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CONSTITUENT ASSEMBLY OF INDIA



COMMENTS ON THE PROVISIONS CONTAINED IN THE DRAFT CONSTITUTION OF INDIA

Received from

1. Ministries of the Government of India,
2. The Federal Court and the Chief Justices of all Provincial High Courts,
3. The Federal Public Service Commission and the Chairmen of the Provincial Public Service Commissions,
4. Provincial Governments, and
5. Provincial and State Legislatures.

LETTER FROM THE MINISTRY OF AGRICULTURE NO. 25-1/48-POLICY, DATED THE
5TH/8TH JULY, 1948.

I am directed to invite a reference to your letter No. CA/21/Cons/48-III, dated the 14th June, 1948, on the subject mentioned above and to enclose a copy of a letter from the Hon'ble Minister for Agriculture to the Hon'ble Minister for Law and a note submitted to the Committee appointed for considering the Draft Constitution. As will be clear from these two documents, the Ministry of Agriculture are of the view that if the national interest is to be properly furthered then the following amendments to the Draft Constitution are necessary. In the Union list, the following item should be included—namely:

“co-ordination of the development of agriculture including animal husbandry, forestry and fisheries”.

For the reasons given in the note mentioned above the Ministry of Agriculture would strongly urge that action may also be taken as suggested in the last para. of the note to enable the Centre to discharge effectively the responsibility for the development of agriculture and the supply and distribution of food and to co-ordinate an All-India policy on agricultural development. The additional powers asked for relate to the inclusion in the current list of:

- (1) Reclamation of waste lands on a large scale requiring the use of plant and machinery.
- (2) Forest Laws and working plans and
- (3) Inland Fisheries and Fishery Laws.

In addition, it has also been suggested that item 61 in the Union List should be amplified to read “establishment of standard weights and measures including laying down of good quality standards for agricultural products”.

The Ministry of Agriculture would be grateful to know in due course the action taken on the suggestions contained in the letter and the note, sent herewith.

LETTER FROM THE HON'BLE SHRI JAIRAMDAS DAULATRAM TO THE HON'BLE DR.
B. R. AMBEDKAR DATED THE 16TH JANUARY, 1948.

As you know, under the Government of India Act, 1935, Agriculture is a purely provincial subject, *vide* item No. 20 Provincial Legislative List, Seventh Schedule of the Government of India Act, 1935. The only item in the Federal Legislative List which could be invoked by the Centre for doing something in the sphere of Agriculture is item 12 which runs as follows:—

“12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.”

In fact there was no Ministry of Agriculture until late in 1945 and how it came into existence is given in paragraphs 6, 7 and 8 of the Report of the Reorganisation Committee for the Departments of Agriculture and Food which is reproduced below for easy reference:—

“6. There was no separate Department of Agriculture at the Centre until late in 1945. The primary responsibility for Agriculture and Animal Husbandry Development including Fisheries, Forestry, Co-operation and other allied subjects rested with the Provincial and State Administrations and the functions of the

Centre related to (a) control and management of the Central Research Institutes such as I.A.R.I., I.V.R.I., I.D.R.I., Forest Research Institute, (b) the co-ordination of Agricultural Research on an All-India basis through the Imperial Council of Agricultural Research and the Commodity committees and (c) the running of training institutions for imparting higher education in Agriculture, Animal Husbandry and Forestry. In addition, the Central Government has been responsible for handling questions relating to Agriculture and allied subjects in respect of the Centrally Administered areas of Delhi, Ajmer-Merwara, Coorg, Baluchistan and Panth Piploda. These functions were grouped together under the name 'Lands' which was an integral part of a single department of Education, Health and Lands under one Secretary and one Member. All this work was, in fact, handled by one Deputy Secretary and one Under Secretary of the Education, Health and Lands Department, and in close collaboration with the Vice-Chairman, I.C.A.R., and the heads of the Central Research and Training Institutes.

7. The worsening of the food supply position in India particularly after the entry of Japan into the War and the consequent loss of Burma rice imports focussed public attention on the importance of increasing the production of food within the country to the maximum extent possible. It was realised that while the primary responsibility for framing and executing policies and programmes must rest with the Provinces and States, the Centre alone could assess the food requirements of the country as a whole and co-ordinate the individual plans of the provinces into a common All-India plan.
8. The First Food Production Conference was held early in April, 1942 under the Chairmanship of the then Member for Education, Health and Lands which chalked out the lines of a Grow More Food Campaign for implementation by the Provinces and States. For about a year thereafter, the work relating to the Grow More Food Campaign was handled by the Deputy Secretary and the Under Secretary above mentioned in consultation with the then Vice-Chairman, I.C.A.R., and with the assistance of a newly appointed officer designated as Agricultural Production Adviser. This was the beginning of the further expansion of the Agriculture Department which has gradually led to its present organisation. In 1944, the Agricultural work was made the separate charge of an Additional Secretary together with a Deputy Secretary and an Under Secretary assisted by the Agricultural Production Adviser and his staff. It was not until September, 1945, however, that a separate department of Agriculture under a Secretary to Government was brought into existence".

The difficulties of feeding the ever-increasing population of India and the experience of the last war have made it abundantly clear that the national interest demands that the Centre should play a more active role in the sphere of Agricultural Development and in January 1946 a statement of Agriculture and Food Policy in India was issued by Government (copy enclosed) from which it will be seen that the Centre assumed to itself specific responsibilities for the development of agriculture and the supply and distribution of food and to co-ordinate an All-India policy of Agricultural development, food production and distribution.

The position is satisfactory so far as it goes but in our opinion it does not go far enough. In fact, the Ministry of Finance have been challenging the Ministry of Agriculture even when they restrict their schemes to the sphere defined in the Statement of Policy referred to above.

We have given the matter very careful consideration and we think that there will be no adequate answer to the challenge of the Ministry of Finance that the agricultural development is a provincial responsibility, until there is some specific suitable provisions in the Constitution Act itself. I am inclined to think that the time has come when the Centre ought to take up the entire responsibility in regard to food. But the minimum that is essential in national interest is that the Centre must have an active hand in co-ordinating and guiding agricultural development all over the country. I would, therefore, suggest for your consideration that, besides the existing Item No. 12 in the Federal Legislative List, the following item should also be included in that List, namely, 'Co-ordination of the development of agriculture including animal husbandry, forestry and fisheries and the supply and distribution of food'.

I shall be grateful if you will kindly take action in the matter urgently, as I understand that the Drafting Committee will shortly take up the question of the distribution of powers between the Centre and the Units.

NOTE FROM THE MINISTRY OF AGRICULTURE

SUBJECT:—*Additional powers to be provided for the Centre in the new Constitution of India with regard to the development of agriculture.*

Under the Government of India Act, 1935 Agriculture is purely a provincial subject, *vide* item No. 20, Provincial Legislative List, Seventh Schedule of the Government of India Act, 1935. The only item in the Federal Legislative List which could be invoked by the Centre for doing something in the sphere of Agriculture is item 12 which runs as follows:—

“12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.”

