with them it should not be apprehended that if that Minister happens to be a Hindu or a Muslim his action is likely to be criticised by the other communities. As I remarked on Friday last, we cannot run away from the realities of to-day, and each one of us, including myself, is probably rather too much obsessed with the realities of to-day. If that Ministry has a majority, however, I am sure it will be a majority composed both of Hindus and Muhammadans, and the Minister, be he a Hindu or be he a Muhammadan, will have to look not only to the Muhammadan section of his followers, but to the Hindu section. A Muhammadan will have to look to the Hindu section of his followers as well as to the Muhammadan section, and a Hindu will have to look to the Muhammadan section as well as to the Hindu section.

Again, it has been my experience—and I am sure it has been the experience of many others—that with added responsibility there comes added strength. Look at what is going on in the different Legislative Councils with regard to the transferred and reserved departments. With regard to transferred departments, the added responsibility is shown by the fact that on perhaps only one occasion was there a departure from that responsibility, and that was rapidly made good; generally speaking the Legislative Councils, even those which were against working the constitution, have acted with responsibility.

Giving the matter my best consideration, I say that if in any Province Law and Order ought to be transferred it is in Bengal. Let me not be misunderstood. If there is any Province where Law and Order has created difficulties it is in my Province. Quite apart from communal questions, where is another Province where you have a terrorist movement such as you have in Bengal? I make bold to say that if Law and Order were in the hands of Indians, perhaps that movement could have been checked—I do not say wiped out—more effectively. Let me refer, Sir, to your own administration. How was it that when you left not even the terrorists criticised you? It was because you tried to take into account public opinion, and at the same time you were firm. But, whenever public opinion has been ignored, those who are against the maintenance of law and order raise their heads, and the mere enforcement of law and order will never be able to suppress them.

I know, Sir, that you can always see the other point of view when the other point of view is presented to you, and, as I value

your testimony very much, I should like to make an appeal to you. I know you have not the obstinacy of weakness; you have the strength of the strong. You will approach the question from this point of view, and, approaching it from this point of view, let us examine the position.

Let me assume for a moment that Law and Order are in the hands of an official Minister. That official Minister can at the most have but the most grudging support of his colleagues. What will be the type of his colleagues? There will be no official bloc. The type of colleagues from whom the official Minister can expect support will be a type, I venture to submit, which will not have the confidence of considerable sections of their countrymen represented in the Legislative Council.

What can the official Minister do? At present he can do a lot of things; at any rate he can get his will enforced. But when there is no longer an official bloc, and when the Governor, in spite of whatever reserve powers you may give him by the constitution, will be either powerless or, if he has the strength of the weak, will set the whole country ablaze, what will happen? The only alternative will be for the Governor to call in martial aid. If the Governor does not listen to the advice of his Ministers, whether the Ministry is formed from a majority party or is a coalition Ministry, the whole countryside will be ablaze; do not forget that. On the other hand, if instead of an official Minister you have a Minister who has the support of his majority, I am sure that in an emergency of that character that Minister will call to his aid not only his own following but, since we are all agreed we are going to have joint responsibility, the following of all the Ministers. Those Ministers, with joint responsibility, will place before the elected representatives of the people what the position is, and show the necessity of maintaining law and order. If there be some Hindu who is communal, some one from the Hindu Sabha for instance, or some Muhammadan who approaches the question from a communal point of view, I am sure there will be other Hindus who will impress on this Hindu, and other Muhammadans who will impress on that Muhammadan, the supreme necessity, in the interests of the people themselves, of the maintenance of law and order.

I do not for a moment ignore the fact that there may be occasions of communal conflict, but the best solution is not merely to take action after the event but in the general formation of public opinion, which is far more important than the police force, however efficient. But, Sir, I speak with a full sense of responsibility as one who has borne his share of the burden of the government of the country, and I ask how is it that the communal question, which I knew in Bengal 15 years ago, is again raising its head? I do not question the efficiency of the police officers. I have the highest respect for some of them, particularly the Head of the Police in Calcutta. Nor do I question the motives or the efficiency of the Indian Civil Service. I have had the privilege of working with mutual confidence with members of that service. The Civil

Services has always tried to be efficient, but it is necessary also to be able to appreciate the mentality of the people. There have been people who have been able to appreciate that mentality, and at the same time to be efficient administrators. Bengal is a Province where Hindus and Muslims are not in conflict and where education is well advanced, but the unemployment problem does give rise to conflict. In that Province, above all others, you do require the help of the non-official. You require efficiency combined with understanding. Therefore I venture to say as my considered opinion that official ministers, whether they may answer in other Provinces or not, will certainly not do in Bengal. As regards a minister who may be a member of the community from which my friend Mr. Wood comes, it would depend on him whether or not he made good. I am one of those who believe that the future policy should be for Hindus and Muslims, British and Indians, to work together with true understanding. If the British elected member remains a member of the Council I would not object if he were in charge of Law and Order, but even when the British minister be in charge of Law and Order it must never be forgotten that he and his colleagues are jointly responsible to the House, and he must act with a proper sense of responsibility. I say, therefore, that there is no case for treating Law and Order in Bengal on a different footing from that in any other Province, but there is every reason for treating Law and Order in Bengal from a more progressive standpoint.

There are only one or two other points on which I may address the sub-Committee. We have discussed the question of the chief minister at some length. Much of the discussion is really based on a misapprehension. We have been told that statutory provision is not wanted for a chief minister. If there be no statutory provision it stands to reason that the minister who can command a majority, and in commanding that majority, can command the votes of other sections, stands in a stronger position in commanding the majority. Some people are apt to think that if you have 50 to 60 per cent. of the members in one community you at once get the support of those members. We had 39 Muslims in our legislative council, and with the official bloc the total was 44, and they had more than an ample majority in a House of 140. But how is it in Bengal? From the mere fact that a number of members of the legislative council belong to one community, be that community Muslim or Hindu, you cannot expect that every individual in that community would give his support. I speak from ten years experience. A party in a wider sense of the term—a party with a programme to go before the country—will not be possible so long as we have communal electorates. I am merely stating my opinion. If there be no statutory provision for the chief minister, the particular gentleman who should command the confidence of the majority is hardly likely to do so unless he has the support of the Hindu, the Muslim, the backward classes, the Indian Christians, and others. And the more varied the composition of his party, the greater will be his strength.

My remarks about the chief minister disposed to a certain extent of what I had to say about minorities. For minorities I think it is not possible to have statutory provision, but it is possible to draw the attention of the Governor in the Instructions to the existence of the minorities, and, as has been pointed out by Lord Zetland the constitution cannot run unless there is the utmost confidence between the Governor and his ministers, particularly the most important, the chief minister. Without a statutory provision, the Governor, even if the chief minister system be adopted, will have it open to him to point out to the chief minister, that he is neglecting such and such an interest which is very important, and that if the members representing that interest can be brought in and enabled to work together it will be an asset and a source of strength. (*Mr. Henderson at this point took the Chair.*)

*Sir Ghulam Hussain Hidayatullah* : I still adhere to my opinion that no rigid provision can be made in a statute for the appointment of a chief minister. My friend who has just sat down stated that in Bengal they cannot form a party which can command the confidence of very large sections of the House. Another friend from my part of the country, Sir Cowasji Jehangir, was anxious about the statute.

*Sir Cowasji Jehangir* : I did not say statute.

*Sir Ghulam Hussain Hidayatullah* : At least he was laying stress on the point that there ought to be some provision. Now what are the parties in this part of the presidency? There are the Muhammadans, the non-Brahmin group, or I might call the other territorial group, the majority group. How many Liberals are there? Only 5 or 6. We tried to form in Bombay, when there was a scramble over the formation of a ministry, certain parties, but there were no parties. Surely it is impossible that a rigid provision in the statute for the appointment of chief minister will work in all the presidencies. I may refer, on the question of minorities, to the fact that certain other countries have had statutory representation of minorities. In Canada the principle of such representation has been recognised as valid and regularly applied since the first ministry of thirteen members formed in 1867; 5 of those members came from Montreal, 4 from Quebec, 1 represented the English speaking population, and the others came from other parts. In the case of an important minority like the Muhammadans, a provision ought to be made for at least one Muhammadan by statute to be in the cabinet. I do not like the members of my community to be left to the tender mercies of the majority. By convention it also might be made imperative that a member of a minority like the Muhammadan or some others might be represented in the cabinet, but the danger of a convention is when the majority may not follow the convention. Therefore there ought to be authority given to the governor to enforce the convention.

Coming to law and order, everyone of us is interested in its preservation. Whoever be in charge of law and order, whether

Hindu, Muhammadan, or European is always subject to a certain amount of criticism, and I might say on my past experience that Europeans are subjected to more criticism than the Indian members in charge of law and order. It is admitted on all hands that the subordinate officers from the rank and file of the police are very well disciplined, very loyal, and have carried out their duties under very difficult circumstances, even against their own co-religionists. If the rank and file can conscientiously carry out this duty I fail to see how a responsible minister would not also discharge the duty conscientiously. The Indians in charge of law and order, though they were in a safe and secure position, not subject to the vote of the council, have nevertheless carried out their duties conscientiously, without any consideration of caste or creed. Why, therefore, should not a minister responsible to the legislature carry out his duties with equal conscientiousness, and rise above racial considerations? Moreover, in the cabinet we have joint responsibility. There will be other ministers who will have to accept this policy before he launches it, and so there is a control over him within the cabinet.

My experience of the Montagu Chelmsford Reforms has been that they have failed because of the division of the subjects into reserved and transferred. The elected members of the Council have always resented the fact that the reserved subjects are not subject to their vote. They have always attempted to level their criticism against the reserved subjects, because if they throw out any legislation in the reserved departments it can be certified. Now we are transferring most of the subjects, including Irrigation and Land Revenue, to make only Law and Order reserved will be very difficult and will be an untenable position to take up. Even when we had Councils in which there was an official bloc and nominated members a good deal of criticism was levelled against the department of Law and Order. If we do not transfer Law and Order I am afraid the position of the Ministers who have accepted joint responsibility, with only one official or non-official or whoever it may be who is not responsible to the Legislature, will be very difficult, and they will find it very difficult to carry on. The Ministers who are responsible to the Legislature may feel that they cannot leave their colleague who is in charge of a reserved department in the lurch and ask all their followers to go and vote against him, but if they follow his advice in regard to a particular matter which is not approved by the Legislature I am afraid they will lose their own adherents. Their position will be a very awkward one.

In fact, the separation into reserved and transferred subjects has prevented the Ministers from forming parties, because the members of the Legislature have always said to them "If you will join us in attacking the reserved departments we will blindly follow your lead, but, when the question of the reserved departments comes up, you Ministers who belong to the transferred departments for the sake of policy throw your votes with the reserved side of Government." That has been a great obstacle in



the way of forming Ministries. In my opinion, therefore, Law and Order should be transferred.

Coming to another question, the powers of the Governor *vis-a-vis* his Executive and the Legislature, and so on, I will only say a word about this. We have said there will be a Ministry and that there will be joint responsibility; now comes the question of whether the Governor should be bound by the joint advice of the Ministers in all matters or not, or whether he should be given certain overriding powers. To my shame I must admit that there are communal differences among us. My friend Dr. Ambedkar complained of the tyranny of the majority over his class, and went to the extent of suggesting not only that the Governor should have overriding powers but that the Central Government in addition should have those powers. When I bear that in mind, and when I find there are no stable parties yet in my country which can ensure a majority of the elected members—and we have not worked this constitution yet—I think I am in favour of giving the Governor overriding powers in some matters, but at the same time I would suggest that provision should be made in the Statute that as soon as we have worked the constitution properly those overriding powers should be eliminated.

Personally, I am against the idea of a Second Chamber; I think it would merely create difficulties and be a fifth wheel in the coach, but I have left my mind open until I hear what will be the composition of this Second Chamber, what will be the franchise for electing members to it and what will be its functions. If it is merely a Second Chamber, a revising body in regard to Bills, I do not think it is necessary. I fail to understand how this Second Chamber will protect the rights of minorities. We have safeguards in the overriding powers of the Governor for the protection of minorities and in regard to other matters, and if anything liable to disturb Law and Order occurs and the Minister does not take timely action there is the overriding power of the Governor which can be exercised; in order to preserve the safety and tranquillity of the Province he can intervene. We agree that the Governor should be given certain overriding powers, and therefore he ought to be given power to restore demands which are rejected, for the purpose of carrying out those powers, and powers of certification in regard to Bills so far as those overriding powers are concerned.

I fail to see how setting up a Second Chamber would prevent the Governor from exercising certain overriding powers which have been suggested by the Simon Commission. It is suggested he should have overriding powers in order to secure the due fulfilment of any liability of Government in respect of items of expenditure not subjected to the vote of the Legislature. How would the Second Chamber help there, unless this power is given to the Governor? We may not have Security Services hereafter, but at present we have them and they will continue; and therefore if the salaries of the existing staff are cut down the Governor ought to have the power to intervene. Overriding powers are also suggested

to secure the carrying out of any order received by a Provincial Government from the Government of India or the Secretary of State, with a view to safeguarding the administration of Central subjects and so on. Those powers are necessary, but should be very carefully defined, so that we may not leave room for the re-introduction of powers of control over the whole Provincial field.

*Raja Narendra Nath*: I should like to make a few remarks on the subjects which have been under discussion this morning. First of all, with regard to Second Chambers and the desirability or necessity of creating them in the Provinces, I am one of those who admit the utility of Second Chambers. They certainly exercise a steadying influence over the Lower Chamber. The Punjab Government, however, has not proposed a Second Chamber and there is no general demand for it in the Province. It is not that there is any lack of men who would be suitable as members of a Second Chamber, or that they are unwilling to exercise their influence on the policy and administration of the Province, but because of reasons peculiar to the Province itself. Provinces which have proposed the creation of Second Chambers have at the same time come forward with the proposal that the preponderant influence of landlords should be counter-acted by the representation of other interests. The Maharaja of Darbhanga referred to the matter, and as far as I have read the proposals of other Governments I know that the necessity of representing interests other than those of landlords is admitted.

If that principle were admitted with regard to the Punjab it would create a difficulty to which I do not wish to refer in clear words. We have many controversial issues of a similar nature to settle before we create another one, and therefore for that reason I am not asking for the creation of a Second Chamber in the Punjab, although I think that, if one were created, it would exercise a healthy influence; though in regard to that many of my friends may differ from me. However, that is my view and I must give expression to my own views. The difficulties are of the character at which I have hinted.

The next controversial question which has been discussed is the transfer of Law and Order. I listened very attentively to the speech delivered by Lord Zetland, and I admit there is considerable force in his arguments. At the same time, I know what has been urged upon the other side, namely that there have been Indian administrators who have with great impartiality administered Law and Order and have inspired confidence in all. On a small scale in earlier times I have had my own experience in this matter, and I think I was able to administer Law and Order to the satisfaction of those below and those above. But it is said that the circumstances were quite different; the Indian officers who administered Law and Order were not responsible to the Council or to a populace or to an electorate. It may be so, but everything depends on how that electorate is composed. I will not trench on controversial questions, but it seems to me that every sub-

Committee has got something in common with sub-Committees which have been appointed. I would not encroach on the functions of other sub-Committees, but it seems to me that if we are able to solve minority questions to the satisfaction of all, most of the difficulties will disappear.

The mentality evinced by Indian administrators and Indian Ministers during the last 40 years will be different from the mentality which will be created under the new circumstances, if we are able to grapple with the problem to which I have referred. In that hope, therefore, I would support the transfer of Law and Order, because the performance of duties is learnt by undertaking responsibilities and learning how to discharge them. An atmosphere has undoubtedly prevailed during the last 40 years, due to circumstances to which I am not referring in detail, which makes the outlook for the future also somewhat disappointing; but if the circumstances are changed I think we can look forward to a better and healthier atmosphere.

With regard to the inclusion of minorities in the Cabinet, there seems to be a consensus of opinion that important minorities should be represented in the Cabinet, and though no statutory provision is necessary a sort of convention may be created, or a clause may be inserted in the Instrument of Instructions from the King to the Governor drawing the attention of Governors to the desirability or necessity of including minorities in the Cabinet. I am not one of those who say that the Simon Report, or any superstructure built on it, should not be touched with a pair of tongs. I have come across on the same boat as Sir A. P. Patro, and I have carefully studied the Simon Report and the Despatch of the Government of India based upon it; and I think the solution which has been suggested by the Government of India is the most satisfactory. They say that they do not fail to recognise the strength of minority apprehensions, and that they give general support to the suggestion put forward by the Government of the United Provinces that the Instrument of Instructions to the Governor should include an obligation to attempt to secure the representation of a minority community in the Cabinet where such a minority is of sufficient importance to warrant it. I think that would meet the case; I do not think we should encumber the Statute with provisions which can be made otherwise.

With regard to the appointment of a Chief Minister, I think undue importance is being attached to that term. There will always be the leader of the majority party, by whatever name he is called. In the Punjab there has been no Chief Minister, but there has been a Minister who has had the largest following. He is not called the Chief Minister, but words do not matter; so long as the man who commands the majority of followers in the Council is consulted it is all right. I think some of the discussion about a provision in the Statute or elsewhere with regard to the appointment of a Chief Minister has been unnecessary.

*Sir Chimanlal Setalvad*: We have already occupied considerable time in debating the various points that are before us, and I will

be as brief as I possibly can. I do not share the view to which expression has been given by my friend Sir Nawaz Bhutto; he drew a very gloomy picture of the state of the Presidency of Bombay, and if his picture is true it is really a plea for abolishing all transferred subjects, scrapping even the Montagu-Chelmsford Reforms and going back to autocratic government.

Fortunately, however, the picture drawn by him in my humble view, is not correct at all, and though I do not say for a moment that there are no difficulties, it is not for us unduly to exaggerate them, and to say that this or the other thing cannot be done. Considerable discussion has taken place on the question whether law and order should be transferred or not. Various doubts and anxieties have been expressed. It has been suggested that the department of law and order should remain with a non-official minister, that the police should be in the hands of a neutral authority—I do not know exactly what was meant by that—and Lord Zetland expressed anxiety with regard to the state of things in Bengal, and doubts as to the desirability just yet of transferring law and order to ministers responsible to the legislative council. But I implore him and all the members of this Committee seriously to consider that, while you are doubting and hesitating whether Hindu or Muhammadan can be trusted properly to administer law and order, events are marching fast in India, and if you continue to hesitate and to doubt and to weigh this and the other, take heed—I am saying it in all seriousness—if there is no real transfer of power there will be in a few years no law and order left in India to administer, and you will have to go on administering the country by force. You have to make your choice. There may even be mal-administration for a time if you transfer law and order, but the choice you have to make is as to whether you will, so to speak, in the hope and expectation and firm belief that ultimately, when responsibility is thrown upon the people, things will come all right, act according to that faith, or whether you are going to take the alternative of disturbing law and order continuously, not in one Province but in the whole country, and carry on rule with armed force. Sir, I say this with all seriousness, and with all emphasis, not by way of any threat, not by way of trying to frighten anyone, but I say it because I feel deeply about it. I feel convinced as to the truth of what I am saying, looking at the events which were happening in India while we were there, which are still happening after we have come here, and which are bound to happen unless the British Government are prepared to do something big that will arrest the imagination of the people and bring them back from the ways in which they have travelled, putting before them something which they think is worth working for. Unless you do that, things to my mind are hopeless, and I say this in all seriousness, I, who have always been a supporter of law and order, who have always been, as we Liberals have been, reasonable supporters of Government, we who have surrendered large incomes in order to take up and work for reforms, we who know the people, we who know the conditions obtaining in our Presidencies—I say

that I warn you again that if you go on tinkering like this, hesitating and doubting whether this can or cannot be trusted to the Indians you are committing the greatest blunder in history. I will pass on.

As regards law and order, look at the state of things in Indian States like Hyderabad and Kashmir. In Hyderabad 90 per cent. or more of the population is Hindu. There is a Muhammadan ruler, a Hindu chief minister, and law and order is administered there by the Muhammadan ruler and a predominantly Muhammadan cabinet over a 90 per cent. Hindu population. Is there any trouble there? In Kashmir we have the reverse position. There we have a Hindu ruler, with a very large proportion of Muslim subjects. Law and order is administered by members of one community though that community is a minority in the Province. If you once throw responsibility on the shoulders of the Indian ministers I do not see why there should be any trouble there at all. Therefore I appeal to you to put the utmost confidence in the Indian, if you are going to trust him with self-government, and see what happens. I assure you, you will not be disappointed.

Coming to the various other subjects about the overriding powers of the Governor, I submit that if you have full autonomous government in the Provinces, you cannot have vested in the Governor the present powers of interference. For instance, at present he has the power of certifying any bill or law which the legislative council has rejected. He has the power to restore any grant which the legislative council has thrown out on the presentation of the budget. That power acts in a very vicious manner. It makes the legislative council irresponsible, it makes the executive also irresponsible in a sense. Let us say that the question of a particular grant or a particular bill is put before the legislative council, the council, if it has some grievance, may throw out that particular proposal irrespective of its merits, because it is fully conscious that this will not bring the government to a standstill, and that the Governor will restore it. But if they knew that when they threw it out the responsibility would be upon them and upon their ministers to carry on the administration, they would think twice, thrice and many times before they threw out any grant except on its real merits. The present power of restoration of grants engenders irresponsibility in the members of the council, because, as I have pointed out, they are sure that whatever pranks they play, the King's Government will be carried on. There is the power of restoration, and they know full well that it will be restored. Therefore I submit that those powers of restoration of grant and certification should go. The powers vested in the Governor under Section 52 (3), in which he is entitled to take action contrary to the advice of his ministers should also go. I quite admit that if there is breakdown in the constitution or if the tranquility and peace of the Province may so require, he may be given certain powers circumscribed by proper conditions.

Then, in this connection, the question of Second Chambers has been put forward. In my humble view it would be a great mistake

to institute Second Chambers in the Provinces. We have the considered opinion of a majority of the local government against the institutions of Second Chambers. If you institute Second Chambers you produce occasions for conflict and strife, and instead of smoothing the work of administration you will create difficulties where none exist at present. Some members suggested, very disinterestedly, that a Second Chamber will be a very good thing for the protection of minorities and other interests. I fail to see how the Second Chamber is going to protect the minorities, and, as has been pointed out already, you will have immense practical difficulties. What is the Second Chamber to do? Is it to have co-ordinating powers, and the same sort of powers with regard to the budget as the lower house? If you do that, you immediately put both Houses in conflict. Are they to have a co-ordinated voice in every matter considered by the legislative council? It would be very difficult in practice to adjust the relations of the two Houses, and occasions for conflict would be created where at present none exist.

Then with regard to the suggestion about the Chief Minister, I have carefully heard what has been said against it, but I still hold to the view that the best system is to have a chief minister who recommends to the Governor the names of his colleagues. No doubt the Governor, if there be special reasons for not accepting his recommendation, must refuse it, but I do not see how you are to have the principle of joint responsibility working unless you have the chief minister. How can you put together three or four individuals who are not of the same mind and are selected by the Governor independently of each other? How are you to get them to work with joint responsibility? You must devise some system by which the ministry brought together is one that will work in common, and that can only be done by following the ordinary procedure adopted in these matters. The Governor sends for the persons having the largest following and asks him to undertake the administration and suggest to him the names of his colleagues.

Then, Sir, a lot has been said about minorities and their protection, that a certain provision should be statutory or a convention, or that some other method should be taken. May I appeal to all the members of this Committee that we should not complicate the issues before us by going into the question of minorities. The question would include their proportion in the councils, their places in the cabinet, in the services, and all the various safeguards, and this question is going to be considered by a special Minorities Committee. All these questions will have to be considered in a Committee with other people who are not here to-day, but who are interested in the question. As some members know, there are conversations proceeding on these very subjects between the people who are working with regard to Hindu and Muslim minorities and other questions, and it is very likely—I hope it will be so—that these questions will be satisfactorily settled by mutual agreement. Therefore let us not complicate the situation by discussing piecemeal the question of minorities as regards the Provinces. The

question has to be looked at as a whole for the whole of India. Let that subject be considered comprehensively by the special Minorities Committee which must deal with all these questions, their place in the Cabinet, in the services, in the legislative councils, and other analogous questions. I beg of you to leave that question to be dealt with by that committee where all these considerations and many more may be considered, and some proper solution reached.

*Raja of Parlakimedi* : I rise to offer just a few remarks in favour of second chambers. The institution of second chambers throughout the Indian Provinces, I feel, is very necessary. The Provinces are vast, their population huge, their interests varied, and in many Provinces these interests clash with one another. Not long ago in my Province an attempt was made by the party in power to deprive certain owners of property of rights which they had held hereditarily for ages, and had it not been for the support which those who were threatened received from the Central Government, legislation would have been carried of a very drastic nature with disastrous effects. India, like other parts of the world, has vested interests which are subject to attack, and unless there is such an amount of safeguard, the minority community run a great risk. The democratic system of government is, after all, an experiment, simply grafted upon the oriental mind, and countries that have worked the democratic system of government for long periods have found the necessity of continuing second chambers. It is necessary for India to have, for the time being, if not for ever, second chambers. These need not be entirely for a certain section of the land interests. The land interests in India have never tried to deprive others of their possessions or to encroach on their rights. Their ideal has been always to be useful to others and to further the advance of whatever comes under their control. It is the principle of the landed interest to-day also to see that, while seeking protection from encroachments on the part of others, it should not itself be a stumbling block in the way of other interests coming into the Second Chamber. In addition to the land interests, there are other interests, which also I have had occasion to study, and which have been rather neglected by legislatures in certain Provinces. If a Second Chamber were instituted which should include commercial interests, the land interest, and also the services, together with people of long experience, I am sure it would be a very desirable institution to hold the balance equal, and also a source to which minorities and vested interests could look for protection.

*Sir Cowasji Jehangir* : Since this question of an official minister has been raised by so important a member of this Committee as Lord Zetland, I may be allowed to say just a few words. Lord Zetland has agreed to the transfer of all departments, but from his experience in Bengal he has come to the conclusion that law and order should be in the hands of a man who is neither a Hindu nor a Muhammadan.

*Lord Zetland*: I did not say that this should necessarily be so, but that there should be a discretion.

*Sir Cowasji Jehangir*: I stand corrected. Lord Zetland thinks that there should be an opportunity for the Governor and the chief minister to appoint to this post a man who is neither a Hindu nor a Muhammadan, and in order to do that he has suggested that an official should be a minister. I understand, therefore, that his suggestion amounts to a possible safeguard with regard to law and order. Well, Sir, we have heard a good deal from other members as to the success with which Indians have administered the department of law and order in several Provinces. I am quite prepared to admit that these Indians had been members of the Executive Council. I understand that some Englishmen who have had experience in India may feel some hesitation on this subject, but Lord Zetland has given us an example to illustrate his point. He is apprehensive of adverse criticism of even just and honest conclusions and actions, and of the effect which this might have upon the morale of the police. May I point out that since Lord Zetland left India we have heard not a small amount of criticism of English members of Government all over India holding the portfolio of law and order. Such criticism has not come only from Hindus and Muhammadans, I venture to suggest that it has also come from members of his own community, and sometimes I even believe it is a truism to say that a man holding the portfolio of law and order cannot do anything that is right to-day, and it follows absolutely, as day follows night, that he is going to be criticised. I am afraid I cannot admit the argument that criticism of even justifiable actions on the part of the Minister, whether a Hindu or a Muhammadan, would affect the morale of the police. If that were so, the police would have very little morale left by now.

We have heard that the police have stood up to the great task which has been placed upon them with conspicuous loyalty to their Member and to the Government, and therefore the main argument which it seemed to me Lord Zetland put forward to support the Governor or the Chief Minister appointing an official does not really bear examination.

The second argument was that if he were a Hindu the Muhammadans might criticise; if he were a Muhammadan, the Hindus might criticise—the old communal question. But to-day, with an Englishman holding the portfolio of Law and Order, it is both Hindus and Muhammadans who criticise him! He is accused to-day of siding either with the Hindus or with the Muhammadans; he is sometimes accused by both for other reasons. Therefore in critical times, in times of difficulty and of communal tension, whether you have a Hindu or whether you have a Muhammadan or whether you have an Indian who does not happen to be either a Hindu or a Muhammadan, I am afraid he will be criticised and his just motives will be impugned. You are not, therefore, going to get over that difficulty by suggesting that in such times it would be an advantage to have an Englishman. I firmly believe that in



these critical times it is a distinct advantage to have an Indian—a distinct advantage.

Sir Chimanlal has very eloquently appealed to you all in the name of both England and India, and I need not add to that appeal. I would ask you to go forward with courage and, if you have any apprehensions, to choose the lesser evil. We who have to suffer, we who will lose most in India by disorders, by anarchy, by terrorism, we are prepared to take our courage in both hands. Many of us, who five or ten years ago would have hesitated to hand over Law and Order to a Minister, are not only prepared to do so now, but urge and advocate that it should be done for our own safety, and in the name of the connection between Britain and India.

I must just say one word about the question of the Chief Minister.

*Chairman*: Did not you give us that the other day?

*Sir Cowasji Jehangir*: Yes, but when you were absent Sir Ghulam Hussain mentioned that I had asked for a Statutory provision. I did not ask for a Statutory provision for a Chief Minister.

*Sir Ghulam Hussain Hidayatullah*: Then we both agree.

*Sir Cowasji Jehangir*: I asked that the matter should be dealt with in the Instrument of Instructions to the Governor.

*Sir Ghulam Hussain Hidayatullah*: I said the same thing.

*Sir Cowasji Jehangir*: There is a difference, and I really cannot see why there is all this objection. There are only two alternatives; either the Governor chooses his Ministers with the advice of one or two prominent elected members of the House, or one prominent member picks out the names of the Ministers for the approval of the Governor. The Governor will have the right to disapprove of any name, and he will have the right also of carrying out the directions he may be given under the Instrument to see that minorities are safeguarded. The great advantage of having a Chief Minister who will choose his own men and get them approved by the Governor is that there will be joint responsibility.

*Sir Ghulam Hussain Hidayatullah*: Without a large party at its back.

*Sir Cowasji Jehangir*: We have heard about the Governor's overriding powers, and I want to ask a question about that. A good deal has been said about Second Chambers. Is it open to us on the present occasion to raise the question of the life of the Executive, as to how many years the Executive is to last and as to the circumstances under which a vote of censure can be moved, or does that come under a separate head?

*Chairman*: I have already announced that I do not see how you can separate any of these questions from the composition and constitution of the Provincial Executive.

*Sir Cowasji Jehangir*: Under those circumstances it is a new issue altogether that I propose to raise, and I am afraid I shall have to deal with it. If it does not come under this head I will resume

my seat, but if you rule, Sir, that it does come under this head I shall have to deal with it, because it has not been touched on yet.

The life of the Executive, I presume, will be the same period as the life of the Legislature; if the Legislature is to have a life of four years I presume the Executive will also have a life of four years unless it is turned out by a vote of censure or by the rejection of a Bill or grant which the Executive considers of such importance that it chooses to tender its resignation. I think we must consider by what majority the House can pass such a vote of censure. We have heard a good deal about the desirability of stability; we have heard a good deal about the groups that exist in the Legislatures in India, and there is genuine apprehension in the minds of some that a Ministry under certain circumstances may undeservedly be turned out. Therefore, to give some stability to that ministry, it is necessary to consider ways and means. On that account I am one of those who believe that it would be advisable to provide in the Statute that no vote of censure should be carried without a two-thirds majority. That will give the stability which is wanted to the Ministry and which will help us and help those members of the British Delegation who are so anxious to provide stability by the overriding powers of the Governor.

I am not in favour of those overriding powers of the Governor, because our experience of dyarchy has shown that these overriding powers are often made use of on occasions which the originators and authors of the legislation never intended. I do not wish to go into details, but we have had experience of that and therefore, anxious as we are to have as little interference as possible from the Governor, and anxious as we are that a Ministry should be stable, I think it advisable that this suggestion of requiring a two-thirds majority to turn out a Ministry by a vote of censure should be considered. I would even go further and would be prepared to consider a definite life for the Ministry, as in America, say three or four years, and have a Ministry which cannot be turned out for three or four years.

*Mr. Zafrullah Khan*: Also at the Centre?

*Sir Cowasji Jehangir*: I am not talking of the Centre but of the Provinces.

*Sir Chimanlal Setalvad*: Then it is not responsible to the Legislature.

*Sir Cowasji Jehangir*: It is in a way, and I should have it appointed not by the Governor but by the Chief Minister in consultation with the Governor. I would suggest for the consideration of the sub-Committee that for the stability of the Ministry we should have these two provisions. I am not going to be dogmatic on the question, but since no one has alluded to these very important matters, and since under your ruling, Sir, they fall under this head, it has been my duty to place them before you for consideration.

*Chairman*: It is time for us to adjourn. I have some half-dozen speakers still on my list, and I think you will agree with me

that when I have exhausted those on my list I should try to give you what I conceive to be the sense of the Committee on the various points which have been discussed. I think we shall all agree that we cannot go round the table again; at least, I hope so. I have given a fair amount of latitude, and I hope that by about noon to-morrow I shall be able to sense the feelings of the sub-Committee on several of the points. If I feel satisfied that any point requires further discussion I shall separate it from the others and suggest that we discuss it a little further. We will hold two meetings to-morrow, at 11 A.M. and 3 P.M.

*(The sub-Committee adjourned at 4:45 p.m.)*

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PROCEEDINGS OF THE FOURTH MEETING OF SUB-COMMITTEE No. II  
(PROVINCIAL CONSTITUTION), HELD ON 9TH DECEMBER, 1930.

*Sir Robert Hamilton:* Mr. Chairman, the subjects which we have been discussing in this Committee have been very fully discussed in detail and I do not propose to deal with them at all in detail; but I thought that perhaps the Delegates from India particularly might desire to have an expression of opinion with regard to one or two of the points from another member of the British Parliamentary Delegations.

I should like to say at the outset that I think we must remember, having regard to the discussion which has already taken place, that in the matter of the transference of law and order we have not at all considered what the relationship of the Provinces to the Centre will be, and it might from some aspects have been more desirable if we could have carried on our discussions here having some knowledge of what that position was likely to be. I only mentioned that in passing because it is a very important point which we shall have to bear in mind.

With regard to the heading which is entitled: "Provisions to safeguard the administration of law and order," which we are considering, I may frankly say at once that I consider the best safeguard that can be given is the fullest responsibility that can be placed on the Minister. From whatever point of view you may regard it, responsibility must be the final and ultimate test, and if a Minister cannot pass the test of responsibility he cannot pass anything. Now, having said that, I should like to say, a word or two with regard to the official Minister. It is obvious from the views which I have already expressed that I, in company with many of those who have already spoken—I think almost all who have spoken—feel that there are very great objections to an official Minister being included in a Cabinet on which there ought to be a joint responsibility, because the inclusion of such a Minister must inevitably go to weaken the joint responsibility of the Cabinet. But I should like to say this, that we have got to bear in mind that there may be difficult circumstances at the starting of the new scheme. We should as realists keep that before us. We want

to see the new scheme a success and we should not take any step or do anything which might impair a fair chance of success. That being so, I would not rule out the possibility of a Chief Minister asking to include an official in his Cabinet, particularly at the start. It may be necessary and I would not rule it out. But I am inclined to think that in the course of time the necessity, if such a necessity should exist, will lapse, and less and less will it become necessary for a Chief Minister or a Governor to go outside the ordinary elected members in order to form a Cabinet.

Now as regards the non-official Minister, to the same extent we, with our long experience in this country and with the great reserves that we have to call on, still feel it necessary sometimes to go outside the elected members and get a non-official to help the Government. I would not rule it out. We do not do it as a rule, but I would keep it as a possibility, especially when you remember the difficulties that you may have in starting the new scheme.

Now, when we come to the relationship of the Chief Minister and the Governor, in the same way I would say: do not make too hard and fast rules which may tie the hands of the person who has to start the machine at the beginning. I look to the Chief Minister inevitably eventually as being the person who will be called upon to select and form a Cabinet; but at the start it may be difficult; there may be very great difficulties in the way; there may not be a man sufficiently outstanding; there may be all sorts of personal difficulties in the way. Therefore I would only say: Do not make too hard and fast a rule at first which may tie the hands of the Governor in choosing a Cabinet. It is inevitable to my mind that as years pass by the most important man definitely becomes Chief Minister; he selects his Cabinet and he advises the Governor. As that is the inevitable rôle which I think must be followed I would not do anything which would hamper the machine at the start by tying the Governor's hands too tightly. As regards his overriding powers, I think overriding powers such as may be reserved must be very very strictly defined and very limited in use; and again they will lapse in practice. It is astonishing to think at this present day what enormous theoretical powers the Crown in England has; but they have lapsed in practice because the responsibility has been a success. The more that responsible Government becomes a success the less necessary will be all the additions or safeguards so-called that are put in at the start. I do not think I need say anything further on that point.

I would just like to say a word in passing on the question of two Houses or one. We in England are accustomed to two Houses and we prefer it; but because we prefer it in England I do not think that should rule out anybody else who prefers one House having one House. There has been a very great difference of opinion expressed in India in different Provinces as to whether there should be two Houses or one. I would make no uniformity; if one Province wants two Houses let them have it; if another Province wants one House, let them have it. I would have it embedded

in the constitution that if they like afterwards they could change it and go from two Houses to one House if necessary. I do not see any vital reason why we should have uniformity in this. Conditions vary in the different Provinces; it may suit the circumstances of one Province to have two Houses and of another Province to have one House. Therefore as far as I am concerned I would leave that entirely open to the choice of the Provinces. All through as a general rule I would suggest that we should avoid any rigidity in framing the constitution at the start. Where it is necessary to have safeguards let them be in the nature of regulations and instructions which can be easily altered. It is very hard, as you all know, to alter anything which is once put in a Statute but it is very much easier to alter things which are put merely in Instructions. Having regard as I said just now to the great diversity and variety of circumstances in India, why should we worship a fetish of uniformity?

Finally may I say that when we are building, or attempting to build—and I hope we shall be successful in building—this enormous structure, we should be very careful to see that the foundations are of the firmest. It is my belief that the firmest foundation on which you can build is responsibility. If you build on those firm foundations, never mind your scaffolding which is necessary when the building is going up but when the building is finished the scaffolding can come down.

*Mr. K. T. Paul:* Mr. Chairman, as I am the first Indian member you are pleased to call upon to speak this morning, may I have your permission to say a word regarding a matter which is uppermost in the minds of most of us, I take it, regarding the incidents that have happened in Calcutta. I believe, Sir, I am expressing the view of my colleagues when I say that we have heard that news with great horror. Here a number of young men, three young men I believe, entered the chief Secretariat buildings with arms and shot down in cold blood officer after officer. We have come here for a settlement of the affairs of India which would make such a thing as that impossible, and the atmosphere provided by an incident like this is the last thing that is desirable. I do trust that public opinion in England will realise that those who are responsible for acts of this sort in India are a group which does not represent either the nationalist feeling as a whole or any of those whom we represent here.

At the same time, Sir, I feel it my duty to say that the way to make that impossible is by not merely—I say not merely because it is inclusive—stiffening the processes of control by the Governor. There should be no one in his common sense who would ask for anything else. At the same time I feel it my responsibility to state here in unmistakable language that some of the actions of the Executive through the police, recently particularly, have no doubt been the immediate cause of provocation for such senseless acts as these. Therefore I trust and hope and plead and beg His Majesty's Government to see if it will not be possible to carry on the most

rigorous and firm administration without having recourse at the same time to those excesses which are so often unjustifiable and in my view, speaking as an eye witness, so often brutal and immoral.

Sir, permit me to revert to the subject on hand, the making of a constitution. I am speaking as an amateur come for the first time into the arena of politics. It seems to me to be somewhat in the nature of filling a cross-word puzzle: the filling of any one House depends so much upon the way in which the other Houses are being filled. For instance, referring to the particular point and the only point I want to speak on this morning, namely the Second Chamber, the way in which I should answer that question as to whether we should have a Second Chamber or not depends to a very large extent as to how the other Houses are going to be filled. If the relationship between the Central Government and the Provincial Governments is one way, then a Second Chamber would not be necessary; if the powers of the Executive and the make-up of the Second Chamber are in another way, then a Second Chamber may be allowed or may be necessary. So that it is extraordinarily difficult, particularly to an amateur like myself, to come to a definite conclusion as to whether at this stage a Second Chamber is desirable or necessary.

But I still see very clearly one or two things which it is my duty to state here so that there may be no mistake about it. It has been argued that a Second Chamber will be necessary for the protection of minorities. Sir, in regard to a small minority like mine most of the things which are considered to be grievances arise not in the course of legislation but in the processes of administration. In regard to the prevention of such acts which are considered to be grievances or in regard to remedying them after they have taken place, I do not see how any good can come from a Second Chamber, I am speaking subject to correction; if it can be shown that a Second Chamber will really prevent administrative deviations or will be able to correct administrative deviations after they happen, then I am willing to vote for it; but so far I do not see how it can be so. Even as regards the interests of the landed aristocracy in the country it seems to me that the argument directed from that angle is also on the assumption that the Second Chamber will be made up in some way which will give perpetually to the landed aristocracy a place of security or dominance in that House. On the other hand, so far as I can see the trend of political developments in the country, I can only forecast that the real security for the landed aristocracy, or of industry, capital, high finance and commerce, or any such special interests, consists in making its case in the one Chamber which is popular and in carrying the good will of that Chamber in regard to their interests. It is there where all the interests are represented, where labour is represented as well as capital, where the peasant is represented as well as the landlord, where all the communities are represented and not merely the small minorities; it is there that on principles of good government, high policy, mutual understanding and generosity, each

special interest is represented and should carry the convictions of the whole House.

In addition to that, the steady development of democratic ideals in the rising generation will render a Second Chamber a constant irritant to them. Your Swarajists of the future will fasten their teeth in the Second Chamber and either ask for its abolition or work for its emasculation to such an extent that anything that is expected of it will become impossible of fulfilment.

All I have been saying with regard to a Second Chamber depends on how it will be constituted. We have not been told by anybody what scheme there is. Almost everyone who spoke here yesterday spoke about a Second Chamber, but it seemed to me everyone spoke with a mental reservation and assumed there would be a full dress debate about it. There was no attempt to discuss how it should be constituted and what its powers should be with reference to the Lower House or with reference to the Executive: for instance, whether the Executive should be responsible to it or not, and if so to what extent. I do hope, Sir, that when you summarize the discussion with regard to all the points at the end of our session this morning you will still allow some time, either this afternoon or to-morrow, for a full dress debate on the Second Chamber, when someone who has convictions about it will be able to make us visualize the whole story of how a Second Chamber is to be constituted and what its various relations will be. Meanwhile I do not see how a Second Chamber can be a protection to my minority or to any special interests whatsoever.

*Mr. Zafrullah Khan:* In view of the fact that yesterday morning you, Sir, were pleased to enlarge the scope of the discussion and were pleased to direct that members may express their views on all the sub-heads included in Item 2, I will, with your permission, add a few observations to those which I submitted on Friday last.

The views put forward by the Marquess of Zetland have been already submitted to a considerable amount of criticism and discussion. I believe it is the just due of his great personal ability and experience that the views put forward by him should be submitted to minute and careful examination in order to see exactly what his apprehensions are and whether the suggestions put forward by him are likely to meet those apprehensions; that is to say, in practice how will his suggestions operate, and will they obviate the dangers which he apprehends may arise in case there were no such reservations in the constitution as he proposes.

Now, I must confess that I found myself a little unable to follow in complete detail the exact suggestions put forward by His Lordship. He first started with the position that although in some quarters it had been suggested that, with regard to some Provinces at least, the Department of Law and Order might be reserved, he personally, while thinking there was a great deal of justification for that view, was of opinion that the advantages likely to

result from the reservation of Law and Order were far outweighed by the disadvantages that would result therefrom. The first position he took up, therefore, was that if there is going to be any further transfer of subjects, it is proper that all subjects should be transferred. That being the first position, we want to show to our people in India that we have agreed that dyarchy in the Provinces shall disappear.

Then he went on to detail his apprehensions with regard to the administration of the department of Law and Order, and there are two positions which he took up. He was at pains to explain to the sub-Committee that he was not of opinion that merely on account of difference in race a British Minister or a British administrator of the department of Law and Order would be more competent to administer the subject than an Indian. I do not think there need be any apprehension that he intended in any way to question the competence or the ability of an Indian Minister to administer the department. He made two points, however. First of all he said that a European as such would be likely to take up a more unbiased and neutral view of any situation that might arise, and secondly he said a European would not be subject to the pressure or coercion of members of his own community in the Legislature in taking or in refraining from taking any measures to cope with any particular situation that might arise.

Let us consider for a moment whether the remedy suggested by him would work out as he said it might. He said he was not confident the time had come when immediately the department of Law and Order could be administered by somebody who was responsible to the Legislative Council. That is rather in conflict with the conclusion recorded on the first point.

*Lord Zetland:* May I correct the hon. member there? I did not object to that; I quite agree that if a non-elected Minister is brought into the Ministry he shall be responsible to the Legislature in common with his colleagues.

*Mr. Zafrullāh Khan:* The position was that discretion should at present be left to the Governor so that if on any particular occasion he felt it was necessary to do so he might bring a non-official non-elected person into the Cabinet, and that that non-official non-elected Minister should, along with his other colleagues, become responsible to the Legislature. So far as that is concerned, I am not clear in the first place whether Lord Zetland advocated that there should also be a discretion to include an official Minister or not, and secondly, whether the non-official Minister who was to be included should on all occasions be a European.

If the non-official to be included may be a Hindu or a Muhammadan, his appointment is open to the same objections from the point of view of Lord Zetland to which the appointment of an elected Hindu or Muhammadan Minister would be. He would be as much liable to pressure by members of his own community in the Legislative Chamber as would be an elected member who is



appointed a Minister. If, on the other hand, he is going to be a European in all cases, I seem to recollect that when some member suggested it would be possible for the Governor to select an elected European member of the Chamber for the portfolio of Law and Order, Lord Zetland took the view that such gentlemen are generally members of the commercial community and can ill afford to leave their business to take charge of the portfolio of Law and Order.

Viewing the situation generally, whoever the Minister may be, if he is responsible to the Legislature along with his colleagues then, along with his colleagues, he is subject to the same amount of pressure from the Legislative Chamber in the administration of his portfolio as any of his colleagues. The policy which he is going to pursue will be a policy which has been approved by the whole Cabinet; and, if that is so, it does not make the slightest difference, if in reality you are going to enforce the doctrine of joint responsibility, and if in fact and not merely in theory everybody, whether he is a European or a Hindu or a Muhammadan or an Indian Christian or a Parsi, so long as he is inside the Cabinet, is going to work as a member of a team and is going to take full responsibility for all the measures of all his colleagues it does not make any difference who is administering Law and Order.

The safeguard is there, and if by putting in a non-member Minister or an official Minister you are seeking to give him, as it were, a larger discretion and in some way invest him with immunity from pressure from the Legislature, to that extent you will really be reserving that department. It will mean that while you want to show you are transferring it you are really wanting to reserve it; and, whatever else you may do and whatever else you may concede or not concede, I warn you of one thing: do not seem to be doing a thing when you really do not mean to do it. If you proceed in such a manner, any scheme of reform you put forward is bound to be wrecked, because more than anything else we must start in an atmosphere where the people of India will believe that whatever seems to have been conceded has actually been conceded and is meant to be conceded, and that when we say dyarchy must disappear from the Provinces it does disappear, and that we are not bringing in a camouflaged sort of dyarchy by reservations or safeguards or whatever name we may give to them.

The Marquess of Zetland asked what the safeguards are with regard to the administration of Law and Order. There is no doubt that a great deal of apprehension has been felt with regard to the administration of this portfolio. One safeguard has already been suggested by Sir Robert Hamilton, who has said that the best safeguard is the fullest sense of responsibility of the Minister who will be entrusted with the portfolio of Law and Order. That is one safeguard—the natural anxiety of a man who is placed in that position to make good. That anxiety would ordinarily override any other considerations of a communal or other character by which he might be likely to be influenced. That is one thing.

Then in actual practice, as to the orders he should give or the policy he should pursue, he will have the advice of the permanent staff of the Police Department; naturally all proposals and so on will come to them. There is also the doctrine of joint responsibility, which means that matters of policy will always be discussed by the Minister with his colleagues, and a certain policy settled which he will be bound to follow. Then there is almost unanimous agreement that there should be some sort of overriding power of the Governor in the Department of Law and Order, and that is a safeguard. If, nevertheless, an apprehension is felt that a situation may suddenly arise with regard to which orders have to be given, and that that requires that somehow the matter should be so circumscribed that no one should be able to take independent action, I am afraid that if that argument is followed to its logical conclusion it would mean that no Indian should be employed in the Police department at all, because often the first action to be taken has to be taken by the Superintendent of Police of the district where the occurrence takes place, or by the District Magistrate of the district and the higher Police officers. If you argue that no Hindu or Muhammadan is capable of discharging his duty impartially in a crisis like this, it is an argument that no Hindu or Muhammadan should be employed in the Police force at all. By the time the matter reaches the Minister it has become a question of policy and not of giving instructions as to what should be done in a particular emergency, which is not the business of a Minister in any department. There will be these safeguards. The Minister will have the advice of the Inspector-General of Police and he will have an opportunity of discussing matters with his colleagues, and then, in grave matters, the Governor can interfere. I think sufficient safeguards are thus provided and that the apprehension of Lord Zetland that the time has not come when you should really transfer Law and Order to the control of the Legislature is not well founded.

The second topic on which I wish to submit one or two observations is that of Second Chambers. With regard to this I agree entirely with what has fallen from Sir Robert Hamilton, namely, that each province should be allowed in this matter to express its views, and if some provinces desire that Second Chambers should be set up in their Province those Second Chambers should be established; in other words, the recommendation of the Government of India on this matter should be followed. Those Provinces which have asked for Second Chambers should be allowed to have them, to begin with at any rate, with power to do away with them if experience shows that they are not fulfilling any useful purpose. Other Provinces, which have definitely said that they do not want to be saddled with Second Chambers, should not be forced to have them, although I think even there power may be given that if, after experience, they think they ought to have them they may be able to pass constitutional legislation and set them up.

I do not think the matter can be carried any further so far as the constitution of these Second Chambers is concerned, and so far as my own Province goes, the people of my Province have not asked for a Second Chamber. The Legislative Council has not asked for it; the Provincial Committee said they did not want it; the Provincial Government have said they do not want it, and the Government of India has said that it need not be set up in the Punjab. I wish it to be noted, therefore, that so far as the Punjab is concerned from no quarter has the demand been made for a Second Chamber in that Province.

The third matter to which I want to refer is one to which allusion was made yesterday by Sir Cowasji Jehangir. Dealing with the question of what he described as the life of the Executive, he was of opinion that, having regard to the peculiar conditions prevailing in India, the Provincial Executive should if possible be made irremovable during the lifetime of the Legislature, or, if it was to be removable, then it should be liable to removal only by a vote of censure supported by a two-thirds majority of the Legislature.

To that suggestion I have to take the strongest exception. If you make the Provincial Executive irremovable altogether, there is an end at once of responsible government. What Executive will consider the wishes of the Legislature in any matter if it knows that however it acts it is not liable to be removed by the Legislature? After all, the whole doctrine of constitutional responsibility involves placing power in the hands of the Legislature to turn out the Executive if the Executive no longer possesses the confidence of the Legislature. I do not think this suggestion requires any detailed examination to be rejected.

The next suggestion is almost on a par with the first; that is to say, it is suggested that a majority of two-thirds of the members of the Legislature should be required before a Ministry can be legally censured and turned out. Let us look at the implications of that suggestion. Would Sir Cowasji Jehangir, for instance, say that a majority of two-thirds would also be required to reject any grant included in the budget, or the whole budget for that matter? If the budget could be defeated by a majority of one vote and the whole machinery of government brought to an end, it is rather illogical to expect that a mere vote of censure, asking for a change in the Ministry, should require a majority of two-thirds. If you allow the budget to be passed or defeated by a majority of one, you are allowing a majority of one to do a much bigger thing than merely censure the Ministry, and as a consequence of that majority of one the Ministry will have to go out; yet for a vote of censure at any other time you require a majority of two-thirds.

Secondly, you are making it possible for the Government to select a group of ministers who command in the House the support of one-third of the members. If they do that and are able to maintain that support then they cannot at any time be turned out.

I do not know what sort of responsibility you are bringing in, nor why Sir Cowasji Jehangir was so particular that the Governor must be a constitutional Governor, and that he must have a Chief Minister who would select his own colleagues. If we want to make any change in the constitutional doctrine that a Ministry can at any time be turned out by a vote of censure or of "no-confidence," subject to safeguards that it should not be a snatch vote or a vote which does not really represent the wishes of the majority, we shall be doing away with responsibility. I do not think that the wishes of the majority should be flouted in this or any other matter. I am reminded of another safeguard in connection with the stability of Provincial Cabinets which the Simon Commission recommended. They have suggested that the Ministry should be turned out only on a vote of censure of which due and proper notice has been given—and with that I agree—but they have also said that the salaries of the Ministers should be laid down by statute and not altered except by statute. To that also I have no objection, provided that it means a Provincial Statute after the new constitution has come into force, but I do object to it in other circumstances if it would mean that the question of salaries was now to be settled by Parliament, and settled on the scale at present operating in the Provinces. That would not be equitable at all. Some Provinces have reduced the salaries of Ministers already; others have not reduced them on the ground that a revision was pending. In some Provinces the Ministers are being paid far more highly than others, although perhaps the responsibility in the less highly paid Provinces is the greater. I would therefore suggest that any kind of safeguard in respect of Ministers' salaries should be embodied in a constitutional statute laying it down that within a definite period after the new constitution comes into force each Provincial Chamber shall be required to pass a statute fixing the salaries of the Ministers in that Province, and if that is accepted by the Governor and passed into law, those salaries shall continue and shall not be liable to reduction by a vote in the Legislative Chamber, any alteration in them being brought about only by a subsequent Statute.

One matter has been mentioned by one or two members of the Committee, but not pursued further, presumably owing to the fact that it is not a matter with which the Statute can deal, though it is of some importance in administration. It concerns the selection of Governors for the Provinces. We are aware that that is a privilege of His Majesty alone. He can appoint whomsoever he chooses, but certain conventions have in the past been followed with regard to the appointment of Governors of different Provinces. To the Presidencies ordinarily a British statesman or public man from England is appointed, and to the other Provinces some member of the I.C.S. We have therefore Provinces which have ordinarily British public men appointed as Governors, and Provinces which have ordinarily I.C.S. Governors. In this connection again I think the position is going to be different under the new

constitution. If the doctrine of the real and complete responsibility of the Provincial Executive to the Provincial Legislature is to be enforced it is a logical conclusion that the Governor must be appointed from outside the cadre of the Services. Otherwise the position will be this, that a gentleman may be appointed Governor of a Province who has for years served the Ministers in another Department and been subject to their orders. If the Ministers are conscious all the time that any one of the Heads of Departments in their Provinces may be appointed Governor over their heads we really to that extent weaken their responsibility and make them subordinate to the wishes of senior members of the I.C.S. from whom a selection for the appointment of Governor may be made.

I generously and frankly concede that the distinguished band of officers who have belonged to the I.C.S. in the past have rendered enormous service, and so long as the Service continues we are confident that those traditions will remain. It is no reflection upon them to say that if Governors continue to be appointed from the I.C.S. it will directly affect the sense of responsibility of the Ministers and the Government. A Convention should now be established that in future Governors should be appointed from outside, either British or Indian statesmen, who shall not be members of any Service.

*Sir Abdul Qaiyum*: When I asked for permission to speak it was only on the spur of the moment, desiring as I did to make a few comments, but after hearing the last two speeches I find that most of the points I wanted to lay before the Committee have been put forward in language better than my own. What has struck me as a layman—not a constitutional lawyer—at the hearing of the speeches yesterday is that there is no idea of leaving any powers with the Government. Everybody spoke of cutting down the discretion of the Governor in every direction and leaving him without any actual and practical powers in the administration of the Province. If that is so, the thought occurs to me that we might as well select a President, something like the President of a Republic, and do away with the nomenclature of a Governor altogether. If there is going to be a Governor, and he is expected to control the policy of the Province, he must have some sort of discretion to exercise in the administration of that Province when ordinary machinery fails to run that Province efficiently. In ordinary administration there will be some subjects which will be left to the Federal Government. What remains must be left to the local Council, and in this respect the Governor will have to possess some sort of control in giving assent to legislation passed by the Council or in certifying allotments in the Budget, and perhaps some overriding powers in matters of an executive nature. Without those powers I do not believe that the Governor will be worthy of his position. How far and elastic those powers should be is for my constitutionalist colleagues here to define more clearly, but from what I learned yesterday I gathered that no discretion was to be left to the Governor.

The second point that struck me is that if we are going to do away with dyarchy, and if the responsibility of the Ministry of the future is to be joint, then any particular way of putting up safeguards in the constitution will be practically bringing back the dyarchy. It will look as if we are still going to have the dyarchy in one form or the other. I think it will be most advisable if we can form a constitution which will not give to the people of India the idea that dyarchy is to be retained in some form or other.

There is another point which strikes me. It relates to the suspicions and doubts in the minds of the various communities in India with regard to one another. If we are trying to bring in safeguards to give some sort of assurance to the people that they will be safe under the new constitution, I am afraid we shall never come to the end of framing that constitution. There must be some confidence placed somewhere between the rival communities in that country. We are framing the constitution as if we were lawyers of a rather questionable type trying to draw up a deed in which there might be some loophole of doubtful phraseology to enable a way of escape later on. If we are framing our constitution in that spirit I do not believe we shall proceed very far. Even the dyarchy which we had in the last constitution was not so bad in its legal form as it came out to be in practice. The fault lay on both sides. On the Indian side they thought there was this dyarchy and that they were not going to be given any real power even in the transferred subjects. On the other hand, others were not allowing them the full amount of authority in those subjects and the budgetary allotment which they wanted for the improvement of those subjects. If it had only been worked out in a better spirit perhaps that constitution would have given much better results.

Many members of this Committee and of the Conference have spoken on the sentimental aspect of the question, and I for one would also appeal to the Committee not to worry themselves so much with the technicalities of the situation, but to leave it to the good sense of the people who are being given a chance to take part in the administration of the country with greater freedom and responsibility in the future. I think it must be realised by now that India is determined to take some real share in the administration of her affairs, and if that is the spirit of the Britisher in giving Indians their future constitution, we need not be afraid if the legal language of the constitution is a little defective here or there.

*Dr. Ambedkar:* In offering my remarks I will proceed in the order of the questions which have been circulated. The first relates to the constitution and composition of the Executive. With regard to the constitution of the Executive, it seems to me that there is more or less agreement on two things. First of all, it is agreed that the distinction between the reserved and the transferred subjects should vanish, and that the Executive, instead of being a divided Executive, should hereafter work as a unified

Executive. It is true that Lord Zetland took some exception with regard to the transfer of law and order.

But as I understood him, his objection was not to the transfer of law and order so much as to the necessity of providing in the actual composition of the Executive itself some element whereby an impartial individual who is neither a Hindu nor a Muhammadan will be provided for. I believe I have understood him rightly. But if his objection is that law and order should not be transferred at all, then I would just make two observations with regard to that position.

My first observation will be that the argument on which he has based his conclusion that law and order should not be transferred seems to me to prove too much. It will always be the case that in India as it is constituted there will be a Hindu or a Muhammadan who will be in charge of that particular portfolio.

*Mr. Joshi:* Not a Christian?

*Dr. Ambedkar:* It may be, but I am taking these two communities for the moment because they are important. It seems to me that any argument which is based upon that fact is an argument which leads to a conclusion which will never enable us to transfer law and order. Therefore it seems to me that that is an argument which ought not to be adopted or accepted. It seems to me also that the noble Marquess assumes that although a Muhammadan or a Hindu will be in charge of the department of law and order, he will be entirely subject to the whims of the particular community to which he belongs. My submission, Sir, is this, that that assumes that the future of political parties in India will be so constituted that they will be divided on religious lines and not on the lines of political or economic differences. As I view the situation it seems to me that in the future constitution of India the Executive will be so divided that we shall see less of the religious and racial distinctions coming to the surface and we shall find a Hindu Minister having a party and a following containing a large element of Muhammadans, and a Muhammadan Minister with a following of Hindus in his group. If that happens, and I take it it is almost a certainty that it will happen, I do not understand how, for instance a Hindu Minister who is in charge of law and order could administer law and order in such a manner as to offend the susceptibilities of a part of the group which supports him in office. It seems to me therefore that the fears so far as this particular aspect of the matter is concerned are rather unfounded.

The second thing which seems to be agreed upon more or less is this, that not only should the Executive be a unified Executive but that the responsibility of this unified Executive should be joint and not several. With these conclusions, Sir, I agree, but the points of difference that have arisen in the course of the debate to which we have listened largely relate to the composition of the Executive and it seems to me that there arise three different questions for our consideration in connection with the composition of

the Executive. The first question is: should the Executive be confined to members of the Legislature or should it be open to individuals who are officials or non-officials and who are outside the Legislature? The second question is: should it consist of members of the minority communities? The third question is whether the Governor should have the responsibility of appointing the Ministers himself or whether he should appoint the Chief Minister and leave the matter of the selection of his colleagues to that Chief Minister.

Now, Sir, on all these three questions my answer is in the affirmative. Personally, I do not see why the membership of the Cabinet should be rigorously restricted and confined to the members of the Legislature. I also do not see why there should not exist some provisions whereby the Executive should not be made as representative as possible of all the communities that are represented in the Legislature. Thirdly, regarding the power of the Governor to compose his Ministry, it seems to me that we must admit that it is his prerogative right to constitute the Ministry and that you must have discretion left to him in the matter of selecting his men. But, Sir, when I say that I answer these three questions in the affirmative, namely, that the Executive need not be confined to the members of the Legislature, that some provision should exist whereby different communities may be represented in the Cabinet, and that the Governor should have left with him abundant discretion in order to form his Cabinet—I say when I make these admissions I make them subject to one supreme condition. That supreme condition is that however the Executive is composed, it shall abide by one principle, namely that it shall accept joint responsibility. If, for instance, this principle of joint responsibility is made obligatory upon the Executive, it seems to me that the importation of a foreign element into the Cabinet will not be a disturbing factor as it is supposed to be. If, for instance, the new-comer who does not belong to the Legislative Council comes into the Cabinet and accepts joint responsibility along with the Cabinet, I do not see any reason why such a procedure should not be permitted. It was pointed out that it may so happen that when a Ministry is censured and it goes out, the official or the one who does not belong to the Legislature will remain while the other members of the Cabinet will go out; that when a new Ministry is formed, he will be again tacked on to the Ministry and that he will be perpetually in the Council. It seems to me with all respects that that is a somewhat fallacious view, because, unless the members who are drawn from the Legislature to form the Ministry are prepared to take him along with them and are prepared to bear the responsibility of his actions, they will not consent to work with him; they will consent to work with him only on these terms, that he accepts their advice and they accept his advice. If, for instance, a Prime Minister were so situated that he could safely take an outsider into his Cabinet and at the same time maintain the confidence of the House, I do not see why the



Chief Minister should be prevented from having that privilege accorded to him.

In the same way, Sir, if, for instance, it was found possible that the Governor should have powers to see that the different minority communities are represented in his Cabinet, and if at the same time it is made perfectly clear that whoever is appointed to the Cabinet must accept joint responsibility with the others, then I submit there is no harm in allowing this sort of thing. It seems to me therefore that the point which it is necessary to emphasize is that the Governor may have the power which as I say belongs to him as of right to compose the Ministry in any way he likes provided that the Ministry does not violate in its operation the principle of its being, namely, that it is to work on the principle of joint responsibility.

Now the next question to which I will address myself, Sir, is how best to achieve this result, how best to bring out a responsible and unified Executive. It seems to me there are two ways open to us. One way is to define in the constitution itself the character of the Executive by law; the other is to leave to convention the constitution of the Executive. Both these ways are adopted, as you all know. We all know that in the Dominions of Canada, South Africa and Australia, responsible government of a unified character is entirely a matter of convention. Everyone of us knows that in the Canadian Act or in the Acts of South Africa or Australia the words "responsible Government" do not arise. It is not even mentioned in the Canadian Act, as I found to my great surprise, that the Ministers who are to advise the Governor are to be members of the Legislature, although as a matter of fact they are. On the other hand, as we know, in the constitutions of Ireland, Malta and Rhodesia this is a subject which is not left to convention, it is something which is incorporated in law. In Ireland we know that the Prime Minister is a creature of statute, the joint responsibility is also defined by law.

I therefore think that we shall have to make our choice between the two, and in making the choice I for one would be guided by two considerations. I fully realise that when a matter is left to convention it is possible that the convention may be wrongly worked, that it may be abused, and may be abused with impunity. The danger of matters being left to convention in a country like India seems to me to be greater because there are no parties in India which have a keen eye on the way in which the constitution works and we may have ministers less interested in working the constitution in the right spirit than in maintaining their seats in the Cabinet. On the other hand it seems to me that where matters are defined by law it must necessarily take away all the discretion that must necessarily be left to a Governor. In a country like India where the political field with all its communal and racial difficulties is an absolutely uncharted sea, it seems to me that we must so contrive that sufficient discretion will be left with the

Governor. My concrete suggestion therefore is this, that joint responsibility of the Executive should be prescribed by law and that everything else should be left to the discretion of the Governor, so that we shall have satisfied both the conditions: we shall have provided that whatever responsibility there is is joint responsibility and that the composition of the Executive is at the same time not hampered in such a manner that the communities which do require to be represented in the Cabinet may be represented or that the necessity which a Prime Minister may feel of having a non-official, I mean an outsider, in his Cabinet is provided for. If we do that, if we insist by law, not leaving it to the discretion of the Governor, that the Executive shall be a joint Executive with joint responsibility, I think all other matters may be left without any fear of abuse to the choice of the Governor.

Now Sir, the next topic which I will take for consideration is that of the powers of the Governor *vis-a-vis* his Executive. The present relations between the Governor and the Minister, as we all know, are defined in Section 52, sub-clause 3. That clause says that in all transferred matters—and all matters will now be transferred, none being reserved—the Governor shall be guided by the advice of his Ministers; and it adds a further proviso that if he sees sufficient cause to dissent from the advice of his Ministers he may cause action to be taken otherwise than in accordance with that advice. With all due respect to those who framed that clause, and they did it with the best intention of providing responsible Government, I cannot help saying that this clause as it now stands is a perversion of responsible government; it makes responsible government a matter of convenience, a matter which may be accepted and followed when it suits the Governor, whereas as a matter of fact what we want is that responsible government should be a matter of obligation. If responsible government means anything it means this, that in whatever action the Governor takes in any field he has the support of a Ministry which has the confidence of the House. That is a fundamental proposition which we cannot ignore. It does not of course mean that a Governor must always accept the advice of his Ministry; it leaves it open to the Governor to throw out the Ministry, to say he will not abide by their advice: but then if the Governor chooses to differ from his Ministry his obligation is not to act on his own initiative but to find some other Ministers who will support his action. So that the proposition is that at all times when the Governor takes action he takes action which is in conformity with the views of Ministers who have the confidence of the House. My submission therefore is that this clause, namely Section 52, must be so altered as to make it plain that unless specific provision is made to the contrary by statute—there may be cases which I will come to a little later—the Governor shall always act upon the advice of the Ministers.

Now Sir, I do readily agree that there may be cases in which it is necessary to provide the Governor with overriding powers, powers in respect to which he will not be obliged to follow the

advice of his Ministers but will have the right of independent action. Those cases are mentioned in paragraph 50, page 36 of Volume 2 of the Report of the Simon Commission. The first is that he should have overriding powers in order to preserve the safety and tranquillity of the Province; secondly, he should have overriding powers in order to prevent serious prejudice to one or more sections of the community as compared with other sections; and then lastly it mentions certain cases where the Governor may have fixed upon him specific responsibility as apart from the responsibility of the whole of the Executive, in which case it says that he should also have overriding powers.

With regard to these items my first submission is this, that if you are going to give the Governor power to override his Ministers to preserve the peace, safety and tranquillity of the Province, it seems to me you are taking away a very large part of responsible government in the Provinces. After all, what we are striving for is that the Provinces shall be governed in all matters, including even the peace, safety and tranquillity of the Province, by a Governor on the advice of his Ministers; and, if you reserve powers to the Governor to act contrary to their advice, it seems to me you are to a very large extent nullifying the powers of responsible government. I should not, therefore, give the Governor overriding powers in a matter of this sort, unless some way could be found whereby this large formula, which seems to me to eat up the whole situation, might be very narrowly defined.

Coming to the other question, namely prejudice to one section of the community as compared with the others, my own view is that although this is a very salutary thing my preference is that such matters as are likely prejudicially to affect the interests of any particular community should be governed by statute; it should not be left to the sweet will of the Governor. I say that for this very good reason. After all, a Governor has to keep in touch with a Cabinet which is supported by a majority in the Legislature. He can never work at cross purposes with the Cabinet; the greatest amity must prevail between them, and I am not sure the Governor would always be so minded as to quarrel with a Cabinet which represented a majority in the House merely in order to protect a minority which, in his eyes, might not be very important. Although, therefore, I agree with the underlying suggestion there, I rather prefer that the interests of the minorities should be protected in a firmer manner than is suggested, and for myself I should be prepared to delete this clause.

Regarding the other items—3, 4 and 5—I agree that in cases of this sort the Governor must have overriding powers, because they are cases where he personally is made responsible for the administration of those subjects.

Coming to the next subject, the powers of the Governor *vis-à-vis* the Legislature, I will divide my remarks under three heads. There is first of all budgetary legislation; secondly, ordinary

legislation and thirdly, emergency legislation. The Governor has to-day powers of certification with regard to the provision for reserved subjects, and that will necessarily go with the abolition of dyarchy. Secondly, the Governor has authority to authorise expenditure for the safety and tranquillity of the Province. It seems to me that if you are going to leave questions of peace and tranquillity to be settled by a responsible Ministry, the Governor should not possess this power of authorising expenditure for the safety and tranquillity of the Province. In the next place, he has the power of certifying Bills, which are of two sorts. He may certify that a particular Bill which is being discussed in the Legislature shall not be discussed because it affects the safety and tranquillity of the Province, and he has also the power to certify a Bill which is in the interests of the safety and tranquillity of the Province even though the Legislature may not desire to pass it in the ordinary course. It seems to me both these powers should go; they will not be necessary in the future constitution of India.

He has also powers of previous sanction; certain subjects have to be previously sanctioned by him before they can be discussed, and in my opinion this power should go.

*Sir Ahmad Said Khan:* Discriminatory legislation?

*Dr. Ambedkar:* That should be dealt with by Statute; I should not leave it to the Governor. The Governor must have the power of veto, and in view of the fact that there will be no Second Chamber in those Provinces which do not want it, it is very necessary that the Governor should have the power of veto. The Governor to-day has also the power of returning a Bill to the House for reconsideration. This is a very useful power which exists in the constitutions of the various Dominions, and I think it should be retained. The Governor has also power to reserve a Bill for the consideration of the Governor General, and the cases in which he should do so are defined by Statute. That is a matter, I think, which might be more conveniently considered when we consider the relations of the Provincial Governments to the Central Government, but I should like to make one observation on this subject. We should endeavour so to contrive our Provincial constitution that it will function independently, as far as possible, of the interference of the Central Government in those domains which have been transferred to its control. We must make a constitution under which there will be no occasion for constant intervention by the Central Government, either administratively or legislatively by the reservation of Bills.

With regard to the question of safeguards for Law and Order and for minorities, I have already stated that Law and Order should be transferred, but I am prepared to make one suggestion, for what it is worth. In cases of emergency, when Law and Order are being jeopardised, I suggest the Governor should have power to pass orders finally, without respect to the advice of the Ministry, regarding the posting and transfer of Police officers. I think that is very necessary; it is essential.

*Sir Cowasji Jehangir* : In case of emergency only?

*Dr. Ambedkar* : Yes, but not in other cases.

*Mr. Paul* : Not in normal times?

*Dr. Ambedkar* : Not in normal times, no, but in cases of emergency when a riot has taken place or a disturbance has occurred, it is very necessary that an impartial officer like the Governor, who is not swayed by what is happening in the Cabinet, should have the ultimate power to see that people are not transferred from one place to another to suit one community or the other community when a riot is actually proceeding. It seems to me that gives him sufficient power for the purpose of safeguarding the administration of Law and Order.

With regard to the question of minorities, it was suggested by some speakers that a Second Chamber would afford protection to minorities, and my friend Mr. Wood threw out the suggestion that I had not carefully considered the position of the Depressed Classes in relation to a Second Chamber. I should like to assure my friend that I have given the matter most careful consideration, and I thoroughly agree with my friend Mr. Paul that these Second Chambers, far from being a protection to minorities, will be really millstones round their necks.

There is one subject I did not touch on before, but which I should like briefly to mention now, namely, the relation of the Governor to his Cabinet. Should he preside over the Cabinet as a matter of right or should he not? Should there be the system which prevails in this country, where the Cabinet holds its meetings without the King being there, and if so what should be the means of communicating the results and decisions arrived at by the Cabinet to the Governor? I do not know if that arises on this item; if it does not, I will not waste time in discussing it.

*Chairman* : We have generally discussed the whole question, so that if you desire to continue I shall not object.

*Dr. Ambedkar* : In that connection I want to say one thing. The Simon Commission has suggested that a Cabinet Secretary should be appointed who would be of the same status as an I.C.S. officer, and who would act as the liaison officer of the Cabinet to the Governor. In throwing out that suggestion the Commission says it has drawn on the practice that has now become prevalent in this country, namely, that the Cabinet now always has a Secretary, which formerly it did not have. I should like to submit, however, that it is one thing to say that the Cabinet should have a Secretary, but it is a totally different thing to say that that Secretary should have access to the Governor over the heads of the Ministers. In this country the practice does exist, probably, of appointing a Secretary, but I do not think any Cabinet or Prime Minister in this country would consent to that Cabinet Secretary having access to His Majesty over the heads of the Ministers or over the head of the Prime Minister; such a thing would be intolerable. We know

that in this country the Cabinet throughout all its history has laid emphasis on the fact that the persons who will be near to His Majesty should be persons who will bear the same complexion as the Ministry, and we know that that has been carried so far that even the Ladies of the Chamber who wait upon the Queen are required to be nominated by the Prime Minister and the Cabinet. The situation suggested, therefore, seems to me almost impossible. I do not think any Cabinet which is working on the principle of joint responsibility will consent to have a Secretary of this kind attached to it.

On the other hand, if the Governor is given the power to preside over the Cabinet when it is discussing its policy, I doubt very much whether that will work, because although the Ministry may, and indeed must, communicate to the Governor the decisions at which it has arrived, I do not think the Ministry will consent to disclose to the Governor the reasons which have led it to come to those decisions. The reasons may be very particular and very delicate, and you all know that the Cabinet is very jealous not to let the Governor know the reasons why it has arrived at a particular decision. The explanation of that is that the Governor holds in his hands a tremendous power for undoing the Ministry, for he may not agree to the Ministry's advice to dissolve the House, but may instead dissolve the Ministry. That being so, it seems to me that instead of being embodied in a Statute the matter should be left to the Instrument of Instructions, which may provide that the Governor can attend if he desires to do so, but it should not be obligatory at all. On the other hand, it should be made obligatory for the Cabinet to communicate to the Governor all the recommendations at which it arrives at its meeting. That is all I desire to say on that point.

*Chairman:* My next speaker should have been Mr. Joshi, but he is not here. I understand that Sardar Sampuran Singh desires to make an observation on one point only.

*Sardar Sampuran Singh:* That is so. So far I have generally agreed with what Mr. Zafrullah Khan has said, but I rise to oppose a small suggestion he made this morning, namely, that officers of the I.C.S. should be barred from becoming Governors of Provinces. I am of opinion that nothing should be laid down either way. The only reason which he tried to give in this connection was that in some cases, or perhaps always, those I.C.S. officers would have been serving under the Ministers, and that they would be always trying to spot which of their men would become Governor, and naturally their responsibility would be affected by that consideration.

I submit that there should not be any definite rule on the subject, so that it would be very difficult to say whether an I.C.S. officer or some gentleman from outside would be the Governor. That takes away 50 per cent. of the chances of one being appointed from the I.C.S. Secondly, past experience shows us that the gentlemen who have been appointed as Governors in Provinces

where Governors are drawn from the I.C.S. have been for several years absent from the Province and serving with the Government of India. I have tried to recollect all the instances, as far as my memory goes, and I think that has been the rule in practically all cases.

*Mr. Paul:* No.,

*Sardar Samquran Singh:* I have thought of the Punjab only. Our present Governor was with the Government of India for several years, until he came as Executive Member to the Punjab, holding, that is to say, the same status as a Minister would hold. Before that there was Sir Malcolm Hailey, who had also served for several years with the Government of India, and the same applies to Sir Edward McLaghan, Sir Michael O'Dwyer and Sir D. Ibbetson; my memory does not go back further.

Moreover, it may always be difficult to find enough capable and able men to send out to the other Dominions and to India, men, that is, who would be willing to leave their country for that purpose. In addition, if we happen to have capable and able officers of the I.C.S. who have served India for many years I see no reason why they should be deprived of what may have been the ambition of their lives, namely, to be Governor in some Province. I do not think it would be fair to them to exclude them merely on the ground they had served in the I.C.S.

One drawback in the case of Governors drawn from this country would be that they would not have as much experience of India as the people who have lived there, and another defect which might show itself in some cases is that they might depend too much on their Secretariats instead of using their own personal knowledge of such matters, which naturally would be less than that of Civil Service officers.

In one sentence, what I mean to say is this. We should not, by making any definite rule on the point, deprive ourselves of the experience and knowledge of those officers who have worked so long in India.

*Sir Chimanlal Setalvad:* I am intervening only to deal with the new point raised this morning about I.C.S. Governors. I entirely agree with the speaker who said that the practice which now obtains in some Provinces of appointing I.C.S. officers as Governors should cease. In saying that I believe I am reflecting the opinion of a very large majority of those who are gathered round this Table. The reasons why that step should now be taken are several. One has already been referred to, but I submit that there is a much stronger reason, which is as follows: An I.C.S. officer makes a very efficient officer but this very fact of efficiency makes him to my mind unfit to be at the head of a Province as a Governor. The I.C.S. officers—I mean no disrespect to them—are so lost in admiration of efficiency and efficiency alone that they never have the larger outlook that is wanted in the Governor of a

Province. They are so imbued with Service traditions and discipline. An officer who has worked as part of a machine for 25 or 30 years before he becomes a Governor can never get out of the narrow Service outlook, and therefore we here feel it absolutely necessary—now more necessary than ever if India is to have a more democratic constitution—that this practice of putting civilians as Governors of Provinces should disappear. What you require now is a man who will bring to bear a larger outlook and come from a larger experience of public life, and for that purpose we desire that in all Provinces, as has been the case in the Presidency Provinces in the past—the Governor should be a statesman brought from public life in England and also in India. That, I submit, is one essential for the proper and successful working of the new constitution. These Service Governors ought to go. I mean thereby no reflection on the Service at all, but the Service must be purely one to carry out the policy of the Governor, and we cannot have service people laying down policy. I repeat that I am reflecting the opinion of the large majority of those not only around this Table, but of the members of the Indian Delegation present now in London.