2. In fact there was no separate Ministry of Agriculture until late in 1945. The primary responsibility for Agriculture and Animal Husbandry Development including Fisheries, Forestry, Co-operation and other allied subjects rested with the Provincial and State Administrations and the functions of the Centre related to, (a) control and management of the Central Research Institutes such as the Indian Agricultural Research Institute, Indian Veterinary Research Institute, Indian Dairy Research Institute, and Forest Research Institute (b) the Co-ordination of Agricultural Research on an All-India basis through the Indian Council of Agricultural Research and the Commodity Committee and (c) the running of training institutions for imparting higher education in Agriculture, Animal Husbandry and Forestry. In addition, the Central Government has been responsible for handling questions relating to Agriculture, and allied subjects in respect of the Centrally Administered areas of Delhi, Ajmer-Merwara, Coorg, and Panth Piploda. These functions were grouped together under the name ‘Lands’ which was an integral part of a single department of Education, Health and Lands under one Secretary and one Minister.

3. The worsening of the food supply position in India particularly after the entry of Japan into the war and the consequent loss of Burma rice imports focussed public attention on the importance of increasing the production of food within the country to the maximum extent possible. It was realised that while the primary responsibility for framing and executing policies and programmes must rest with the Provinces and States, the Centre alone could assess the food requirements of the country as a whole and co-ordinate the individual plans of the provinces into a common All-India plan.

4. The First Food Production Conference was held early in April, 1942, chalked out the lines of a Grow More Food Campaign which is still being pursued by the Central Government. The campaign is largely based on financial assistance from the Centre to the Provinces and to that extent only limited objects could be achieved.

5. The difficulties of feeding the ever-increasing population of India and the experiences of the last war have made it abundantly clear that the national interest demands that the Centre should play an active role in the sphere of Agricultural development and in January, 1946 a Statement of agriculture and Food policy in India was issued by Government according to which the Central Government assumed to itself in practice specific responsibilities for the development of agriculture and the supply and distribution of food and to co-ordinate an All-India policy of agricultural development, food production and distribution.

6. The partition of India has resulted in large surplus areas going over to the Government of Pakistan leaving the Dominion of India in a more precarious position in food supply than even before the partition. Considerable sums

spent in the annual import of food-grains to stave off starvation and famine have already hampered the import of heavy machinery required for the Industrial development of the country. It is clear, therefore, that unless India becomes self-sufficient in the matter of food supply which could be done only if agriculture is developed according to an All-India plan directed from the Centre, the Development of India as a whole would be hampered. The time has come when the Centre ought to undertake greater responsibility in regard to food, but the minimum that is essential in national interest is that the Centre must have an active hand in co-ordinating and guiding agricultural development all over the country.

7. The draft constitution of India has now become available and an examination of it shows that the position of agriculture in the new draft constitution is no way better than in the Government of India Act, 1935. After a very careful assessment of the pros and cons it is considered that while the Centre should not unduly encroach on the legitimate functions of the provinces and States in the field of agriculture and should achieve an All-India Agricultural Development with the willing co-operation of the participating units, there are certain aspects which could be effected only if the Centre had the necessary legislative powers. These functions are detailed below:—

Reclamation of waste Lands on a large scale requiring the use of plant and machinery.—One of the important items of G. M. F. Campaign is the large scale reclamation of waste lands by the use of tractors and other heavy implements. This is an item where all participating units may not have the necessary finances for importing machinery and technicians to undertake individually large-scale reclamation. While some provinces like U.P. have made some headway in the direction of large scale reclamation other Provinces have made no progress. A scheme is under preparation in the Ministry of Agriculture for the large-scale reclamation of waste lands all over India as a measure of increasing food production and this could be achieved only if the Central Government takes to itself the necessary legislative powers in the matter. This is particularly necessary where a single province may hamper progress by declining for various reasons to reclaim large tracts of lands. The volume of public opinion is now considerably in favour of the Centre taking the initiative in this matter. In practice, however, land reclamation would be done as far as possible with the willing cooperation of the provinces and states and legal provisions will be invoked only if a particular province or State declines responsibility to reclaim large tracts for any reasons.

Forestry.—While there would be no two opinions that the provincial governments and States should have considered freedom in the management of their own forests, it will be generally admitted that in the matter of forests exploitation and development no province or State can follow a policy entirely independent of its neighbouring units. Forests have a great bearing on the general agricultural development and prosperity of the country as a whole, and it is essential to ensure that no province or state follows, even inadvertently, a policy which will be detrimental to the rest of the country. This is particularly so as the acts of a particular province will affect another province which had nothing to do with the forests policy pursued by the former province. For instance, floods which do considerable havoc in the plains may be the result of indiscriminate fellings in catchment areas under the control and jurisdiction of an entirely different province. What we really want therefore is legal power to ensure that in their working plans the provincial or State governments do not allow exploitation of their own forests in a way which will be detrimental to the interests of other areas. In other words, we must have a uniformity in respect of Forest Laws and their enforcement and an over-all-Co-ordination of

working plans as was the case, when Forests was a reserved subject. For these reasons it is suggested that certain aspects of Forestry, viz. 'Forest Law and working plans' may be included in the Concurrent List.

Fisheries.—It is considered that certain aspects of fisheries, viz., 'Inland Fisheries and Fishery Laws' should also for more or less the same reasons as stated in the previous paragraph be included in the Concurrent list. In the case of bigger rivers flowing through more than one province or state, any action legislative or executive taken by one unit will have repercussions on the fisheries in the other units. The question of fishery rights have in many other countries led to as bitter controversies and disputes as in the case of navigation and irrigation and the development of fisheries with necessary powers at the Centre on All-India basis at least to the extent indicated would be necessary:—

Agricultural Marketing.—Under the Agricultural Produce (Grading and Marking) Act, 1937, the Centre is competent to lay down grade standards for agricultural produce but it has no power to enforce them. Neither in the Union list nor in the Concurrent list any provision has been made for the Centre to retain this power of laying down quality standards. Laying down standard of quality cannot be done in isolation by a particular Province or State and should continue to be dealt with by the Centre as quality standards all over India should be on a uniform basis. At the same time the Central Government cannot aspire to set up a machinery to enforce such quality standards which should be down exclusively by the Provincial and State Governments. The object could be achieved by amplifying item (61) in the Union list namely 'establishment of Standard Weights and Measures' to read 'establishment of Standard Weights and measures', including laying down of quality standards for *agricultural produce*'.

As regards 'Regulation of Agricultural produce exchanges and adoption of standard contract terms', it could be dealt with suitably under the provision already existing in item 10 of the Concurrent list in the Draft Constitution namely 'contracts including partnership, agency, contracts of carriage and other special forms of contracts but not including contracts relating to agricultural land'. As regards many other agricultural items it is felt that while it would be desirable for the Centre to take an active part particularly in the co-ordination of the development of agriculture, the necessary work should be done with the willing co-operation of all Provinces and States and by establishing inter-State Councils where necessary, under Section 246 of the new Constitution rather than undertaking legislative powers to enforce the Central Government action on unwilling units.

To sum up, it is suggested that to enable the Centre to discharge effectively the responsibility for the development of agriculture and the supply and distribution of food and to co-ordinate an All-India policy on agricultural development, the following items should be included in the Concurrent list:—

- (1) Reclamation of waste lands on a large scale requiring the use of plant and machinery.
- (2) Forest laws and working plans, and
- (3) Inland Fisheries and fishery laws.

In addition item 61 in the Union list should be amplified to read 'establishment of standard weights and measures including laying down of quality standards for agricultural produce.'