*Chairman:* I think it will be admitted that we have had a fairly full discussion on Item 2, without much effort being made either on the part of the speaker or the Chairman to keep the discussion within the limits of that item. Indeed, the discussion has strayed into Items 3, 4 and 5. The discussion, so far as it has gone, has made the position fairly clear on several points, though it may be necessary to have a further discussion on some of the remaining points. May I just give you what I believe to be the general sense of the Committee on a few of the points, always keeping in mind, as I said at the beginning, that every thing we do here is provisional to the extent that it must fit into its proper place in the general scheme of any constitution.

First, there is a general opinion that dyarchy should be abolished and all subjects transferred to Ministers.

Secondly, that the official bloc in the Provincial Legislature should disappear.

Thirdly, that Ministers should be jointly responsible to the Legislature.

Fourthly, that as a general rule there should whenever possible, be a Chief Minister to facilitate the formation of a jointly responsible Executive.

Fifthly, that the representation of minorities in the Cabinet should not be made statutory.

I want you to keep in mind that eventually a Report will have to be submitted to this Committee, and therefore it will be open for us to consider how all these questions that I have read out to you are formulated in that Report. We are not finally disposing of them even so far as this Committee is concerned.



*Sir Ahmad Said Khan:* Can we not put the point you have just made about minorities in a rather different way?

*Chairman:* I have already said that this question of minorities would have to be probably the subject of discussion in a joint meeting with another Committee.

Now may I proceed to the points upon which we may have to have further discussion:—

(1) should the Governor have a discretion to appoint an official Minister to the Cabinet?

(2) should the Governor have any special power to act otherwise than on the advice of his Ministry, whether in the matter of administration, legislation or finance?

(3) should further power be vested in the Governor for use in times of emergency to enable the Government to be carried on in the event of a breakdown in the normal constitution?

There is another question that we might have a little further talk about, although it has been frequently referred to, namely, the question of Second Chambers. But possibly, if we terminated our discussion on the powers of Governors first, we might be in a better position to discuss any further question of Second Chambers. My suggestion is that we should meet this afternoon at 3 o'clock, when I hope you will be prepared for rather a long sitting. I should like to finish our discussion to-day, and then adjourn for a day or two for the preparation of a Report and afterwards call you together again.

*Sir Abdul Qaiyum:* There is also the question, Mr. Chairman, of the North-West Frontier Province coming within the scope of this discussion.

*Chairman:* I made the statement that that was going to be the subject of consideration by a special Committee, and it might even be necessary for some joint consultation between that Committee and this Committee before the subject is finally disposed of. You will have the opportunity of raising the matter at some part of our proceedings.

*Sir Abdul Qaiyum:* The question of the constitution should be dealt with by Sub-Committee II.

*Chairman:* I gave you my word that at some stage of our proceedings you would be able to raise the question. We must be in possession of all information before we come to a decision on the question.

*Lord Zetland:* I understood you to say, Sir, that there was general agreement that the official bloc in the Legislative Council should be done away with. It is just possible that there may be such agreement, but I did not understand that the composition of the Legislative Councils had been at this stage submitted to the sub-Committee. It was the composition of the Executives with

which the sub-Committee has been dealing. Nothing is said about the constitution and composition of the Legislative Councils. We have not discussed that.

*Diwan Bahadur Ramachandra Rao*: This is not involved in the abolition of the distinction between transferred and reserved subjects?

*Chairman*: If the question was not referred to us we are not taking any decision upon it, but I do not see how that relates to the point that the official bloc in the Provincial Legislature should disappear.

*Lord Zetland*: But surely that is very much to the point. If the constitution and composition of the Legislative Council has not been submitted to this Committee, how can this Committee discuss whether in that composition there should or should not be an official bloc?

*Chairman*: What I am trying to do is to give the sense of the subjects discussed in this Committee, and I think I am entitled to say that, generally speaking, there has been a desire to dispense with the official bloc.

*Mr. Barooah*: Would you not include something about the appointment of civilian Governors?

*Chairman*: I have allowed great latitude in the discussion, and I have put up three suggestions whereby the whole powers of Governors can be discussed this afternoon.

*Diwan Bahadur Ramachandra Rao*: May we say that the sense of the sub-Committee is against the appointment of officials as Ministers?

*Chairman*: That is a point we will keep in mind in the report we have to submit.

*Mr. Fazl-ul-Huq*: Did not the Committee decide that it was not desirable that minorities should not be represented in the Cabinet?

*Chairman*: That the representation of minorities in the Cabinet should not be made statutory.

*Mr. Fazl-ul-Huq*: Could we not say that while the Committee thought that it was desirable to have minority representation in the Cabinet, it could not be embodied in a statute?

*Chairman*: That is exactly what it means. You have to remember that what I have suggested to you are only headings, and not necessarily the exact wording which will be in the report. The report will come before the Committee.

*Sir Chimanlal Setalvad*: In the larger Committee when this question was under discussion it was said that these bodies should be co-extensive, and the Prime Minister said that that was what was in his mind. You cannot consider the powers of the Provincial Legislature, of course, in the same manner as the powers of the Provincial Executive.

*Lord Zetland:* We have not considered whether a definite number of seats in the Provincial Legislature should be reserved for Muhammadans, and other matters of that kind.

*Chairman:* I want to call your attention to the fact at the opening of our proceedings I pointed out that the sub-Committee could not avoid the question of the size of the Provincial Legislature and the elimination of the official bloc. I do not take responsibility for the failure on the part of the sub-Committee to discuss that question.

*Lord Zetland:* I accept your ruling at once.

*Mr. Wood:* Could it be put to this Committee that they are perfectly satisfied that we have discussed sufficiently the composition of the Legislature? There has been no discussion as to whether seats should be reserved for Muhammadans or minority communities, but if the Committee is satisfied that that has been taken into consideration, and the members have refrained from speaking upon it, we might add a statement to that effect.

*Chairman:* If it is the desire of the Committee to expand the number of subjects so as to include the one raised by Lord Zetland I have no objection. I have given you two points which needed further discussion, namely, the powers of Governors, and Second Chambers. If there is a desire to take the other question with regard to the composition of the Legislature, I do not mind, only it seems to me that we are going to travel over some of the ground that we have travelled in the last two sittings.

*Mr. Wood:* I am not suggesting any blame to the Chair, quite the contrary, because it was clearly explained to the Committee what the scope of the discussion was, and it simply means that that subject has been eliminated by the speakers.

*Chairman:* The fact that nothing has been said about it might be taken to indicate that there is nothing to be said.

*Sir A. P. Patro:* The question of the composition and representation of various communities will be dealt with fully and adequately by a separate committee. The question of the official bloc has been discussed by every member present.

*Sir P. C. Mitra:* I understood that we might more profitably discuss this matter after the Committee dealing with minorities has considered the matter.

*Sir Abdul Qaiyum:* The official bloc is in direct connection with the rights of minorities.

*Chairman:* I did not know that the official bloc had such a close connection with minorities. May I say that we are not ruling this out. I have stated that there would have to be some consultation with another committee. I think we should devote our time this afternoon to two questions that do belong to this Committee, the powers of Governors in the Provinces and whether you are going to have Second Chambers. We might continue the discussion on that aspect.

*(The sub-Committee adjourned at 1 p.m. until 3 p.m.)*

*Lord Zetland:* Mr. Chairman, you read out this morning, just before we adjourned, a number of subjects on which you told us that you thought the Committee were generally agreed, and I agree with you; on those subjects there is general agreement upon the Committee. You told us that there are one or two points which you thought might be discussed a little further. One was the question of the possibility of having an official minister, and the other was the question of the powers of the Governor. Sir, we have discussed these matters pretty freely and I think we know generally what the views of the Committee are upon them; it perhaps might shorten the discussion this afternoon if I point out that there is really no great difference between my view and the view of the majority of the Committee on these questions; there is some difference but not really a great difference. All I am pleading for is what Sir Robert Hamilton pleaded for this morning: a certain amount of elasticity.

Take the case of the appointment of the Ministers. I agree with the Committee that in nine cases out of ten the procedure would be this, that the Governor would invite the member of the Legislative Council who appeared to have the largest following to form a Ministry; he would discuss with that Chief Minister the composition of his Ministry; and, as I said, in nine cases out of ten I imagine that the composition of that Ministry would be elected members of the Legislative Council. The only difference between the majority of this Committee and myself is this, that I do want to retain for the Governor and his Chief Minister just that discretionary power which might in certain circumstances be really valuable. That is all I ask for; a discretionary power, that is to say, a discretionary power to go outside the elected members of the Legislative Council in the case possibly of one of his Ministers. It is quite true that I go further than the majority of the Committee do when I say that in the exercise of that discretionary power I would not exclude the possibility of an official being chosen. I myself do not think that an official would be chosen except in very exceptional circumstances, because I fully admit the force of all the arguments which have been used in the course of this discussion against such an appointment. If the Committee were prepared to leave the discretionary power with the Governor I should be quite prepared to agree that in the Instrument of Instructions to the Governor it should be laid down that the normal procedure would be the choice of a Chief Minister and the selection of Ministers from the Legislative Council chosen by the Chief Minister in consultation with the Governor. Very well, then; that appears to me on that point to be the only difference between us.

Then with regard to the Governor's powers I think it is quite clear, as one of the speakers pointed out—I think it was Dr. Ambedkar—that in items 3, 4 and 5 in which the Report of the Simon Commission suggests that the Governor should have certain reserved powers, he must have those powers. Number 5 is that he is to have powers to carry out any duties statutorily imposed

upon him. Now I ask members of this Committee: how can he obey the statute unless he has the power to do so? It is quite clear I think that if he has certain functions laid upon him by statute he must be put in a position in which he is able to discharge those functions; otherwise the thing becomes a farce. Then with regard to securing the carrying out of an order of the Secretary of State or the Government of India, if the Governor is to be in a position in which he has to carry out an order issued by the Government of India or the Secretary of State, clearly he must have the power to do so; otherwise there again it would be a farce. An example of the sort of thing that he might have to do under a provision of that kind occurs to me; there might be, let us say, trouble of some kind affecting more than one Province; the Federal Government might send down an instruction to the Governor of one of the Provinces affected to take certain action in conformity with the action being taken in another Province. I think it would be quite reasonable that the Federal Government should have the power of issuing an instruction of that kind; and there again surely unless the Governor is in a position to carry out that order it is quite useless to send any order. So that there again I think he must have a certain reserved power. I do not suggest that the power would have to be used; it is quite likely that his Ministry would be perfectly willing to carry out the wishes of the Federal Government; but supposing for any particular reason the Ministry hesitated to carry out the particular action, whatever it was, then I think the Governor would have to be in a position to order that the action should be taken. Certainly under those two heads Dr. Ambedkar and I are entirely in agreement and I think various other members of the Committee too.

Then, going back, there is number 3, to secure the fulfilment of a liability of Government in respect of expenditure non-votable. There may or may not be non-votable expenditure; I express no opinion on that; but if there does happen to be any non-votable expenditure I think it is only reasonable that the Governor should have the power in that respect of securing the fulfilment of a liability imposed upon him.

Then the other two heads which are of course rather more open to debate, are, to prevent serious prejudice to any section of the community. There again I really think the Governor in the last resort ought to have power to issue an order to protect a minority from obvious injustice if such a case arose; I do not think it is unreasonable that the Governor of a Province should have that power.

The other case is to preserve the safety and tranquillity of the Province, or, as Mr. Zafrullah Khan would rather put it I think, in the department of law and order; I think he preferred to put it in that way. There again in the last resort surely the Governor of a Province, unless he is to be a pure automaton, a pure cypher, must have power to ensure to the best of his ability the peace,

good order and tranquillity of his Province. So that I would reserve to the Governor those suggested powers. I do not contemplate that they would ever be used in the normal process of administration, and indeed I should see grave objections to the Governor stepping in normally; but these are to me particular cases which may arise, and in the last resort I think they would have to be dealt with by the Governor.

Now that is my plea; do let us have a little elasticity when you are dealing with your Governor and your Chief Minister. Sir Chimanlal Setalvad this morning, when he was arguing against the appointment of members of the Indian Civil Service as Governors, said that what was wanted in India in the future to fill the post of Governor was men either from Great Britain or from India of capacity and of broad views, of a capacity for statesmanship. Well, believe me, if you are going to tie the hands of your Governor with yards and yards of red tape, to say that he shall not do this and that he shall not do that, you are not going to get either from India or from this country men of the type suggested by Sir Chimanlal Setalvad. If you are going to lay down by statute or by rule minutely every little thing that the Governor may or may not do, you will not want a man for a Governor at all, all you need have is automaton. Really after all, we are men of the world, we have mixed with many peoples, and do not we all know that character and human personality must have some field for their display if a man of capacity is to be of any value for a country at all.

I hope it will not be necessary to continue discussing in any detail this question of the choice of the ministers or the powers of the Governor. I have put my views before the Committee as frankly as I can, and, as I have said, they amount to no more than this, that I do ask this Committee just to give some elasticity; do not try to tie up men occupying responsible positions of that kind with all these yards and yards of red tape. If I may say so, if there is one vice to which all Governments are liable it is that of getting themselves tied up in red tape. Now let us get away from that; trust the man, if he is good enough to occupy the position he will be worth trusting; if he is not to be trusted then he ought not to be there; but I do ask you to give a chance to the Crown when it is making appointments of this kind to select men who will be really fit and worthy to hold these high positions.

*Sir Ahmad Said Khan:* Sir, we are dealing with point No. 3 and the powers of the Governor. Before I deal with this I should like to say a few words about the suggestion made by my noble friend the Marquess of Zetland. As he knows, I made it quite clear to him in my speech that I am in favour of not making the constitution very rigid. Still I may be allowed to submit that it will be a mistake to follow this line of including an official minister. My reasons are very clear; even if you do so it will be impracticable; it will never happen; no Governor will try this experiment; no Chief Minister or Ministry will be ready to include

an official Minister. By putting this in the constitution you will make a constitution which will be looked upon by my countrymen as a retrogressive measure. Therefore if you want to give them something do not give them it with such a paint that they may dislike the very colour of it. So far as this question is concerned I will finish there.

Now coming to the special powers of the Governor, I beg to submit that I do not wish to take up the position taken by Dr. Ambedkar this morning; I think he indicated a certain suggestion and refuted it at one and the same time; for instance, he started by saying that he agreed that minorities should be protected but said that these powers should not be given to the Governor, that they should be put in the statute. Sir, if no man is going to exercise those powers how are those words of the statute going to protect minorities? Somebody would have to exercise those powers and that person should be the Governor; therefore the powers are bound to be put in the hands of the Governor; there can be no other authority to exercise them. Similarly with regard to the preservation of tranquillity and peace in the Provinces, while he disagreed with giving power to the Governor, he proposed that if there is any breach of peace the Governor should be allowed to have all the postings of the officers in his own hands. That means that he should be allowed to usurp all the functions of the Home Minister and the Home Minister for the time being would become a nonentity in the Cabinet. I think, Sir, that instead of doing this it would be much better, as was suggested by the Simon Commission and by many other gentlemen here, that these powers should be given to the Governor to interfere in these departments. As far as these two questions are concerned I know that any reservation of power in the hands of the Governor is contrary to the notion of self-government; it is difficult to reconcile the idea of autonomous Provinces on the one hand with these special powers of the Governor on the other hand; still, situated as we are, we have got to make a constitution for a country in which there are difficulties. We wish to face those difficulties and to draw up a constitution which may be suitable for that country. I should like with your permission to quote the words of a nationalist of the type of Mr. Sastri when addressing the East Indian Association about these powers of reservation of the Governor; he said this: "Though great powers are reserved for the Governor, the cases in which he may use them are carefully defined; they are: (1) In order to preserve the safety or tranquillity of the Province, or (2) in order to prevent serious prejudice to one or more sections of the community as compared with other sections. Exception may be taken to the second category of powers as being likely to create occasion for undue exercise; but it is necessary to induce a sense of contentment and security in the minority communities and we must bring ourselves to acquiesce in it." When a nationalist of Mr. Sastri's type is willing to agree to it I do not think that any of us should have any objection to those powers being given to the Governor.

Sir, now the question is whether those powers should be given to the Governor or should be shared by his Government. My reply is that these powers should be given only to the Governor and not to the Executive of his Government. The reasons are very clear. First of all it will be when the Governor wishes to override his Cabinet that he will have to use these powers, and therefore the Cabinet cannot possibly share those powers with the Governor. Secondly, any such special powers, if given to the Ministers, would be quite inconsistent with their responsibility to the House. For these reasons I am definitely of opinion that these powers should be given only to the Governor and not to the Government. May I also speak on Nos. 4 and 5.

*Chairman:* You see I gave three points which we might discuss: should the Governor have a discretion to appoint an official amongst the Cabinet; should the Governor have any special power to act otherwise than on the advice of his Ministry, whether in the matter of administration, legislation or finance; should further power be vested in the Governor for use in times of emergency. Now I am quite prepared to take the points one by one or to take the three points together. I do not think there is a wide difference between us on any of them. I should rather like to hear what you have to say on any of the three points and then I will try later on to collect the general sense of the Committee. But I agree with the Marquess of Zetland: I do not think there is very much between us.

*Sir Ahmad Said Khan:* I come to point No. 5, that in the case of breakdown what powers should be given the Governor. I entirely agree that full powers should be given to the Governor if there is a breakdown of the constitution, and those powers should be shared by his Executive also. I wish here to make it clear that while in the case of a breakdown I am of opinion that these exceptional powers should be shared by his Cabinet also, I feel that when he is going to override in interests of minorities or for the preservation of law and order, in normal conditions these powers should not be shared by his Cabinet. When there is a breakdown the whole Government will work together and therefore these powers should be shared by the whole Government.

It is very very difficult to reply to the last two points. The question is what are the requisite conditions under which it can be declared that normal conditions are not prevailing and that the constitution has come to an end.

I think it is very difficult to foresee all those conditions. Still I must say that such conditions may be created in spite of all we may do. Such conditions may arise, for example, if there is a Province where it is impossible to get a Council elected or where, if a Council is elected, it refuses to have a Ministry. If there is no Ministry I think one can say the constitution is not working, and the Governor will have to use his abnormal powers to carry on the Government.



All these abnormal powers of the Governor should be well defined and perfectly definite. I do not wish him to use them whenever he likes; in normal circumstances he should always act according to the advice of his Cabinet and he should be a constitutional Governor. These powers are for use only in certain conditions, and those conditions should be well defined, to make it quite clear that the powers of the Governor may be used in those conditions and in no others.

*Mr. Chintamani:* I am indebted to the noble Marquess for the very clear exposition he has given of the point of view from which he put forward his proposal that the law should be elastic and should allow the Governor discretion which will be adequate enough for him to act in difficult and delicate situations, and that he should be endowed with powers requisite for the discharge of his responsibilities. With the latter part of that proposition no sane man can have any quarrel; none will say that you should impose on any individual duties and responsibilities without at the same time conferring upon him the powers without which those duties and responsibilities cannot be discharged.

Applying this proposition to the case under discussion, I should like to know what are those duties and responsibilities which you would cast on the Governor for the performance of which you do not propose to endow him with the requisite powers. The basis of discussion of this subject, from our point of view, is that the Government should be a constitutional or responsible Government and that it should be presided over and have at its head a constitutional Governor. In various parts of the Dominions there are constitutional Governments presided over by Governors, and you will not have to invest the Indian Governors of the future with any more powers or with any more responsibilities than those with which you endow Dominion Governors.

There should be, however, one important exception. That exception I referred to in my remarks yesterday morning, namely, that in the Instrument of Instructions to the Governor we should have no objection to the insertion of a clause providing that he should see that no injustice was done to any minority community, and that the minorities should receive fair and equitable treatment. If in that respect the Governor takes a view which is not the view of his responsible Ministers, and if, therefore, in pursuance of the obligation cast on him by the Instrument of Instructions he gives advice to his Ministers as to a particular action to be taken or to be avoided, and if the Ministers do not accept that advice, the Governor will have the power which every constitutional Governor has of seeking for other Ministers who will be more amenable to the advice he gives in this particular regard, where a special responsibility has been placed on him.

Similarly, when in the course of day to day administration a subject or a situation arises which in the opinion of the Governor is of more than ordinary importance, and which, therefore, makes it his duty not to follow the advice of his Ministers if he disagrees

with it, but to insist on different action being taken, there again the constitutional remedy will always be open to him of accepting the resignation of those Ministers and appointing others who will be more in accord with his views.

Going a step further and assuming the difference between the Governor and those members of the Legislative Council who may be expected to be in a position to form a Government is, on that matter which the Governor regards as of such importance, so fundamental that he cannot get Ministers, the other constitutional remedy will be open to him and he can dissolve the Legislature and order a fresh election to take place. If after the general election he still finds there is no available man for the office of Minister who will take his view of the matter, it must follow in any constitutional system that the Governor must accept the advice of those who come with a fresh mandate from the electorate.

If you do not make these assumptions, and proceed to build your constitution on them, you may as well abandon the idea of endowing any Indian Province with constitutional or responsible Government. If you think of extreme possibilities which may occur once in a generation, and seek to provide safeguards or reservations or remedies for them, you run the risk of placing in the hands of Governors with an autocratic habit of mind the power, in emergency situations which may be provoking to them, to take action which cannot be justified on any ground of constitutional propriety or public expediency.

We must proceed on the assumption, in seeking to build up a scheme of reform, that the people for whose benefit that scheme is intended will act as men of commonsense and responsibility, and that they will know their own wellbeing and will not create situations fatal to their own development.

If I am told in reply that the history of the Governments of more Provinces than one in British India in recent years belies this assumption that you can trust the people to exercise enough commonsense and responsibility, I would say the objection is invalid on the ground of the peculiar nature of the present constitution, on the ground that the present constitution, taken as a whole, may without violence to language be described as an unconstitutional constitution, and the difficulties which this constitution has produced are not difficulties which you need anticipate when you have a straightforward constitution which creates a system of responsible Government. I would venture again to repeat the warning uttered by a Provincial Governor, Sir Harcourt Butler, when he said reform must not be afraid of itself.

The noble Marquess raised another point when he said there would have to be non-votable items, and if the Legislature refused to grant the money what was the Governor to do. The one comprehensive answer to that and to all cognate questions is this. If the Ministers refuse to act in the manner expected of responsible

men, the Ministers will have to surrender their jobs; if the Legislature acts and persists in acting in contumacious and irresponsible ways, the Governor must dissolve the Legislature and hold a fresh election. These are the constitutional remedies for constitutional difficulties in a constitutional system of government.

The third point raised by the noble Marquess was that the Governor might receive orders or instructions from the Secretary of State or from the Governor-General in Council, and how was he to carry out those orders received from official superiors unless he was endowed with special authority therefor. My answer is this. If the Provincial Government is to be a unitary responsible Government, the Governor will not have to receive any orders from any external authority such as the Governor-General in Council or the Secretary of State so far as the region of Provincial Government is concerned. He can only receive orders and instructions with reference to matters which are not within the province of the responsible Provincial Government; so far as those orders go the Provincial Government will not have anything to do with them; they will be matters of a different nature which cannot be solved in this Sub-Committee.

If there are Central or Federal subjects which are placed under the control of the Central or Federal Government and Legislature, but subjects which are administered through the agency of the Provincial Governor for purposes of administrative convenience or financial economy, then the Central or Federal Government which makes the Provincial Governor its agent specifically for those purposes will see he is given the requisite staff, the requisite funds, and the requisite powers to perform his duties as its agent in an adequate manner. He will not come into conflict on any point with his responsible Government.

The noble Marquess pleads that all he wants is a certain elasticity, a certain discretion for the Governor. If the Governor is allowed at times to appoint an official as Minister, you may be certain, the noble Marquess said, that he will not proceed post haste to exercise that discretionary power, but will do so only in an emergency when he thinks he has no other option. I submit this is not a reasonable view of elasticity for the noble Marquess to take, if you proceed on the assumption that you are building up a system of responsible government in the Provinces. Suppose in this country an emergency arose when it appeared to wise men that the ordinary constitutional system should be suspended and that an emergency Government should be created. Is there any provision by which you are governed which would enable anyone here to suspend Parliament or to suspend Cabinet Government? When the emergency occurred, you proceeded to construct a Cabinet of five. But in a Provincial Government such situations are not likely to arise. We are not dealing with the Central, National Government but only with a Provincial Government, the whole of the problems under the purview of which will be of a domestic nature.

I think one comprehensive answer can be given to all the questions which are treated in items 3, 4 and 5 of this paper, namely, that the Governor should be considered to be a constitutional Governor at the head of a responsible Government, and that with the single exception of an instruction to him in the Instrument of Instructions with regard to minority communities, he should be treated as constitutional Governors are treated in Dominions which have constitutional Governments.

*Dr. Shafa'at Ahmad Khan:* I am under a considerable handicap to-day, because I did not follow the debate yesterday; but I should like to deal with two points which have been raised by the noble Marquess. The first point concerns the question of an official Minister, and the second the question of the powers of the Governor.

So far as the question of an official Minister is concerned, opinion in India, and I think here too, is that he would be a fifth wheel in the coach. I am convinced that if an official Minister is taken into the Ministry it will place the Ministry in a very awkward position. Either the official will be brought in with the consent or at the desire of the Chief Minister, or he will not. Taking the first alternative, let us suppose that the Chief Minister consents to the inclusion or the admission of an official Minister. If the Chief Minister says to the Governor "Your Excellency, I have no objection at all", it will show that the Chief Minister is not really equal to his job; he cannot carry on the work and is incapable of carrying on the administration on a very high standard. The best thing, therefore, would be for him to give way to another Chief Minister, in order that the Government which his successor may form may inspire confidence.

If, on the other hand, the official Minister is brought in against the advice of the Chief Minister, several very serious complications will arise. The mere fact that the official Minister is there will cause all the non-official members of the Council to make a dead set against him. When he appears in the Council on the Treasury Bench the whole Council will be virtually united against him, because he is an official Minister and has been taken against the wishes of the Chief Minister. That is a very important consideration which has to be borne in mind when the possibility of appointing an official Minister is advocated. I can say from an experience of seven years in a local Legislature that a number of the measures proposed in that local Legislature are opposed simply and solely because they proceed from what is called the reserved side. If any measure comes up from the reserved side it is suspected by the transferred side. The Ministers may not oppose it openly, but they sometimes oppose it secretly because it emanates from the reserved side. If, on the other hand, you have an official Minister, in that case the opposition will be greater, more intense and keener, because in that case the official Minister will be the target of attack not only by the Chief Minister but by practically every non-official member of the House. That is a very important consideration which has to be borne in mind.

I now come to the powers of the Governor. In discussing the powers of the Governor two or three important factors must be kept in view. In the first place a distinction must be made between two different capacities in which the Governor may exercise his powers. When a Governor comes to a Province he has a dual function to perform. In the first place, he acts as the agent of the Imperial Government; in the second place, he is the head of the local Government. These two functions are quite clearly understood in all the Dominions, as far as I know. Insofar as the Governor is the agent of the Imperial Government, he must carry out and is obliged to carry out all the duties and obligations and responsibilities which the Secretary of State for the Colonies or the Secretary of State for India may impose on him, or which may be imposed on him by the Statute. That is absolutely clear. As head of the local Government he has also certain duties which he will be called on to perform.

I will deal with his duties as agent of the Imperial Government. His duties as agent of the Imperial Government consist not merely in performing social functions and doing the routine work of attending cricket matches and so on; they consist also in obeying the Despatches of the Secretary of State for India or the Secretary of State for the Colonies. This is also perfectly clear. When he receives his letters patent he also receives instructions under the Signet, and those instructions he must obey, besides obeying the instructions which he receives frequently from the Secretary of State for the Colonies. He is bound to obey, therefore, not only the instructions he gets when he is appointed but also the instructions which he frequently receives from the Secretary of State for the Colonies; and, because several Governors have not obeyed those Despatches of the Secretary of State for the Colonies, several of them have been recalled. We do not really dispose of this subject, therefore, by saying that the Governor should have the same powers as are possessed by a constitutional Governor.

What are those powers? We ought to know them. The constitutional Governor has certainly got more powers than the previous speaker has really indicated. I will divide those powers into three categories. In the first place, he must have all the powers which a Dominion Governor is expected to exercise and does normally exercise, and those powers include the Statutes of the Imperial Government, all the duties imposed on the Imperial Government by international treaties or by other conventions entered into by the British Government with other Foreign Government. All these must be carried out through the Government of India by the local Government. That is one thing. Secondly, besides the international obligations he must carry out the orders of the Secretary of State whatever they may be. Of course, they will be very restricted.

I come now to the powers of the Governor and his duties in respect to local Government. First we have the safety and security of the Province. This is included in the present instructions to

Governors, and the proposal is that similar words, "safety and tranquillity" shall be embodied in a statute. I believe that the Governor must have a reserved power of this kind in emergencies. A Governor will think twice before he cuts across the wishes of his Ministry, and, on the other hand, he will not take steps lightly to alienate public sympathy. What we have to fear is not too much action by the Governor, but too little.

In the second place there is the question of safeguards for minorities. This sub-Committee has not to deal with the nature or form of the safeguards, but with the method by which those safeguards are to be enforced. I can say that on these points it is perfectly clear that safeguards must be enunciated in the statute. The principles must be there; if they are not there the Governor cannot be expected to try to carry them out. It is placing too heavy a responsibility upon him. Not to put them there would be to reduce the whole thing to a farce. In the Government of India Act, Section 67 (2) we read, "It shall not be lawful without the previous sanction of the Governor-General to introduce at any meeting any measure affecting . . . the religious life and usages of any class of British subjects in India." All that has to be done is simply to adapt this phraseology, so as to make it unlawful to introduce any Bill dealing with these fundamental rights without the previous consent of the Governor. If the Governor stated that the objection was frivolous, in that case the Bill must proceed. The machinery I suggest is perfectly easy. This Section can be modified and applied to the Provincial Legislature. It has been tested in practice and found to work very successfully indeed.

Then it was suggested that the Governor should have power regarding financial stability. I entirely agree. It is one of the duties which should be imposed upon the Governor to maintain the financial stability of the Province. There are numerous instances of Governors of Dominions being called upon by Statute to see to it that no financial irregularity occurs. That power should be extended.

The next point is concerned with the power of the Governor in emergencies. Very few will disagree on this point. Supposing the constitution breaks down, and there is no Ministry capable of carrying on the Government, in that case the Governor will be justified in dissolving the Legislature, dismissing the Ministry and running the Government himself until a new Ministry can be appointed. The method suggested by Mr. Chintamani will not be practicable; he suggested that in certain questions, for instance, law and order, the Governor should do nothing. All he need do is to dissolve the Legislature and later on to entrust the work to a Chief Minister. The time he would take in doing this could not be less than a month. What will happen during the interval when he goes through all the formalities of dismissing the Legislature, dismissing the Ministry and forming a new Ministry? There would be anarchy throughout the Province. Anybody who has

had any practical experience of administration will see that it is thoroughly impracticable to suggest this tedious process.

*Mr. Jadhav* : On the third item of the Agenda, as to whether special powers should be exercised by the Governor, Lord Zetland has stated that the Governor should not be reduced to the position of an automaton. I perfectly agree with him. But when it is stated here that the Governor should be a constitutional Governor it does not mean that he should be such from January 1st, 1932, or from whatever date the new Government of India may come into operation. There will be a period of transition, and I assure the noble Marquess that in that period the Chief Minister and his colleagues will have very often to go to the Governor for advice, especially on constitutional matters. I have had the privilege of knowing intimately the three last Governors of Bombay, and have on many occasions consulted them as to what the constitutional position was, and what under such circumstances would be done by the Parliament or the Government of England. This recourse would be of immense use in carrying out the new constitution which will be mostly on the British model. If the Governor was taken from the I.C.S., and had no experience of political life in England, the recourse would not be of the same value. But a Governor taken from the public life in England would not be used to the position of an automaton. He would have to give advice and guidance to the Ministers working under his eye, and therefore I do not think there would be any difficulty in finding men of experience and also of self-respect accepting the position of Governor in any Indian Province. It is certain that the Governor should be vested with special powers which are necessary, and that these should be exercised by him and not by the Executive. The time for exercising these special powers will be when the Ministers have failed in their duty, and the situation is left to the Governor to deal with.

With regard to the fourth point in the Agenda, as to how the Governor should obtain advice necessary for the exercise of his special powers, I do not think that special machinery need be created for providing advice to the Governor. The Governor will, I think, exercise his ingenuity or the means at his command in gaining the necessary information. I do not think there should be any provision made to supply him with advice, nor do I agree with the proposal made by the Simon Commission for the creation of sinecures in the shape of Ministers without portfolios.

With regard to the fifth point on the Agenda, as to provision to enable the Government to be carried on in the event of a breakdown in the normal constitution, what is meant by a breakdown? By that is meant that the constituted Ministers are not in a position to carry on efficiently, and in that case the Governor will be the best judge as to what he should do, whether he should dismiss the Ministry and constitute another or dissolve the Legislature and order a fresh election, or take on the administration himself. That is a question which should be left to the decision.

of the Governor himself. I do not think it will be right for us to make provision with regard to each of these points.

As to what emergency powers should be given to the Governor and to the Executive, I do not think it necessary to define them. That question has been sufficiently dealt with in the various reports before us. As to the conditions requisite for the exercise of those powers, and under what safeguards they should be exercised, I do not think that any elaborate rules should be formed for the guidance of the Governor, because different conditions may arise in different Provinces, and any set of principles may not be suitable for general application, and ultimately the Governor will have to fall back upon his own ingenuity. I think that the amendment of the Government of India Act should not be too frequently called for, and as we are now framing a constitution which will make India a self-governing Dominion, provision should be made in this amendment of the Government of India Act, that the advancement and evolution of the constitutional progress of India is clearly and completely set out in such a way that there will not be any need for change afterwards. Any changes required from time to time as India advances should be put down in the Instruments of Instructions. For this reason I do not agree with the last speaker that everything should be put into a statute, including the provisions for the protection of minorities. This would mean that India would not be a self-governing Dominion for a very long time to come, at all events not until those conditions laid down in the statute had become a dead letter. For that reason I would not desire that these provisions should be embodied in a Government of India Act, but in the instructions or rules issued from time to time it would be possible to make effective such changes as might prove to be necessary. In that way the working of the Government of India Act would not be impeded.

*Sir Cowasji Jehangir*: Sir, the points have now been narrowed down by the speech just made by Lord Zetland. He still suggests that the Chief Minister or the Governor should have the option of having a minister from outside the Council. May I point out that he does not now insist or he never did believe that it would be necessary in every case, but he just wants to give that option to the Governor. May I point out that even if the Governor or the Chief Minister never took advantage of this provision, we must consider what the effect of such a provision will be just now upon public opinion in India. I would bring this point to the attention of Lord Zetland and the other Delegates. Take it for granted that that provision is never made use of, take it for granted that Lord Zetland does not intend that it should be made use of, may I most respectfully point out that such a provision in the Act will have the effect of damning any legislation that may go through.

*Lord Zetland*: May I just point out that I do not want to insert a clause of that kind in the Act; what I want to avoid is



laying down quite definitely, either in the Act or in rules, that the Governor shall not have the discretion. I do not want it mentioned at all.

*Sir Cowasji Jehangir*: The unfortunate thing is that in the Simon Commission's Report this suggestion was made and if you do not now provide for such a contingency in the Act itself it will immediately be said that you are handing over these powers to a Governor and a Chief Minister, that is to say the power of appointing one or more officials to the Government, and a contingency may arise when a Governor may take advantage of it. Therefore, Sir, I most respectfully beg that this suggestion should be given up in view of the practically unanimous opinion of the Delegates, taking everything for granted, that what Lord Zetland said is correct, that it will not be taken advantage of. If that is so the point is so narrow and public opinion is so strong in India, that, rather than have strong criticism against any legislation that may go through in this respect, I would respectfully ask that it should be left out.

Then again, his explanation as to the position of the Chief Minister was perfectly logical. We hope and trust that the Governor will in each case ask for the assistance of a Chief Minister in the formation of his Government. It can only be mentioned in the Instrument of Instructions; such things are never or very seldom mentioned in a statute. It was always my intention to leave it free in the Instrument of Instructions; but it must be very definitely laid down that in every case the Governor shall appoint the Chief Minister and shall approve or disapprove of the names submitted except perhaps—and I am not prepared to admit this just now—in certain very exceptional cases. This goes to the very foundation of self-government, the Government appointing the Ministry with the advice of prominent members of the Council. The suggestion is the very negation of self-government. It has been admitted on all sides here that joint responsibility is an absolute necessity; it is a *sine qua non* so much so that Mr. Ambedkar suggested that that should be the only point which should be made a statutory provision. If that is so, may I respectfully again point out that giving the power to the Governor to appoint his ministers is not consistent with joint responsibility. There are several groups; the Governor picks out the best men from each group; he calls one or two prominent members and says: "Now work together jointly." Would not the other method be far better, that the Chief Minister should go round and choose the men who he thinks will work with joint responsibility, submit the names to the Governor, then let the Governor say that for certain reasons so and so might be left out or so and so might be included. If the Governor did not approve of that list finally or if the Chief Minister would not accept the advice of the Governor, the Governor would have the opportunity of choosing another man to form the Ministry.

*Lord Zetland*: That expresses my views beautifully.

*Sir Cowasji Jehangir*: Then why not have it laid down definitely that that shall be the principle? Why leave it open? Why say that in certain cases that shall not be the rule? That is what is doing the damage so far as Indian public opinion is concerned. I have read in the Indian Press many criticisms of these suggestions. It is these little things that cause the trouble. They may be little things; we know that if worked properly it means nothing except that you let it be flexible; but you start with the prejudice. That was the trouble with dyarchy and it ultimately accumulated. Do not start with a prejudice; say clearly that you mean that there shall be a Chief Minister; the Governor may disapprove of a name or two and may call for another Chief Minister; lay that down as a principle in the Instrument of Instructions. The difference being so small ultimately, do not let us start with the prejudice of the Indian public.

Lord Zetland said that if you do not give any powers to the Governor he will be a cypher. Well, Sir, what is the Governor expected to be? In short, he is expected to be a guide, philosopher and friend of the ministry, a man there from whom advice is available; a man of experience of public life in England who is ready to give his ministry advice, but who has not the power of insisting that that advice shall be taken. Believe me, the Governor will be more powerful; the Governor will be a greater instrument for good to the country in that position than if you give him powers of over-ruling or over-riding his ministry. Situated as we are to-day in India, the advice of an Englishman is most welcome, but when that Englishman has the power of forcing that advice down the throats of unwilling people, it is not only resented but the advice is not taken. That is the position; the Governor will be in a more influential position provided the responsibility is not on his shoulders.

*Chairman*: But does anybody propose to give him the power which you are referring to—to push it down their throats?

*Sir Cowasji Jehangir*: Yes, all these over-riding powers that are suggested.

*Chairman*: I thought we were trying to turn over a new leaf.

*Sir Cowasji Jehangir*: Yes, that is what we are trying our utmost to do, Sir, and we hope we shall do it. As to these over-riding powers mentioned in the Report of the Simon Commission, 3, 4 and 5 are mere truisms. Undoubtedly if there is any statutory provision laying upon the Governor any responsibilities you must give him the power to carry out those responsibilities; that is a truism, but the point is what are the statutory responsibilities which you are going to put on his shoulders? I should say very little and I will give my reason afterwards. No. 4 is to secure the carrying out of an order of the Secretary of State or the Government of India. Naturally that is another truism; if in the Statute the Secretary of State has the power of laying down a policy, the Governor must have the power to carry out that policy.

But the point is: What power are you going to give to the Secretary of State? The third is also a truism; if you are going to have non-votable items, naturally the Governor must have the power of putting his hands in the Treasury and paying out those amounts; they will be a first charge on the Revenues. All non-votable items are at present a first charge on the Revenues; they will remain so. It would be unconstitutional not to pay a non-votable grant; it would be *ultra-vires*. It is a first charge and that is a truism.

Then we come to No. 2, on which there is a difference of opinion; that is to prevent serious prejudice to any section of the community. I would leave that alone for the present until the Minorities Committee has reported. Whatever responsibility is placed upon the shoulders of the Governor with regard to minorities he must have the power of carrying out those responsibilities.

No. 1 is to secure the safety and tranquillity of the Province. There I quite agree the Governor must have emergency powers, and if No. 1 means emergency powers, I have no objection. But what does it mean? That is what we want to know. What does it mean when it says: "to preserve the safety and tranquillity of the Province?" There are two circumstances under which I consider emergency powers, at present are necessary and I think the Governor must be left to be the judge. The first is where no Council is in existence, and no ministry under certain circumstances. Certainly the Governor must carry on the Government. Secondly, which is much more serious, when there is such a disturbance in a Province or in any part of a Province and that a disturbance continues for a length of time notwithstanding every effort of the Ministry, when public opinion gets so strong that something more effective should be done, when Government is paralysed on account of that trouble, communal or otherwise; then certainly the Governor must step in.

*Mr. K. T. Paul:* What can he do?

*Sir Cowasji Jehangir:* The assistance of the Federal Government must be asked for; the Governor must intercede and establish government again. These are cases of emergency and I would be the first to say the Governor must be given those emergency powers; under all circumstances he must be given those emergency powers and he must be the judge of when that emergency had arisen. If a Governor does not use his discretion properly and uses those emergency powers when his Ministry is still able to cope with the situation, then public opinion will be so strong I believe in the future that that Governor will no longer be able to remain a Governor. I have no reason to believe that the men who will be Governors in the future will not use that discretion in a manner in which it is intended to be used, provided it is clearly defined that it is only in the case of emergency that the Governor should interfere. I will only give two instances. The Simon Commission has also pointed out the very difficult position in which Governors will be placed in the future in India and in a few lines upon which

I cannot lay my hands immediately it has shown some hesitation, it wonders whether those men will be forthcoming to take up all these responsibilities. That doubt is well founded and it is our object to lessen those responsibilities as far as possible. We must not make it necessary to have supermen as Governors of Provinces; we can only expect to get good men; we cannot expect to get supermen. Unless you take all this responsibility off their shoulders, which so many people are anxious to thrust on their shoulders, you will require supermen to be Governors of Provinces. I do not expect to have supermen to be Governors of Provinces; I only expect to have good men and men with experience. Therefore, I would most respectfully urge that you do not place all these responsibilities on the shoulders of a Governor; let him be a guide, philosopher and friend, but not a dictator.

*(The Committee adjourned for a quarter of an hour.)*

*Diwan Bahadur Ramachandra Rao:* Sir, there are three questions which have been under discussion this afternoon. Lord Zetland has revived the discussion in regard to official ministers. I regret to say that with all respect to him, and after hearing everything that has been said in favour of the proposal, I still feel that the entertainment of an official minister would constitute a serious inroad on the principle of responsibility which it is proposed to confer on the ministers. I have already pointed out on a previous occasion that even the partly official local Governments as they now are, are for the most part against the introduction of a minister who is not responsible to a constituency. The Government of Bombay point out that it will create the anomaly of there being in a Cabinet jointly responsible to a Legislature persons who will not be drawn from it and who will not represent the choice of the Legislature; they will not have any party or following in the Council on whom they could depend for carrying out their policy; though in theory responsible to the Legislature, they will not be removable by it, and, being appointed by the Governor, will naturally look to him for support. Now, Sir, that is conclusive; in effect we shall be introducing into the Executive a person who is not responsible to anyone but the Governor. That is fundamental. If you wish to have joint Cabinet responsibility for the administration of the Province it is far better not to have an official Minister. The only reason put forward by Lord Zetland was that there may be circumstances in which as between the conflicting communities in India it may be possible to entrust the portfolio of Law and Order to a person who is not connected with any community. As I have already pointed out, and as several of my friends have already stated, if the communities have no confidence in each other, they must learn to work together and to trust each other. As has been pointed out, in many of the Provinces Indians have already been discharging these duties. In those circumstances absolutely no reason has been assigned for infringing the principle because of the possible contingency of an official minister being required in some Pro-

vince at some future time. It seems to me that there are no compelling circumstances which should induce us at present to agree to the introduction of an official minister.

As regards the overriding powers of the Governor, there seems to be some slight confusion. The Simon Commission have definitely taken the stand that as far as possible there must be a break with the existing system, which allows the Governor to do more or less what he likes and to override his Ministers in any matter in the whole field of administrative responsibility. In para. 53 they say: "It is this which we have more than once referred to as the 'blurring' of responsibility. Self-government in the provinces can only become a reality when the Governor does not come in like a *deus ex machina* to make the wheels go round. The principle which we think ought to be insisted upon is that as long as the normal processes of responsible government are being pursued, the responsibility which properly attaches to government should be jointly borne by those who have the honour and the care of office. We are bound to make the provisions in para. 50 for the critical cases which may arise when the rights of minorities are put in jeopardy, or the peace and security of the province are put in serious peril, as well as for cases where vital interests not limited to the province are involved. But subject to this, responsibility in the face of the provincial legislature should rest where it constitutionally lies, as long as normal constitutional government is being carried on."

This is the position taken up by the Simon Commission, and their recommendations are intended to break with the existing practice of allowing the Governor to do what he likes in any sphere of government entrusted to the Ministers. The Commission reduce the cases where the Governor should have power of intervention and of overriding the views of his Ministers to five, and these five cases are expressly set out in para. 50 of the Report of the Simon Commission. The question we have to consider is whether we should accept these cases as cases where the Governor should have some power to override the decisions of the Ministers.

In regard to these five cases, the first one mentioned is: "In order to preserve the safety and tranquillity of the Province." I submit that these words "the safety and tranquillity of the Province" are too general and are too comprehensive. In one place the Simon Commission has expressly ruled that responsibility should lie normally with the Minister, yet they give power to the Governor under these comprehensive words to override the decisions of the Cabinet and to prescribe measures over the head of the administration. I submit many cases may arise in the normal course of administration where this provision could be invoked, and I submit that the Governor should not have the power to intervene in this way in the normal course of administration in any Province, but should have it only in the case of a state of emergency, such as is referred to in the Report of the Simon Commission. Otherwise we shall impinge on the responsibility of the Minister, and we shall be inviting the Governor to

shoulder that responsibility, which ought to be on the shoulders of the Ministers.

I should also like to draw the attention of the sub-Committee to the fact that in these five cases the Governor would be subject to the superintendence, direction and control of the Governor-General. The result of that is that in regard to matters which are described as falling under the safety and tranquillity of the Province it is not only the Governor but the Governor-General who may intervene in the affairs of the Province and in this way override the decisions of the Ministers.

On these broad grounds I submit that the only case in which the Governor should have any special powers should be in the circumstances described as constituting a state of emergency, and which are these: "We recommend that the Governor . . . should be given statutory powers to declare that a state of affairs has arisen under which the government of the province cannot be carried on in accordance with the provisions of the Statute, and thereupon there should vest in the Governor all the powers normally possessed by the Governor and his Cabinet, with the right to appoint any persons to assist him and to delegate powers to them, and the right to nominate any such persons as members of the Legislature. The Governor would have further powers to restore rejected demands for grants, and to certify legislation if in his opinion it is essential for any interest in the province—a power which it will be observed is wider than his normal powers set out in para. 50 above. It should be provided that the reasons for declaring that such a state of affairs exists should be reported at once to Parliament, and that these special powers should not remain in operation for more than twelve months without the approval of Parliament expressed by resolution of both Houses."

It is these powers that it may be necessary for the Governor to possess, where the machinery of Government breaks down, where the Legislature refuses to function and where there are no Ministers to take charge of the administration. It may be that in those circumstances the special powers mentioned in the paragraph I have quoted should be given to the Governor, but I think that in no circumstances other than that should the responsibility of the Ministers be reduced. They should certainly learn to face the music and not to call on the Governor to shoulder their responsibility which lies on them as Ministers. That is, I submit, the true position; it is only to meet a state of emergency that the Governor should have these powers. In other circumstances the Ministers should act normally and the Governor should be bound to act on their advice.

*Sir Ghulam Hussain Hidayatullah:* I will not take more than five minutes. I agree with my friend Sir Cowasji Jehangir that no Minister who is not an elected member of the Legislative Council will be acceptable to the country, but I join issue with him when he says it should be obligatory on the Governor in all circumstances to have a Chief Minister. I do not think the

Governor's discretion should be tied down in that way. There will be circumstances under which he may not be able to find a man who can command the confidence of a very large section of the House.

My friend Mr. Chintamani said we ought to have a constitutional Governor, whose powers would be restricted to dismissing Ministers and dissolving the Council. He did not like to give the Governor any other powers; he seems to imagine that in India ideal circumstances exist, that there are no differences of class and creed, and that we have disciplined parties in that country!

With regard to the powers proposed for the safety and tranquillity of the Province, that point has already been dealt with by my friend Dr. Shafa'at Ahmad Khan. If the tranquillity and safety of the Province is in danger, the Governor, it is said, must dissolve the Council. It will take some time before new elections take place and a new Council is formed, and in the meantime the disaster may be complete.

With regard to the protection of minorities, Mr. Chintamani suggested that instructions should be given to the Governor in the Instrument of Instructions to see that no injustice was done to the minority communities. If the Governor gives that advice and he is not listened to, what is he to do? He will be helpless. We have Provinces where one community predominates over the other. In that case almost the same Ministers will be returned and will form the Ministry, and no other community can form a Ministry. What will be the position of the Governor then? He ought to be provided with certain overriding powers.

On the third point, expenditure, let us suppose that we have financial difficulties in all the Provinces. The Council may, for example, cut down the salaries not of future recruits but of the existing servants. What will happen if the Council does cut them down?

*Sir Cowasji Jehangir*: What sort of servants?

*Sir Ghulam Hussain Hidayatullah*: All-India servants. They will continue for some time; you cannot send them away now, at once, and until they retire their position must be safeguarded. What will be the position of the Governor? He cannot restore the amount.

*Sir Cowasji Jehangir*: It will be non-voted.

*Sir Ghulam Hussain Hidayatullah*: Suppose the local Legislature makes an inroad on the administration of Central subjects; the Governor will be helpless. If the Council interferes in a matter which, in the opinion of the Governor-General, essentially affects the interests of any other part of India the Governor will be helpless unless we give him specified powers.

With regard to emergency powers, I am in favour of them in the form in which they are recommended by the Simon Commission.

*Sir A. P. Patro*: I propose to speak only on the powers of the Governor in relation to the Executive and the Legislature. We

have all been talking more or less at random and without reference to any particular powers that are now exercised by the Governors. The powers exercised by the Governor relate to administrative, financial and legislative matters. In regard to the exercise of the powers that are now vested in him under the Government of India Act, we have to find, from our experience and knowledge of what has happened during the last ten years, whether there has been any abuse of the powers that are now vested in the Governors in the various Provinces. If these powers that are now vested are abused or are not carried out properly, then we have to examine the position and see what are the powers that should be curtailed or taken away.

In the present circumstances of the country where we have got reserved and transferred subjects certain powers are vested in the Governor, but this distinction between reserved and transferred will disappear, and therefore the powers of the Governor must necessarily be altered.

With regard to the administrative powers of the Governor, I think the Statutory Commission has very carefully considered the altered position of the country, and has made suggestions in paragraphs 52 and 53 which are very sound, and which should in my view be adopted, because they form the basis of the conclusions with regard to provincial autonomy. The only criticism which has been made of them is one made by my friend Dr. Ambedkar with regard to communal matters; but I should like respectfully to say that I do not agree with his criticism of that matter otherwise every one of the speakers here has agreed that this should be the basis of the powers of interference by the Governor in administrative matters. My friend Mr. Ramachandra Rao read out paragraph 53, and here we have a very careful survey of the existing situation and of the new powers which will be vested in the Legislative Councils. The Statutory Commission has made its suggestions, and I do not think anyone has seriously challenged the correctness of the suggestions made in paragraph 50 of its Report.

With regard to the financial powers, to-day certain powers are conveyed in the Statute under Sections 64 and 74 D. With regard to certification where a grant is thrown out, that has reference to the reserved subjects. With reference to the transferred subjects the present power of the Governor is not to restore it but to leave it to the Council itself, and the fate of the Ministers will be that they will have to go. In the case of reserved subjects the Governor has power to certify a grant which has been thrown out, and in addition he now has power, where he thinks the discharge of his responsibility requires that a certain item should be sanctioned apart from the budget, to sanction it.

I appeal to the experience of the members of the Legislative Council, and to Ministers with long experience, to say on how many occasions this power was exercised. I know only one occasion in Southern India where this power had to be exercised, and was exercised in consultation with the Cabinet, namely, when the Moplah rebellion broke out in Southern India. The Legislative



Council was not sitting at the time, and the Governor had to certify this in consultation with the Ministers and the Members concerned. That is the only occasion in the last ten years in Southern India where the extraordinary powers vested in the Governor were exercised, and the exception proves the rule that the existence of such powers is necessary to meet such cases as I have described.

With regard to the Legislative powers, Sections 37 and 42 of the Nehru Report acknowledge the need for the same powers that are now provided in the Government of India Act. They refer to the legislative powers with regard to the previous sanction of Bills with regard to finance matters, and for referring Bills back, such as are contained in the Government of India Act. Those powers are also recommended by the Simon Commission. The powers of the Governor in regard to administration are described in paragraph 50 of the Report, and the financial powers as we find them in Section 72D and the legislative powers which are necessary are all suggested in this Report. I therefore say that the Governor must have these powers with a view to carrying on the administration on practical lines.

From a strict constitutional point of view it may be argued that the Governor should get rid of a Ministry or have a new Council: That may be quite true logically, but what is our practical experience? What effect will this have on administration? If every time there is a dissolution of the Council, if every time the Governor dismisses the Ministry, it will lead to what happens in some other countries. To avoid all such contingencies and to carry on the administration for the benefit of the people and for the political advancement of the country it is necessary that some of these powers to which I have referred should be vested in the Governor. It cannot be that the Governor will exercise them arbitrarily under the new conditions, when he has a responsible Ministry which is responsible to the people of the Province and he has to be guided by their advice.

*Mr. Zafrullah Khan:* I feel, with all respect, that there is some slight confusion with regard to the powers of the Governor between what are described as the overriding powers and the powers in the case of a breakdown. The overriding powers, whether wide or narrow, will be exercised, we must realise, at times when the government of the Province is being carried on on ordinary, normal constitutional lines; that is to say, when there is a Legislature in existence and a Cabinet responsible to the Legislature, and some difficulty or emergency arises which it is not necessary to get over by the dismissal of the Ministers, a fresh election and the formation of a new Cabinet, but where we feel the Governor should have power to get over the difficulty by differing from and overruling the advice or decision of his Ministers. These are what I understand to be the overruling powers, and those are the overruling powers—(1), (2), (3), (4) and (5)—described by the Simon Commission as being those which the Governor should ordinarily possess.

Let us suppose that action is proposed to be taken which constitutes a grave menace to the safety and tranquillity of the Province,

and the Governor finds that his persuasion and advice are not being accepted. He should then have the power, though its limits should be strictly defined, to interfere in order to preserve Law and Order, and to say "This shall not be done, because in my opinion it will endanger the safety and tranquillity of the Province".

Otherwise, the government will be carried on at that time in ordinary normal conditions.

On the other hand, there is the other question to which perhaps not so much attention has been paid this afternoon as ought to have been paid to it, the question of a breakdown, which is dealt with under Head No. 5 of the heads of discussion. Supposing either the Legislature broke down or there was non-co-operation in the Province and people refused to return representatives, or when a Legislature has been formed everybody refuses to take office, or when a Ministry has been formed the majority goes on turning it out every time, the question is what powers shall be possessed in that case, and it is only in regard to those that I want to make a submission or two.

With regard to those, the procedure suggested by the Simon Commission is that under the supervision, control and superintendence of the Government of India, the Governor-General should have power to declare a state of emergency and to carry on the Government for a period not longer than twelve months, to report his action to the Parliament, and it is possible to carry out that plan for longer than twelve months if Parliament so certifies. In my submission there ought to be two modifications in this scheme recommended by the Simon Commission as an alternative scheme in the case of a breakdown. There is not enough time to develop my suggestions, but I ought to put them before the Committee for consideration. One is that in such an event the Governor shall have all the powers of carrying on the Government. Naturally he must have, because there is a breakdown, and he must have people to assist him. There is no objection in that; but to say that he can nominate to the Legislature would mean that even at that time a Legislature would be sitting. If that is so, that seems rather illogical, with all respect, in this sense, that when there is a breakdown the Governor shall have the full responsibility, and for the Legislature to continue to sit during these periods, would not be a help to the Governor. When there is a state of emergency, the Legislature should be dissolved at once, the Governor should carry on the government of the Province on his own responsibility by appointing any advisers he chooses to appoint, with all the powers of certification by ordinance and so on.

The next suggestion which I have to submit as a modification is that these powers should be exercised for a period not longer than six months instead of twelve months, and within six months they must have another election to the Legislature and see whether the Government can normally carry on the government of the Province with the help of the new Legislature, forming a new government if necessary.

*Mr. Joshi:* I feel that it would be a great mistake if we showed distrust of the responsible Ministry from the very beginning of the new era in India. I myself hold that the Chief Minister and the Ministry, who care for the interests of the country at least as much as any foreign Governor, should not be mistrusted and will be more responsible. Unfortunately, in this world we have the experience that if we treat people as irresponsible they become irresponsible, therefore, let us not treat them as being irresponsible people from the very start of the new era. I feel that if we once begin to give special powers to the Governor we shall have to give him some other powers also. If for instance, you ask the Governor to act in an emergency in a certain way, in the first place he will get the power with tampering with the loyalty of the Civil Service to their political chiefs. How can the Governor do anything unless he asks the public servants to obey his orders against the advice of his Ministers? That must be the first result. The second result will be that the Governor must also possess the power of dismissing public servants. If he has not got the power of dismissing, for example, a police officer who obeys the political chief, how is the Governor going to get his orders obeyed? He must, therefore, also have the power of making appointments. I therefore, feel, Sir, that no special powers should be given. The powers which constitutional Governors possess, namely, the power of vetoing legislation, are very wide powers, and can be utilised by Governors in a large number of cases. Then the Governor has the power of dismissing a Minister, which, in a large number of cases will secure for him his object. Then he can dissolve the Council, and I think that these three powers will enable a Governor to secure his object. I therefore think that in no case should the Governor possess a special power to override the advice of his Ministers. If we say that the Governor will be responsible in an emergency I do not know, why the Governor should be more responsible than the Chief Minister. If there is a rebellion in the country, the Chief Minister will also suffer from the rebellion, and, therefore, the Chief Minister will have to take all the measures which the Governor is expected to take. Moreover, I am told that the Governor must interfere on behalf of minorities. In the first place, we are going to give the minorities protection by their special representation, and that should secure for them whatever their object is. Now, if they expect the Governor to secure for them the proportion of Government posts, then logically it follows that they must give the Governor power to make all appointments, from the smallest appointment of a peon to the highest appointment. If the Governor has not got the power I do not know how he is going to secure equality or proportionate distribution of the posts. They must leave that to the Ministry, because if the Ministry does not act properly towards the minority, the Governor must dismiss the Minister and try to secure another Minister. He must dissolve the Council and secure a better Council. I do not think the Governor can assume for himself the power of making all appointments. Then it was said that the Governor should also use his power to

secure financial stability. I do not know how any Governor can do it. If the Governor begins to interfere with the Finance Member's business, then the Governor will have to secure all the powers to himself. I do not think, therefore, that any of these powers should be left with the Governor.

My view, therefore, is that we should not invest the Governor with any special powers; but his powers with regard to vetoing legislation, his power as regards dismissing the Ministry and his power as regards dissolving the Council should be quite sufficient for his purpose.

*Chairman*: That ends the list of speakers that I had on the question of the powers of the Governor. I do not know whether you could assist me. I have not had the opportunity, of course, of examining the notes of the meeting to see where we stand with regard to this subject. If I were to put these three points—I do not want to vote in the sense that it is a final decision; as I have already said, everything must be provisional—but if I were to put two or three questions just for guidance I think it might assist us in drafting the report. The first question submitted was, is there to be a discretion with the Governor to appoint an official Minister? (“No, no.”) I think that so far as I can see, nearly the whole of the speeches from the Indian representatives, at any rate, were against that discretion; so we had better just leave it at that for the moment.

The next question is, “Should the Governor have any special power to act otherwise than on the advice of his Ministry, whether in the matter of administration, legislation or finance?” That would be, I suppose, under strictly normal circumstances. Now, I do not think that that position was quite so clear as the first one. There has been some difference of opinion.

*Sir Chimanolal Setalvad*: I submit that in a general Committee the powers now suggested under Section 52, clause 3, the powers I read, should go. That empowers the Governor, in a day-to-day administration, to act contrary to the advice of his Ministers.

*Chairman*: Is there any objection to that position?

*Dr. Ambedkar*: Might I suggest that it should be put separately—normally and in emergency?

*Chairman*: The next point I am going to put deals with an emergency. I think this deals with ordinary times. I purposely put in the word “normal”. Is it Section 50 or Section 52?

*Sir Chimanolal Setalvad*: It is Section 52, clause 3 of the Act.

*Sir A. P. Patro*: That will go, naturally.

*Chairman*: Is there any objection to that?

*Mr. Zafrullah Khan*: None. That must go.

*Chairman*: “Should further power be vested in the Governor for use in times of emergency to enable the government to be carried on in the event of a breakdown in the normal constitution?” (“Yes, yes.”) That is in the event of a breakdown in the normal

constitution. I think there can be no disagreement about that. Somebody must act. Things must be brought back to normality. There seems to be agreement there.

The next point is the question of the Second Chamber. We have had a good many references to a Second Chamber. I do not know whether it would assist you, or whether we could get agreement, but my own feeling was that the majority of the Committee was rather favourable to a discretion being left with the Provinces to have a Second Chamber if they so desired, but it was not to be made obligatory in the new constitution. I do not know whether there is any disagreement with that point of view.

*Dr. Ambedkar:* We should like to say one thing on that point, that the Second Chamber should not be constituted first, and then its abolition should be left to constitutional resolution requiring a certain majority. What we suggest is that if the situation is such that it should be left as a matter of discretion in certain Provinces, then first of all a resolution might be passed by the Provincial legislature expressing its desire for a Second Chamber, and then that the Second Chamber should be constituted. It should not be first imposed on the Provincial legislature by the constitution.

*Chairman:* If you are going to leave a discretion you leave a discretion. You do not impose it, you leave it for the legislature which is to be formed to ask for it. That is how I understand the principle of discretion in that connection.

*Sir P. C. Mitter:* I should like to say one word in this connection. In the legislatures where they have already asked, for instance in Bengal, in Bihar and Orissa, and in the United Provinces, where the Committee appointed by the representatives have already asked, where the Government have already recommended, and where the Government have already accepted, we may proceed on the principle that they may be accepted, subject to further discussion in the full Conference; but where they have not asked it may be left to discussion in the open Conference.

*Mr. Joshi* rose to speak.

*Chairman:* Just a moment, Mr. Joshi. Supposing that the position just put before the Committee by Sir P. C. Mitter was the position, or is the position when this constitution comes to be put into operation, there is nothing to prevent the new legislature in the Provinces to which he refers exercising its discretion and bringing into being a Second Chamber. If they had not come to any such decision, there is nothing to compel them to take such a decision, that is how I used the word discretion.

*Mr. Joshi:* That is all right. That expresses our feelings.

*Sir P. C. Mitter:* I understand where a discretion has already been exercised, the discretion will be on the new legislature.

*Chairman:* The discretion will be the discretion under this new constitution. You might have a lot of strange decisions applied to you if it was under a past constitution. It must be that the decision of the legislature when the constitution has been put into operation.

*Sir P. C. Mitter* : In that case, I would like the point debated at greater length. It is a point of the utmost importance.

*Mr. Jadhav* : Is the hon. member diffident about this?

*Sir P. C. Mitter* : Not at all.

*Chairman* : Very well, let us hear your speech on the subject.

*Sir P. C. Mitter* : My point is that we are going to frame a new constitution. On the new constitution we first of all took the advice of the Statutory Commission, we also got the assistance of members elected by the Provincial Legislature, we also got the advice of the Central Committee, and when the elected representatives of the local legislature gave their advice after that, that advice was considered both by the Statutory Commission and by the local Government, and finally that advice was considered by the Government of India; so that in the case of Provinces, where we have the advice first of all of the representatives of the local legislatures, then of the Provincial Government, and finally of the Government of India, we stand in a position different from that of the Provinces; for example, Bombay, where they do not want a Second Chamber. Therefore, as our whole object is to frame a constitution, and that constitution is being framed on advice already obtained, I submit that there is a difference. Therefore, I should be perfectly content if my friends here would come to this agreement, that as regards these Provinces, we start with the presumption of this advice. On the other hand, if they do not, then I submit that this is a question of such importance that it ought not to be summarily disposed of one way or the other at the far end of a sitting. It is a question of great importance. A great deal depends on this. The future safety of the Provinces, the tranquillity of the Provinces, decisions taken in haste—many things depend on it. Therefore, we should not so lightly ignore the unanimous opinion of the representatives of the local legislature, of the Government and of the Government of India.

*Chairman* : But just let us see where we are. Our friend here is objecting to discussing this matter, though he asked for a discussion and he has made the first speech in the discussion. He is arguing now that we should not continue the discussion because the matter is of such importance. How that arises out of giving any Provinces discretion, to be exercised, as it will, under the new legislature in that Province, I cannot for the life of me understand. Supposing that we were to take a very emphatic decision and vote, we should probably find that three parts of this meeting was going to give a declaration against Second Chambers. He would then have some complaint, but we are avoiding that by leaving it absolutely open, and saying that in his Province they can come to their own decision.

*Sir P. C. Mitter* : In the new legislature?

*Chairman* : In the new legislature, yes. Surely he is prepared to trust his new legislature?

*Mr. Joshi* : Or is he afraid of his new legislature?

*Sir P. C. Mitter* : My point is, why should I lose the advantage I have already got? If I may say so, I do not want to avoid the discussion, but what I do want is this. I will discuss, but if you want to discuss, discuss after taking into account the importance of the subject at a time when members are willing to discuss this important subject.

*Sir Chimanlal Setalvad* : We are quite willing to discuss it.

*Sir P. C. Mitter* : You may say you are quite willing to discuss it, but at this fag end of the meeting, we all know that we shall be discussing in a hurry this important subject. That is my point, and in that case, and in any case, our recommendations will come before the full House. Therefore why should I lose the advantage of the considered opinion in the case of these three Provinces? If other representatives from these three Provinces object, I can understand, but if other representatives from these three Provinces do not object, why should my friend from Bombay shake his head? If the representatives of Bengal objected, if the representatives of Bihar and Orissa, if the representatives of the United Provinces objected, I could understand that. If there is to be self-determination, let there be self-determination in the Provinces.

*Sir Chimanlal Setalvad* : That is what you want to avoid.

*Sir P. C. Mitter* : No, I do not want to avoid it. You want that the advantage that I have already got should be wiped out. That is the difference.

*Chairman* : But surely my friend must admit that to be afraid of losing an advantage that you have already got is not self-determination so far as the new legislature is concerned; it is taking away their discretion. I am fighting for the discretion for your new legislature, and that is self-determination, not for somebody, before the constitution ever was brought into being, to determine something for your Province—that is not self-determination.

*Sir P. C. Mitter* : I do not for a moment want to take away the right under the future constitution to take away what is going to be given. According to my idea let there be a statutory provision so that by means of constitutional resolutions, as the Government of India has suggested, it will be open to discussion. We are talking of what has been decided to-day or else all the previous papers are worthless. Are not the decisions which have already taken place to-day taken into account by everybody who has to look into it. I do not object to the future legislature deciding by constitutional resolution to abolish this, that I do not object to, but I do say that as we are including in these certain decisions already taken, and as these three Provinces stand on a different footing, why should members who do not come from these Provinces object? that is my point. If others coming from these Provinces objected I could understand that, but those who are concerned in these Provinces want it and do not object. Therefore my points is: let it be recommended to the whole House and then the whole House will have the right to discuss it, not that I am asking you to take a decision to-day.

*Chairman*: If by "the whole House" you mean the full Conference in Committee, they will have the right to discuss it, because the report of this Committee will be presented and the question of leaving to the Provincial legislatures a discretion with regard to Second Chambers would be open to discussion in that full Conference in Committee. If we can get our Report completed this week, it will probably be discussed at the meeting that is to be held early next week.

*Sir P. C. Mitter*: Perhaps I have been misunderstood, Sir. I cannot object to the whole House coming to the decision that there should not be a Second Chamber without a special constitutional resolution by the new Legislative Council; that I am not objecting to. All I am pleading for is that our Report should say that inasmuch as representatives from these two Provinces do not object, inasmuch as their Provincial Committees asked for it, their Provincial Government asked for it and the Government of India asked for it, our recommendation is that this be accepted. But it must be open to the whole House to reject the recommendation.

*Chairman*: Yes, it will be open to the whole House to reject our full report if they wish to do so.

*Sir P. C. Mitter*: These three Provinces stand on a different footing, and therefore our recommendations should be on that basis.

*Mr. C. E. Wood*: Sir, could we put in a rider that with regard to certain Provinces which are mentioned as special, in which the Provincial Committees recommend second houses, the representatives of those Provinces appear to be in favour of forming Second Chambers. Perhaps that would meet Sir P. C. Mitter's objection.

*Sir P. C. Mitter*: Yes, that would meet my objection.

*Dr. Ambedkar*: That is a fact which has to be taken into account.

*Sir Chimanlal Setalvad*: My friend Sir P. C. Mitter has repeatedly asked why Bombay objects to his proposal, and why are other Provinces objecting to his proposal. I will give him the answer: because the course he is proposing is against the self-government that he himself wants.

*Sir P. C. Mitter*: No.

*Sir Chimanlal Setalvad*: Yes, it is; he says: inasmuch as the expiring Council has so decided.

*Dr. Ambedkar*: They have not; that is the point.

*Sir Chimanlal Setalvad*: And that inasmuch as some other authorities have said so, therefore the new Legislature that will come into existence under the new constitution should not have the discretion to decide upon it, but it must be first imposed upon them and then they can say: we do not want it. That is inverting the whole process. It is either one thing or another: either Bengal wants a Second Chamber or it does not. If Bengal wants a Second Chamber, then surely there should be no difficulty in the Legislative Council under the new constitution asking for it. Why is he afraid



to go before it and get that resolution? If, on the contrary, Bengal is against it, then surely you cannot force upon unwilling Bengal in the new council the wording of the old council and the wording of other authorities and committees that have considered the matter. To my mind it is so simple; there should really be no discussion of this in the way the Chairman put it. We are giving complete discretion to each Province to determine by constitutional resolution of the Legislative Council whether it requires a Second Chamber or not; the field is completely open, and if the case for Bengal for a Second Chamber is so strong as is said, then surely there can be no difficulty in getting that resolution passed.

*Sardar Sampuran Singh*: The position is not this, that by deciding that there should be two Houses you would be in any way limiting the authority of the coming constitution of India; but if at present we do not decide it, we shall be decided only with regard to one interest in the country, that is to say only with regard to those people who are more likely to go into the lower House. But the interests of those people who are likely to go into the higher House naturally will not have the same amount of voice in the lower House. In these Provinces where they want two Houses there are two kinds of people, each different from the other. There are different communities of interest and in order to legislate for those two different communities of interest I think it is to a certain extent necessary that provision should be made for both of them. If we do not consider this point now, I think we should be ignoring one community of interest where it exists in certain Provinces.

*Chairman*: But that is an entirely new point. As I understand you, you are wanting us to lay it down definitely that there shall be a provision for two Houses. I did not quite gather whether you intended to enforce that upon the Provinces as a matter of statute. All I am suggesting is we shall have to leave it to the discretion of the new Legislature as to whether it shall call into being a Second Chamber.

*Sardar Sampuran Singh*: What I wanted to submit was this, Sir, that by saying there shall be one House and the second House is to be created by that lower House, we should be ignoring the interests of the people who are to go into the second House. There are Provinces, for example the Punjab, which do not want a second House; but there are different communities of interest in certain Provinces and there a second House is required. If we now give them only one House we shall be ignoring the claims of those people who think they want a second House and have a separate community of interest from those who are more likely to go into the lower House.

*Sir P. C. Mitter*: The question of a second House was not really on our agenda paper; it was discussed incidentally. Therefore I suggest we make no recommendation one way or the other but merely say that it was suggested incidentally, that some speaker suggested there should be a second House while others objected. We should leave it to the Conference because it was not on the

agenda paper and was never fully discussed. That ought to meet my friends. I do not want to run away with a decision. Let the whole Conference decide this question. I will place my points before the whole Conference and the whole Conference will then decide whether I should have the advantage, whether the self-determination should be only self-determination of the future or should be self-determination of the past as well as self-determination of the future. With some confidence I suggest that I can fairly ask for that. It was not on the agenda paper; it is true it was incidentally discussed, but I have many things to say which I would have said at an earlier stage if it had been definitely on the agenda paper.

*Chairman:* I would like to remove this grievance; we had better have it out in our Committee rather than have it out in the full House, as the suggestion has been made. I think you had better leave it and there will be some reference in the report which I hope we shall be able to discuss on Friday amongst ourselves; If Sir P. C. Mitter is not satisfied with the reference, we will give him the opportunity of making any speech he desires to make upon that part of the report and try to influence this Committee to give him such an amendment as will give him satisfaction. There are one or two other points I should like to mention for your guidance. We have had no discussion at all on two points affecting the Legislature: first of all, the question of how long the new Legislatures shall last; are they to go on for four years or five years?

*Some Members:* Five years.

*Other Members:* Four years.

*Chairman:* I am only asking you to put something in the draft report and I will put in five years. If you move that it should be four years then we will discuss the pros and cons. You are about equally divided between four and five years; I as Chairman will decide for the time being and I will put in five.

*(The sub-Committee adjourned at 5-40 p.m.)*

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PROCEEDINGS OF THE FIFTH MEETING OF SUB-COMMITTEE No. II  
(PROVINCIAL CONSTITUTION), HELD ON 15TH DECEMBER, 1930.

*Chairman:* Perhaps I ought to say that I have sent each member of the Committee a copy of the draft report. In beginning the proceedings I will assume that the report has been read, and therefore I will not take up the time of the Committee by reading it. I propose to take the report paragraph by paragraph, and, if there are amendments, sentence by sentence; but if there are no amendments to any paragraph, I hope the time will not be taken up in discussing the mere wording of any of the paragraphs, because we have to keep in mind that we are not framing a Constitution. A process will have to be taken up at a later stage when all these things will have to be, as I have said repeatedly, fitted into the Constitution; the language that is used in the report is perhaps not so technical and legal as it will be when it comes to be

fitted into the entire Constitution. If we would keep that in mind, I think perhaps it would avoid speeches being made on the mere wording of a sentence.

“ 4. The abolition of dyarchy. The sub-Committee is agreed that in the Governor's provinces the existing system of dyarchy should be abolished and that all provincial subjects, including the portfolio of law and order, should be administered in responsibility to the provincial legislatures.” To that I have an amendment by the Earl of Zetland, which I will now ask him to propose.

*Mr. Joshi*: I have an explanation to ask.

*Chairman*: Yes, an explanation.

*Mr. Joshi*: We did not go into the whole list of provincial subjects, but we thought that the powers of the Legislatures would be first considered by the sub-Committee A. The explanation I want is this: there are some matters which are considered to be provincial, but are subject to legislation by the Central Legislature. The subjects in which I am interested and about which I want an explanation are: factories, the welfare of labour and the settlement of labour disputes. These are considered to be provincial subjects but are subject to legislation by the Central Legislature. I do not know what is to happen to these subjects, whether they will now be transferred wholly to the Central Legislature, or will be reserved for the provincial legislatures. They were kept as reserved subjects and not transferred subjects, for a very good reason, that the legislation was central. The legislation was central as regards factories which may ask for certain inspection to be undertaken, and if the Central Government had no control over the Provincial Government in that matter, the legislation would be futile. Therefore these subjects were subjects for Central legislation as well as reserved subjects. I therefore want to know, Mr. Chairman, whether we have taken any decision on this matter or whether that will be a subject to be considered by the First Committee.

*Chairman*: I understood that that was a subject to be considered by the First Committee and that it was no part of our discussion. My report is, as near as I could make it, based upon the actual discussion on this Committee or upon subjects definitely coming within the scope of this Committee, and certainly not coming within the scope of any other Committee. I think Mr. Joshi need have no fear but that it will be discussed and if he has any desire to have the matter explained, he had better give notice to the Chairman of the Committee meeting to-morrow that he will ask him a question to make it clear.

*Mr. Joshi*: My only desire was that I should not be precluded from raising that point when the report of the First Committee comes up for discussion.

*Chairman*: No, you cannot be, because we are not covering the ground.

*Lord Zetland*: Mr. Chairman, the amendment which I should like to put before this Committee is not really an amendment of any

substance so far as the main principle of clause 4 is concerned. What I am anxious to do is to provide that the services, and particularly the Police Service, shall be immune from political interference of a party kind. It was agreed in the course of the discussion which took place last week that it was very desirable that the services should be placed completely outside the influence of party politics. What I would like to suggest to the Committee is this, that in that respect we should place the services—and I am dealing particularly with the Police Service—as far as possible on the same footing as they are in this country. In this country the matters of the internal economy of the police force, so to speak—that is to say questions of discipline, training and promotion—are dealt with by the head of the Department, the Commissioner of the Metropolitan Police in the case of London, and Chief Constables in the country. There is in existence in this country an organisation which I think is known as the Police Federation, which consists, with the exception, I think, of a solitary representative of the Home Department, exclusively of police officers. Without the consent of that body no alterations in the rules or regulations relating to emoluments, conditions of service, promotion and so on, can be made. It has been found very desirable to have a system of that kind in this country and I think it would be equally desirable to have a similar system in India.

Now bearing in mind what your Chairman said, that we are not framing a detailed Constitution, I merely put forward a suggested addition to paragraph 4—not that I am wedded to the particular wording which I have given to it, but merely to make that point. The addition to paragraph 4 which I suggest is as follows: “But the sub-Committee is of opinion that statutory provision should be made that the responsibility for the maintenance of discipline and for the recruitment, training and promotion of the provincial police force, now vested in the Inspector General of Police, should continue to be vested in him, and that in the discharge of these functions he should be subject only to such control as may be necessary to ensure that the police administration of the Province conforms to the general policy of the Government”.

Now, Sir, I think I have very nearly taken up my five minutes and I will not therefore delay the Committee further. That is the point I want to make.

*Chairman:* Just as here the police force in a certain degree is under the control of the Secretary of State for Home Affairs. The amendment proposes an addition, a new paragraph following paragraph 4: “But the sub-Committee is of opinion that statutory provision should be made that the responsibility for the maintenance of discipline, and for the recruitment, training and promotion of the Provincial police force, now vested in the Inspector General of Police, should continue to be vested in him, and that in the discharge of these functions he should be subject only to such control as may be necessary to ensure that the police administration of the Province conforms to the general policy of the Government”. Now that is the amendment.

*Mr. Chintamani:* Sir, I appreciate the anxiety of the noble Marquess to make it clear beyond doubt that the discipline of the police force and its efficiency shall not be affected by political and personal considerations which he apprehends may weigh with the Minister; but I think, Sir, the amendment is partly superfluous and partly undesirable. It is superfluous for the reason that, as he himself admits in the body of the amendment, the matters to which it relates are at present under departmental control, and there is absolutely no reason for us to assume that steps will be taken, either in respect of the Police Department or any other Department, calculated to affect the efficiency and discipline of the working of the Department.

If it is merely superfluous, it is also undesirable for the reason that we start, as it were, with an expression of doubt as to the manner in which, and the motives and purposes for which, the future self-governing Government of a Province may work in respect of this Department or any other Department. Just as the noble Marquess has moved this amendment in respect of the police, other members may move similar amendments urging statutory provision with regard to other Departments, and the result will be a continuation of the present undesirable state of affairs where it is often seen that the Ministers are only the nominal heads, and the heads of Departments are the real heads. We do not want this to happen; we desire that the new Constitution should be started in an atmosphere of confidence; and, as I suggest respectfully to the noble Marquess, it may be the better part of wisdom to have that confidence and not to suggest clauses which are only suggestive of suspicion.