LETTER FROM THE MINISTRY OF DEFENCE, No. F. 0328/48/COOD(A), DATED THE
25TH OCTOBER, 1948.

I am directed to refer to the correspondence ending with your letter No. CA/21/Cons/48-III, dated the 18th October 1948, and to say that the Ministry of Defence have no remarks to offer except that if it is found feasible to amend item 4 of List I of the Seventh Schedule to the Draft Constitution on the lines suggested by the Chairman of the Drafting Committee, precluding any acceding State from maintaining any Armed Forces of its own, it should be done. As this may not be in accordance with the Instruments of Accession, the matter would obviously require further consideration in the States Ministry.

LETTER FROM THE HON'BLE MAULANA ABUL KALAM AZAD, MINISTER FOR
EDUCATION, DATED THE 28TH APRIL, 1948.

I am sure you will agree with me that all our plans for the development of free India will ultimately depend upon the quality of our human material. Whether it is industrial expansion or issues relating to Defence, in every case the governing factor will be the type of individual who carries out the schemes. For the proper training of individuals, Education is essential. This is the more so in India, as we have to make up for the tremendous leeway from which we suffer on account of the past bondage. Education should, therefore, be a first priority of the National Government, as I am afraid that, unless this is done, necessary provision for Educational facilities will not be made. Experience has shown that when the State wants, it can find the money. Thus during a war, the National budget is always extended to undreamt of proportions to meet the war emergency. My suggestion is that Education should also be regarded in the same light.

The second point to which I would draw your attention is that in the present state of development of Education in India it is imperative that there should be Central guidance, if not Central control, on Provincial progress. You have yourself seen the dangerous symptoms of fissiparous tendencies in the recent months. If it can be secured that Education throughout India follows the same general pattern, we can be sure that the intelligentsia of the country will be thinking on similar lines. This would be a better check against the dangers of fragmentation than any centralisation of Government or concentration of power in the hands of the Central Authority.

I find from the new Constitution, which has been accepted by China, that they have made very adequate and clear-cut provision for securing that Education should be both National and adequately financed. I would, therefore, suggest for your consideration that we may make provision on similar lines in the Constitution of India also. I would draw your attention especially to Article 162 and Article 164 of Chapter 13, Section 5 of the Constitution of the Government of China, which I am enclosing* for your perusal.

I would, therefore, propose that the two following amendments be incorporated in the Constitution:—

- (1) All public and private educational and cultural organisations in the Indian Union shall be subject to the supervision of the Union Government in accordance with law.

Explanation.—It will be noticed that the Union Government will reserve to itself only general supervision, while all matters of administration and management will be under the control of the State Government.

- (2) Expenses for Education, Sciences and culture shall not be less than 10 per cent of the total budget estimates in the case of the Central Government, not less than 25 per cent of the total amount of the budget estimates in the case of State Government and not less than 35 per cent of the total amount of the budget estimates in the case of Local Authorities.

I hope that these amendments may be discussed by the Constitution Subcommittee and put up before the Constituent Assembly in due course. In case you would like to discuss with me any of these amendments, I will be glad to do so at your convenience.

LETTER FROM THE MINISTRY OF HEALTH No. F.17-17/48-G, DATED THE 21st OCTOBER, 1948.

With reference to your letter No. CA/21/Cons/48-III, dated the 14th June, 1948, I am to say that the Ministry of Health would like to offer the following comments on the Draft Constitution of India.

2. Article 225 of the Draft Constitution provides that the power of Parliament to make laws for a State or a group of States for the time being specified in Part III of the First Schedule will be subject to the terms of any agreement entered into in that behalf by that State or group of States with the Government of India. The result of this will be that the power of Parliament to legislate regarding States included in Part III of the first Schedule may vary from State to State. This is not desirable especially in fields of administration where uniformity throughout India is essential. It is accordingly suggested that, as regards States included in Part III of the first Schedule also, Parliament may be invested with the same powers of legislation which Parliament will have as regards territories included in Part I of the First Schedule. In this connection it may be mentioned that at the Health Ministers' Conference held in Delhi early in August, at which representatives of most of the important States and groups of States which will appear in Part III of the first schedule were represented the following resolution was passed unanimously:—

“The Conference recommends that, in order to establish cooperative effort between Governments on a sound basis the States should fall in line with the Provinces by transferring to the Centre such health functions as now constitute common ground for Central and Provincial action. It is only in this way that the formulation and execution of health policies on a uniform basis throughout the Indian Union, will become possible.”

It is expected, therefore, that the proposal that Parliament should have the same powers of legislation as regards territories included in Part III of the First Schedule as in respect of territories included in Part I of that Schedule will find general acceptance.

3. Article 226 of the Draft Constitution confers power on Parliament to legislate with respect to any matter enumerated in the State List subject to the conditions specified in that Article. It is suggested that with respect to such legislation also executive power may be conferred on the Union to the extent it will have in respect of concurrent subjects by virtue of Article 30 of the Draft Constitution.

LETTER FROM THE MINISTRY OF HOME AFFAIRS No. 20/11/48-G.S., DATED THE 15TH OCTOBER 1948.

I am directed to invite your attention to Chapter I—SERVICES—of PART XII relating to the Services under the Union and States, of the Draft Constitution of India, and to say that the provisions of that Chapter have been examined

by the Government of India, and it has been decided that steps should be taken to secure the substitution for that Chapter of a revised Chapter in accordance with the draft (enclosed). The Hon'ble the Home Minister proposes to sponsor in the Constituent Assembly such amendment as may be necessary for this purpose. I am to request that the necessary amendment may be put into proper form for purposes of insertion in the Draft Constitution and included in the Agenda of the Constituent Assembly.

(Revised Draft)

CHAPTER I

THE CIVIL SERVICES

281. Same as Art. 281 of Draft Constitution. Interpretation.—In this Part, unless the context otherwise requires, the expression "State" means a State for the time being specified in Part I of the First Schedule.

282. New provision corresponding to Sec. 240(1) of the Government of India Act. Tenure of office of persons employed in the Civil Services.—(1) In this article, references to members of a civil service of the Union or a State include persons holding civil posts under the Union or the State, as the case may be.

(2) Except as expressly provided by this Constitution, every person who is a member of a civil service of the Union or an all-India service holds office during the pleasure of the President, and every person who is a member of a civil service of a State holds office during the pleasure of the Governor of the State.

(3) *New provision corresponding to Sec. 240 (2) of the Government of India Act.*—No such person as aforesaid shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(4) No such person as aforesaid shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this clause shall not apply—

(a) Where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) Where an authority empowered to dismiss a person or remove or reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause.

282-A. New Provision (Modelled on Art. 226 of the Draft Constitution). All India Services.—(1) Notwithstanding anything in Part IX of this Constitution, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India Services common to the Union and the States, and, subject to the other provisions of this Chapter, for regulating the recruitment and the conditions of service of persons appointed to any such service.

(2) *New provision. (Upon such declaration as aforesaid of the Council of States.*—The services known as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under the provisions of clause (1) of this Article.

282.-B. *Same as Art. 282(1) of the Draft Constitution.*—*Recruitment and conditions of service of persons employed in Civil Services of the Union or a State.*—Subject to the other provisions of this Chapter, Acts of the appropriate Legislature may regulate the recruitment and the conditions of service of persons appointed to the civil services or, and civil posts under, the Union or a State.

283. *Corresponds to Art. 283 of the Draft Constitution.*—*Transitional provisions.*—(1) Until other provision is made in this behalf under this Constitution any *existing laws* applicable to any civil service or post which continues to exist after the commencement of this constitution as an *all-India-Service* or as a civil service or post under the Union or a State shall continue in force so far as consistent with the provisions of this constitution.

(2) *New provisions corresponds to Sec. 10(2) of the Indian Independence Act.*—Except as expressly provided by this constitution, every person who, being a member of a service specified in cl. (2) of art. 282 A or a service formerly known as an All-India-Service continues on and after the commencement of this constitution to serve under the Union or a State shall be entitled to receive from the Governments of the Union and the States which he is from time to time serving, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters and the tenure of his office, or rights as similar thereto as changed circumstances may permit, as that person was entitled to immediately before the commencement of this constitution.

LETTER FROM THE MINISTRY OF HOME AFFAIRS No. 51/282/48-PUBLIC, DATED THE 15TH OCTOBER 1948.

With reference to your letter No. CA/21/Cons./48-III dated the 14th June 1948, I am desired to say that this Ministry is concerned generally with those provisions in the draft Constitution which relate to:—

- (a) the Services (including the Public Service Commissions);
- (b) the Judiciary, and
- (c) the President, Governors of States and their Councils of Ministers.

2. As regards (a), we have already addressed the Constituent Assembly. The only further comments we would like to offer are with reference to the recommendations made by the Conference of Chairmen of Public Service Commissions forwarded to the Constituent Assembly with the Federal Public Service Commission's letter No. F. 8/29/48-S, dated the 20th May 1948. In paragraph 4 of that letter it has been suggested that the provision for service personnel in article 285(1) should be altered from "one-half" to "one-third". This Ministry is inclined to the view that, from the point of view of public servants, the services could be even more strongly represented on the Commission. We do not in any case agree to the reduction proposed. Nor do we support the recommendation in paragraph 7 of that letter for amendment of article 285(3) relating to the eligibility of Chairmen of Public Service Commissions for appointment under Government after ceasing to hold office.

3. As regards (b), the Constituent Assembly have had under consideration recommendations made by a conference of Chief Justices who met to consider the provisions of the draft Constitution affecting the Judiciary. An analysis of these recommendations is under scrutiny in this Ministry and our views are being communicated separately.

4 With regard to (c), this Ministry suggests the following points for consideration:—

- (i) *Articles 61 and 62.*—We had sent a note to the Constituent Assembly suggesting the inclusion of specific provision for Ministers of State and their salaries. On the other hand, if Ministers

of State are to be regarded as belonging to the "Council of Ministers" (as they presumably ought) no separate provision for them would seem to be necessary.

Nor does any special provision seem necessary for Deputy Ministers.

The only point is regarding their disqualification on the ground of acceptance of an 'office of profit' (article 88 of the draft Constitution); but this is a matter which can be left to the Union Parliament—*e.g.* to declare that the appointment of a Minister of State or a Deputy Minister is not an office of profit for purposes of disqualification.

- (ii) *Article 135(3)*.—The emoluments and allowances of Governors are to be determined by the Legislature of the State. In the interests of uniformity, it seems desirable that this power should be vested instead in the Union Parliament. The proposed amendment would be all the more necessary if the Assembly decides to leave the appointment of Governors to nomination by the President acting on advice, a view which is likely to be pressed in the Assembly.
- (iii) *Article 136*.—The Governor is required to make and subscribe an affirmation or oath in the presence of the members of the Legislature of the State. It would be preferable, on the analogy of article 49 applicable to the case of the President, if Governors were required to make and subscribe an affirmation or oath before the Chief Justice of the State or, in the latter's absence, a judge of the High Court of the State.
- (iv) *Article 191(1) (a)*.—The words "Assam and Orissa" should be inserted after "Nagpur" and the words "and the Chief Court in Oudh" should be omitted.

5. The delay in communicating these further comments is greatly regretted.

MEMORANDUM FROM THE MINISTRY OF HOME AFFAIRS ON THE PROVISIONS IN THE DRAFT CONSTITUTION RELATING TO THE JUDICIARY.

The Chief Justice of the Federal Court and the Chief Justices of the Provincial High Courts submitted a joint memorandum to the Hon'ble the Home Minister and to the Constituent Assembly incorporating their views on the provisions of the Draft Constitution dealing with the Supreme Court and the High Courts of States. This memorandum has been considered by the Drafting Committee and a joint meeting of the Union and Provincial Constitution Committees, and some of the recommendations of the Chief Justices have been accepted. Those that have not been accepted have been subjected to a careful scrutiny in the Ministry of Home Affairs and the view of the Ministry is that on the points noted below a communication should be addressed to the appropriate committee of the Constituent Assembly asking them to take into consideration the views of Government:—

2. Under article 103(2) of the Draft Constitution, Judges of the Supreme Court are to hold office till they attain the age of 65 and, under article 193(1), Judges of High Courts are to hold office until they attain the age of 60 or such higher age not exceeding 65 as may be fixed in this behalf by a law of the Legislature of the State. The Chief Justices have suggested in their memorandum that the retiring age for High Court Judges should be 65 and that for Supreme Court Judges 68. The view of the Home Ministry is that the normal age for retirement should be 60 for High Court Judges and 65 for Supreme Court Judges, but the Constitution should provide that, in exceptional circumstances, the appointing authority may extend the service of an

individual Judge, in the case of High Courts not beyond the age of 63 and in the case of the Supreme Court not beyond the age of 68. Experience has shown that most High Court Judges are well past the peak of their usefulness by the time they attain the age of 60 and an automatic extension of the age limit would not be in the public interest. Where, however, an individual Judge shows exceptional talent and vitality, the President may extend his service for a maximum period of three years. Such cases, however, are likely to be very few. There is also another objection to the provision in the Draft Constitution. As it leaves it to the Legislatures of States to decide whether the age limit should be extended in the case of all Judges, there would be lack of uniformity. This would be undesirable in any case and would be particularly inconvenient as it would render difficult the transfer of Judges from one High Court to another.

3. Article 196 of the Draft Constitution lays down that no person who has held office as a Judge, Additional Judge or a temporary Judge of the High Court shall plead in any Court or appear before any authority within the territory of India. The Chief Justices in their memorandum have pointed out that the enforcement of the ban in the case of Additional or temporary Judges would lead to a not very satisfactory result and would prevent recruitment from the bar to these posts. No doubt a District Judge could be appointed to be an Additional or Temporary Judge whenever it is found necessary to appoint such Judges but such appointments might not always be satisfactory and by giving some sort of a claim for permanent vacancies, give rise to difficulties in recruitment from the bar. The Chief Justices are also of the opinion that the scope of the existing disability should not be enlarged without a compensating increase in the scale of pension and a higher age-limit for superannuation.

The position at present is that persons appointed permanently to a High Court give an undertaking that they will not practice before any court within the jurisdiction of that High Court whereas persons employed as Acting or Additional Judges are not required to give any such undertaking. The view of the Home Ministry is that this limitation should not be extended in scope. From experience, it is in a position fully to endorse the views of the Chief Justices that to impose a ban on practice on Acting or Additional Judges would make recruitment from the bar exceedingly difficult.