*Mr. Jadhav:* May I ask as a matter of information whether the noble Marquess contends that the present independence of the Police Department is not sufficient, and that more independence should be given, or that he intends that the present state under the Executive Council should continue.

*Lord Zetland:* No, my intention, as appears in the proposed amendment, is that the existing control should continue. I do not want to alter the existing position.

*Mr. Jadhav:* Then does he mean to say that the present interference by the Home member should continue in the hands of the Minister?

*Lord Zetland:* Yes. All I want to secure is that the powers and position of the Inspector-General of Police as they exist at present should be secured to him in the future.

*Mr. Joshi:* My question is this. Lord Zetland proposes that the recruitment of police services should be in the hands of the Inspector-General. We hope to have a Public Services Commission. Does the noble Marquess desire the Public Services Commission to be deprived of the power of recruitment for police service?

*Lord Zetland:* It depends. Of course, if there is to be a Public Services Commission in every Province, that will make a difference,

and I agree, I think the recruitment should be done by the Public Services Commission.

*Mr. Joshi:* That would be one of the proposals which we would be making.

*Chairman:* I am only allowing questions; I am not allowing discussion upon this point. I have called upon this gentleman here to speak, but I was allowing two questions to be put. Now are the questions finished, because I cannot allow them to go on indefinitely.

*Sir Chimanlal Setalvad:* Sir, as you will remember, there was discussion in this Committee about the recruitment of the public services in the Provinces, and the general trend of opinion then was that the recruitment should be in the hands of a Public Services Commission. Therefore the Police force recruitment will be included in that scheme, and when we come to the proper place, we shall have to add, I submit, a paragraph about the recruitment of services in the Provinces.

Then as regards discipline and various other matters included in this amendment, I entirely agree with my friend, Mr. Chintamani, that the way in which the amendment has been drafted suggests doubt and apprehension that the Minister in charge of law and order will not deal with the matter in the right way, and if you lay down rigidly what has been put in the amendment, you will create from the start friction and want of confidence between the Minister in charge and the Inspector-General of Police, or whoever the authority may be. I hope, therefore, that Lord Zetland will not press his amendment. In all these matters, as I have already said, you have to take risks; you cannot safeguard every possible contingency. You have to take risks. There may be mistakes. In a certain way things may be done which may for the moment be undesirable; but, after all, when responsibility is put upon people they will in a very short time adjust themselves to the right conditions. I therefore am opposed to the amendment.

*Sir A. P. Patro:* I think this amendment is due to the desire that if law and order is transferred to the Provinces there should be some safeguard in reference to the Police Service which should not be subject to political influences. A Public Services Commission will no doubt be formed. In some Provinces such a body is already in existence. In my own Province it is in existence and is working. Whether recruitment to the Higher Services should be wholly entrusted to the Public Services Commission is open to some doubt, and that is being considered now in the Madras Presidency. The transfer of this power of recruitment to the Public Services Commission has not yet taken place, because it is desired first to make an experiment in regard to other Services in order to see whether the method will prove successful. It seems to me that a certain safeguard is necessary so far as Provincial recruitment is concerned, and that the matter should continue to be, as it is now, with the Inspector General of Police. This is a special Department—a security department. Therefore, unlike other Departments I think

some provision is necessary—subject to the control of policy and of conduct of the Minister in charge of Law and Order.

*Sir Cowasji Jehangir*: You mentioned that there was a Police Federation here. Am I to understand that the Home Member is not responsible for discipline in the Police Force in England, and that if any questions are asked in the House of Commons the Government does not take upon themselves the responsibility for disciplinary action, or if any injustice is done to a policeman and questions are asked they can absolve themselves of all responsibility?

*Lord Zetland*: No. Ultimately, of course, the Home Minister takes responsibility. He answers questions in Parliament, but certain powers are delegated by him, in working, to somebody else.

*Sir Cowasji Jehangir*: The proposal can only mean one of two things—either to retain the powers which the Inspector General has to-day, or enhance them. Lord Zetland distinctly mentioned that he wanted those powers now vested in the Inspector General. I know of no section in the Act which vests any power in the Inspector General at present.

*Lord Zetland*: Yes; he has his powers under the Police Act.

*Sir Cowasji Jehangir*: Under the supervision, control and direction of the Government.

*Lord Zetland*: Yes.

*Sir Cowasji Jehangir*: There are no powers vested in him overriding the control of the Government.

*Lord Zetland*: No. I am not asking that he should be given powers overriding the control of the Government. That would obviously be absurd.

*Sir Cowasji Jehangir*: Then you want the *status quo* to be ensured?

*Lord Zetland*: Yes.

*Sir C. Setalvad*: Making him independent of Government, except as to policy?

*Lord Zetland*: No.

*Sir Cowasji Jehangir*: You want the *status quo* to be maintained?

*Lord Zetland*: Yes.

*Sir Cowasji Jehangir*: That is to say, that the new Minister shall have all the powers that the Home Member now has in India, in all Provinces?

*Lord Zetland*: Yes.

*Sir Cowasji Jehangir*: Is that all you want?

*Lord Zetland*: Yes.

*Sir Cowasji Jehangir*: Then I think the language of the amendment goes much further than that. It can be put quite simply—that the *status quo* should be maintained with regard to the powers

vested in the Inspector General and the Executive Member at present.

*Chairman*: Let us be clear what it is that is being asked for: "The control of the Provincial Police in matters of recruitment, training, discipline and promotion should be secured, as at present, to the Inspector General by statute". It is desired to maintain the *status quo* by statute.

*Sir A. P. Patro*: I do not think the noble Lord insists on Statute.

*Chairman*: There it is; it is by Statute. Then he goes on "The training and promotion of the Provincial Police Force now vested in the Inspector General should continue to be vested in him", and then "and that in the discharge of these functions he should be subject only to such control as may be necessary to ensure that the police administration of the Province conforms to the general policy of Government".

*Diwan Bahadur Ramachandra Rao*: I think Lord Zetland's amendment is altogether unnecessary. The policy has been to establish Public Service Commissions and gradually to transfer the recruitment of all the Services to those bodies so that there may be no political influence exercised by the Ministers in the selection of men for Public Service. If the Inspector General of Police should be made an exception to that general policy which is being followed in the Provinces it may be awkward. In Madras the Public Service Commission has already been appointed and the duty of recruitment to the Services in the Province, except the All-India Services, is being transferred to that body. I think that is the solution. As regards disciplinary action, I think it is now becoming the rule that before any disciplinary action is taken against any of the officials the opinion of the Public Services Commission is obtained, and the Local Government passes final orders in the light of that opinion. So that both in regard to recruitment and disciplinary action, the general policy which is now being followed in India is to leave these matters to an independent body apart from the Ministers, and to follow the advice of that body as far as possible. I think that if we now introduce this amendment it will act against the policy which the Local Governments are now following. The constitution of Provincial Public Services Commissions has been recommended by the Simon Commission, and I think that these matters ought to be left to the Provincial Public Services Commissions.

*Dr. Shafa'at Ahmad Khan*: I am in favour of the principle underlying this amendment, but I should like to make one suggestion to the noble Lord. The Conference, I believe, will appoint a sub-Committee on Services. This is a question which demands very careful and thorough attention. It is a question concerned not only with the Provincial Services, but also with the Imperial Services. There may be some persons who would like this suggestion adopted not only in the case of the Police Services but in the case of Executive Civil Services. I submit, therefore, that the whole question



should be threshed out when the sub-Committee on Services is appointed. I believe that is the proper place for a discussion of this nature.

*Mr. Zafrullah Khan:* I am in favour of the amendment to this extent—that so far as the first part of the amendment is concerned, that is to say, that the powers in these matters mentioned in the amendment, which are at present exercised by the Inspector-General of Police, shall continue to be vested in him, subject to the proviso “except in so far as any of these powers may, at any subsequent stage, be transferred to, or vested in, a Provincial Services Commission”.

*Sir A. P. Patro:* You do not want statutory permission, do you?

*Mr. Zafrullah Khan:* No. I am coming to that. Secondly, that this reservation in favour of the Inspector-General should be secured by orders made under the Statute, and not by provision in the Statute; because if we start allowing these provisos and other things to be put into the Statute, many other things will be insisted upon as being incorporated in the Statute, which will make the Statute absolutely unworkable, and certainly very voluminous. Thirdly, with regard to the second part of the amendment—that the exercise of these powers by the Inspector-General of Police shall not be controlled by the Government except in so far as may be necessary to secure conformity to the general policy of the Government—I should like to put it in another way; that is to say, that the Member in charge, or the Local Government, shall not interfere with the discretion of the Inspector-General of Police in these matters, or the exercise of powers by that gentleman, except to the extent to which the Home Member is at present entitled to interfere. That will secure that the existing state of affairs shall continue. On the one hand, the powers of the Government of interference in these matters will not be curtailed; and, on the other hand, doubts will be set at rest that they will not in future be enlarged or extended.

*Chairman:* Perhaps I ought to say, for the information of the sub-Committee, that the Prime Minister has already provisionally appointed a sub-Committee on Services, and he will probably say something on the matter at the full meeting to-morrow. I do not know whether we have discussed this matter sufficiently, or whether Lord Zetland would like to say anything in view of what has taken place.

*Lord Zetland:* There is only one thing I would like to say, and that is with regard to what Sir Chimanlal Setalvad and Mr. Chintamani have said, namely, that this was casting suspicion upon the possible conduct of the Minister. Certainly it is not intended to do that in any degree. The Home Member in this country does not consider that a reflection is cast upon him by these provisions which are made over here for securing to the Head of the Police Department the exercise of certain powers; and if the Home Secretary over here does not feel that a reflection is cast upon him, I cannot understand why a Minister in India should feel that a

reflection was cast upon him. At any rate, do let me say that I have not the smallest desire to cast any reflection of that kind. Mr. Chairman, it seems to me that there is a fair amount of support at any rate for the principle for which I am contending, and I must leave it to you, Sir, to decide what the views of the sub-Committee are.

*Chairman*: If I have gathered the sense of the Meeting, there is a fair amount of support for the suggestion that the matter should be allowed to go to the Services sub-Committee. That is the feeling, I think.

*Sir Robert Hamilton*: May I ask whether it would be possible just to make a reference to the Police here, and say that we are of opinion that questions relating to the Police should await the decision of the Services sub-Committee—just to show that it has not been overlooked?

*Chairman*: We might add a foot-note at the end of the Report saying that the matter of the Police was raised but that it was thought that any further conclusion on it should be deferred until the Report of the Services sub-Committee was known. Would that meet the case? If Lord Zetland would be prepared to leave it in that way he would still have a further opportunity to raise it in the larger body, if he were not satisfied. We could agree upon a suitable foot-note. It would still keep the matter open, and you could raise it at a subsequent stage.

*Lord Zetland*: Very well, as long as it is made clear that I am not abdicating my rights to press this point.

*Chairman*: No. It is left open in the way of a foot-note, and you can reserve your right to raise it at the final stage of the proceedings. I think we might agree to pass on on that understanding.

*Mr. Chintamani*: I want to understand whether the foot-note you propose to add to this sub-Committee's Report about the Noble Lord's amendment will merely state that the question was raised, or will indicate the nature of the amendment that has been moved.

*Chairman*: I thought I had put it quite clearly. A foot-note will be put at the end of the Report saying "The question of the Police was raised, but it was decided to await the Report of the Services sub-Committee in the matter". I think that is quite clear. If there is no other suggestion that means that we accept Paragraph 4 as part of the Report.

Now Paragraph 5. "The composition of the Provincial Executives." "(a) Joint Responsibility—The sub-Committee recommends that there should be unitary executives; and that the individual Ministers composing the executive should be jointly responsible to the legislature." I think we had better take that section by itself. Are there any remarks.

*Raja Narendra Nath*: I give my support to what has been proposed as regards responsibility, but my view may require reconsi-

deration after the Report of the Minorities Committee has been received.

*Chairman*: Thank you. With that explanation, may we pass on?

(Agreed.)

*Chairman*: “(b) The appointment of Ministers—The responsibility for appointing Ministers will rest with the Governor. The sub-Committee is of opinion that in the discharge of that function the Governor should ordinarily summon the member possessing the largest following in the legislature, and invite him to select the Ministers and submit their names for approval. The Ministers should ordinarily be drawn from among the elected members of the provincial legislature. In the event of the appointment of a non-elected non-official, such person should be required by statute to secure election to the legislature (and if the legislature be bicameral, to either chamber) within a prescribed period not exceeding six months, but subject to this limit he may be nominated by the Governor to be a member of the legislature. The sub-Committee is of opinion that there should be no discretion to permit the appointment of an official to the Cabinet.”

I have received notice of two amendments. One is by Mr. Fazl-ul-Huq.

*Sir C. Setalvad*: I have an amendment to make; it is not a very big one. The sentence at present runs “The sub-Committee is of opinion that in the discharge of that function the Governor should ordinarily summon the Member possessing the largest following”, etc. I would substitute the words “wherever practicable” for the word “ordinarily”.

*Chairman*: Is there any desire to make that small change?

*Mr. Fazl-ul-Huq*: I propose that we delete the words “and invite him to select the Ministers and submit their names for approval”, and in lieu thereof to substitute the words “as well as the leaders of important groups, and take their suggestions into consideration before making his final selection”. As I read this paragraph, it is the intention of the sub-Committee to suggest that there should be a following of the procedure which takes place in England—where the Prime Minister is asked to select his colleagues as Members of the Cabinet. I am opposed to that idea.

There is no doubt that in this sentence it is provided that the Governor shall appoint Ministers, but the very last words seem to suggest that after the member with the largest following has been summoned he will be invited—I emphasise the word “invited”—to submit names. I feel that in the course of time this discretion will crystallise into a custom. My apprehension is that for many years to come in the Legislatures we shall have groups based on communities rather than on differences of political opinion, and there have been cases in which the leader of a particular group, amounting to over 70 per cent. in the House, has refused the suggestion of the Governor to take a Minister from the other group.

At present there are officials and other interests in the Chamber and a large number of nominated members, so that the wishes of the Governor are more likely to be respected now than in the days to come when there will be no official bloc and practically no nominated members. The leader of the largest following in the House would then have an absolute discretion to make his own selection and to ignore the claims of everybody else.

For this reason I wish that after the elections are over the Governor, just as he will have the responsibility of appointing the Ministers, will ordinarily summon the member with the largest following, but will also consult the wishes of the leaders of important groups. No doubt he will have to give the greatest possible weight to the opinion of the person with the largest following in the House, but apart from that I should not lay down anything in the Statute or in the recommendations we may make here which would suggest that not only as a matter of ordinary practice, but almost as a matter of course, when the person with the largest following is summoned he should be asked to make selections and suggest names for approval. It is for that reason I suggest this amendment.

*Chairman* : I ought to say that in this matter I followed very carefully what I thought was the sense of the sub-Committee as revealed in the discussions.

*Raja Narendra Nath* : I support this amendment.

*Chairman* : The amendment is that as well as the leader of the largest following the Governor should consult the leaders of important groups.

*Sir A. P. Patro* : I agree with my friend that parties cannot be formed now on political principles, and there is a difficulty in forming clear-cut political parties in the Legislative Councils. We must make an attempt, however, to see that parties are formed on a political basis and not always on this most troublesome basis of communities. In order, therefore, to make a beginning it is necessary we should ask wherever it is practicable, or ordinarily, the leader of the group with the largest number of representatives in the Council should be called on to form the Ministry. In forming that Ministry, as Mr. Fazl-ul-Huq knows, in Bengal and elsewhere the person called on to suggest names will be most imprudent if he does not consult other groups and leaders in submitting names. As a matter of practice it is done in every Presidency; when a Minister is called on to suggest names for his colleagues he consults other groups and other leaders and takes them into his confidence, and then submits the names to the Governor for confirmation and appointment. In practice, therefore, that is being done, and I am sure my friend will not press his amendment, because it is quite unnecessary in the ordinary course of things.

*Chairman* : May I remind you that in the next paragraph we say: "The sub-Committee considers it a matter of practical importance to the success of the new constitutions that important

minority interests should be adequately recognised in the formation of the provincial executives." Surely any Chief Minister would be acting most indiscreetly if he ignored this, and this will be part of the constitution.

*Mr. Fazl-ul-Huq*: I did not overlook that, but as a matter of fact I am going to move an amendment to that, and if that is accepted I shall not press for this amendment. The amendment I propose to move to clause (c) is to omit the words "to endeavour" so that the sentence will read "An obligation to secure such representation should be expressed" and so on. I want to delete the words "to endeavour" because "to endeavour" may mean nothing.

*Chairman*: Do you not think, after the explanation which has been given, you can trust us until we get down there?

*Mr. Fazl-ul-Huq*: If the words "To endeavour" are left out I might not press for this amendment.

*Chairman*: We will try to help you when we get there.

*Raja Narendra Nath*: The amendment proposed will be productive of no harm.

*Chairman*: I am more concerned to be convinced that it will do some good, if I have to change my report.

*Mr. Chintamani*: As it is suggested this amendment might be withdrawn in view of the sentence to which you have drawn attention, I think it fair to state that I am going to move an amendment for the deletion of that sentence when we come to that part of the report.

*Sardar Sampuran Singh*: I think instead of taking this point at this stage we might leave paragraph (b) and make a provision that this will be subject to the recommendations of the Minorities sub-Committee.

*Chairman*: In a sense that is so, because, as I have pointed out more than once, everything depends on fitting in what we do to the whole scheme, and we have to trust each other until we see the whole scheme before us.

*Sardar Sampuran Singh*: What I am afraid of is that if that provision is not particularly mentioned it may be taken that this is passed by the sub-Committee unanimously, whereas it is, of course, subject to fitting in to the general constitution. I think the same provision which is made in connection with paragraph (a) should be made in connection with paragraph (b), and that we should say that this is subject to any recommendations which the Minorities sub-Committee may make about this, so that that sub-Committee, when considering these things, may not be prejudiced by the view that this has already been considered by this sub-Committee.

*Mr. Wood*: I am in complete sympathy with the remarks of Mr. Fazl-ul-Haq, but I am inclined to think he will yet find his

salvation in a properly constituted Second Chamber, which can, I feel sure, if properly constituted look after the interests of minorities. With all due deference to Mr. Fazl-ul-Huq, I think it is for him to see that when this question of Second Chambers comes up he is able to suggest a constitution whereby the minorities shall have a chance when subjects are referred to the upper Chamber from the lower which affect minority interests.

*Chairman:* Will Mr. Fazl-ul-Huq wait until we see if anything can be done for him on paragraph (c)?

*Mr. Fazl-ul-Huq:* Yes.

*Raja Narendra Nath:* The provision made in paragraph (c) does not really cover the idea which Mr. Fazl-ul-Huq has put forward. The representatives of the majority community will be selected by the Chief Minister, and the Governor will be bound to take a man who represents a minority community; but whether that man would be acceptable to his group is a different matter, and it is on that point that Mr. Fazl-ul-Huq is laying stress.

*Chairman:* We understand that, but we must trust the Chief Minister, on whom there is going to rest the responsibility for seeing that effect is given to the sense of paragraph (c). If that is in the constitution, he would be a very imprudent Chief Minister if he did not give most serious consideration to it.

*Raja Narendra Nath:* Sometimes there have been imprudent Chief Ministers.

*Chairman:* The next amendment is by Lord Zetland.

*Lord Zetland:* This is a small amendment which I desire to propose in line 10 of paragraph (b). Line 9 reads: "In the event of the appointment of a non-elected non-official, such person should be required by Statute" and so on. My proposed amendment is to insert after the words "such person" the following words: "unless already a nominated member of either Chamber."

The object of that amendment is this. We are proposing in a later paragraph that various minorities should as far as possible be given an opportunity of serving on the Executive. It is admitted that, in some Provinces at any rate, for some time to come Labour will be represented in the Legislature only by nomination. In those circumstances, if you wish to appoint a representative of a Labour to your Executive it would only be possible to appoint a nominated person.

With regard to the Upper Chamber, in the case of those Provinces where it is decided to have an Upper Chamber, it seems to me it would be very desirable that discretion should rest with the Governor to appoint a nominated member of an Upper Chamber in certain circumstances to the Ministry.

That power, of course, is freely taken advantage of in this country and is found to be of very great value. It will be within the recollection of the members of this sub-Committee that it was desired some years ago to appoint an Indian gentleman to the

Government in this country, the late Lord Sinha. It was not considered necessary here that the late Lord Sinha should become an elected member of Parliament. What was done in order to get over that? He was nominated a member of the House of Lords, the Upper Chamber.

*A Member:* He was created a peer first.

*Lord Zetland:* I quite agree. In other words, he was nominated by His Majesty to the Second Chamber, and he was then made a member of the Government. It seems to me that power, which exists in this country, ought to exist also in the case of the new constitution in India, and it is for that purpose that I propose to add these words.

*Chairman:* The amendment is to line 10, sub-section (b), under the heading "Appointment of Ministers," after the words "such person" to insert "unless already a nominated member of either Chamber." Does anyone desire to speak on that?

*Mr. Jadhav:* I am afraid, with all due deference to the noble Lord, I must oppose this amendment; it is bringing in an outsider by the back door, if not by the front one. If a man cannot get himself elected to the Legislative Council and if he is *persona grata* with the Governor and the powers that be, it will be quite easy for the Governor to nominate him to represent any interest. In fact, we have seen in the Council of Bombay a capitalist nominated to represent Labour!

*Lord Zetland:* You have misread my amendment which says "unless *already* a nominated member." He would not be nominated for the purpose.

*Mr. Jadhav:* He would first be nominated as a member of the Council and then taken into the Ministry on the strength of that nomination. I do not think this sub-Committee will give an opportunity to the Governor or to any of the authorities there to manipulate things in that way.

The analogy drawn by the noble Lord with regard to the raising of Lord Sinha to the peerage is not on all fours with what is suggested here. England enjoys a constitution under which His Majesty has been empowered to create Lords; but that is quite different from the nomination of a member to the Legislature. The nomination there is for a limited period, but the nomination here to the peerage is from generation to generation; it is not confined to a small number of years but is of a permanent character; and therefore His Majesty will take very great care that only fit and proper persons are raised to the peerage. In the case of the nominations now suggested, on the other hand, they will be at the most for four or five years, and therefore there will be no such responsibility. If this amendment is carried it will lead to complications and will strike at the root of the very principle of responsible government by elected members of the Legislature.

*Mr. Chintamani:* I regret that for the second time I have to oppose an amendment moved by the noble Marquess. It is discouraging to find that both the amendments he has moved to-day are of a restrictive nature, intended to whittle down the value of the scheme we are going to recommend. The sense of the whole scheme is that there should be responsible government in the Province and that a member of the Government should be a person in whom the people have shown their confidence by sending him as an elected member to the Legislature, or, if he is not when appointed an elected member, he shall be required within six months to get himself elected, or he will lose his office.

Instances have been known to occur in India—and the noble Marquess cannot be a stranger to them—of the Government nominating as members people who have received a sound beating at the polls. There will be nothing, if we are not careful, to prevent a repetition of such a scandal; we may have persons who are defeated at the polls nominated as members and then becoming Ministers. If that possibility is open there will be no real value in the scheme we are going to recommend.

*Mr. Joshi:* I am entirely against this proposal to appoint nominated members as Ministers, and incidentally I may say I am also against the other proposal that the Ministers should be nominated to the Legislature. My objection to the first suggestion is that all these proposals will create a sort of friction between the Chief Minister and the Governor, whenever the Governor attempts to bring in people who are not desired by the Chief Minister.

With regard to the very noble wish of Lord Zetland that interests like Labour should be represented on the Executive, I have absolutely no doubt that with his help and sympathy we shall frame a constitution by which Labour interests will be represented in the Legislature by election, and I am sure he will support the proposals I shall make in that behalf.

*Sir Cowasji Jehangir:* May I point out that the analogy which Lord Zetland has brought forward is correct only with regard to the Upper House, but nobody can become a Minister and be a Member of the House of Commons unless he is elected. The analogy only applies to the Upper House. Therefore, if any Province desires to have an Upper House, and it is also provided that there shall be nominated members, it will be difficult for us to consider whether those nominated members should be allowed to be appointed Ministers. But if in the Lower House you have nominated members becoming Ministers, there is no analogy for it either here or in India, for members to-day are not allowed to be appointed Ministers unless they are elected. That is the Constitution to-day.

*Lord Zetland:* Within six months.

*Sir Cowasji Jehangir:* Within six months, yes; that is another provision altogether. You want them to be made Ministers,



even though they are nominated. That is quite a different matter altogether. Of course in every Constitution, including this country, a man can be made a Minister, and then if he is elected to the House of Commons, well and good; while if he is not elected to the House of Commons, very often he has to give up office. If the analogy is to be any good it should be considered only when Second Chambers are being considered, and not at this stage I think.

*Mr. Zafrullah Khan:* Sir, with certain reservations, I support the amendment put forward by Lord Zetland. The first reservation is the provision that the nomination should not have been made in contravention of the recommendation which this sub-Committee proposes to make under paragraph 7 (c). That is one reservation. That means that the member shall have come into the Legislature normally already. Supposing the representation of certain interests in a particular Provincial Legislature is considered to be desirable, but it is found that it is not practicable, to begin with at any rate, to group them together into constituencies, and a certain amount of restricted power of nomination is still left to the Governor, those interests being represented by members who are nominated, there is no reason why our recommendation with regard to the Constitution of the Executive should definitely exclude this, that any such member who represents a particular interest in the Province as much as any of the elected members, should never form a member of the Executive.

*Lord Zetland:* That is the whole point.

*Mr. Zafrullah Khan:* Once he has been nominated to represent a certain interest, then, while representing that interest in the Legislature, he should be as much eligible to be a Minister as anybody. That is the first reservation. As a matter of fact, that is the only reservation; that in that sense the Governor should not have power to nominate anybody he chooses to begin with, and then have a tussel, as it were, with the Chief Minister to have his nominee included in the Cabinet. If the nomination has been in the normal course under that restricted power which the Governor should have, then such a member should be eligible to become a Minister. And if that reservation in course of time disappears, or it is not necessary to exercise it, naturally this provision will have to go; there will be no such member of the Legislature and there will be no possibility, therefore, of putting him in.

I want to make just one remark with regard to the analogy that has been discussed with regard to the Constitution in this country. Here, of course, one knows that the Prime Minister first decides that it is necessary to have somebody who is not already a member of the House of Commons or of the House of Lords, and then, on his recommendation, such person may be created by His Majesty a peer. That is the chief distinction. If the discretion be left to the Governor to appoint a person as a Member of the Legislature, merely with a view to having him

appointed a Minister, that certainly would not be in accord with the practice here, because then it would be the Governor who would desire to include that man in the Cabinet and would try to force him on the Prime Minister. Here it is the Prime Minister who, having decided that he wishes to have a certain colleague who has not been able to secure election to the House of Commons, approaches His Majesty with the request that he shall be created a peer.

*Chairman:* But I think the last point you have made will not come under this amendment.

*Mr. Zafrullah Khan:* No. I say, provided the amendment is restricted in such a way as is proposed under paragraph 7 (c), I have no objection.

*Chairman:* The amendment lays it down that unless he is already a nominated member, he cannot be nominated for the purpose. I only want to clarify the position.

*Sardar Sampuran Singh:* I also rise to support the noble Marquess, though on another ground. Though I agree with my friend that at least there has been an effort to make out this point, that because there may not be any Upper House in some of the Provinces, therefore this analogy of the English Constitution will not apply, personally I think this amendment is necessary just for this reason, because there will be no Upper House in some of the Provinces. That means that certain interests which may perhaps be very important might not be represented in the Lower House, simply because those people are supposed to be a little out of the common run of the people, and Provinces will be deprived of the benefit of their services on account of that reason. For example, there are landed interests, landed gentry, and so many other people who have a lot of experience; there are old servants, members of the legal profession and so many other people who may be very highly qualified to serve their Provinces, but just because they do not happen to be in touch with the general electorates have not succeeded in getting into the House; whereas, if there were an Upper House, they would perhaps be the fittest and most likely people to be in that Upper House. For the reason that there are not going to be Upper Houses in several Provinces, it is necessary that such nominated members should in some cases be appointed Ministers.

*Sir A. P. Patro:* Sir, I am constrained to oppose this amendment on the ground that it defeats the very principle of responsibility in the Provinces, knowing as we do how nominations are manipulated in the Provincial Legislative Councils and the class and quality of persons who are nominated.

*Dr. Ambedkar:* Are you opposed to nominations throughout?

*Sir A. P. Patro:* No, I support nominations. When we have got this vicious system, then I think this provision will lead to a great deal of mischief. It may be that an individual, however estimable he may be, is not able to come in by the direct door

of election; then he may be put into the Legislative Council by the indirect method of nomination. If a person is so important, so able, so representative, that he could certainly fight an election and come in by the direct door of election, if he is only nominated to the Legislative Assembly and takes his seat as a nominated member, whom does he represent? A ministry formed with such a nominated member will be an anomaly, because there may not be harmony between the nominated member and the other members who are elected as ministers. Therefore, to avoid friction and to avoid trouble, it seems to me that the advantages are in favour of the omission of this provision of the amendment. The introduction of this provision to my mind will certainly lead to confusion and a great deal of friction in working the Constitution. If the nominated member is to be imposed on the ministry, then the ministry will be in a difficult position. If an unwilling partner is taken into the partnership, you know what the result will be in the end when the partnership is working. Therefore it seems to me prudent that we should not press this amendment.

*Mr. Barooah*: Sir, if this amendment is accepted I am afraid it will probably have the effect of creating a little anomaly. The words are: "In the event of the appointment of a non-elected non-official." Now that means an official who has been nominated by the Governor. Now if we add the words "unless already a nominated member," as suggested by his Lordship, it will be open to the Governor to appoint to the ministry either a person whom he has already nominated or whom he will nominate after the election and at the time of the formation of the ministry. I really cannot understand why a person who is nominated by the Governor at the time of the formation of the ministry should be required to secure election after six months, while all the men who have been elected only a few days earlier should not be required to secure any such election. I hope I am making myself clear. What I mean to say is that if these words are added it will mean that if the Governor appoints to the ministry a person after an election is over, after he has made his nominations, that man will have to secure election; but in the case of the other man, if he happens to be a member who has already been nominated by the Governor, his Lordship wants to exempt him from securing election. There is clearly an anomaly in this and I therefore oppose it.

*Sir Chimanlal Setalvad*: Sir, I am entirely opposed to this amendment. I agree with my friend, Sir A. P. Patro, that it strikes at the principle of responsibility. The whole suggestion in this behalf has been based on paragraph 7 (c) under which power is proposed to be given to the Governor to nominate certain persons if certain interests are not represented by the election. Now with regard to that, Sir, when we come to that clause 7 (c), I propose to move an amendment, which, if accepted, will remove the difficulty that Lord Zetland is feeling. As paragraph 7 (c)

stands, it runs in this way: "With the possible exception of a strictly limited proportion of non-officials who may in some Provinces require to be nominated by the Governor to secure the representation of groups unable to return their own members through the polls—." What I propose, Sir, is this: "If in the opinion of the Governor any minority or interest has failed to secure representation by election the Governor may direct the Council to supply the deficiency by co-option—."

*Members:* No, no.

*Sir Chimanlal Setalvad:* So that the interests left out will come in, not by nomination, but by co-option by the elected members of the Council. If a member comes in in that way, then there may be no difficulty; the moment he is co-opted, he stands on a par with the elected members, and then he may be taken into the ministry if the Governor so desires.

*Sir A. P. Patro:* You will give power to the majority party to co-opt their own creatures.

*Sir Chimanlal Setalvad:* I am only making a suggestion which you may accept or not accept; but if you do not accept what I am suggesting with regard to paragraph 7 (c), then I am entirely opposed to the proposal made that the Governor may nominate a member and that member may be taken into the ministry; that is striking at the root of the whole principle of responsibility and we cannot accept it.

*Dr. Ambedkar:* Sir, I should like to make one or two observations on the amendment which the noble Marquess has moved. I should like to state at once that the position which he has taken up seems to me to be absolutely logical. In this report we are going to provide that certain interests and minority groups may be represented by nomination in the Legislative Council. At the same time we are also making provision in this report that the Governor shall be given an obligation to endeavour to secure that his Cabinet shall be representative of all interests and of all minorities. Now, Sir, unless you provide that in the making up of this Cabinet, the Governor shall also have the right to include members who represent certain important interests by nomination, it seems to me that you are creating an absolutely illogical position. Either you must provide that there shall be no nomination to the Legislative Council at all, that all interests, no matter how minute, shall be secured by election to the Legislative Council, or, if there is to be nomination then you must provide that a nominated member shall have the right to be in the Cabinet if his colleagues are prepared to work with him on the principle of joint responsibility. There is no escape from one or other of those positions.

Now, Sir, it is stated by friends who are sitting on this side that if we accept this principle, that a nominated member shall be a member of the Cabinet, or at least that there shall be no ban upon him, it will run counter to the principle of responsibility. I really

cannot understand that position. These gentlemen who are saying it will run counter to the principle of responsibility are prepared to take the votes of nominated members. I am taking the report as it stands; I do not know what future amendments there will be. Supposing the report as it stands is carried, that there shall be certain members in the Legislative Council who shall be nominated, is it the position of these gentlemen that their votes are illegal? If those who form the Cabinet who are drawn from the elected portion of the House can validly use the votes of members who are nominated to the Legislative Council, if those votes can logically become the basis of the policy of a Government, I cannot see how a member who is one of that nominated group should not become a member of that Cabinet. I fail altogether to understand it. If, as I say, they can take these votes of nominated members and utilise them for their own purposes, I cannot understand what objection there can be to the inclusion of a member from the nominated group in the Cabinet. I therefore say the position of the noble Marquess is perfectly logical. It seems to me we have to make a choice whether we shall make a provision of the sort suggested by the noble Marquess in his amendment, or whether we shall agree to the other proposal which my friends say they will move at a later stage, that there shall be no nominative element in the Legislative Councils at all. Personally I would much rather have the whole Legislative Council elected with no trace of nomination at all. From that point of view I am not very much in favour of the amendment suggested by the noble Marquess; but if in this Committee or at any later stage nomination remains, then I think I shall have to agree with the noble Marquess and accept the amendment he has proposed.

*Diwan Bahadur Ramachandra Rao* : I must express my surprise at the speech to which I have just listened.

*Dr. Ambedkar* : You may, but you cannot have it both ways.

*Diwan Bahadur Ramachandra Rao* : He knows very well that even under the existing system nominated members are not eligible for appointment as ministers. Section 52 clearly lays it down that no minister shall hold office for a longer period than six months unless he is an elected member of the local Legislature.

*Dr. Ambedkar* : That is in the melting pot.

*Diwan Bahadur Ramachandra Rao* : During the last ten years my friend knows very well that important interests were represented by nomination; nevertheless, under the requirements of the Act passed ten years ago, all ministers were drawn from the elected portion of the House. It seems to me, Sir, that to go back now and appoint a nominated person as a minister would really be destroying the whole principle of responsibility and discrediting the Reform scheme which is contemplated as a whole. We are looking forward to the time when nominations will disappear, and even under the future Constitution the portion nominated will be so small that for practical purposes we should omit it for the present

and not stick to logic which has been expounded by Dr. Ambedkar. It seems to me that once you introduce a nominated minister who does not seek election, whatever you may do, this scheme is bound to be rejected by the country.

*Mr. K. T. Paul:* I must remind my friend, Mr. Ramachandra Rao, that in practice the Governor has secured representation of important minorities through nomination in a Cabinet by appointing them members of Government. Now that system is to go and we are to have only ministers.

*Diwan Bahadur Ramachandra Rao:* You mean members of the Executive Council?

*Mr. K. T. Paul:* Yes.

*Diwan Bahadur Ramachandra Rao:* That is another matter.

*Mr. K. T. Paul:* For instance, the community my friend represents has been brought into the Cabinet of Madras through the Executive Council. Similarly the Muhammadan community has been brought into the Cabinet in that way in Madras. But now we have to have a Cabinet consisting only of ministers. If that is so, my position is precisely that of Dr. Ambedkar. I am not in favour of any nomination; but if there is to be nomination and it is to be permitted as a practical necessity, then I do not see how it will be right to place any disability on the Governor appointing to the Cabinet nominated members.

*Lord Zetland:* Mr. Chairman, Mr. Chintamani was kind enough to say he regretted that once more he had to oppose my proposed amendment. May I say I share his regret, for I greatly value his support.

I have an uncomfortable feeling that Mr. Chintamani looks upon me with a certain measure of suspicion. He always seems to be looking in my amendments for something which is not actually there. This amendment of mine surely is a very simple one, and it is, as Dr. Ambedkar has pointed out, a perfectly logical one. My object in moving this amendment has been most lucidly explained both by Mr. Zafrullah Khan and by Dr. Ambedkar. It does seem to me to be a ridiculous position that you should have a member of a Legislative Council nominated but because, owing to certain circumstances to which we need not now refer, it is not practicable that he should secure election. It seems to me ridiculous to have such a man, equal in every other respect with every other member of the Legislative Council, and yet to say to him, "No; because you cannot secure election you shall not be eligible to be a member of the Government." It seems to me that that position is wholly illogical, and both on the grounds of expediency and of logic I do venture to ask the sub-Committee to accept this very small and innocuous amendment.

*Mr. Joshi:* I think it would be better to postpone this until the question of nomination is decided upon. If we agree not to have any nominated members, this will fall through.

*Lord Zetland*: If there are to be no nominated members this will be a dead letter, and it will not do any harm.

*Chairman*: As Mr. Garvin said yesterday, the House is divided. I do not mind putting in a note. There is really a serious division in the Committee. I do not want to settle these points to-day by taking a show of hands, if I can avoid it. I do not think that is the right thing to do. We might leave it over till a little later to see what the Report is like. Then we might agree upon some method of dealing with the question, either by following the precedent, which we have established, of a foot-note saying that a section of the sub-Committee were in favour of so-and-so, or by some other method. At the moment there is a clear division, and I think the best way is to postpone further consideration until we have gone through the Report. Then we will return to it. Is that agreed? (*Agreed to.*)

*Lord Zetland*: With regard to the last sentence in sub-section (b), I am not going to ask the sub-Committee to accept an amendment by the deletion of those last two and a half lines, because I realise that the sense of the vast majority of the sub-Committee is against me, and in those circumstances I do not wish to waste the time of the sub-Committee. I shall have to ask the Chairman just to say that I dissent from the last sentence.

*Sir Robert Hamilton*: I associate myself with that.

*Chairman*: We will have those two dissents noted in the Report. “(c). Group or communal representation in the Cabinet. The sub-Committee considers it a matter of practical importance to the success of the new constitutions that important minority interests should be adequately recognised in the formation of the Provincial executives. An obligation to endeavour to secure such representation should be expressed in the Instrument of Instructions to the Governor.”

*Mr. Fazl-ul-Huq*: I propose to delete the words “to endeavour.” Everything depends on the spirit. If the spirit is wanting, any endeavour will fail.

*Chairman*: Is there any objection to the deletion of these two words?

*Mr. Chintamani*: Yes. I have an amendment. I propose that the second sentence be amended. It now reads, “An obligation to endeavour to secure such representation should be expressed in the Instrument of Instructions to the Governor.”

*Chairman*: One moment. Do you deal with the third line from the bottom—“An obligation to endeavour”—because if not I can take your amendment after that.

*Mr. Chintamani*: I will read my amendment, and then you will decide: “An obligation to endeavour to secure such representation need not, however, be expressed in the Instrument of Instructions to the Governor, as no Chief Minister can ignore any important minority in recommending this to the Government.”