4. Article 197 of the Draft Constitution provides that the salaries and allowances and rights in respect of leave, pension, etc. of High Court Judges shall be fixed by or under a law made by the States Legislature. The Home Ministry considers that it is most desirable that there should be uniformity in this respect and that the matters specified in Section 197 should be settled, not by State legislation, but by legislation in the Union Parliament.

5. Article 197 read with Part IV of the Second Schedule provides that while the existing emoluments and conditions of service of High Court Judges shall be preserved in the transition period, these may be amended by State legislation subject to the qualification that the salary of a Chief Justice shall not be less than Rs. 4,000 and that of a Puisne Judge less than Rs. 3,500. On the consideration of the Chief Justices' memorandum, the Special Committee has agreed to provide that the existing Judges in the High Courts should continue to get the same salaries as they were drawing immediately before the commencement of the constitution. In regard to Supreme Court Judges, the effect of articles 104 and 308(1) read with Part IV of the Second Schedule is the same as in the case of High Court Judges, namely, that the salaries and conditions of service may be varied by Union legislation. The Special Committee have not agreed to extend to Supreme Court Judges the privilege which they are prepared to extend to High Court Judges, namely, to preserve the

rights of Federal Judges on the date the constitution comes into force. The Home Ministry considers that there is no reason to differentiate between the High Courts and the Federal Court in this matter of salaries and considers that the salaries of all existing Judges both of the Federal Court and the Provincial High Courts should be guaranteed by constitution. The Home Ministry is prepared, however, to make it a condition of all appointments made after the 1st November 1948 that the salaries will be subject to such changes as may be made by the appropriate legislative authority under the new constitution.

In regard to other conditions of service also, the Home Ministry considers that the existing rights should be preserved by the Constitution except in the case of appointments made after the 1st November 1948. Any variation either in salaries or other conditions of service of existing High Court Judges would not only not have any appreciable financial effect but would be unfair and create discontent and consequently would not be in the public interest.

It is not understood why, while the Constitution should provide a minimum salary for High Court Judges, it should not do for Supreme Court Judges. The Home Ministry considers that a provision for a minimum salary for Supreme Court Judges should also be made. It accepts the figures mentioned in Section 10 of Part IV of the Second Schedule to the Draft Constitution.

LETTER FROM THE MINISTRY OF INDUSTRY AND SUPPLY, No. MI-21(105)/48, DATED 5TH OCTOBER, 1948.

Article 24(2).—It is considered that the Constitution should specifically provide for the payment of "reasonable" compensation when property is acquired for public purposes. The Government of India Resolution No I(3)-44(13)/48 dated the 6th April 1948, in which Government's industrial policy was announced, declares that in the event of acquisition "the fundamental rights guaranteed by the Constitution will be observed and compensation will be awarded on a fair and equitable basis". The draft Constitution recognises the right to compensation, but a guarantee of "reasonable" compensation should, it is felt, be also explicitly declared.

Articles 217 & 233 (1).—The redraft suggested by Shri Alladi Krishnaswami Ayyar in the Appendix seems preferable.

Articles 226 & 228.—This Ministry is in agreement with the views of Shri Alladi Krishnaswami Ayyar as given in the Appendix.

Article 244.—In (a), the word "import" as applied to the movement of goods from one State into another is unhappy and inappropriate. The normal significance of "import" is "the bringing in" from another country across a customs frontier and the use of the word in the present context might imply that the States in the Union of India are or are intended to be self-contained economic units.

Part (b) of this article is open to serious objection on principle and might be deleted altogether. It is not possible to foresee circumstances in which the freedom of trade, commerce or intercourse with a State will need to be interfered with by that State in the public interests, unless it be on the basis of discrimination between the residents of one State and another; and this would be wholly contrary to the spirit of the Constitution.

Article 250.—It is suggested that taxes on the sale, turnover or purchase of goods be included in Part (1) of this Article. The proposal to unify the levy and collection of sales tax has met with considerable support in various quarters and the following resolution was passed by the Industries Conference convened by the Government of India in December, 1947:

"This Conference recommends that the following suggestions be considered by the Central Government in consultation with the Provinces:

- (a) that raw materials of vital importance to industry like coal, steel, cement and cotton should be exempt from the Sales Tax.
- (b) that the tax on another industrial raw materials should be low and at uniform rates;
- (c) that taxation of the same material more than once should be avoided; and
- (d) that the policies of Provincial and State Governments regarding the levy of Sales Tax should be co-ordinated."

Article 254.—The propriety of assigning a portion of the Export Duty on jute and jute products to the provinces in which jute is grown is doubtful. By the same token, the provinces concerned may claim a share in the Export Duty on manganese, which, as a raw material, is on a par with raw jute in this matter; or on cotton cloth. The bulk of the jute products exported from India are fabricated from raw jute not grown in the country and there is thus less of a case than ever before for assigning to a Province a portion of the Export Duty on jute products on the basis of the jute acreage in that Province.

This article, therefore, needs careful consideration.

Article 306.—In part (a), spare parts of mechanically propelled vehicles may be deleted; though these are included in the Essential Supplies (Temporary Powers) Act, 1947, there is now no control on these goods and it seems improbable that the need for control by the Centre will arise again.

UNION LIST, SEVENTH SCHEDULE.

Items 5 and 64.—The scope of the powers the Union Government may exercise under item 5 is not clear; would they, for example, extend to every aspect of the industries specified by law, irrespective of whether any of these aspects is covered by the State List? There is also an overlap between items 5 and 64 and it is suggested that the two be amalgamated to read as follows:—

"The regulation of industries, where such regulation under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest."

The word "necessary" has been included above to bring out the compelling need of Union control for example in the event of war.—

For effective implementation by the Union Government of the industrial policy announced by the Government of India on the 6th April 1948, and for other reasons, it is necessary to invest the Union Government with certain powers over trade and commerce in respect of and the production, supply, price and distribution of the goods produced by the industries to be brought under Central regulation and certain other goods such as wholly imported articles or agricultural products. The following additional item is, therefore, suggested:

"Regulation of trade and commerce in and of the production, supply, price and distribution—

- (a) of goods which are the products of the industries whose regulation under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest,
- (b) of any other goods whose regulation similarly is declared by Parliament by law to be necessary or expedient in the public interest."

The foregoing would necessitate suitable amendments in items 32, 33 and 36 of the State List.

Item 26.—The phrase "Government of India" may be substituted by "Union Government". It would also be preferable if this item came immediately after item 17 (trade and commerce with foreign countries).

Item 43.—The principles on which compensation is to be determined is in the Concurrent List (item 35) and unless Central Legislation is enacted, it may happen that the acquisition or requisitioning of property for the purposes of the Union will, in so far as compensation is concerned, have to be dealt with under a number of different State laws. This would seem to be undesirable; besides, the principles on which compensation shall be assessed, whether the acquisition etc. is for the purposes of the Union or a State, should be uniform throughout the country. Accordingly, it is suggested that item 35, List III, should be brought into the Union List and item 43, List I, suitably amended.