*Chairman* : I think, strictly speaking, that that comes later. The amendment now before the sub-Committee is the deletion of the words "to endeavour." It would then read, "An obligation to secure such representation should be expressed in the Instrument of Instructions to the Governor." The question before the sub-Committee is the deletion of the two words "to endeavour." Do you agree to that. (*No! No!*) Very well. Does any one wish to speak against the deletion of these words?

*Mr. Chintamani* : I speak against the deletion of these words without prejudice to what I am going to say in moving my own amendment. Assuming that a mention of this obligation in the Instrument of Instructions is considered essential or desirable, then it is more prudent and less objectionable to retain the words "to endeavour" rather than to delete them. If you retain them the effect will be that the Governor and the Chief Minister will make every possible endeavour to secure a suitable representative of the minority communities, and if they should fail they will fail in spite of the best endeavours. If, however, you delete these words, any sort of man to represent the minority communities, whether he may or may not be in agreement with the general policy of the rest of the Ministers or whether he may or may not be able honestly to share the responsibility with them, will be appointed because of this obligation. The result will be administrative confusion. Therefore, of the two evils, the lesser will be to keep in the words "to endeavour."

*Mr. Joshi* : I think the omission of these words may be found in some cases to be inconsistent with the joint responsibility. If the Governor does not secure a man who is willing to share the joint responsibility with the others, he cannot be under an obligation to secure a man. If he is under an obligation to secure a man, he must also be under an obligation to make that man responsible, but certainly he has no power to make the man agree with certain others. Therefore, if these words are to be retained, it can only be an endeavour. He cannot be sure of securing a man who will be bound to work with others with whom he may not agree. Therefore, the words "to endeavour" must remain. I may also suggest a small amendment myself, namely, that the word "direction" should be substituted for the word "obligation"—"A direction to endeavour".

*Lord Zetland* : May I say how happy I feel to think that at any rate on one occasion Mr. Chintamani and I are in full accord, though let me also add that the fact that I am in full accord with Mr. Chintamani necessitates, to my regret, that I should find myself at issue with a very old friend of mine, Mr. Fazl-ul-Huq; but I really think that the most you can require the Governor to do is to endeavour to secure this representation. Obviously it would be quite impracticable to say that in all circumstances he shall secure the representation of these different minorities. If you were to do that, the whole idea of appointing a Chief Minister in a province where parties rather on the lines of parties in this country have



developed, and consulting with him as to the appointment of your Cabinet, would be undermined and fall to the ground. Therefore, I feel I must support Mr. Chintamani in his objection to this amendment.

*Sardar Sampuran Singh*: I rise to support my friend Mr. Fazl-ul-Huq. The words "to endeavour" are proposed to be deleted not in order to weaken the hands of the Governor, but really to strengthen his hands. We are making this constitution with the view in front of us that eventually the Chief Minister will be making the Cabinet, and not the Governor. By making this provision in the Statute we are strengthening the hands of the Governor to interfere in such matters so as to get the minorities represented. If, on some occasions there is possibly a weak Governor, and he does not use his full influence in getting the minorities represented, and the other side say to him "You are only to endeavour; it is not binding on you by Statute", he might give in; and for the future there might be a sort of custom established that the minorities might go unrepresented on the Cabinet. Therefore, when Mr. Fazl-ul-Huq asks for the removal of these two words "to endeavour", it is really in order to strengthen the hands of the Governor, so that if at any time he is pressed by the people about him he will not have to give in, but will always be able to stand on the strength which he gains from the Statute to see that the minorities are represented in the Cabinet.

*Chairman*: I think you ought to reply now Mr. Fazl-ul-Huq. I think we have discussed this point sufficiently.

*Mr. Fazl-ul-Huq*: We are not proposing to frame our recommendations in the expectation of how things should be, but in recognition of facts as they are. It is extremely unpleasant that I should bring forward a suggestion of this character which seems to suggest that I am more or less reactionary in my temperament, and that I am trying to put spokes in the wheels of a complete democracy for which India is now striving. Only the other day my friend Sir Cowasji Jehangir remarked that the demands of the Muhammadans are extravagant.

*Sir Cowasji Jehangir*: I never said so.

*Mr. Fazl-ul-Huq*: If Sir Cowasji Jehangir knew how the Muhammadans and other minorities are sometimes treated by their own countrymen I do not think he would have gone so far as to make a remark of that character. I put it to Mr. Chintamani: the idea is to have a Chief Minister or Prime Minister who will make the selections, submitting the names to the Governor with a view that ordinarily these names shall be accepted for appointment to the Cabinet. Supposing Mr. Chintamani comes at the head of a group of 70 per cent. of the members of the Legislative Council, and he chooses to ignore absolutely the other 30 per cent., there is no doubt that in the Instrument of Instructions to the Governor there should be an endeavour to have the 30 per cent., or some one of the 30 per cent., represented, but if the spirit is

wanting any endeavour will be futile. It is with a view to providing for such cases—and such cases have occurred in many Provinces in which interests which ought to have been properly represented have not been represented at all—that I make this proposal. Considering it along with the other proposal which I have put forward, the net proposal comes to this: after the elections are over, the responsibility for appointing the Ministers shall rest with the Governor. What I am suggesting is that in the discharge of that responsibility the Governor shall not merely consult the person who may have the largest following, and shall not merely make an endeavour to secure the representation of important minority interests, but shall see that such minority interests are recognised. I therefore put to the Sub-Committee both of my amendments for its consideration and also for the consideration of the Conference.

*Chairman*: I must say I feel very strongly the view which Lord Zetland has put forward, that we are imposing a definite obligation here to endeavour to do this. He cannot pass this over lightly. Mr. Joshi was going to take out the word "obligation" and merely direct him to do this, but we are emphasising the point, unless another amendment is moved, and emphasising it very strongly. You cannot ask him to do the impossible, but normally not only would prudence dictate that he should do this, but he is under an obligation to make an effort to do it. I think we might accept that and leave the report as it is, for I think it represents the opinion of the majority of the members of the Sub-Committee at the end of the discussion which we had here. (*Yes!*).

Now we will take Mr. Chintamani's amendment to sub-section (c).

*Mr. Chintamani*: I desire to move an amendment to the sentence in sub-section (c) which reads "An obligation to endeavour to secure such representation should be expressed in the Instrument of Instructions to the Governor", so that as amended it shall read "An obligation to endeavour to secure such representation need not, however, be expressed in the Instrument of Instructions to the Governor, as no Chief Minister can ignore any important minority in recommending names to the Governor".

*Chairman*: I do hope you will not press that. I think the report correctly states the general attitude of the sub-Committee.

*Mr. Chintamani*: I shall have no complaint if you declare it lost, and I shall not take up your time, but I owe it to myself to move it. I hold it to be essential to carry out the proposition already carried by this sub-Committee, that there should be collective responsibility of Ministers to the Council. You should rely on the commonsense and the political sense of whomever the Governor may select as Chief Minister not to start by creating antagonism against his Ministry on the part of any important section of the Council; you must leave it to him to secure colleagues who, taken together, will command the largest assent of every section. It is on that that you should rely if you start on the experiment of

responsible government with any confidence and not with these artificial props. It is for these reasons that I move this amendment.

*Sir A. P. Patro* : I oppose the amendment. Experience suggests there should be such an instruction.

*Several Members* : I oppose the amendment.

*Chairman* : I think the opinion of the Committee is against the amendment.

*Mr. Chintamani* : I ask in that case that it be included in the report.

*Chairman* : Do please try to realise where your collective interests lie! if we fill up the report with these statements what will the position be? I will put it in if you insist, but I plead with you not to insist. (*Cries of assent*).

*Mr. Chintamani* : I do not insist on it, but I shall move it in the full Committee.

*Chairman* : Then, subject to the reservation which we made at an earlier stage, No. 5 stands part of the report.

The next is No. 6, Powers of the Governor.

*Mr. Fazl-ul-Huq* : What about the other amendment I moved?

*Chairman* : I thought the sense of the meeting was against you.

*Mr. Fazl-ul-Huq* : I proposed that in addition to the leader of the largest group, the Governor should invite the leaders of the other groups, and that there should then be a discussion, after which all the suggestions made should be considered by the Governor.

*Chairman* : I understood the sense of the sub-Committee was opposed to that. (*Cries of assent*). No. 6 is Powers of the Governor, and we come first to (a), his powers in regard to the legislature. (1) reads :

“ The Governor shall have power to dissolve the legislature; he may assent or withhold assent to legislation; he may return a Bill for reconsideration by the legislature, or reserve it for the consideration of the Governor-General.”

I understand there is an amendment to be moved to that.

*Sir Chimanlal Setalvad* : The amendment I wish to move relates to this, yes. It says “ he may return a Bill for reconsideration by the legislature ”. I am entirely in agreement with giving him the power to return a Bill for reconsideration, but what happens at present is that he has the power, or at least he has taken the power in some Provinces, not only to return a Bill for reconsideration but to tell the Legislative Council in what form they should pass it and indicate the amendments he requires them to put in. That happened, I believe, in Madras in one instance.

*Sir A. P. Patro* : That was at the instance of the Government of India.

*Chairman* : Let us have the amendment read.

*Sir Chimanlal Setalvad* : I do not want the Governor to have that power. Let him send back a Bill for reconsideration to the Legislative Council, but he should not dictate to the Legislative Council what amendments he requires; it should be left to the Council to reconsider it and to suggest certain amendments which they may in the circumstances think desirable.

*Chairman* : But surely that is going to place the Legislature in a most difficult position? They will have a Bill sent back to them by the Governor for the consideration, but they will not be told why he has sent it back.

*Mr. Chintamani* : That is not the point of the amendment; he did not mean that. I should like to explain the position. The Governor at present has power to recommend to the Council that a Bill should not be passed in a particular form. The power is not exhausted by asking the Council to reconsider particular parts of the Bill; he can send it back to the Council with the recommendation that the Bill should be passed in a particular form, and say that otherwise it will be dead. My hon. friend the Home Member will remember that when there was tenancy and revenue legislation before the Council of the United Provinces in 1926, the Governor went against the wishes of the Council. The Council wanted the legislation in a certain form, and the Governor held a pistol at the head of the Legislative Council and said "Either you pass it in this form or it will be dead". The amendment is designed to deprive the Governor of this particular power.

*Sir A. P. Patro* : What has been referred to is the Religious Endowment Bill in Madras, which was reserved for the assent of the Governor-General. The Governor-General in sending it back suggested certain amendments to make the Bill more satisfactory. With regard to the Malabar Tenancy Bill suggestions were also made, but they were not an abuse of the Governor's powers but were suggestions made by the Governor with a view to making the legislation more efficient and workable. There was no question of the Governor arrogating to himself any extraordinary powers not conferred by the Statute.

*Sir P. C. Mitter* : It is not suggested by my friend Sir Chimanlal that the power of the Governor to withhold assent should not be there. If that is not suggested—and I am sure it is not suggested—what will happen in regard to what comes under (2), legislation (i) affecting the religion or religious rites of any class or community in the Province and (ii) regulating any subject declared under the constitution to be a federal subject? There is also (iii) any measure repealing any Act or Ordinance made by the Governor-General. Unless the Governor can send this back to the Council and say "Unless you take note of certain points" and so on, there will be difficulty. The Governor has no right to impose anything on the Legislature, but the Governor should be able to

indicate certain defects and difficulties, so that I hope my friend Sir Chimanlal will not press this.

*Sir Cowasji Jehangir*: From 1921 to, I think, 1924 the Governor returned Bills for reconsideration, pointing out in ordinary language where he thought they might be amended. In 1924, however, a rule was brought into existence which enabled the Governor to send an Amending Act back to the Council for their consideration—an actual draft Bill, showing how the Bill should be amended if it was to receive his assent. That was the distinction and that rule to which Sir Chimanlal desires effect should not be given. The Governor should not have the power of sending an actual draft Bill to the Council; he should merely point out where he thinks the Council might amend certain sections of a Bill; then he would leave it to the Council to amend that Bill, if they chose to do so, according to his wishes, or to pass it again. He should not be allowed to send an actual draft amending Bill back to the Council; that is the point.

*Chairman*: No, but if he has had a Bill sent to him for his approval and he takes exception to it or to any of its provisions, surely he must indicate what the points are? The amendment I have in my hand clearly says "should not indicate." I say he must indicate.

*Sir Ahmad Said Khan*: He must indicate.

*Chairman*: I should think that in nine cases out of ten he would merely give to the Minister in charge his views as to why certain provisions should not be accepted, and they would probably try to come to an agreement as to what modification was necessary to enable the Bill to pass. But if the Bill merely comes back to them and they are left to guess what the Governor's objections are, they will be in a fog and not know what to do.

I should like again to ask you to remember that we are not drafting an Act of Parliament; we are not even drafting a constitution in detail, and in the existing Act there is such a provision now. I suppose when this constitution comes to be drafted and turned into an Act of Parliament, it will be seen what limits it is necessary to impose in connection with the return of a Bill for reconsideration. The intention of this amendment may be correct but I feel sure the wording is not; to say that he "will not indicate" in my opinion would never work.

*(The sub-Committee adjourned at 12-55 p.m. and resumed its discussions at 4 p.m.)*

*Chairman*: We shall continue the discussion upon the amendment proposed by Sir Chimanlal Setalvad.

*Sir Chimanlal Setalvad*: I am afraid there is some misunderstanding as to the object of my amendment, and possibly the way in which I drafted it has led to that misunderstanding. What I mean is this. Under the Rules as they stand at present, if the

Governor does not approve of a Bill passed by the Legislature he not only indicates to them the reasons for his disapproval, but is authorised to send to them a Bill in the amended form in which he wants it adopted, and no discretion is left to the Legislature to alter the Bill so drafted by the Governor or further to negotiate about the matter.

What is more objectionable is that the Rule says that if the Legislature refuses to pass the Bill as amended by the Governor and sent to them for acceptance, the Governor has the power to certify the Bill over the heads of the Legislature and it becomes law.

*Sir A. P. Patro*: Where is the Rule? Who made the Rule, and how was it made?

*Sir Ahmad Said Khan*: That can be done on the reserved side only.

*Sir Chimanlal Setalvad*: But now there is to be no reserved or transferred side.

*Sir A. P. Patro*: Therefore that Rule must go.

*Sir Chimanlal Setalvad*: That is what I am asking.

*Sir A. P. Patro*: These things are intended to be incorporated in an Act.

*Sir Chimanlal Setalvad*: This is a principle we have to indicate, namely that the present power in the Governor to certify a Bill if the Legislature does not accept the exact amended form he indicates must go. That is what I am seeking, and it may be provided in this manner.

*Sir Cowasji Jehangir*: It does not say anything about certification here.

*Sir Chimanlal Setalvad*: He must not be allowed to require the Legislature to pass the Bill in the exact form as amended by him, and on their refusal to do so certify the Bill and make it law. That is the amendment I wish to propose.

*Chairman*: That is not the amendment that was proposed this morning. The amendment proposed this morning, which I have read more than once, is that he shall not indicate the amendments he desires to be made.

*Sir Ahmad Said Khan*: I am sorry, but I cannot agree with the mover of the amendment. If we are to give the Governor power to send back any Bill to the Legislature, I cannot understand why we should not give him the power to indicate to the Legislature where the defect is and why he wants to send it back and what he wants in place of the section to which he takes objection.

Mr. Chintamani referred to me in his speech about the Rent Act in the United Provinces. It is true, as he said, that the Governor sent back the Bill, or a certain section of the Bill, against the wishes of the House, and it was carried. The real difference

is, however, that that was done on the reserved side, where the Governor had the power to certify. Now this will be done on the transferred side, and the Governor can send this back to the Legislature either with the consent of the Ministers or without.

If he is doing it with the consent of the Ministers I see no objection to it, because the Minister who is in charge of the Bill has every right to say that if the Bill is not going to be made law with this particular section in it he will not proceed further with the Bill. That is the right of every private member, and I do not see why a member of the Government should not enjoy the same right. But if the Governor is going to send a Bill back to the Legislature against the advice of his Cabinet, in that case he should remember the House has got definite power to reject it and not to pass it, and if any Governor is thinking of taking a strong line in that connection he should beware of the result, because it is quite possible that in these circumstances the Ministers would all resign, and if the House is unanimous on that section, or if there is a great majority in the House in favour of that section to which the Governor takes objection, the chances are that he will not be able to get any Ministers and the whole constitution will come to an end. I think that safeguard is quite sufficient against the Governor taking any arbitrary action.

Personally I think what is put down here is quite all right, and that there is no need for any change.

*Dr. Shafa'at Ahmad Khan*: Sir Chimanlal has in effect moved two amendments. The first dealt with the question of reconsideration by the Legislature of amendments desired by the Governor, but in the second amendment which he has just proposed he wants something quite different; what he wants is that the Governor should not possess the power of certifying any Bill. There has, however, never been any question of the Governor in the new constitution possessing any power of certification. No one has raised this point, and I am sure very few persons would support any power of certification being given to the Governor, so that the question of certification does not arise at all.

*Chairman*: He can only reserve it to the extent of putting it before the Governor-General.

*Dr. Shafa'at Ahmad Khan*: That is all, and that, of course, must be retained. The second amendment being thus disposed of, I come to the first amendment. This first amendment expects the Legislature to decide in a way contrary to that in which it has first decided, but it does not call on the Governor to give any guidance to the Legislature; that is what it comes to. Sir Chimanlal's proposition comes to this, that the Governor sends a sort of blank message to the Legislature, saying that he is displeased with a particular Bill, but he does not say how or in what way he would like the proposal amended or altered; he only says "Please reconsider this."

I should like to know what effect such a vague, ethereal and rather nebulous method will have on the Legislature. A Legislature which is told to reconsider has a perfect right to ask what it has to reconsider, on what lines it has to reconsider it and on what principles it is to reconsider it; but on these points Sir Chimanlal is perfectly vague and quite indefinite.

There have been two occasions on which this power has been exercised by the Governor in the United Provinces. In 1925 this power was exercised when the Governor sent back a Bill with his own suggestions, and all the suggestions recommended by the Governor were carried out by the vote of the Council.

In 1926 the Governor sent back the Agra Tenancy Bill for reconsideration and he suggested his own proposals. The Council again considered all those suggestions; it did not make the least alteration in the suggestions which had been made by the Governor and passed it as recommended by the Governor himself. If the suggestions of the Governor had been contrary to the wishes of the Legislature, the Legislature would have been perfectly right to have rejected his suggestions, and it could have said: "No, we are not going to carry out your suggestions." But, on the contrary, all the suggestions, all the amendments, of the Governor were carried out. I think, Sir, that the power which is now exercised by the Governor is very salutary and very useful, because, after all, even a Legislature is liable to make mistakes now and then.

*Chairman*: Now I think we had better have the position clarified. First of all, do I understand that you withdraw your first wording?

*Sir Chimanlal Setalvad*: Yes.

*Chairman*: Very well; then that is out of the way, and the discussion must now proceed on the new wording. I have not got a copy of the new wording yet. Could it be given to the Secretary while the discussion is going on?

*Sir Chimanlal Setalvad*: Yes.

*Sir A. P. Patro*: I think the previous speaker was speaking with regard to the powers which are now specified in the recommendation we make?

*Dr. Shafa'at Ahmad Khan*: That is it.

*Sir A. P. Patro*: But the power which Sir Chimanlal refers to is a power which is vested in the Governor and the Governor-General under rules made in the Legislative Department in 1924. The reason is this: before that there was doubt as to whether, in returning a bill for consideration to the Legislature, the Governor or the Governor-General could lay down the lines on which the amendment should be accepted by the Council. Instead of explaining that position, the Government of India took the matter into their own hands and, in returning a bill, said they would make certain suggestions conditionally, that unless the Legislature was able to accept those conditions, they would not accept the bill. That has



happened in regard to what was known as the Irrigation Bill in Madras in respect to which the Council refused to accept certain recommendations made in the Reserved Department. When it went up to the Government of India, they said: If certain conditions are accepted by the Legislature then the Government of India will accept the bill. But we refused to accept those conditions laid down by the Government of India, and therefore the bill could not be passed. It is a power that now exists with the Governor and the Governor-General to lay down conditions under which they will accept a bill when they send it back to the Council. When the Council refuse then the bill ceases to exist. That is the present position; but this position applies only in regard to matters arising out of the Reserved subjects; it does not apply to the Transferred subjects; neither the Governor nor the Governor-General has power of refusing in regard to matters transferred when the Ministers are responsible to the Legislature. This arises only in the cases of Reserved subjects; but now the distinction between the Reserved and Transferred subjects will be abolished. Therefore this amendment of Sir Chimanlal is quite unnecessary. It would be necessary only if the distinction between Reserved and Transferred subjects remained. That power is applicable only under the rule with regard to the Reserved subjects, and that distinction being sought to be abolished, the amendment of Sir Chimanlal seems to be quite unnecessary.

*Sir Chimanlal Setalvad*: I will not press it now.

*Mr. Joshi*: I am not moving an amendment I will simply express my view that now I am entirely against this clause, that he may return a bill for reconsideration by the Legislature. I feel, Sir, that it is enough that the Governor should have the power of either assenting to or dissenting from the bill. To give the Governor power to send a bill back for reconsideration really means that the Governor will have power to negotiate with the Legislature as to the details of the bill. If the Governor only has the power of dissenting or assenting, he will use his power very rarely; but if he gets the power of negotiating with the Legislature as to the details of the bill, he will use that power very frequently. I therefore feel that we should not give the power to the Governor to send back a bill for reconsideration.

*Chairman*: May I just read, for the benefit of the Committee, the position in the South African Constitution: the Governor-General may return to the House in which it originated any bill so presented to him, and may transmit therewith any amendments which he may recommend, and the House may deal with the recommendations. Now the report stands as it is on this point. We have dealt with No. 1; we now come to No. 2, to which an amendment is proposed by the Maharaja of Darbhanga. It now reads: "It shall not be lawful, without the previous sanction of the Governor, to introduce any legislation (1) affecting the religion or religious rites of any class or community in the Province." Do I understand that you

want to take out the words I have just read, and substitute the words you propose?

*Maharaja of Darbhanga:* Yes, Sir.

*Chairman:* The words are: "It shall not be lawful to introduce any legislation affecting directly or indirectly the religion or religious rites or any class or community of His Majesty's subjects." You will now propose that amendment.

*Mr. Zafrullah Khan:* What is the difference?

*Chairman:* It takes away all power to deal with this matter; it says: not to introduce any legislation directly or indirectly affecting the religion or religious rites of any class or community.

*Maharaja of Darbhanga:* Sir, the reason of my moving this amendment is that I am convinced that it is entirely wrong that there should be legislation interfering in any religious matters. India is a country of different races, religions and creeds, and what one section may consider right is considered wrong by another section. Therefore I do not think it right to make a hard and fast rule in matters of religion, which means everything to a great majority of people. It touches the core of their heart if they are hindered in any way in religious matters. Sir, I do not for a moment wish to suggest that there is no room for reform. Things have crept in which are attributed to religion, but which may be quite contrary to the religion itself, but I submit it should be left to the leaders of the community itself to say what changes shall be effected.

*Chairman:* Yes, but will you please direct yourself to pointing out the difference between the report and the amendment you are proposing. All you are now telling us is admitted in the Report itself. We clearly laid it down that it shall not be lawful without the previous sanction of the Governor.

*Maharaja of Darbhanga:* I mean to say, religious matters should not be liable to legislation even with the sanction of the Governor.

*Chairman:* That is the point to which I want you to address yourself.

*Sir A. P. Patro:* There is nothing in the amendment.

*Maharaja of Darbhanga:* Then I would suggest that in this particular case the Governor should not give his sanction without consulting the leaders of the communities.

*Chairman:* I cannot see him doing it without consulting some one, unless he is out for trouble, and serious trouble.

*Maharaja of Darbhanga:* At times the ideas and the views expressed by some of the leaders have not been considered; for instance, in regard to some of the Bills which have been before the Council, the views of some of the leaders of the Society were not at all considered, and legislation contrary to their wishes was allowed to be brought into the Council.

*Chairman:* You will see the point here is that the Cabinet have got to get the sanction of the Governor before they can interfere in any way. Surely in a matter like this, the Governor, for the tranquillity of his Province, is going to see to it that his Cabinet is not remain in operation for more than six months without the religious convictions of any section of the community; at least I should imagine so. Now, do you propose to press this amendment?

*Maharaja of Darbhanga:* No, I do not.

*Chairman:* Very well. Then the next is on (iii) by Sir Chimanlal Setalvad.

*Sir Ahmad Said Khan:* I have an amendment with regard to affecting the religion or religious rites of any community in the Province. My idea is that a sort of note should be attached to clause (i) and the note should run as follows: "If any community submit a memorial to the Governor or the Governor-General, as the case may be, signed by two-thirds members of that community in the Legislature, then he should be required to give his formal decision whether any Bill does or does not affect the religious or social usages of that community, and to withhold his consent if he thinks that the Bill affects the religious or social usages."

*Raja Narendra Nath:* You use the word "social" as well?

*Sir Ahmad Said Khan:* Yes.

*Chairman:* You have moved your amendment; will you speak to it?

*Sir Ahmad Said Khan:* I beg to move that this explanation should be added to it. This will perfectly serve the purpose which was in the mind of the Maharaja of Darbhanga. The effect of this will be that whenever any Bill or any measure is brought before the Council, if any community take objection to it, then if two-thirds members of that community sign a memorial and submit it to the Governor, he will have to give a formal decision, first of all, as to whether that thing or that Act or that measure does or does not affect the social or religious usages of the community concerned; and if it does, then he will be empowered to withhold his consent. I think this will cause full satisfaction to the Maharaja of Darbhanga and other members of the minority communities who may be afraid that the majority community may do something which affects their religious usages.

*Chairman:* But do I understand that though you will have representation in the Legislature, you desire, as members of the Legislature to sign a memorial to the Governor going over the heads of the Cabinet; is that the idea?

*Sir Ahmad Said Khan:* Yes.

*Chairman:* Well, that is rather an extraordinary thing in a representative Chamber.

*Mr. Joshi:* Sir, I am not only against this amendment, but I am against this part of the Report. I feel that in India social reform has been delayed by the attitude taken up by the British Government, which has been an attitude of neutrality. If we are going to put in a clause now that no legislation shall be introduced unless a Governor, who may be very reactionary in social and religious matters, approves of that legislation, then we are not going to get any social reform in India at all; it will depend on the Governor being a social reformer.

*Chairman:* You will excuse me, Mr. Joshi, but we are only dealing with this one which affects religious rites.

*Mr. Joshi:* Yes, I am talking of religious rites, because unfortunately in India every social custom has got some relation to religion. I will give you an instance; there is the question of taking water by the depressed classes from a public well. It is quite possible that some people may say that this affects their religion, and if a Governor happens to be a Governor of a reactionary mind, there can be no legislation on that point at all. It is a dangerous thing to give such a power to a Governor who delays social reform. The British Government has done sufficient harm by taking up an attitude of neutrality, and we should not now give power to the Governor to delay social reform any longer.

*Sir A. P. Patro:* The last Act of the Government of India with regard to marriage restriction was well supported and backed up by the Government. If social legislation emanates from the non-officials and is placed before the Legislature, then the attitude of the Government of India will be known, and in every case in which a social measure has been placed, the Government of India and Provincial Governments have supported it so far. In my own Presidency two such measures were placed, one with regard to the depressed classes and the other with regard to endowments. Those measures were at first non-official measures but they received the full support of the Government. Therefore it is wrong to say that the Government opposes any measure which is for the social advancement of the people. In the proposal which has been made I am sorry that social measures have been included. If social measures are withdrawn and it is confined to religious matters, then, as was proposed in the Conference, if two-thirds of the members of a Legislature vote against any particular measure as affecting their religion, then it is for the Governor to consider whether he will give permission to introduce it. But I am not able to understand how this proposal is put, namely, that if a memorial signed by two-thirds of the Legislature is placed before the Governor, the Governor shall take cognisance of the matter. It is a matter of which the Legislature will be completely seized; the Legislature has the power to deal with it because it is a representative assembly consisting of representatives of all classes and communities, and if two-thirds of that Legislature say that a measure is opposed to the religion of religious communities, then it is for the Governor to consider. As it is proposed, namely that it should be memorialised, that seems to be a very

cumbrous procedure. If the proposal is that if two-thirds of the members affected by the particular measure pass a resolution in the Council, then the Governor shall not give his consent, that I could understand as a constitutional position.

*Chairman*: Do not let us get at cross purposes. The words are: "Two-thirds members of that community in the Legislature." That can be interpreted to be two-thirds of the representatives in the Legislature, but I understand that is not what you mean?

*Sir Ahmad Said Khan*: Two-thirds of the members of that community in the Legislature which is affected.

*Chairman*: Not two-thirds of the Legislature?

*Sir Ahmad Said Khan*: No, Sir.

*Chairman*: I was going to say that if two-thirds of the Legislature were opposed to it, they would not pass it, and therefore the point would not arise. It is a question of wording. I want to get your mind and then the wording can be put right. I understand what you want is that if two-thirds of what might be a minority in a Legislature feel that this is an encroachment upon their religious rites, you want them to have the power to petition the Governor.

*Sir Ahmad Said Khan*: Yes.

*Chairman*: Now we have got clear what it is. Is there any objection to that course being adopted on a purely religious question, because the word "social" has been deleted. Is there any objection to that being done in some form if we get the right words, if we confine it solely to the religious question?

*Mr. Zafrullah Khan*: There would be no objection in principle to giving that guarantee, but we had better be clear as to what we are about. The proposal in the Report is that no measure which affects the religious rights of any class or community in the Province shall be introduced in a Provincial Legislature unless its introduction has been previously sanctioned by the Governor. Let us stop there and see whether that provision affords sufficient protection or not. If it does I do not think it would be necessary to put into our Report anything to the effect that certain things shall be lawful to be done by a certain proportion of the members of the Legislature. Supposing a measure is introduced into the Legislature without the previous sanction of the Governor which it is felt affects the religious rights of a particular community or class, and supposing that this clause stood as it is, what would be the remedies open to members representing that particular community or class? It would be for them to raise an objection first in the Legislature itself when the measure was sought to be introduced, to the effect that it was *ultra vires* the powers of the Legislature to consider the measure at all, inasmuch as it required previous sanction, and previous sanction had not been obtained. In the first place the powers of the President would come into play. He would have to consider the measure, and he would have to give a ruling as to whether in his opinion the

measure did or did not affect the religious rights of any community or class in the Province. If he ruled out the measure, it would go. If he did not rule it out the measure would be taken into consideration on its merits: members would still be free to vote on it from the point of view of whether or not it affected the religious rights of certain communities, and those concerned might be able to persuade a bare majority in the House that it was not desirable to pass the measure. If that happens at any stage, the measure goes. If, in spite of all this, it is passed into law it will be extremely probable that it is not a measure of the kind with regard to which previous sanction is required; but if, nevertheless, it has been passed, then it goes up to the Governor for his assent. If he in the mean time has been persuaded that it is one of those measures which requires his previous sanction, he can interfere and refuse to assent. Supposing, nevertheless, that he does assent and it becomes an Act: it is open to anybody to whom it is sought to be applied to go to court and raise the question that the measure is not a valid measure—that it is *ultra vires* the powers of the Legislature inasmuch as previous sanction was required and has not been accorded. That is what happened with regard to fiscal measure in my own Province. A certain tax was imposed by the Provincial Legislature without previous sanction. Some people paid the tax under protest and afterwards sued for the recovery of the tax, and the court gave a ruling that it was *ultra vires* the Legislature, and the matter was set at rest. I do not object to the spirit of the amendment, but I think, with all respect, that it is unnecessary.

*Chairman:* The only point which I think we have to consider now is as to whether we are going to add to the end of this sub-clause (2) words which will enable a petition to be presented by two-thirds of any minority claiming that their religious rights are being encroached upon. I do not know whether we can dispose of it now. It is not a very vital matter. Nobody likes to have their religious convictions trampled upon. The only question is whether in the majority of cases, if anything of the kind were attempted, the Governor himself would refuse to allow the Legislation to be introduced. It says it shall not be lawful to do so without his consent, and that seems to me to be a very adequate protection. If we are afraid that the Governors will not do their duty in this respect, there is still the fact that you have a unitary Cabinet, and the Cabinet itself with the Chief Minister is not going to allow these disturbing questions to be brought in unnecessarily. There you have a second safeguard. Now you are wanting to impose a third safeguard. It does seem to me that you are not going to begin by trusting each other very much in these matters. Do you wish to press this?

*Sir Ahmad Said Khan:* You might put it to the sub-Committee. If they do not wish to have it, well and good. Personally I thought it was necessary. There is nothing new in it. It has been laid down that two-thirds of any minority community should be able to stop any law which affects their religious susceptibilities, but if the members of the sub-Committee are against it, well and good.

*Chairman*: I think the sense of the sub-Committee is against it, and I rule against it. The next amendment is by Raja Narendra Nath.

*Raja Narendra Nath*: I wish to suggest that in (ii) it should read "regulating any subject declared under the constitution to be a Federal or Central subject." (*Agreed to.*) Then in (iii) I suggest it should read "any measure repealing or affecting any Act or Ordinance made by the Governor-General." (*Agreed to.*)

*Sir C. Setalvad*: That assumes that the power of promulgating an Ordinance is still to be kept with the Governor-General? It may or it may not be; that will depend upon what is done hereafter. Therefore I would insert the words "Ordinance made by the Governor-General in Council, if he is given that power."

*Chairman*: He must have the power. Now let us turn to "(b). Conduct of business."

*Sir C. Setalvad*: The clause runs thus: "The Governor shall be placed in possession of such information as may be needed by him," and so on, and the second part says that the Chief Minister should preside, but that on any special occasion the Governor may preside. You have to take the two together. What I submit is this—that in the first part instead of having the words "The Governor shall be placed in possession of," we should have the words "The Governor may call for from the Ministers such information as he may need." The reason for my suggestion is this. If the Governor is to call for any information, he must call for it from the Ministers and not, as happens at present, from the Secretaries. At present the Secretary of a Member or a Minister has direct access to the Governor, and he goes to the Governor when he disagrees with his Member or with his Minister. Therefore if any information is to be called for by the Governor, it should be called for from the Minister. With regard to the second clause, I do not want the Governor to preside at the meetings of the Cabinet.

*Chairman*: Take the first one first. The point is this—that you object to his being placed in possession of information by any other person than the Minister.

*Sir C. Setalvad*: By the subordinates of the Ministers—the Secretaries, as at present.

*Chairman*: I have had experience of this. I have often sent my Chief Secretary to see His Majesty and to impart information. It is unnecessary always for me to do it.

*Sir C. Setalvad*: As it stands at present the Governor may directly call for the Secretary and get information. Further, the Secretary of his own initiative, if he differs from the point of view which the Minister takes, goes to the Governor, and has access to him under the rules at present. I suggest it should read "The Governor may call for from the Ministers such information as may be needed by him for the discharge of duties imposed upon him by the constitution."

*Chairman*: One version is "The Governor shall be placed in possession," and the other version is "The Governor shall call for." That is the question before the meeting.

*Sir A. P. Patro*: I believe what Sir Chimanlal means is this. There is a suggestion in the Simon Commission Report that there should be a Cabinet Secretary who should communicate all that takes place in the Cabinet meetings to the Governor. I believe Sir Chimanlal is attacking that position that there should not be a Cabinet Secretary who should be exclusively under the control of the Governor, keeping the Governor informed of what is going on in the Cabinet.

*Sir C. Setalvad*: Not only that, but at present the Secretary of a Minister or of a Member is entitled to go direct to the Governor if he disagrees with the view of that Member or Minister in any particular matter.

*Sir A. P. Patro*: That is a matter of rules of business. The rules of business are made by the Governor and the Cabinet. If the Cabinet is strong enough to be able to place its views before the Governor, it can make arrangements as to how the Governor should be placed in possession of them; but we must be honest, and say that we do not approve of the recommendation of a Cabinet Secretary who shall be the connecting link between the Cabinet and the Governor. It is considered undesirable by us that there should be an official who should be the link between the Cabinet and the Governor. The Governor could at any time be at liberty to call for information from his Ministers. The rule to which Sir Chimanlal refers is this: at present, if there is a difference between the Minister or Member and the Secretary, the Secretary can go direct with the file and place it before the Governor and discuss the matter over the head of the Minister or Member. If that rule of business is to be altered, it is only a matter of procedure. It is not necessary that it should be in the Statute.

*Sir Cowasji Jehangir*: This is not quite such a detail as is imagined. Under the present constitution the Governor has the right of making rules, and he has made rules. I am not contesting that point. The point is that under the Act itself a Secretary has got statutory powers—

*Chairman*: Under which Act?

*Sir Cowasji Jehangir*: The Government of India Act.

I want to make it clear what the position is. The position is that the Governor shall get all the information he requires in order to exercise his statutory powers, and that information should be obtained through the Ministers and not through any other agency over the heads of the Ministers. That is the point to be cleared up—nothing else, because it is rather vague here, if you read it: "The Governor shall be placed in possession of such information as may be needed by him." It is not quite clear as to how he shall be placed in possession of that information, and the matter is rather complicated by suggestions already made by certain Commissions



and Committees which have reported on this matter. Therefore, in order to make the matter perfectly clear I think that if the words "through the Ministers" were inserted, no harm would be done, and the matter would be made perfectly clear.

*Chairman:* "The Governor shall be placed in possession by his Ministers of such information."

*Sir Cowasji Jehangir:* That is quite sufficient.

*Lord Zetland:* On that point I think you ought to give the Governor a certain amount of discretion. If the Governor wishes to do so why should not he consult, say, the Director of Public Instruction on an educational matter, or the Sanitary Commissioner or the Director of Public Health, whatever his designation may be, in the same way? After all, there are many technical questions which arise in connection with, say, public health matters; and it seems to me that you would be unduly restricting the Governor if you were to say that in no circumstances was he to invite the Director of Public Health to come and discuss a public health matter with him. The Governor must have a little elasticity.

*Sir Ahmad Said Khan:* As far as this question is concerned, I think information should be supplied to the Governor. The only point is this—that some of my friends think that certain information should come only through Ministers, and through nobody else. If this is the position, I beg to submit that further on, in Section No. 2, dealing with the relations of the Governor with his Ministers, it is proposed to give him certain special powers for the protection of minorities as well as for the maintenance of law and order, where he will be placed in a position even to override his Ministers.

That is the proposal, that even when he wants to override the Ministers he should get all the information from the Ministers? (*Cries of assent.*) Then it will be impossible. (*Cries of dissent.*)

*Sir Cowasji Jehangir:* The intention is not that the Governor shall not be able to call for the advice of any head of any department; the point is that at present he has the right to call for heads of departments over the heads of the Ministers and take their advice independently of the Ministers. At present, as Lord Zetland knows, if one Executive Member of Government wants information from another department he does not call for it directly; he cannot; he goes to the Member or writes to the Member in charge and says "I want such and such information; will you kindly ask so and so to supply me with it." The Member writes a letter saying "Please inform the Hon. Member of the facts and give him all the information he requires." That is the present position, and even with the Governor that is what happens. If the Governor wants any information from a department he writes to the Member and says "I want such and such information; please see that I get it." The Member cannot give the information, nor can he go himself; he generally sends the head of the department, who goes and supplies the Governor with all the information.

The point is that, to be in keeping with the whole idea of the future constitution, the Governor should not have the right of consulting the head of a department without the knowledge of the Minister. After he has got all the information he may discuss it with the Minister, and disagree with or overrule the Minister; but the constitutional point should be established that the heads of departments should be under the Ministers with the Governor at the top, and that the Governor should not be in direct communication with the departments and give orders to the departments without the knowledge of the Ministers. That is all that has to be provided against.

*Mr. Joshi:* I only want to oppose the suggestion made by Lord Zetland that the Governor should, without the knowledge of the Ministers, be able to deal with the officers of the Government. I think it is wrong practice for any Governor to do such a thing, and it should not be allowed.