Item 58.—The term "for the purposes of the Union" requires clarification. Does it mean "for the purposes which the Union is competent to legislate upon" or would it include anything which is of interest or benefit to the Union (country) as a whole? On a narrow interpretation, the powers which the Union Government will enjoy are regarded as inadequate.

Item 64.—To be deleted; see comments above.

Item 74.—The words "the Development of" may be omitted to give more comprehensive scope to the entry.

Item 76.—The words "manufacture and distribution" at the two places at which they occur may be substituted by "production, supply, price and distribution".

STATE LIST, SEVENTH SCHEDULE

Item 9.—This will need amendment in the light of the comments above on item 43, List I.

Items 32, 33, 36, and 37.—These will need amendment in the light of the comments under items 5 and 64, List I. Item 33 will need further amendment if the view expressed earlier on Article 244(b) is accepted.

Item 58.—If the view expressed in this letter (under Article 250) on sales tax is accepted, this item must be deleted.

Item 62.—The word "luxuries" is vague; it is suggested that the words "taxes on luxuries, including" be deleted.

CONCURRENT LIST, SEVENTH SCHEDULE

Item 35.—As already stated, this may be placed in the Union List.

LETTER FROM THE MINISTRY OF INFORMATION & BROADCASTING, No. 20/4/46-P
DATED THE 29TH JULY, 1948.

I am directed to invite your attention to item 32 of List III of the Seventh Schedule to the Draft Constitution of India and to say that the Government of India consider that the subject "Sanctioning of cinematograph films for public exhibition" should be transferred to List I of the Schedule.

2. At present, the powers under the Cinematograph Act are exercised by the Provincial Governments and censoring of films for public exhibition in India is a Provincial responsibility. But it is becoming increasingly clear that a decentralised system of censorship is unsatisfactory not only from the point of view of producers and importers of films and the public but is contrary to the interests of public policy. Under the present arrangement there is more than one Board constituted by different Provincial Governments and the standards and principles of censorship vary from Board to Board. Films passed by one Board are uncertified in another Province and films refused certification by a Board are passed by another. Moreover, the motion picture film has developed from being just a means of entertainment into a medium

conveying ideas and impressions capable of influencing public opinion in the moral, social and political field. It is, therefore, imperative that the films should be examined with the policy of the State in various matters in mind and it is not possible to do this unless censorship is centralized. Similarly, it is desirable to achieve co-ordination between the principles and standards of censorship in the Indian States and those applicable to the Provinces and such co-ordination can only be achieved by a centralised censorship authority.

8. It is considered that sanctioning of cinematograph films for public exhibition should be the function of the Central Government. The Provincial Governments have been consulted on this point and the trend of opinion is in favour of centralisation of censorship. It is proposed to promote legislation to enable the Central Government to set up a Central Board of Censors in place of the present Provincial Boards. For the proper discharge of the functions of censorship by the Central Government, it is necessary for them to have exclusive legislative and executive authority in regard to the subject, "Sanctioning of cinematograph films for public exhibition." I am, therefore, to request that necessary steps be taken to transfer this subject from the Concurrent List to the Union List in the Seventh Schedule of the Draft Constitution of India.

LETTER FROM THE MINISTRY OF LABOUR NO. G-7, DATED THE 20TH MAY, 1948.

I am directed to invite attention to the following items in the Seventh Schedule to the Draft Constitution of India which relate specifically to Labour:—

List I. (Union List)

57. Union agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

59. Industrial disputes concerning Union employees.

65. Regulation of labour and safety in mines and oilfields.

List II. (State List)

41. Relief of the poor; unemployment.

List III. (Concurrent List)

25. Factories.

26. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.

27. Unemployment and social insurance.

28. Trade Union; industrial and labour disputes.

There are, of course, other items, e.g., item 13 of the Union List, with which the Ministry of Labour are also concerned, but the items listed above indicate how responsibility in labour matters is shared between the Centre and the Provinces.

The position in regard to employment does not appear to be clear. Item 41 of the State List refers to "unemployment", while item 27 of the Concurrent List refers to unemployment insurance and item 26 to welfare of labour and conditions of labour. "Employment" comes within the scope of "conditions of labour" and "unemployment insurance" also presupposes some control over employment. The point at issue is whether the Centre would be in a position

to regulate employment and whether it would have the power to co-ordinate policy in regard to the functioning of employment exchanges in the country. It seems that in view of the entry in item 41 of the State List, employment policy including employment exchanges would fall within the State List and not the Concurrent List. This would not be satisfactory. In accordance with the I. & S. Ministry Resolution of the 6th April 1948, dealing with industrial policy, which has been accepted by the Legislature, the Centre will assume control over practically all the major industries of the country by a declaration of the Parliament as envisaged in item 64 of the Union List. In the circumstances, it seems rather illogical to leave the Provinces in full control of employment. At a recent Conference of Labour Ministers held in New Delhi, it was agreed that "employment" should be included in the Concurrent List.

I am also to point out that there appears to be some overlapping between item 26 and item 27 of the Concurrent List. Item 27 relates to "Unemployment and social insurance", whereas item 26 includes "provident funds; employers' liability and workmen's compensation; health insurance including invalidity pensions; and old age pensions". Health insurance is a form of social insurance (item 26). Apart from this overlapping, the arrangement of subjects in items 26 and 27 of the Concurrent List does not appear to be satisfactory. The modern tendency is to use the comprehensive term "social security" to cover unemployment insurance, social insurance, provident fund, invalidity pensions, old age pensions, employers' liability and workmen's compensation. To split up these subjects into different items in the Concurrent List would not be desirable.

In the light of what has been stated above, it is suggested that:

- (1) in item 41 of the State List (List II) "unemployment" may be deleted. The item will then read: "41. Relief of the poor"
- (2) in place of items 26 and 27 in the Concurrent List, the following may be substituted; "Welfare of labour including provident funds; pensions and all forms of social insurance, conditions of labour; employment and unemployment"

I am to request that the above proposals which have the approval of the Hon'ble Minister for Labour may be placed before the Drafting Committee for early consideration.

LETTER FROM THE MINISTRY OF LAW NO. F. 18/48/R, DATED 25TH JUNE, 1949

With reference to your letter No. CA/21/Cons/48-III, dated the 14th June, 1948, on the above subject, I am directed to forward for the consideration of the Constituent Assembly the following suggestions for amendment to the draft Constitution of India:—

(1) Entry 9 in the State List in the draft Constitution may be amended to include "requisitioning of Land". In the absence of a legislative entry covering this subject in the present Constitution, it recently became necessary for the Governor-General to issue a notification under section 104 of the Government of India Act, 1935, empowering the Provincial Legislatures to make laws on the subject. A copy of the notification is enclosed. A reference is also invited to entry 43 of the Union List in the draft Constitution which covers the requisitioning as well as the acquisition of property for the purposes of the Union.

(2) Para. 8, Part III of the Second Schedule to the draft Constitution refers to "such salaries and allowances as were payable * * * to the Deputy President of the Council of State * * *". As the Council of State never had a Deputy President and no provision was made for the payment of salary to

such an officer, specific provision has to be made for the salary and allowances of the Deputy Chairman of the Council of States.

(Published in the Gazette of India, Extraordinary, on 25th October 1947).

Government of India, Ministry of Law, Notification No. F.311/47-C & G dated the 21st October, 1947.