*Mr. Paul:* On the other hand, Sir, I think it is extremely necessary that the Governor should be accessible to all sorts of people. He should be accessible to the public and he should be accessible to the heads of departments. I think the difficulty in regard to this draft arises because of this. What we want to prevent is the habitual access that the Secretaries to Government have by right to the Governor over the heads of the Ministers, not the access that the Governor has, or can have, to the Secretaries or heads of departments. It is the other way round which is so humiliating, I understand, to the Ministers, who are the superiors of the Secretaries.

I think this should be redrafted. So far as I recollect, this particular point was not discussed last week; what was discussed was the recommendation of the Simon Commission about a Secretary to the Cabinet. In trying to summarize the debate on that question this point has come up. I may be wrong—I speak subject to correction—but I think that is why we are not getting at the question in the right way. It is right that the Governor should be placed in possession of the position by his Ministers, but he should have access to anyone on whom he likes to call. It should be made clear that the recommendation of the Simon Commission to the effect that there should be a Secretary to the Cabinet who by right should have direct access to the Governor irrespective of the Cabinet is not supported by this Sub-Committee. If that were made clear in a straightforward manner I think it would satisfy us all.

*Chairman:* That point has not been raised.

*Mr. Paul:* It was raised last week.

*Chairman:* There is an amendment before the sub-Committee, and a suggested amendment to that amendment. The amendment is that the section should be altered to read: "The Governor may call for such information from the Ministers and may at any time summon the Ministers to confer with him." The other suggestion is that instead of having that amendment we should make it read:

“The Governor shall be placed in possession by his Ministers of such information as may be needed by him for the discharge of duties imposed upon him by the constitution.” I do not know whether we could all agree to accept this last suggestion, with the words “by his Ministers”?

*Dr. Shafa'at Ahmad Khan*: No.

*Several Members*: Yes.

*Lord Zetland*: I should prefer to leave the Governor rather wider discretion. In Bengal before the present reforms came in, and when Public Health was administered by a Member of the Executive Council, I constantly called the Director of Public Health to inform me on technical matters and discussed with him the best means of dealing with the prevention of malaria and other things of that kind. That was of the greatest advantage not only to me but also to my Government, because then when any big question of Public Health came before the Government I was able to discuss it fully informed of the subject. I really do think that it would be a little unfair to a Governor to lay it down that he was not to call in the head of a department in that way in order that he might discuss these questions with him.

*Chairman*: I really do not think this is quite so serious as may be supposed. Even if we were to take the amendment as I last suggested there would not be anything to prevent him seeing the heads of departments. We have to do it in these days. We do not go ourselves to explain a good many technical matters if information is required by the Palace; we send a chief official, but we usually know when it is being done, either before or after.

*Sir Cowasji Jehangir*: That is the point.

*Chairman*: Shall we say this: “The Governor shall be placed in possession, with the knowledge of his Ministers, of such information as may be needed by him for the discharge of the duties imposed on him by the constitution”?

*Several Members*: That is all right.

*Chairman*: I think we can agree on that. (Assent.) I have another amendment under (2); it is suggested that the words “but on any special occasion, the Governor may preside” should be omitted.

*Sir Chimanlal Setalvad*: I suggest that instead of that we should say: “The Governor may at any time summon the Ministers to confer with him”.

*Sir A. P. Patro*: What is the reason? Why not leave it as it is?

*Sir Chimanlal Setalvad*: The difference is very great. When the Ministers meet, the Chief Minister and not the Governor should preside, but the Governor can summon the Ministry to meet him at any time.

*Chairman*: I do not think there is anything between us. This was intended to provide that if an occasion arose which necessitated

the Governor meeting the whole of his Ministers he should be able to take the Chair. I am quite sure that if the Governor walked into this place now I should vacate the Chair and let him take it. That is the position; it is to deal with special occasions. We have already laid it down that in all normal occasions in the conduct of an ordinary Cabinet the Chief Minister will preside, but when the Governor comes specially to meet all his Ministers it is only right that he should preside. Sometimes, no doubt, he will say: "You keep the Chair; I have only one subject, and I shall not keep you more than a few minutes." That is how the thing will work out. Why should we disturb this? I drew up this part of the report very carefully. It says that this is only to be on a special occasion; it must be on a special occasion. It also says that the Governor *may* preside; it does not even say "shall" or "should".

*Sir A. P. Patro*: That is quite all right.

*Mr. Joshi*: It is quite all right.

*Chairman*: I hope our friend here will be prepared to accept what is in the report. (*Assent.*)

On the following page, Sir Chimanlal has another amendment, to sub-section (2), at the end, to leave out the words "and the safeguarding of the safety and tranquillity of the Province".

*Sir Chimanlal Setalvad*: That goes along with what I want to insert in (d) on the same subject.

*Chairman*: Will you please explain it to the sub-Committee?

*Sir Chimanlal Setalvad*: Yes. I accept the clause as it stands until we come to the last sentence, which says: "These duties shall include the protection of minorities"—I am not disturbing that—"and the safeguarding of the safety and tranquillity of the Province". Those last words are much too vague and wide; you can include almost anything in them, and I therefore propose to take them out and to put a provision in the next clause, which deals with Emergency Powers, in this form: "There shall be vested in the Governor suitable emergency powers to deal with any serious disturbance of the public peace and to carry on the administration in the event . . ." and so on. I define it more by saying: "to deal with any serious disturbance of the public peace"; that is more definite than talking about "the safeguarding of the safety and tranquillity of the Province". Any person may say that any particular thing will disturb the tranquillity of the Province, because the expression is so vague. If, on the other hand, you put in these words about serious disturbance of the public peace, then we know where we are. The wording with regard to a breakdown would remain. I am merely replacing the provision about the safety and tranquillity of the Province by something more definite in the next clause.

*Sir A. P. Patro*: The provision with regard to safety and tranquillity is to be found in the existing Act, for instance in the powers in Section 72D.

*Sir Chimanlal Setalvad*: That is exactly the reason why we want to change it; the words are so vague that you can bring in anything under them.

*Sir A. P. Patro*: I want to know where and how cases of the abuse of this power have occurred. Have there been any instances, within the knowledge and experience of any member here, where this provision with regard to safety and tranquillity has been found to be so vague that advantage has been taken of it and the powers given under it abused? There would be some point in knowing definitely of any instances where this has occurred. Personally, I think we are quite safe in using these words.

*Chairman*: I attach very great importance to this as it stands in the report, and I hope this amendment will not be pressed.

*Sir P. C. Mitter*: It sometimes happens that after an event it may be far more difficult to have tranquillity and safety. I do not see any particular objection to these words, and if Sir Chimanlal apprehends any particular objection I should like to know what it is.

*Chairman*: Is this amendment pressed?

*Sir Cowasji Jehangir*: I should like to raise an important point on this, and to point out to my friends Sir A. P. Patro and others that at present the Governor is a member of the Government responsible for the Home Department along with the Home Member. He is responsible for all the reserved departments. He is in daily touch with the Home Member and is responsible in effect for the department, and therefore he has never had occasion to use the powers given to him under the Act for safeguarding the safety and tranquillity of the Province, for he himself has been responsible for it.

But when law and order is transferred subject and is under a Minister he will be given overriding powers. He will naturally have powers of consultation with the Ministers; those powers will continue; but then he will be given overriding powers, over and above the heads of his Ministers, and therefore they ought to be more carefully defined. Under what circumstances, if he disagrees with his Ministers, shall he set aside his Ministers and take action himself? We are trying to define under what circumstances he should do that, and therefore I can visualise at present only two main reasons for his overriding the powers of the Ministers.

The first is a breakdown of the constitution, when the Ministers go and he must take full charge of the Government and carry on. The second case is where such a situation arises that law and order has completely broken down and the Minister is not able to cope with the situation. Then he sets aside his Ministers and takes charge of the Government. Those are the two occasions on which the Governor should have overriding powers over his Ministers, and they should be properly defined.

At present they are placed under two heads. You will find them in clause (2) and also in paragraph (d), Emergency Powers. In the paragraph dealing with Emergency Powers he has the power of

overriding his Ministers only in the case of a breakdown in the constitution, while safeguarding the safety and tranquillity of the Province is put in another paragraph. If someone wished legally to construe this document it might be said that the Governor has not overriding powers with regard to safety and tranquillity, because they are not referred to in the provisions relating to emergency powers.

Both those provisions should be dealt with as emergency powers. The Governor, although he will not be responsible for the department, will be in constant touch with the Minister when it is likely that dangerous circumstances are going to arise, but if after they have arisen the Ministers have not been able to cope with them, the Governor must have emergency powers to override his Ministers. I would therefore suggest that further consideration be given from that point of view to the proposal which Sir Chimanlal has just placed before the sub-Committee.

I would take this provision out of paragraph (2) and put it under the emergency powers, not only for the safety and tranquillity of the Province but for the safety of India. I think, Sir, that the wording Sir Chimanlal has suggested is far better, if I may say so with due respect, than the one which has been placed before us in this document for our consideration. I would therefore leave out this wording about the safety and tranquillity of the Province, which may mean undue interference at every step, and give the Governor the emergency powers he requires. Under the constitution he will always consult the Ministers and advise the Ministers and keep in touch with them, but if an emergency arises when the Ministers can be no further use to him he takes the power into his own hands, sets aside the Ministers and takes whatever action he considers necessary. I think on consideration the proposal made by Sir Chimanlal will be found better than the one placed before us in this document.

*Lord Zetland*: Surely the emergency powers refer to the case where there has been an absolute breakdown of the constitution.

*Dr. Shafa'at Ahmad Khan*: That is it, yes.

*Lord Zetland*: Everybody agrees that when that happens the Governor must have clearly defined powers and must be in a position to take hold of the machinery and keep the administration going. That is what is meant by an emergency. Apart from that, it is proposed that in certain circumstances affecting the rights of minorities and the protection of minorities and the safeguarding of the safety and tranquillity of the Province he should have the right of taking action in disagreement with the views of his Ministers. It might be a case of prohibiting a big demonstration. Suppose a big communal demonstration was about to take place; the Ministers might be unwilling to advise the Governor to prohibit the demonstration; the Governor might consider that circumstances were such that it was essential in the interests of the safety and tranquillity of his Province that the demonstration should be prohibited; in those circumstances, and in those circumstances only, he would

step in and issue an order that the demonstration was not to take place.

*Sir Cowasji Jehangir*: That would mean daily interference.

*Lord Zetland*: No, not daily interference; we do not have that sort of thing every day. I only remember two serious cases in five years, but they were very important ones.

*Sir Cowasji Jehangir*: That would mean taking over the administration.

*Lord Zetland*: No, not at all.

*Chairman*: Do I understand there is now a division as to whether we leave in the words as to safeguarding the safety and tranquillity of the Province? I think one Member suggested that these words might come in under emergency powers. I have got a suggestion to make presently, but I should like to dispose of this first. I do not know whether all concerned feel that these words should come under the emergency powers.

*Members*: No.

*Chairman*: Or whether they should remain as they are?

*Members*: As they are.

*Chairman*: Remain as they are. Now, does any one oppose their remaining as they are?

*Members*: Yes, it is opposed.

*Sir Cowasji Jehangir*: Yes, I know it will not work.

*Chairman*: I do not want to test the meeting. You see there are three or four who say they are opposed to it.

*Mr. Barooah*: I oppose it.

*Sir P. C. Mitter*: I would like to keep it as it is; I think it is safer..

*Chairman*: "This duty shall include the protection of minorities and the safeguarding and tranquillity of the Province." You do not feel that he should have that duty imposed upon him?

*Members*: As it stands.

*Chairman*: As it stands?

*Members*: Yes.

*Chairman*: The majority seem to favour that. Now may I make a suggestion? We have dealt in the latter part of this last section with administration, legislation or finance. I do not know whether these words should come in twice, but it has been suggested to me that it might be advisable to take the words out there and put them in under the special and emergency powers in the following manner: "There shall be vested in the Governor (1) suitable powers in regard to legislation and finance necessary for the discharge of the specified duties imposed upon him by the Constitution."

*A Member*: There is no question of finance.

*Chairman*: Yes, there is "finance" in the second line with which we have just been dealing: "and (2) suitable emergency powers to carry on the administration in the event of a breakdown of government or the Constitution. The powers under (2) shall not remain in operation for more than six months without the approval of Parliament expressed by a resolution of both Houses." If you accepted that, it would mean that (d) would come out and the words "administration, legislation or finance," instead of being in (c), would go into (d); the present (d) would come out entirely. That would be an amalgamation of those two ideas under this new section. I will read it again: "There shall be vested in the Governor (1) suitable powers in regard to legislation and finance necessary for the discharge of the specified duties imposed upon him by the Constitution, and (2) suitable emergency powers to carry on the administration in the event of a breakdown of government or of the Constitution." Now you see you are getting right back to the old (d). "The powers under (2) shall not remain in operation more than six months without the approval of Parliament expressed by a resolution of both Houses. I may say that after I got my report out, it was pointed out to me that this would be a much better way of dealing with it than the method that I had adopted, and I should like to hear the views of the Committee upon the suggested change.

*Sir Robert Hamilton*: May I ask with regard to that if it would cover the point which I intended to raise in my amendment, which was to refer particularly to the powers of the Governor to restore demands for grants, which we have not really referred to, but I take it that amendment will now cover it?

*Chairman*: Yes, that would cover it. Now that is a suggestion I put forward here for the improvement of the report. I would like to hear your views on it. It disposes of one of Sir Robert Hamilton's amendments.

*Sir Chimanlal Setalvad*: Under the proposed wording, the Governor will have the power to restore grants rejected by the Council?

*Chairman*: Only in the exceptional circumstances of a breakdown. He must have the power; somebody must carry on. It is only in the event of a breakdown, so far as I can see it.

*Sir Chimanlal Setalvad*: We might transpose these words: "In the event of a breakdown of government or of the Constitution, there shall be vested—"

*Chairman*: I am not a lawyer, and I am not going to accept a change like that until somebody advises me legally as to the effect.

*Lord Zetland*: Mr. Chairman, if you tell us that that is the suggestion of a constitutional lawyer for the draft, I have no objection. I was myself quite satisfied with the report as it stood, but if you tell us that the constitutional draftsmen say that that would be a better way of drafting the same thing, I have no objection to raise.

*Chairman*: Yes, I emphatically say that I have been so advised.



*Lord Zetland*: Then cannot we accept that?

*Chairman*: I would like to see it accepted; and if anybody has any doubt about it, he can raise the point in the Committee when the report comes up after having had time to consider it.

*Sir Chimanlal Setalvad*: All I am suggesting is really a verbal change not affecting the meaning of it at all.

*Chairman*: But I cannot accept that. We have too much experience of drafting, even if we are not lawyers, to prevent us from lifting the heart of a thing and putting it at the top.

*Sir Chimanlal Setalvad*: Then I will point out the difficulty which arises. As drafted it runs thus: "There shall be vested in the Governor (1) suitable powers in regard to legislation and finance necessary for the discharge of the specified duties imposed upon him by the Constitution, and (2) suitable emergency powers to carry on the administration in the event of a breakdown of government or the Constitution". I understood from you, Sir, that both these things are to happen in the event of a breakdown of government.

*Chairman*: No, no. The first thing you have got to consider is this: What are the powers necessary for the discharge of the specified duties imposed upon any Governor by the Constitution? That is the first thing you have got to do. When you have cleared that up, then you can get on to the other, because there are two definite subjects here. Now, does he need the assistance of legislation and finance under any ordinary circumstances for the discharge of the duties specified, or the specified duties imposed upon a Governor by the Constitution?

*Sir Chimanlal Setalvad*: If that is so, it is much too wide a power. In the first place, we do not know what are the duties imposed upon him by the Constitution. You here give him power to legislate and to finance anything in order to discharge the duties imposed upon him by the Constitution.

*Lord Zetland*: Yes, only in those cases.

*Sir Chimanlal Setalvad*: What are "those cases". I want to know.

*Lord Zetland*: They have been laid down in the paragraph before, the paragraph we have been discussing.

*Chairman*: In the previous paragraph we have laid it down that it will be part of his duty to safeguard the tranquillity of the Province; it will be his duty to protect the minorities. There are two very definite functions that are imposed upon him.

*Sir Chimanlal Setalvad*: It says those two are included, but you have the general words there: "discharge of the specified duties imposed upon him by the Constitution". Then you specify two; but the general words are far wider and may include anything. We want to know what it includes.

*Lord Zetland*: But surely only if they are specifically imposed upon him by the Act. If I might remind the Committee, Mr. Chairman, there were three heads under which we all agreed that the

Governor must have special powers; one was to carry out any order which is given to him, I think, by the Federal Government. I do not remember the wording, but you remember there were three categories, and it was generally agreed by the Committee that if the Governor was to be in a position to discharge his functions under those three heads, he must have these special powers to enable him to do so.

*Chairman*: If there is not agreement to accept it, then it will be necessary for me to call upon Sir Robert Hamilton to move his amendment in connection with (d), emergency powers.

*Sir Robert Hamilton*: Mr. Chairman, do I understand that you rule this out altogether? May I suggest that we might accept it provisionally, have time to consider it, and, if necessary, raise the point later.

*Chairman*: That is exactly what I suggested, that I hoped the Committee would accept it as it is. Everything has to be fitted in, and if when they read it in the report and consider it they think part of it goes too far, they can raise it in the full Conference.

*Mr. C. E. Wood*: May we have it again very slowly?

*Chairman*: I will read it again with pleasure: "There shall be vested in the Governor (1) suitable powers in regard to legislation and finance necessary for the discharge of the specified duties imposed upon him by the Constitution, and (2) suitable emergency powers to carry on the administration in the event of a breakdown of government or of the Constitution. The powers under (2) shall not allowed to make any change which is going to go against the approval of Parliament expressed by a resolution of both Houses."

*Mr. Joshi*: Sir, I cannot accept this at all, because the power is very wide. If the Governor is to be vested with powers of finance, not in an emergency but in ordinary times, to preserve the safety and tranquillity of the Province, it clearly means he can spend any amount of money on police. He may say that he feels that the safety and tranquillity of the Province is endangered if so much money is not spent on the police, and he can spend under this head in ordinary times, every year, without the permission of his Parliament, any amount of money on the police; it gives him that power. Secondly, I do not know what legislation the Governor can pass without the sanction of his Legislature for the protection of minorities. It is a very wide power that the Governor should legislate on any matter without the consent of Parliament for the protection of minorities. I think, Sir, this power is really very wide and we do not know what it is at all; it may mean anything.

*Sir A. P. Patro*: In matters of administration the Governor's interference is absolutely necessary on certain occasions. On matters of finance, under the section the Governor now has got power of certifying. In cases where emergency arises he will have to certify in the interests of the safety and tranquillity of the Province that it is necessary. Now we have to consider, as I said, as practical business men whether this power has been abused; that is the real

test. It is only in exceptional cases that this power is exercised and is necessary; it is a safeguard only in times of emergency; in times when there was need of it the Governor would exercise this special power. Therefore as practical administrators we must ask ourselves whether there is any danger in such power being vested in the Governor. If in the past there has been no instance in which this power has been exercised to the detriment of the State, I do not see that we need discuss it at much length. In the present conditions of India, it is necessary that this power should be vested in the Governor. We cannot think that such an emergency would never arise. The Governor is not such a foolish man as to interfere in the day-to-day administration, because he knows that it is a system of self-government, of autonomous government, and his Ministers are responsible to the Legislature; he cannot butt in every time and say: Here is my power and I will exercise it. Therefore we must as practical business men take it that it will be exercised when danger and emergency arise and there is a need for it.

*Sir Chimanlal Setalvad:* It is not emergency.

*Sir A. P. Patro:* Yes; I am saying that in ordinary circumstances he would not interfere. Has there been an instance in the past in which a Governor has interfered unnecessarily? There is that extraordinary power now vested in the Governor to certify expenditure in the interests of peace and tranquillity. My friend has referred to the case, for instance, of police expenditure. For instance, we know the position in Bombay to-day. I do not want to refer to controversial matters, but in Bombay to-day the emergency arises, and the police will have to be strengthened and armed; the Governor will have to strengthen not merely the police, but he will have to make another bandar bast. Would Members here deny that that is a case in which he should exercise his power for the sake of the safety and tranquillity of the country. After all, you must consider that the Ministers in the party system and the communal system that we are going to have in the Legislatures will be influenced not merely by adherence to principles, but also by communal considerations. In such a case what is the position of the Governor if he has not got this power to exercise generally and hold the balance between these communities in order to administer the Province in the interests of the people? Therefore it seems to me, Sir, that as practical business men we are wasting time in discussing this matter.

*Chairman:* Now, can we agree to the suggestion which has been made that if this be accepted it is to be on the clear understanding that if to-morrow, when you have had the opportunity of considering it further, if you desire to raise it in the full Committee, you are entitled to do so without going against the decision of this Committee?

*Sir Chimanlal Setalvad:* No, Sir, we do not want to be placed in the position of having to raise the question in the Committee. Let it be considered here.

*Chairman* : But we are considering it here; I have listened to several speeches and we must get a decision; we cannot wait upon the one point all night. I do not like it to be said that it should be considered here when we are doing nothing else but considering it.

*Sir Chimanlal Setalvad* : It is a matter of such importance to my mind that if you give these vague and wide powers to the Governor, you will be striking at the root of the responsibility which you want to establish. With all deference to my friend, Sir A. P. Patro, it is a very poor argument to ask:—Has the power been abused in the past, and to say you must trust the Governors. That is not the question. You must not clothe a person or authority with power which may be abused. It is no use saying that under certain other circumstances he has not abused the power and therefore you must vest him with that power. The proposal here is not to vest him with this power only when an emergency arises, but ordinarily in the day-to-day administration he is to have the power of legislation and of finance in the discharge of what are called the specified duties imposed upon him. One of the specified duties imposed upon him, as has been pointed out by Mr. Joshi, is the protection of minorities and various other things. So that he will be at liberty to spend any amount of money he chooses on the protection of minorities or on any other thing. With regard to law and order, my friend Sir A. P. Patro always speaks of the ministers as being people who will have no regard to the tranquillity of the Provinces at all. If we have no confidence in your Ministers, why do you waste your time forging this constitution? We are proceeding on the footing that the Ministers will be responsible people who will do their duty properly and in the right way. Therefore I submit, Sir, that the powers proposed here are much too wide to be given and we cannot assent.

*Dr. Shafa'at Ahmad Khan* : Sir, I very strongly support the proposal which has been made that the powers should be conferred on the Governor with regard to administration, legislation and finance. I am surprised that a question of such a non-controversial nature should be the subject of comparatively controversial speeches. The point at issue is this:—Will the Governor abuse the powers that are going to be conferred on him? Before we can reply we must ask ourselves whether he ever has abused them in the past. I do not know a case of any Province where the powers regarding safety and tranquillity, that portion dealing with the clause in the Government of India Act, have been abused. They have not been abused in the United Provinces, the Punjab nor in any other Province that I know of. Will it be done in the future? I should like you, Sir, to visualise the position of the Governor say in the year 1932 or 1933 under the new regime. In the new regime the Governor will be guided mainly by a unified ministry—a ministry which will really carry on the administration of the whole country, and the Governor will not have those powers which he exercises now. He would be a very rash man who would take any action that went counter to the wishes of the ministry as a whole. If he did do that he would be subjected to criticism in the Legislature,

outside the Legislature, and throughout the Province. I do not think, therefore, that the powers which are now proposed to be given are excessive. I think any Governor worth his salt will consider very carefully the measure which he is going to propose before he uses the safeguards which you propose to give him.

*Chairman*: I have already made the suggestion, but I understand that one or two dissent from it. Do they press their dissent? (Cries of "Yes.")

*Sir Abdul Qaiyum*: If the difficulty is only as to finance, the finance will only be needed when the Governor is exercising those special powers. Am I to understand that the Governor is not going to be allowed the power of spending money in times of emergency? If so, I cannot understand it. I think some powers must be given to the Governor if he is to keep peace and tranquillity in the country, and he must be given powers to spend some money under those circumstances. Otherwise, if you do not give him the money to spend he cannot carry out those duties.

*Chairman*: If the dissent is insisted upon, the only way we can settle this is to say in the notes that some members dissented from the first part of No. 1 of this clause. That would safeguard their rights to raise the question in the full Committee. With that explanation, will members be prepared to accept this? (Cries of "Yes.")

The next matter is this. The sub-Committee suggests a rider that in their opinion it is desirable that the present rigid convention in the Provinces other than the Presidencies of appointing Governors drawn from the Indian Civil Service should be relaxed. I have an amendment by Mr. Paul that the word "relaxed" be deleted, and that the word "discontinued" be inserted.

*Mr. Paul*: I have undertaken a task which is rather delicate, because I have a good many friends in the Civil Service for whom I have a very great respect. It is no small circle either, and yet I do not recall one single member to whom I would not take off my hat for his conscientiousness and even extreme solicitude for the welfare of India. Therefore it is with due deference to them all that I wish to move this amendment. I wish to place two considerations before you. The first is that hitherto the member of the Indian Civil Service who was appointed to the Governorship usually went up all the rungs of the ladder. He generally became a member of the Executive Council, gaining experience in administration in various departments on his way up. In that way he became prepared for his post in many ways. Under the new arrangements, which will be put down even in this document which none of us consider perfect, the number of members of the Indian Civil Service who will be able to go up to the top rungs of the ladder will be extremely small; in fact the provision of an official minister has not been accepted by this sub-Committee; it has only been included in a minute of dissent. I quite realise it might come into the Act. If it does come into the Act or in the instructions or in the rules, it will be very few who will get that opportunity. Then what will be the

result? Any member of the Indian Civil Service who is appointed Governor will be, so to say, promoted, using ecclesiastical language, *per saltē*. He will have to jump over many rungs which otherwise he would have had to ascend. Merely to say that will be immediately to show anyone who knows anything about India the inadvisability of such a procedure. To promote a Commissioner, or a Chief Secretary, or a Member of the Board of Revenue, or the head of a department, to the position of Governor of a Province is, I think, extremely unwise and injudicious.

Then I have another argument to place before you, which is even more weighty. It is a matter of principle. I want to refer now to a statement appearing in the letter which was published in this morning's "Times," from H.H. the Maharaja of Bikaner. This is the statement: "Does anybody in his senses believe that this articulate India, embracing I am convinced the great majority of thinking people, can be content with permanent subordination to a bureaucratic system of Government?" His Highness was not thinking of this particular point which I am trying to make now, but it has a very definite and direct bearing upon the point which I am trying to make. The Governor of a Province is called upon on important occasions (and those occasions are not infrequent) to be able to dominate the machinery which has been perfected by the Civil Service in my country. It is the most powerful machinery in the history of the whole world. There is no parallel to it anywhere in any age. It is that which we call the Bureau. A Bureau need not be a bureaucracy. It becomes a bureaucracy when the hierarchy reaches up to the top position, and is then vested with extraordinary powers normally and in emergency times. It is that which we want to prevent. I may say candidly that we are trying not to get any diminution in the connection of Britain with India, but we do want relief from the bureaucracy of India. I submit it will be impossible, taking human nature as it is, for a member of the Civil Service, when he is placed in the position of Governor, to be independent of the traditions and of the atmosphere of all that is demanded of that whole group. It is there that we want the help of Britain hereafter. We want Britain to contribute to us not through the Service as it has been contributing, but we want it to contribute more and more—not less and less—what it can through the statesmanship which is available in this country.

*Sir C. Setalvad*: I beg to support what Mr. Paul has said. I had myself given notice of a similar amendment which read: "The sub-Committee are of opinion that no member of the permanent Services in India should be appointed as Governor of any Province." The draft does not represent the views that were expressed when this matter was discussed in this sub-Committee. So far as I could then gather, the larger volume of opinion was in favour of having no Civil Service Governors in the future, and when I spoke then I gave the reasons. I do not want to repeat them, but the fact remains that a Civil Servant, though a very efficient administrator, has been brought up in the tradi-

tions of the Service and is so much a part of the machine that his outlook is not wide enough for that of a Governor of a Province. Therefore it is to the advantage of India and to the smooth working of the new constitution that you should have as Governors people from public life sent out from England. We know in practice what a great difference it made to Bengal, for instance, when the Lieutenant-Governors disappeared and Governors like Lord Zetland were sent out to India. We want administrators of that type to be sent out as Governors and not to have such people, efficient though they may be, as Civil Servants with no wider outlook than they have. I strongly support the amendment.

*Chairman*: I ought to say that I cannot quite agree with the last speaker that his version of what took place in the sub-Committee is superior to the version of the Chair. When I said it should be relaxed, I thought I was accurately representing what took place during the discussion. It is no advantage to me to take one side or the other.

*Sir C. Setalvad*: I did not suggest that.

*Chairman*: I beg your pardon. You definitely challenged the Report on this point. I thought there were one or two speakers who took the opposite line to what has just been taken by the last speaker. Therefore what could I do but sort of gather up the position and take what might be called the centre position, and say that the position should be relaxed? Why did I do that? I could conceive that there might be very serious difficulty in getting all the Commissioners that might be required from outside the Service. There might be an odd case, and all I wanted was that there should be some slight provision to meet that possibility. However, if there is now a strong view in the sub-Committee that it should not only be relaxed but discontinued—that on no occasion should it be otherwise than what the two last speakers have laid down—then of course the Report will be altered to suit that, but I have yet to find that that is the view of the majority of the sub-Committee.

*Sir Abdul Qaiyum*: Why should there be a distinction made between the poor Civil Servant and any other individual? Any private servant, or a sweet seller or a barber can stand for the Assembly and be elected, and may possibly become a Minister in a Province. There are some members in some Provinces who are barbers and sweepers, who may yet come to the Ministry and who may possibly become Chief Ministers, and perhaps the Government of India might like to put one of them in as Governor. Yet the poor Civil Servant must not have that aspiration and that hope of becoming a Governor one day. I do not think we should put the poor Civil Servant under such a disadvantage.

*Lord Zetland*: Here again I only rise to ask for a little discretion. I quite appreciate the force of all that Mr. Paul said on this subject; but when he said that in future there would be no Indian Civil Servant who would be a member of the Executive Council, there will, I think, for some time to come be men of

great experience at the headquarters of the Government of India who would undoubtedly be well fitted to hold the position of the Governor of a Province. While I should be quite prepared to say that it should not be regarded as a right that a member of the Civil Service should look for a Governorship in so many Provinces. I would support what the Chairman has said and say that there may be certain cases in which it would be to the great advantage of the Province itself that a member of the Indian Civil Service should be appointed as Governor. I would prefer, therefore, some such wording as that which is already in the Report.

*Chairman:* Is this amendment pressed? (*Yes!*) In that case we will have again to say that there was a section of the Committee which dissented to the principle being relaxed and that they desired to have it discontinued.

With these amendments, No. 6 stands part of the report.

With regard to No. 7, I have only amendments to (*d*). I hope we shall be able to finish to-night. On (*a*), the size of the Provincial Legislatures, there is no amendment; on (*b*), their lifetime, there is also no amendment. On (*c*) I think there is an amendment by Sir Chimanlal Setalvad.

*Diwan Bahadur Ramachandra Rao:* On (*b*) may I suggest that "four" be substituted for "five"?

*Chairman:* No, I think there was a general feeling that we should make it a maximum of five. That leaves you room within the five to make it four or three if you get agreement. It is only that this shall be the maximum; that is all.

*Sir Chimanlal Setalvad:* With regard to (*c*), the draft gives power to the Governor to nominate any non-officials where certain groups or interests are unable to return their own members through the polls. What I want to propose now is what I indicated before when speaking on another clause, namely, that instead of giving power to the Governor to nominate where, in his opinion, any particular interest or minority is not represented, he should call on the already elected Council to co-opt a certain number to represent those interests.

*Dr. Ambedkar:* No.

*Sir Chimanlal Setalvad:* Objection was taken to that on the ground that those people who are in a majority in the Council will co-opt their own men. That can always be safeguarded against by having a proportional vote system such as obtains at present in many Legislatures, with the result that only a few people—six or seven—if they combine are able to get their own men in. That is my amendment. That would do away with the system of nomination altogether, and you would get in by the method of co-option the interests or minorities which had been left out.

*Chairman:* What are the words you wish to change?

*Sir Chimanlal Setalvad:* I would delete the first part.



*Chairman:* How far down? It says "With the possible exception of a strictly limited proportion of non-officials who may in some Provinces require to be nominated by the Governor to secure the representation of groups unable to return their own members through the polls." Would you take the whole of that out?

*Sir Chimantal Setalvad:* I would delete all that down to the word "polls".

*Chairman:* The amendment is to delete all the words from the beginning of (c) down to the word "polls" inclusive, so that it will begin "The new Provincial Legislatures should consist wholly of elected members, and the official bloc should disappear" and it would go on, "provided that if in the opinion of the Governor any minority or interest has failed to secure representation, the Governor may direct the Council to supply the deficiency by co-option, but the total number as co-opted shall not exceed....."

*Sir Chimantal Setalvad:* There you will insert some number.

*Chairman:* Well, what number?

*Sir Chimantal Setalvad:* Any particular number—5, 6 or 10.

*Chairman:* It is not for me to complete your amendment; my business is to complete the report.

*Sir Chimantal Setalvad:* Then I will name a figure; I will say five; but with regard to the number I am quite prepared to accept any alteration which may seem desirable to the sub-Committee.

*Chairman:* Let us get it clearly before us. As in the document before us, it reads "With the possible exception of a strictly limited proportion of non-officials who may in some Provinces require to be nominated by the Governor to secure the representation of groups unable to return their own members through the polls." These words all have to be deleted, and the paragraph is to be made to read "The new Provincial Legislatures should consist wholly of elected members, and the official bloc should disappear, provided that if in the opinion of the Governor any minority or interest has failed to secure representation, the Governor may direct the Council to supply the deficiency by co-option, but the total number as co-opted shall not exceed five".

*A member:* On a point of information, does the hon. member mean the co-option, will take place after the first meeting of the Council, and that until then the Council will not be complete?

*Sir Chimantal Setalvad:* The Council will be complete when the co-option takes place. You have at present co-option in Bombay in various bodies; those elected sit together and co-opt other members.

*Sir Abdul Qaiyum:* When a point has been raised in the general discussion and defeated, is it in order to bring it up again in the form of an amendment and have it discussed again?

*Chairman:* It is difficult to exclude anything that comes up on this point, but strictly speaking I think you are correct; when

something has been brought up and it has been found that the general sense of the Committee is against it it should not come up again. I claim that in (c) I did endeavour to interpret what I thought to be the general sense of the sub-Committee.

The amendment is before you; does anybody wish to support it?

*Dr. Ambedkar*: I am afraid I shall have to oppose this amendment. First of all, such experience of co-option as we have had in Bombay is not very encouraging. It has developed into the worst sort of scandal; the amount of corruption and bribery that take place are such that I for one should not like to introduce this principle in the constitution of the Legislature of Bombay.

A further objection is this. If the various communities that do not find themselves elected at the polls are to get representation of a real sort, representation which is independent of the influence of any other community, I think co-option is a principle which is certainly not going to help them, for it may very well happen that when representatives of the various communities stand for co-option only those will be in fact co-opted as may happen to be subservient to and willing to play into the hands of the majority. It seems to me this would be worse than no representation at all, and I am afraid on that ground I must oppose the amendment. But I submit, Sir, that this sub-Committee ought to make a recommendation that the future constitution of the Provincial Legislatures should be such that there should be no nominated members at all.

*Diwan Bahadur Ramachandra Rao*: That is far better, of course.

*Dr. Ambedkar*: That is my own view of the matter. I am certainly opposed to co-option.

*Diwan Bahadur Ramachandra Rao*: I agree that some statement that the Legislature should be wholly elected ought to be inserted in this report, and unless some such indication is given of the views of this sub-Committee the nominated element will continue, though I believe it is the desire of most of our members that it should disappear. A statement to that effect ought to find a place in the report. I have no doubt whatever that every one of us is quite alive to the evils of nomination, and we are anxious it should disappear as early as possible. Under these circumstances I am not prepared to support the amendment, and I would favour the proposal made by my friend, Dr. Ambedkar.

*Chairman*: What was the proposal? I have no words here.

*Dr. Ambedkar*: We should say it is the view of the sub-Committee that hereafter the Legislative Councils in the Provinces should be wholly elected.

*Chairman*: That is another amendment altogether, you will have to send it in in writing if you want to move that.

*Mr. Joshi:* I am opposed both to nomination and to co-option of members of those communities that cannot come in by election. Personally, I do not think there should be any difficulty in devising some method by which communities shall secure representation, and if some communities are so small that no representation can be reserved for them, the best course will be for them to seek the goodwill of the community generally and secure election through the general constituencies. I do not know whether we are going to do away with general constituencies altogether; that question has not yet been discussed. Of course, if all the seats are divided by Hindus, Muhammadans, Jains, Buddhists and Sikhs, it is certainly true that difficulty may arise in the case of some people who, like myself, are unwilling to be styled Hindus or Muhammadans; we shall find it difficult even to vote. It will be much better, therefore, if we frame our constitution we make provision for people who will not belong to the big communities for which reservations are made, so that they may have some representation. Those communities should get themselves elected by constituencies, but it is wrong to try to secure representation for those communities by nomination.

Co-option is equally objectionable. If you have five seats to fill by co-option to represent five communities, proportional representation will not be any use.

*Dr. Shaja'at Ahmad Khan:* Quite useless.

*Mr. Joshi:* Because there will be five different people to be nominated, and therefore it will be the majority that will appoint all the five. That is inevitable, and if the majority selects all the five it is going to strengthen its position by co-option. I therefore think that both nomination and co-option are objectionable, and the Councils should consist only of elected members.

*Sir A. P. Patro:* I think a certain amount of nomination is needed at present and will be needed for a number of years. I do not say nomination will be needed to the full extent to which it is at present or that it will be required as a permanent measure, but nomination is required for a temporary period, as otherwise it will not be possible, with the present organisation of our classes and communities, for all the minorities to be properly represented in the Legislatures.

My friend Mr. Joshi is idealistic; he says the communities must seek support from the general electorate. However, a little experience in elections in the rural areas will show that a minority community has absolutely no chance of being returned, however important it may be and however weighty its interest; it has not a chance of coming in. It is in order to fill up such deficiencies that it is necessary that there should remain to a small extent the power of nomination, as recommended in the Despatch of the Government of India and in the Report of the Simon Commission. It should not be used to the extent it is to-day, but a certain proportion will be needed to make up these deficiencies and meet the difficulties. We cannot make it wholly elective at

present. That should be the ideal, and we should gradually work up to it; I entirely support the idea that in course of time that ideal should be realised, but in the present conditions of the country and of society it is necessary that there should remain some element of nomination, and that element has already been recommended in the Despatch of the Government of India.

*Chairman*: I will take your decision on this point.

*Raja Narendra Nath*: I support Sir A. P. Patro. I think the power of nomination should be strictly confined to the representation of interests which cannot be given by election.

*Dr. Shaja'at Ahmad Khan*: Yes.

*Raja Narendra Nath*: There may be in certain Provinces some communities, such as the one to which Dr. Ambedkar belongs, for which it would be impossible to arrange election.

*Dr. Ambedkar*: I should not have anything to do with a constitution which did not provide the franchise for my community.

*Raja Narendra Nath*: The franchise will have to be arranged on a very different basis if it is to be provided for the community to which Dr. Ambedkar belongs, and therefore a limited power of nomination should be provided.

*Chairman*: It seems to me the majority of the sub-Committee is in favour of clause (c) as it stands in the Report.

We will now come to the last clause (d), to which I have two or three amendments. The first is by Sir P. C. Mitter.

*Sir P. C. Mitter*: I beg to move certain changes in the last sentence. After the words "but the decision to incorporate a Second Chamber in the new constitution of any province" I suggest the addition of the words "other than Bengal, Bihar and Orissa and the United Provinces," and at the end, after the word "course," I suggest adding the following: "In the three Provinces mentioned the method by which the Upper House should in each instance be composed should be left to further investigation by the Franchise Committee, and after such investigation these Upper Houses should be set up at the outset of the new system". I am trying to get the recommendation of the Government of India adopted. The Government of India, on page 21 of their Despatch, say: "The matter seems to us to be peculiarly one in which regard should be had to local conditions." For that reason, before I take up the local conditions in all the three Provinces I have mentioned, I desire to bring to the notice of my colleagues here something about the local conditions in my own Province of Bengal.