In exercise of the powers conferred by Section 104 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947, the Governor-General hereby empowers all Provincial Legislatures to enact laws with respect to the requisitioning of land, being a matter not enumerated in any of the Lists in the Seventh Schedule to the said Act.

MEMORANDUM CONTAINING SUGGESTIONS FROM THE MINISTRY OF WORKS, MINES AND POWER FORWARDED WITH MR. GOKHALE'S LETTER NO. G-30, DATED 15TH OCTOBER, 1948.

Article 24.—The word "equitable" should be added before the word "compensation". [Other possible alternatives are "fair" or "just".]

Explanatory Note.—It is not sufficient to merely provide for the payment of compensation where property is taken over. Legal opinion would appear to favour the interpretation that, if article 24 is to stand in its present form in the Draft Constitution, the payment of even purely nominal compensation, e.g. one anna, would constitute legal compliance with the provisions of the Article. The Article as provided would, therefore, serve no useful purpose, and would not prevent expropriatory measures. Therefore, it is considered essential to insert the word "equitable" (or "fair", or "just") before the word "compensation", in order to ensure that the fundamental rights guaranteed by the Constitution in respect of property are implemented by all Governments.

The Congress manifesto speaks of "equitable" compensation for acquisition of any property. The word "equitable" should find a place in Article 24 of the Constitution. The corresponding wording in the Australian Constitution Act is "just".

Union List.

Item 9.—This should read as follows:—

"Atomic energy and mineral resources essential to its production; strategic or key minerals essential for the defence of India".

Explanatory Note.—The necessity for this change arises out of the need for Central control of strategic or key minerals, essential for the defence of India, which is equally important as Central control of minerals essential for the production of atomic energy. The power provided under item 66 of the Union List, is not considered adequate. The Centre should have absolute power of control and development of strategic and key minerals, as also minerals essential for the production of atomic energy.

Items 63 and 66

Item 63 should read:—

"Regulation of oilfields and development of mineral oil resources: petroleum and petroleum products and other liquids and substances declared by Parliament by law to be dangerously inflammable".

Item 66.—The words “and oilfields” occurring after the words “Regulation of mines” should be omitted. This item should, therefore, read:—

“Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.”

Explanatory Note.—1. Petroleum and Petroleum products are of vital importance to the whole country, and no individual Province or State can be expected to deal adequately with this subject. According to the Draft item 68 as it stands at present, the Centre will have power to legislate only as regards Possession, Storage and Transport. It is, however, very necessary that Petroleum and Petroleum products should be entirely within the Union List for all purposes including Production, Distribution, Sale etc., and not merely for Possession, Storage and Transport. Further, though Provinces may be allowed to retain certain powers regarding mines and mineral development in general, it is essential that oilfields and mineral oil development should be made exclusively a Union subject. Item 68 will, therefore, have to be redrafted as proposed.

2. Consequently, Item 28 of the State List will have to be amended by omitting the words “and oil fields”.

3. Also, as regulation of oilfields is now included in the redrafted item 68, the words “and oilfields” will have to be omitted from Item 66. The words “and oilfields” will also not be strictly necessary now in Item 65. It is, however, considered that there would be no harm in letting them stand.

Item 74.—This should be substituted by:—

“Development of inter-state rivers and river valleys for purposes of flood control, irrigation, navigation and hydro-electric power”.

Explanatory Note.—The word “waterways” emphasises the navigational aspect and might restrict the scope of Central control only to waterways, without giving to the Centre any control on the river valleys as a whole. The redraft of item 74 is very essential for multi-purpose river valley development.

State List

Item 28.—Omit the words, “and oilfields”.

Explanatory Note.—Please see explanatory note above in connection with Items 68, and 66 of the Union List.

Items 58 and 60.

Item 58.—This should read as follows:—

“Taxes on the sale, turnover or purchase of goods including taxes in lieu thereof on the use or consumption within the State on sale, turnover or purchase, subject to any limitations imposed by Parliament by law relating to the development of inter-state rivers and river-valleys for purposes of flood control, irrigation, navigation and hydro-electric power; taxes on advertisements.”

Item 60.—This should read as follows:—

“Taxes on the consumption or sale of electricity, subject to any limitations imposed by Parliament by law”.

Explanatory Note.—This Ministry feel that the amendments now proposed, are necessary to prevent pernicious taxation by the Provinces on multi-purposes river valley or electrical development projects sponsored by the Central Government. For instance, the Damodar Valley Corporation, may well be handicapped if Bihar and/or West Bengal impose unreasonable taxes on the sale of water for irrigation and the sale or consumption of electricity for industrial or other purposes.

Note: The Ministries of Commerce, External Affairs and Commonwealth Relations, Food, and Relief and Rehabilitation have no comments. Other Ministries have not replied.

MEMORANDUM REPRESENTING THE VIEWS OF THE FEDERAL COURT AND OF THE CHIEF JUSTICES REPRESENTING ALL THE PROVINCIAL HIGH COURTS OF THE UNION OF INDIA.

As printed copies of the Draft Constitution of India were circulated to the Federal Court and the High Courts for eliciting their views, it was thought desirable, in view of the great and fundamental importance of the document, to convene a conference of the Judges of the Federal Court and the Chief Justices of the several High Courts so that there might be a full discussion of their views and formulation of their collective opinion on the subject. The conference was accordingly held on the 26th and 27th March 1948. All the Chief Justices were present excepting those of the Calcutta and the Patna High Courts which were represented by senior Puisne Judges authorised to speak on behalf of those Courts. As it was felt that matters of general policy except in so far as they affected the Judiciary do not primarily concern the Courts, the discussion centred largely round provisions relating to the Judiciary such as those concerning the jurisdiction and powers of the superior courts, the appointment and removal of the Judges, the age limit for their retirement, their salaries and status etc. The memorandum which I have been authorised to sign on behalf of all the members of the conference and which I am sending herewith represents the unanimous view of all (except when otherwise expressly mentioned).

We have assumed that it is recognised on all hands that the independence and integrity of the Judiciary in a democratic system of government is of the highest importance and interest not only to the Judges but to the citizens at large who may have to seek redress in the last resort in Courts of Law against any illegal acts or the high-handed exercise of power by the executive. Thanks to the system of administration of justice established by the British in this country, the judiciary until now has, in the main, played an independent role in protecting the rights of the individual citizen against encroachment and invasion by the executive power. Unfortunately, however, a tendency has, of late, been noticeable to detract from the status and dignity of the judiciary and to whittle down their powers, rights and authority which if unchecked would be most unfortunate. While we recognise that the draft constitution proposes to liberalise in some respects the existing safeguards against executive interference and to enlarge their present powers, it is felt that further provision should be made in the same direction in order effectively to counteract the aforesaid tendency which is bound to become more pronounced as more power passes into the hands of political parties who will control and dominate the governmental machinery in the years to come. In making the following proposals and suggestions, the paramount importance of securing the fearless functioning of an independent, incorruptible and efficient judiciary has been steadily kept in view.