The reason why I am drawing the attention of members here to the local conditions in my own Province is that I desire that my friends, such as Sir Chimanlal Setalvad and Diwan Bahadur Ramachandra Rao, will give that sympathetic consideration to the local conditions in my Province which I expect from them.

It is well known that in Bengal, from the days of the Swadeshi agitation and for more than fifteen years, there has been a strong body of opinion, which has gradually grown in volume; there is a large number of unemployed youth in the country who have come to the conclusion that there is no evolution worth having through the British connection. They may not to-day be large in numbers, but at elections they do dominate.

Moreover, in Bengal we have people who belong to the revolutionary party elected as members of our Legislature. Before the last Congress passed its independence resolution, and before a certain section of the members of our Legislature resigned, we had amongst others representatives of the revolutionary party from certain important constituencies such as the city of Dacca and the municipality of Hooghly. (Sir P. C. Mitter mentioned two names, and added "I mention names to show you that I am stating facts".)

I can quite understand that those who proceed on theoretical considerations may not like the idea of a Second Chamber, but I appeal to you whether you do not want to advance on constitutional lines. If we do want to advance on constitutional lines, if I place before them the contingency that there is likely to be a large body of members who will obstruct the constitution for the purpose of carrying out the ideal of independence instead of the British connection, I am sure none of my friends gathered round the table here will be in favour of it.

But you may say: Why do you apprehend that? You may say: Why should not those who get the right to return members be satisfied to proceed on constitutional lines? I will tell my friends not only from my personal experience but from events which have happened. In the 1923 elections my friends know very well that the father of Nationalism in India, Bannerjee, was defeated by six to one by a gentleman who was then comparatively unknown. In that election the Advocate-General of Bengal was defeated by ten to one by a gentleman who is even now not known to you. Those are not the only two instances; there are many other instances which I could place before my friends. Now if we all desire constitutional advance, the very existence of a Second Chamber will check the desire for independence. Mr. Chairman, may I have one minute more?

*Chairman:* One minute.

*Sir P. C. Mitter:* For that reason, and for another, namely, that the Government of India, the Government of Bengal and the Committee which was appointed by the Legislative Council all recommend this, it is very necessary that in my Province there should be a Second Chamber. One word more and I have done. If, Sir, you leave it to the legislature of the future, I think it is against human nature to expect that if that contingency happens, namely, resort to obstruction in order to secure separation from the British Empire, the Legislature will ever possess a Second

Chamber. You cannot expect that legislature to give us a Second Chamber. In consideration of these facts I would once more appeal to those who are opposed to this to give us a chance of evolving on constitutional lines.

*Chairman:* I want to remind the Committee that this matter was discussed during the general discussion and I do not want second reading speeches over again.

*Raja Narendra Nath:* I just want to say that the amendment that stands in my name is substantially the same as that on which Sir P. C. Mitter has spoken.

*Chairman:* That is right.

*Raja Narendra Nath:* I want to say that when the reports of Local Governments and the despatch of the Government of India show that there is a demand for such an institution in certain Provinces and the Local Governments and the Government of India also support that demand, this Committee ought to be in a position to recommend it. I would appeal to those of my friends who are opposed to the suggestion to consider the situation. Sir P. C. Mitter has given some very good and sound reasons for the creation of a Second Chamber in Bengal, and those reasons apply, with somewhat modified force I should say, to Bihar and the United Provinces also. In these three Provinces where the recommendation has been made I hope the Committee will reconsider its position and will make a unanimous recommendation in favour of the creation of a Second Chamber. Sir P. C. Mitter has very wisely made a suggestion with regard to the composition of the Second Chamber, and has left that question to be determined by the Franchise Committee. I think the Franchise Committee will see that adequate representation is given to interests other than those of landlords, and that the landlord interests do not become predominant in the Second Chamber.

*Chairman:* I hope you all understand the amendment which has just been moved. I have another amendment which says: Omit everything after first sentence and add:—"But if in any Province the Legislature under the new constitution decides by a two-thirds majority that a Second Chamber is necessary, steps should be taken to constitute such Chamber by the introduction of a Bill in the Federal Legislature defining the constitutional powers of such Second Chamber." May I say that I have had to give a good deal of consideration to this part of the Report; I endeavoured to give very carefully what I thought was the position of the Committee. We recognised, as we say, that conditions in some Provinces may make it desirable that the provincial legislature should be bicameral. There you see we have made it quite possible for this to be applied; but the decision to incorporate a Second Chamber in the new constitution of any Province should not be taken unless opinion in the Province definitely favours this course. I think we have taken what might be described as the middle course, but I shall have to allow the

discussion to proceed unless there is a general desire that we should specify, in the words of the first amendment, Bengal, Bihar and Orissa and the United Provinces; and then at the end add: in the three Provinces mentioned the manner in which the Upper House should in each instance be composed should be left to further investigation by the Franchise Committee, and after such investigation these Upper Houses should be set up at the outset of the new system. That is the position.

*Lord Zetland:* Mr. Chairman, I should like to support Sir P. C. Mitter in the proposal which he has made, for this reason: If you are going to leave it to the Province to express through its newly elected Legislative Council under the new constitution its views on the question whether there should or should not be a Second Chamber, I am afraid you are going to load the dice rather heavily against the second Chamber. Because the position will be this: the members of the new Legislative Council will have just come together flushed with their victory at the polls, and it is very unlikely that they are going to propose anything which in their opinion will in any way detract from their own status and importance. Therefore they will naturally be very much disposed to vote against a Second Chamber. But since it has already been stated very clearly that in these particular Provinces there is a general desire to have a Second Chamber, I think we ought to give those Provinces the chance of getting one which they would have if the suggestion put forward by Sir Provash Mitter is accepted. Therefore I support it.

*Sir Robert Hamilton:* Mr. Chairman, may I just add one word? Since this matter was last discussed by the Committee I have seen reason to change the views which I then expressed. I have discussed the matter with my colleagues, the Liberal Delegation, and the opinion there is that with regard to those three Provinces to which Sir Provash Mitter refers, it should definitely go as to bicameral legislature. I think I should let the Committee know that I have changed my views to that extent, because I said before that I thought it ought to be left to the newly elected legislators to say whether they should be bicameral or unicameral.

*Chairman:* Let me read it as it would be in the event of our accepting the first part of this amendment: "The existing Provincial Legislatures are unicameral. The sub-Committee recognises that conditions in some Provinces may make it desirable that the Provincial Legislature should be bicameral; but the decision to incorporate a Second Chamber in the new constitution of any Province, other than Bengal, Bihar and Orissa, and the United Provinces, should not be taken unless opinion in the Province definitely favours this course." Now that does not read very well but you could leave the drafting to be done afterwards. Is there any objection to the insert of the words:—"Applicable to these three Provinces that have been stated?"

*Members:* No.

*Mr. Joshi:* Yes, certainly we object.

*Chairman:* There seems to me to be a majority of the Committee against the insertion of the words.

*Mr. Barooah:* I support it, Sir.

*Chairman:* In order that I may be guided, may I ask the Committee to indicate by a show of hands whether they desire this reference to these three Provinces to be inserted. In favour please show:—10. Against:—7. Now that is the position. I think we shall have to put a note in to say that these words were added by a vote of 10 in favour and 7 against.

*Lord Zetland:* Mr. Chairman, will you do that, because we have had no voting? Will you say:—a majority?

*Chairman:* Well, I will say: a majority. I do not want to be unfair. It is the nearest that we have had to equality; we have not had anything so near; but I am quite prepared to say that this decision was only reached by a majority of the members; and then anybody will be entitled to ask what the numbers were.

Now the next is:—"In the three Provinces mentioned the manner in which the Upper House should in each instance be composed should be left to further investigation by the Franchise Committee, and after such investigation these Upper Houses should be set up at the outset of the new system." Is there any objection to these words being added?

*Sir A. P. Patro:* It is quite unnecessary.

*Chairman:* Is this part of the amendment pressed?

*Sir P. C. Mitter:* I am quite prepared to leave it.

*Chairman:* Yes, you had better be satisfied with your victory. Now I have still another amendment. I hope we shall get on, because my time is going very fast. I do not know whether you are prepared, in view of the decision which has been taken to press this.

*Sir Chimanlal Setalvad:* How does it stand now, may I know?

*Chairman:* It merely stands that you want to omit everything after the first sentence.

*Sir Chimanlal Setalvad:* I want to know what has been done up to the present, how the clause stands now.

*Chairman:* Subject to drafting, in the last line but two, after "any province", we insert the words:—"with regard to Bengal, Bihar and Orissa, and the United Provinces". That is all the change we have made.

*Sir Chimanlal Setalvad:* With regard to any other Province, the original remains, that it will not be taken unless the Province definitely favours it?



*Chairman*: Yes, it should not be taken unless opinion in the Province definitely favours this course. I think that should meet you.

*Sir Chimanlal Setalvad*: Yes.

Very well, with this amendment this clause stands part of the Report. I think you want to make a statement, Mr. Chintamani.

*Mr. Chintamani*: It is before you, Sir.

*Chairman*: Do you desire me to read it to the Committee? I have not read it myself, and therefore I asked you first. It is as follows:—

“ The Report as approved by the sub-Committee so dilutes the responsibility of the Provincial Government to the Legislature by vesting large powers in the Governor that the undersigned members are obliged, much to our regret, to dissociate ourselves from several parts of it to which we attach importance. We reserve ourselves the liberty of re-opening the issues in full Committee and if necessary in Plenary Session. We request you to be so good as to cause this to be brought on record at the conclusion of the report.”

Then follow eight names, who dissent from the Chairman's Report.

*Mr. Chintamani*: As long as the dissent is recorded that will quite serve our purpose.

*Chairman*: Do I understand that you are agreed that the opposition is to one point only? Would it be all right if at the end of that point we insert “ The following expressed their dissent ”?

*Several Members*: That is all we want.

*Chairman*: These names will be inserted in the proper place. Subject to that this report as amended, and with the dissents recorded, will be presented to the Chairman of the Conference with the object of having it submitted to the meeting to-morrow. Is that agreed? (Assent.)

*(The sub-Committee adjourned at 6-35 p.m.)*

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SUMMARY OF THE PROCEEDINGS OF THE SIXTH MEETING OF SUB-COMMITTEE No. II (PROVINCIAL CONSTITUTION) HELD ON 31ST DECEMBER, 1930.

The following\* were elected as members of a sub-Committee to co-operate with the sub-Committee appointed by sub-Committee

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\* See Appendix No. 1 to the Second Report of sub-Committee No. I (Federal Structure) (volume I, page 282).

I (Federal Structure) to consider the allocation of subjects not already classed as Federal, between the Centre and the Provinces.

Lord Zetland (Chairman).

Mr. Zafrullah Khan.

Nawab of Chhitari.

Mr. Joshi.

Dr. Ambedkar.

Sir A. P. Patro.

Raja Narendra Nath.

Sir Chimanlal Setalvad.

### Sub-Committee No. II (Provincial Constitution).

REPORT PRESENTED AT THIRD MEETING OF THE COMMITTEE OF THE WHOLE CONFERENCE HELD ON 16TH DECEMBER, 1930.

1. The following report, subject to adjustment to the complete constitution, is submitted by sub-Committee No. II.

2. The sub-Committee was appointed to consider two heads of the Lord Chancellor's list, namely—

- (a) The powers of the provincial legislatures.
- (b) The constitution, character, powers, and responsibilities of the provincial executives.

3. The sub-Committee met on the 4th, 5th, 8th, 9th and 15th December. The proceedings on the first and second days comprised a general discussion of the problem. On the succeeding days particular issues were separately considered and examined. The Chairman ruled that the size, lifetime, number of chambers of the provincial legislatures, and the question of the official bloc might also be discussed as germane to the sub-Committee's Terms of Reference.

4. *The Abolition of Dyarchy.*—The sub-Committee is agreed that in the Governor's provinces the existing system of dyarchy should be abolished and that all provincial subjects, including the portfolio of law and order, should be administered in responsibility to the provincial legislatures. (*See note at end.*)

5. *The Composition of the Provincial Executives.*—(a) *Joint Responsibility.*—The sub-Committee recommends that there should be unitary executives; and that the individual Ministers composing the executive should be jointly responsible to the legislature.

(*Raja Narendra Nath awaits the report of the Minorities sub-Committee before agreeing finally to joint responsibility.*)

(b) *The appointment of Ministers.*—The responsibility for appointing Ministers will rest with the Governor. The sub-Committee is of opinion that in the discharge of that function the Governor should ordinarily summon the member possessing the largest following in the legislature, and invite him to select the Ministers and submit their names for approval. The Ministers should ordinarily be drawn from among the elected members of the provincial legislature. In the event of the appointment of a non-elected non-official, such person should be required by statute to secure election to the legislature (and if the legislature be bicameral, to either chamber) within a prescribed period not exceeding six months, but subject to this limit he may be nominated by the Governor to be a member of the legislature. The

sub-Committee is of opinion that there should be no discretion to permit the appointment of an official to the Cabinet.

*(The Marquess of Zetland and Sir Robert Hamilton dissent from the last two sentences.)*

(c) *Group or communal representation in the Cabinet.*—The sub-Committee considers it a matter of practical importance to the success of the new constitutions that important minority interests should be adequately recognised in the formation of the provincial executives. An obligation to endeavour to secure such representation should be expressed in the Instrument of Instructions to the Governor.

*(Mr. Chintamani dissents from the last sentence.)*

6. *Powers of the Governor.*—(a) *In regard to legislature.*—(1) The Governor shall have power to dissolve the legislature; he may assent or withhold assent to legislation; he may return a bill for reconsideration by the legislature, or reserve it for the consideration of the Governor-General.

(2) It shall not be lawful without the previous sanction of the Governor to introduce any legislation—

- (i) Affecting the religion or religious rites of any class or community in the Province;
- (ii) regulating any subject declared under the constitution to be a federal or central subject;
- (iii) any measure repealing or affecting any Act of the federal or central legislature or Ordinance made by the Governor-General.

(b) *Conduct of business.*—(1) The Governor shall, with the knowledge of his Ministers, be placed in possession of such information as may be needed by him for the discharge of duties imposed upon him by the constitution.

(2) In the opinion of the sub-Committee, the Chief Minister should preside over meetings of the Cabinet; but on any special occasion the Governor may preside.

(c) *Relations of the Governor to his Ministers.*—(1) The Ministers shall hold office during the pleasure of the Governor.

(2) Sub-section 3 of Section 52 of the Government of India Act, which confers a general power on the Governor to refuse to be guided by the advice of his Ministers when he sees sufficient cause to dissent from their opinion shall no longer operate. The Governor's power to direct that action should be taken otherwise than in accordance with the advice of the Ministers, shall be restricted to the discharge of the specified duties imposed on him by the constitution. These duties shall include the protection of minorities and the safeguarding of the safety and tranquillity of the Province.

(d) *Special and Emergency powers.*—There shall be vested in the Governor (1) suitable powers in regard to legislation and

finance necessary for the discharge of the specified duties imposed upon him by the constitution and (2) suitable emergency powers to carry on the administration in the event of a breakdown of government or the constitution. The powers under (2) shall not remain in operation for more than six months without the approval of Parliament expressed by a resolution of both Houses.

The sub-Committee suggests a rider that in their opinion it is desirable that the present rigid convention in Provinces other than the Presidencies of appointing Governors drawn from the Indian Civil Service should be relaxed. (There was some support for the substitution of the word "discontinued" for the word "relaxed".)

(*Sir Chimanlal Setalvad, Sir Cowasji Jehangir and Messrs. Ramachandra Rao, Barooah Chintamani, Joshi, Paul and Ambedkar dissent from the sub-Committee's conclusions on the powers of the Governor.*)

7. *The Composition of the Provincial Legislatures.*—(a) *Their size.*—The sub-Committee anticipates that, to meet the conditions of the new constitutions and electorates, the provincial legislatures will require to be enlarged on the basis of ascertained needs, regard being had to the numbers and character of the constituencies.

(b) *Their lifetime.*—In the opinion of the sub-Committee the normal lifetime of the provincial legislatures should not exceed five years.

(c) *The official bloc.*—With the possible exception of a strictly limited proportion of non-officials who may in some Provinces require to be nominated by the Governor to secure the representation of groups unable to return their own members through the polls, the new provincial legislatures should consist wholly of elected members, and the official bloc should disappear.

(d) *Second Chambers.*—The existing provincial legislatures are unicameral. The sub-Committee recognises that conditions in some Provinces may make it desirable that the provincial legislatures should be bicameral; but the decision to incorporate a second chamber in the new constitution of any Province other than Bengal, the United Provinces and Bihar and Orissa where opinion in favour of a second chamber has already been expressed should not be taken until opinion in the Province definitely favours this course.

[The reference to the Provinces of Bengal, the United Provinces and Bihar and Orissa was inserted at the wish of a majority of the sub-Committee.]

#### *Note.*

(1) The question of the administration of the police was raised by Lord Zetland under para. 4, and it was decided that this should be left for the report of the Services sub-Committee when set up.

(2) The sub-Committee did not consider the constitution of the North-West Frontier Province since it was understood that a special sub-Committee would be set up to deal with this subject.

(Sd.) ARTHUR HENDERSON,

*Chairman.*

St. James's Palace, London;  
15th December, 1930.

The following Delegates were members of the sub-Committee:—

Mr. A. Henderson (*Chairman*).

Lord Zetland.	} Holding a watch- ing brief.	Mr. Fazl-ul-Huq.
Sir Robert Hamilton.		Raja of Parlakimedi.
H.H. The Maha- raja of Nawa- nagar.		Mr. Ramchandra Rao.
Sir Prabhashankar Pattani.		Sir A. P. Patro.
Rao Bahadur K r i s h n a m a Chari.		Nawab Sir Ahmad Said Khan.
Sir Ghulam Hussain Hidayatullah.		Mr. Chintamani.
Md. Jadhav.		Mr. Tambe.
Sir Chimanlal Setalvad.		Mr. Zafrullah Khan.
Sir Cowasji Jahangir.		Raja Narendra Nath.
Sir Shah Nawaz Bhutto.		Sardar Sampuran Singh.
Sir Provash Chunder Mitter.		Maharaja of Darbhanga.
		Mr. Barooah.
	Sir Abdul Qaiyum.	
	Mr. Wood.	
	Mr. Paul.	
	Mr. Joshi.	
	Dr. Ambedkar.	

## NOTE ON SECOND CHAMBERS.

CIRCULATED TO ALL DELEGATES AT THE REQUEST OF SIR HUBERT CARR.

The Report of sub-Committee No. 2 dealing with Provincial Constitutions contains the following opinion in 7 (d):—

“The existing Provincial Legislatures are unicameral. The sub-Committee recognises that conditions in some provinces may make it desirable that the Provincial Legislatures should be bicameral, but the decision to incorporate a second chamber in the new constitution of any province other than Bengal, United Provinces and Bihar and Orissa, where opinion in favour of a second chamber has already been expressed, should not be taken until opinion in the province definitely favours this course.”

It is now suggested that second chambers in the Provinces would be of the utmost value:—

- (1) In giving stability to the administration of a Province;
- (2) In assuring the return to the legislature of responsible and responsive Indian statesmen;
- (3) In solving the communal disagreement as to the proportion of seats to be held by each community;
- (4) In giving effect to the safeguards which Minorities are demanding.

## I.

The point has frequently been made and needs no further elaboration, that in any constitution, and particularly in a country where democratic institutions are not fully developed and established, it is extremely desirable that the classes who stand to lose most by civil unrest should be adequately represented in the legislature. It may be doubted whether anywhere democratic electorates have shown sufficient willingness to elect to purely popular assemblies highly educated and experienced men who are neither able nor willing to make a purely electioneering appeal to the imagination of the masses. It is surely desirable that ex-administrators, ex-judges, eminent professors, large landholders and persons prominent in work of social uplift, should have an opportunity of contributing their share to the working of the constitution. In the words of Bryce, one Chamber is apt to contain “too little of the stores of knowledge, wisdom and experience which a country possesses”.

## II.

The Indian Delegates to the Round Table Conference have shown their statesmanship and their courage in coming to England and in devoting their time and energies to the work of building a new constitution for India. It is a melancholy reflection that probably few of

these Delegates will be elected to the Lower Chambers of the new legislatures which they have designed. During the time they have been away the Congress Party has been active in propaganda amongst the old electors. It is already certain that there will be a considerable increase in the electorate, and the danger of these new voters being stampeded by the only organised political party is very great. In such an event it is unlikely that many responsible Indian statesmen, however distinguished, would have any chance of election if opposed by the Congress organisation. The great services rendered by the late Sir Surenderanath Bannerjee, both before and after the reforms of 1919, did not prevent his being defeated in 1923 by a comparatively unknown candidate representing the Congress Party. At the same election, the late Mr. S. R. Das, afterwards Advocate-General of Bengal and Law Member of the Viceroy's Executive Council, was also defeated in a division of Calcutta where he had lived all his life. The fate which overtook these Co-operators ten years ago will probably overtake the Delegates to the Round Table Conference.

Such a result would not only be an undeserved misfortune for the Delegates themselves, but would clearly be disastrous to the new constitution.

### III.

The difficulties which have arisen in distributing seats in the Provincial Councils fairly amongst the different communities are not, in our opinion, capable of final solution in unicameral legislatures. Without expressing any opinion on the merits of the question, we understand that in the Punjab Legislative Council the Moslems are claiming 51 per cent. of the seats, the Sikhs 30 per cent., and the Hindus, not unnaturally, would not be satisfied with the remaining 19 per cent. It appears to us that a hopeful avenue to explore would be substituting bicameral for unicameral legislatures. In such a case it might be possible to persuade one of the communities to be satisfied with less than the representation they are at present demanding in the Lower Chamber if their representation in the Upper Chamber were weighted. We refrain from putting forward any concrete proposals at the present juncture from an unwillingness in any way to prejudice the chances of a satisfactory settlement between the communities.

### IV.

It is becoming more and more recognised in Europe that democracy, or the rule of the majority, must be modified by safeguards for the rights of minorities. It is in a Second Chamber that those minorities can most easily and effectively be protected by a few distinguished representatives. Stationed, so to speak, at the bottle neck of the legislature, they can more easily secure the rejection or amendment of a measure, and in a calmer atmosphere of a revising Chamber reason is more likely to secure a hearing, and justice is more likely to be done than in the Lower House.



Nor can one disregard the possibility of the Lower House becoming dominated by some coalition of groups, or even by financial and capitalist interests. In one Presidency there is already a tendency in this direction and a further step towards democracy is likely to increase this danger.

Second Chambers which are strong and effective are invariably elected or chosen upon a different principle from that adopted in the case of the Lower House. Nomination is not usually a satisfactory method, for it is desirable that the Upper Chamber should be able to claim to speak in the name of the people. In India, however, it would be idle to deny that there are many interests which are not at the present time likely to be fairly represented by a system of election, and that many men whose position, experience and prestige would make them valuable recruits to any legislatures would not be willing to stand for election, and would not be elected if they did stand. We would, therefore, make the following tentative proposal.

The Upper Chamber should consist of 40 members, of whom 10 should be nominated by the Governor on his own responsibility from amongst those persons who in his opinion would be suitable members of the Chamber and who would balance any communal disparities in the Lower House. He might be expected to nominate some ex-ministers, ex-judges, and ex-administrators, but no officials.

Ten should be nominated on the recommendation of the Ministry in power for the time being. This would tend to keep the Upper Chamber in touch and in sympathy with the existing Ministry. It would also enable the Ministry to strengthen itself by the addition of prominent men who might not have been successful in retaining their seats in the Lower House.

Ten should be representative of special interests, such as Indian commerce, landholders, agriculture, universities, municipalities and religious leaders, obtained by means of Electoral Colleges. Further, Electoral Colleges of doctors and teachers might elect respectively experts on health and education.

The remaining ten should represent different interests and communities in accordance with the particular requirements of each Province. In most cases these ten should include representatives of Labour, the Depressed Classes, or whatever interests are prominent in the Province concerned.

These Chambers should be perpetual, one-third of the members retiring every third year; and thirty-five should be the minimum age qualification for membership.

The powers of the Upper Chamber should be in all respects equal to those of the Lower Chamber, and wherever there is conflict between the two Houses the matter should be settled by a joint sitting.

We would give to the Upper Chamber concurrent powers with the Lower Chamber over Finance (although the Budget

would naturally be introduced in the latter); and even where the Lower Chamber has thrown out a proposal for taxation or refused to vote a grant, we would enable the Governor, acting upon the advice of his Ministry for the time being, to order a joint sitting at which the rejected proposal would once more be put forward.

It is vital to the success of the new Constitution that everything possible should be done from the start to provide some stability in the Executive under the new Constitution. It must be remembered that the stability of Governments in Great Britain is solely due to the two party system which obtained for so long. Responsible Government in other countries has too often been associated with instability in the Executive which has militated against efficiency of Government.

It is with a hope of avoiding the same unfortunate instability in India that the desirability of establishing Second Chambers in the Provinces is now earnestly commended to the Round Table Conference.

One thing is certain: if Second Chambers are ever to be introduced provision must be made now. It is hopeless to expect that the Lower Chambers will voluntarily apply, at some future date, to be subjected to the restraint of Upper Houses.

A procedure for constitutional amendment might perhaps be introduced to enable Second Chambers to be abolished at some future time if and when all communities are willing to surrender the protection afforded by their existence.

If the feeling is justified that a large number of those who would be of inestimable value in working the new constitution will not, under the changed circumstances, be returned to a Lower House it seems very necessary not to delay in considering most carefully whether Second Chambers in more than three Provinces are not called for.

## THE ORIYAS, THEIR NEED, AND REASONS FOR A SEPARATE PROVINCE.

CIRCULATED TO ALL DELEGATES AT THE REQUEST OF THE RAJA  
SAHIB OF PARLAKIMEDI.

The Oriya problem concerns a population of more than 9½ millions, scattered in four Provinces—Bihar and Orissa, the Central Provinces, Bengal, and Madras—occupying 88½ thousand square miles of country in India belonging to the Aryan race, possessing a literature of their own, well cultured in, and influenced by, Sanskrit. The civilization of the Oriyas dates back to the most ancient times of Mahabharata, and they are at present the followers of Lord Gouranga, the great Saint of the North, who, ages gone by, had preached the all-embracing common brotherhood among the then living races of India and had advanced the most up-to-date cosmopolitan ideals among them. To Lord Gouranga, a Muhamedan, a Sikh, a Punjabi, a Jat, a Napalee, or men of different castes and creeds, were all equal, and among his followers or Bhakthas, Mahomedans are also to be found as staunch and of eminent order. We, the Oriyas of that creed, therefore view each and every Indian through the eyes of our great Lord as of one common brotherhood; inseparable for achieving the one common goal of India's prosperity, equal in status with that of the other Dominions of the British Empire.

We, the Oriyas, who are by nature, creed and religion a most lawabiding race, are of good fighting element, lovers of art, literature, science, and adventure. The Oriyas had seen their brighter days under the great kings of the Ganga dynasty in the 15th century, conquering vast tracts of country from the Ganges to the Kaveri, and it was during this period that their literary attainment reached its zenith. But the brightness of sunshine over the Oriyas and their country began to wane along with incessant raids of their country by the Mahrattas. In 1759 and 1803, and during subsequent years, Orissa was added piece-meal to the British annexations in India, and it is these historical accidents that are responsible for her dismembered condition at present. Under the British rule in subsequent years, no doubt, the Oriyas have progressed, but it is bound to be slow for want of a united Orissa.

In the late Mr. Pathani Samonto, the Oriyas had an eminent astronomer, whose deductions and solutions in astronomy had attracted the attention of the then Viceroy of India—the late Lord Curzon—and these are still accepted by the present up-to-date men of that science, though Mr. Samonto was devoid of all present-day instruments and appliances, and had to depend entirely upon his own fertile brain. Their love of art and capacity in it is explicit in the stone carvings upon the temple walls of Bhuvaneswar, Konark, and the only cosmopolitan great Hindu temple of Puri, in the caves of Khandagiri and Dhavlagiri, and the present

silver and horn works of Cuttack and Parlakimedi. Their taste in literature and music is evident from their poetical works written in Oriya hundreds of years ago, impregnated with original ideas and metaphors, and also original work of signs of expression while singing a song.

But it is all a glory of the past, mostly, which we, the Oriyas, can boast of; and what are we to-day, divided and absorbed in different parts of British India, with no entirety as a race of our own anywhere in the provinces, without suitable representation or encouragement; known as coolies in Bengal and Burma, Untouchables in Madras, and what not in other parts of India?

Is it fair to such a race as the Oriyas, with such culture, ideals and creed, to be the enjoyers now of such abhorrent and pathetic conditions when all the other races of India under the benign British regime are fighting for Dominion Status for India federating with Indian India? Can India be really federal while allowing any of her races to wither and decay?

The fact of the dismembered state can best be realised from an extract from Grierson's "Linguistic Survey of India," in which he says:—

"The Orissa country is not confined to the division which now bears that name. It includes a portion of the district of Midnapur in the north, which, together with a part of Balesore, was the 'Orissa' of the phrase 'Bengal, Bihar and Orissa, met in the regulations framed by the Government in the last decades of the 18th century. Oriya is also the language of most of the district of Singbhum, belonging to the division of Chotanagpur, and of several neighbouring native states which fall politically within the same division. On the west it is the language of the district of Sambalpur, and of a small portion of the district of Raipur in the Central Provinces, and also of the number of native states which lie between these districts and Orissa proper. On the south, it is the language of the north of the Madras district of Ganiem, with its connected native states, and of the Jeypore Agency of Vizagapatam. It is thus spoken in three Governments of British India, viz., in the Lower Provinces of Bengal, in the Central Provinces, and in the Madras Presidency p. 367).

To remedy the evils arising out of such a dismembered condition the Oriyas have all along been expressing their desire to remain united. This desire may be dated back to the Mahratta invasion and the British advent into Orissa in the 18th century and the subsequent years, since when the national solidarity has been broken and it remains as it is, scattered and merged inside different provinces of India, absolutely lost sight of among the other more predominating populous communities. To give vent to their most deplorable condition in society and insufficient representation in Government service wherever they are, the first Utkal Union Con-

ference of the Oriyas was held in the year 1902, under the presidency of the late Rajah of Kallikote, which officially started to approach the Government with resolutions for a separate province for the Oriyas. The replies received from the Government from that time up till now, though, have been many times quite encouraging, the much-sought-after Oriya province remains to them to-day at as far a distance as it was when they first approached the Government with their prayer.

Lord Curzon, one of the greatest Viceroys of India, when proposed the partition of Bengal, the Oriya problem was not outside His Excellency's vision, and a separate Oriya province would have been a long-accomplished fact to-day, if only at that time the Provincial Government of Madras was equally sympathetic and generous-hearted to help the Oriyas to regain their past great communal equality with, if not superiority over, the present several predominating communities of India.

The Oriyas that had kept the all-conquering Mahrattas at bay for several years are to-day a minority wherever they exist in the four different provinces of India, and they have become all the more so since the advent of the Montford Reforms to India, not being able to elect an influential element of their own into any provincial legislature sufficient to get legislation passed in their favour. In Bihar and Orissa, out of a total population of 34 millions, the strength of the Oriyas is about 7 millions; in Madras, out of a total population of 42 millions, there are only a million and a half; in Bengal, again, they are an insignificant minority of about 3 lakhs among a population of 46 millions; and they are about the same number in the Central Provinces amongst 14 millions of population.

This state of the dismembered conditions of Orissa has been brought about by merely historical accidents, and particularly the circumstances attending the growth of British power in Orissa. This unnatural bifurcation, vivisection and fragmentation of the country has brought untold miseries on the people; it has not only broken their national solidarity by regular process of denationalisation in the borders of Ganjam and Vizagapatam in Madras, and Midnapur in Bengal, but also has succeeded in ruining their ancient civilisation and literature. Let us for a moment examine the census figures of these tracts. In 1901 the Oriyas in the Ganjam District were 1,274,975, or roughly thirteen lakhs, and while, as per census of 1911, the population of the district increased from sixteen lakhs eighty-nine thousand (1,689,142) to eighteen lakhs seventy thousand (1,870,826), the Oriya population showed a reduction by nearly three lakhs (1911—958,661). Similarly, in the Midnapur District in Bengal the number of the Oriya speakers fell from five lakhs seventy-two thousand (572,798) in 1891 to one lakh eighty thousand (180,801) in 1911, and one lakh forty-two thousand (142,107) in 1921. Although there is no explanation available for such glaring diminution in figures in different provinces, it will be interesting to note here what Mr.

Malony in 1911, as the census officer in Madras, has remarked regarding the fall in figures of Ganjam:—

“ The proportional variation in the case of Ganjam is so remarkable as to suggest either careless enumeration at one census or the other, or else a possibility of deliberate misrepresentation by Telugu or Oriya enumerators not uninfluenced by the contentions which prevailed some five or six years back between the Telugus and Oriyas of the district.”

Let me make it clear that the Oriyas are one with the rest in the desire to make rapid but steady progress for the attainment of Responsible Self-Government in India; but what prospect is there for them existing as they are, separated and scattered in different provinces?

About the year 1868, Sir Stafford Northcote, the then Secretary of State for India, saw the defects of administering a tract of country divided and dissected into unnatural boundaries in times of emergency, and in the year 1895 the Commissioner of Orissa, writing the Administrative Report of the Orissa Division, advocated strongly for bringing the Oriya speaking tracts under one administration. He says in his report:—

“ Among the reasons for this change are, as I have said, the uniting in a single division and placing under the same laws and rules the whole local Oriya population, instead of having a portion of it forming an insignificant item of the Central Provinces and another portion forming an equally insignificant item of the Madras Presidency.”

He then goes on citing political, ethnological and philological grounds in support of his proposal. Let us see what another prominent Government official has to say on this matter. H. H. Risley, Esq., C.I.E., Secretary to the Government of India, in his letter No. 3678, dated 3rd December, 1903, to the Chief Secretary to the Government of Bengal, says:—

“ The difficulties arising from the Oriya problem thus created have been for years a source of anxiety and trouble to the different provinces concerned. The Government of Madras have repeatedly complained of the anxieties imposed upon the administration by the great diversity of language (Oriya, Tamil, Telugu, Malayalam, Canarese) with which Madras civilians are called upon to cope and which render the transfer of officers from one part of the Presidency to another, a matter, in any case, of great difficulty, and often of positive detriment to the public interest. These disadvantages exercise an injurious effect not only upon the administration, but still more upon the people. Where the population speaking a distinct language and the area over which it is spoken are too small to constitute a substantial portion of a province, the foreign unit is almost of necessity neglected. Under ordinary conditions the Gov-

ernment is unable to retain in it a superior staff, who have become acquainted with the local language and with the local customs which invariably accompany it. It is often impossible to officer the subordinate staff from local sources, and foreigners have to be brought in who are ignorant alike of the people, their language and their ways. The Government may order that the vernacular shall be the language of the Government offices and courts, but since neither officers nor clerks know this vernacular properly, compliance with the order is often impracticable and almost always incomplete. Nowhere are the drawbacks more conspicuous than among the Oriya-speaking people, distributed, as has been pointed out, between three (*now four*) administrations and a source of constant anxiety to each. Hence, in dealing with a question of this kind, it may be that the true criterion of territorial redistribution should be sought not in race but in language.

“The Oriya-speaking group, in any case, emerges a distinct and unmistakable factor, with an identity and interests of its own.”

In 1917, on the momentous visit of Mr. Montagu to India, the Oriyas again submitted a memorial, under the leadership of Mr. M. S. Das, C.I.E., and the Honourable Rajah of Kanika, the present Finance Member of Bihar and Orissa, and many other influential men for the administrative union of the Oriya tracts as a preliminary to the Reforms; but, except for the recognition of the principle to form provinces on the linguistic basis, giving prominence, of course, to the problem of Orissa, nothing tangible has been done for the Oriyas: As anticipated in the memorial, the position of the Oriyas in every province under the Reforms changed for the worse, as in every provincial legislature the Oriya representatives found themselves in a hopeless minority without being able to influence any decision in their favour against contending forces.

My experience as a member of the Madras Legislative Council is that the position of the Oriyas is unenviable and far from satisfactory, though, in pre-Reform days they had much less to complain of, receiving usually official support and sympathy as a backward community. I have reasons to believe that wherever the Oriyas exist now, their condition is exactly the same, and worse in Bengal, with all the disadvantages pertaining to a minor community among a bigger and more advanced population.

The desire of the Oriya people to be united finds its counterpart in the case of several other Indian communities also.

Let me repeat again, that nothing short of a separate province will satisfy the Oriyas. They will not remain content with any half measures as a part of a major province with any amount of statutory guarantees and declarations.

The demand for a separate province was embodied in a resolution of the Utkal Union Conference in 1919, which runs as follows:—

“ Believing as it does in the sympathetic recognition of the special claims of the Oriyas for a separate administration, as evidenced by the illustrious authors of the scheme in their proposal for constituting a sub-province for Orissa, this conference desires to place on record its conviction that, unless a separate province, under a Governor-in-Council and legislative assembly with an elected non-official majority be given to the united Oriya-speaking tracts, the proper solution of the question cannot be satisfactorily reached, and the legitimate aspirations of the people concerned cannot be fulfilled.”

In the following year, Mr. Sachidananda Sinha, of Bihar, moved in the old Imperial Legislative Council for a mixed committee of officials and non-officials to formulate a scheme for amalgamation of Oriya-speaking tracts. Most of the speakers in the debate welcomed this resolution, but Sir B. N. Sarma advocated a separate province for the Oriyas, to which the whole house agreed. Sir William Vincent, the then Home Member of the Government of India, speaking on behalf of the Government, recognised that there was a very great feeling among the Oriyas for amalgamation, and that the Government was in no sense opposed to an examination of this question. The Phillip and Duff Commission, in 1924, also have recorded the same feeling among the Oriyas.

The position of Orissa as at present has drawn the attention of the Simon Commission, and they regard it as “ a glaring example of the artificial connection of areas not naturally related.” The Government of Madras in its memorandum to the Simon Commission, favour a separate province for the Oriyas. The Government of Bihar and Orissa, though, point out the financial insufficiency of the future province, is also in favour of a separate Oriya province. The Government of India, in its Despatch on proposals for constitutional reforms, admit the claim of Oriyas for a separate province of their own, suggesting a Boundary Commission to go into this question. The amalgamation of Oriya-speaking tracts has become so urgent and acute that it is feared in some quarters that another commission might delay matters and postpone the great day.

Considering from a practical point of view, Orissa will be a province 88½ thousand square miles, with men possessing everything in common—language, religion, customs and manners—and their number in population can stand favourably in comparison with Assam, Burma and the Central Provinces.

One of the formidable objections incident on the proposal of a separate province is the complaint of financial insufficiency. The difficulty of finance might be a real one, and I do not doubt it for a moment; but at the same time I do not think it an impossibility if only the question is tackled with sympathy and fairness by the



authorities concerned and its mineral wealth fully developed. Did not the Government of India come to the rescue of Assam when she started as a new province? The Oriya Province may be started on identically the same style.

Orissa is a great agricultural country, with vast natural resources and fertility. It is mainly a rice-producing country, with vast tracts of rich soil capable of great agricultural development. If only its rivers are controlled to avoid devastations of flood, it will be a land of wealth instead of poverty. Again, Orissa abounds in forest materials, which provide beautiful building materials, and with her coal, iron, copper, mica, manganese ores, many more industries can be developed to yield a large revenue to meet the needs of administrative cost.

Space does not permit me to say all that I have in mind regarding this question. The title details I have mentioned are done only in the interests of the case. Enough if the immediate solution of the problem has been brought out.