Appointment of Judges—High Courts

The relevant provision is to be found in s.193(1). It is provided that the President shall make the appointment after consultation with the Chief Justice of India, the Governor of the State and (in the case of a Puisne Judge) the Chief Justice of the High Court of the State. Discussions at the conference revealed that the procedure, followed after 15th August 1947 does not in practice always ensure appointment being made purely on merit without political, communal and party considerations being imported into the matter. Though it is acknowledged readily enough in principle that such considerations should not influence the appointment, this is not always kept in view in working the procedure in practice. The Chief Justice sends his recommendation to the Premier who consults his Home Minister. The recommendation of the Premier is then forwarded to the Home Ministry at the Centre without

even sending the recommendation of the Chief Justice along with it, the prescribed procedure being apparently understood as not rendering it obligatory for the Premier to do so. Cases might conceivably occur where suggestions might be conveyed to the Chief Justice to recommend certain lawyers either because they were expected to be "co-operative" from the Ministry's point of view or because in some cases the Ministry want to get rid of them as they might be inconvenient in the political sphere. It appears that a certain Provincial Government has issued directions that recommendations of the Chief Justice instead of being sent to the Premier should be sent to the Chief Secretary, who, in some instances has asked his Assistant Secretary to correspond further with the High Court in the matter. Thus, there seems to be a growing tendency to treat the High Court as a part of the Home Department of the Province. With a view to check this tendency which is bound to undermine the position and dignity of the High Courts and lower them in the estimation of the public, the Judges assembled in conference were unanimously of opinion that a procedure on the following lines may be laid down for the appointment of High Court Judges:—

The Chief Justice should send his recommendation in that behalf directly to the President. After consultation with the Governor the President should make the appointment with the concurrence of the Chief Justice of India. This procedure would obviate the need for the Chief Justice of the High Court discussing the matter with the Premier and his Home Minister and "justifying" his recommendations before them. It would also ensure the recommendation of the Chief Justice of the High Court being always placed before the appointing authority, namely, the President. The necessity for obtaining the "concurrence" of the Chief Justice of India would provide a safeguard against political and party pressure at the highest level being brought to bear in the matter. It need hardly be pointed out, in this connection, that under the system of responsible government envisaged by the proposed constitution, the President who is to make the appointment will be the constitutional head of the executive guided by the advice of his Council of Ministers who will of necessity be drawn from the political party for the time being in power, and there may thus be some risk of political and party considerations influencing the appointment of the highest judicial officers in the country which, under the existing constitution, has so far remained on the whole free from such influences, the Governor-General and the Governors not being elected nor owing their appointment to political parties in this country. It is therefore suggested that Article 193(1) may be worded in the following or other suitable manner: "Every Judge of the High Court shall be appointed by the President by a warrant under his hand and seal on the recommendation of the Chief Justice of the High Court after consultation with the Governor of the State and with the concurrence of the Chief Justice of India.....".

We do not think it necessary to make any provision in the constitution for the possibility of the Chief Justice of India refusing to concur in an appointment proposed by the President. Both are officers of the highest responsibility and so far no case of such refusal has arisen although a convention now exists that such appointments should be made after referring the matter to the Chief Justice of India and obtaining his concurrence. If perchance such a situation were ever to arise it could of course be met by the President making a different proposal, and no express provision need, it seems to us, be made in that behalf.

The foregoing applies *mutatis mutandis* to the appointment of the Judges of the Supreme Court, and Article 103(2) may also be suitably modified. In this connection it is not appreciated why a constitutional obligation should be cast on the President to consult any Judge or Judges of the Supreme Court or of the High Courts in the States before appointing a Judge of the Supreme

Court. There is nothing to prevent the President from consulting them when ever he deems it necessary to do so.

The same principle of independence of the Judiciary and its freedom from the control of the executive in the administration of justice requires not merely that the appointment of Judges should be free from party or political interference but also that the jurisdiction of the High Courts, the right to fix the salary, pension, leave and allowances of the Judges should be taken out of the purview of the legislative power of the States and should be made central subjects. The obvious desirability of maintaining uniformity in the position, status and privileges of the Judges of the High Courts in the States also reinforces our recommendation. If, however, it could not, for any reason, be accepted, legislation in respect of the above matters should be reserved for the President's approval. In this connection we should like to invite attention to para. 17(b) of the Instrument of Instructions issued to the Governors on 8th March 1937 wherein it was provided that the consent of the Governor-General should be required in respect of "any bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Act designed to fill". The alternative suggestion we have made above will ensure the continuance of this wholesome safeguard. If either of these recommendations is accepted, the following provisions will have to be suitably modified:

Articles 191(1)(c) and proviso, 193, 197, 201, 206, 208, 220(1), 221(2) and (3) and entries (2) and (3) of List II of the Seventh Schedule.

The position of the subordinate Judiciary in relation to the Provincial Executive was also considered at the conference, and it was regarded as essential that the members of that service should not be exposed to the extraneous influence of members of the party in power. Under the existing constitution the appointment, posting and promotion of District Judges are in the hands of the Governor who acts on the advice of his Council of Ministers. Appointments to other posts in the service are also made by the Governor from persons included in the list of eligible candidates made by the Provincial Public Service Commission, while the posting and promotion of and grant of leave to these officers are left in the hands of the High Court [vide s. 254(1) and 255(2) and (3) of the Government of India Act, 1935]. There are no corresponding provisions in the draft constitution. So long as the subordinate judiciary, including the District Judges, have to depend on the Provincial Executive for their appointment, posting, promotion and leave, they cannot remain entirely free from the influence of members of the party in power and cannot be expected to act impartially and independently in the discharge of their duties. It is therefore recommended that provision be made placing exclusively in the hands of the High Courts the power of appointment and dismissal, posting, promotion and grant of leave in respect of the entire subordinate judiciary including the District Judges.

As regards the staff attached to the Supreme Court and the High Courts, recruitment and conditions of service are, under the present constitution, in the hands of the Chief Justice of India and the Provincial Chief Justices respectively—vide s. 242(4) read with s. 241. As it is essential that the said officers should continue to have such power, it is suggested that a similar provision should be included in the new constitution.

Age of retirement and right to practise after retirement.

These subjects were discussed at considerable length at the conference and they were regarded as being to some extent interdependent.

The practice in recent times has been when a member of the Bar is appointed, a High Court Judge, he has to give an undertaking not to practise after retirement in the High Court to which he is appointed and in the courts subordinate thereto but he is left free to practise in any other court. It is not clear whether it is intended by Art. 196 to bar such right to practise of Judges who have retired before the commencement of the new constitution. It need scarcely be pointed out that it would cause great hardship if such Judges were suddenly deprived of a right which they have hitherto enjoyed, and the conference was of opinion that, in fairness, no such enlarged disability should now be imposed on them. If such Judges are not intended to be affected, that should be made clear and Art. 196 should be suitably amended.

As to the desirability of the prohibition against practice in other cases the position is this. The prohibition is apparently based on the English tradition. In England, however, there is no practice of appointing temporary or additional Judges. The enforcement of the ban in the case of additional or temporary judges would lead to the not very satisfactory result of preventing recruitment from the Bar to these posts. No doubt a District Judge could be appointed to be an additional or temporary judge whenever it is found necessary to appoint such judges, but such appointment might lead to some sort of claim being put forward by the District Judges so appointed when permanent vacancies occur, and such claims might give rise to difficulties in recruitment from the Bar to those vacancies. Apart from this, the Judges were of opinion that the scope of the existing disability should not be enlarged without a compensatory increase in the scale of pension and a higher age limit for superannuation. It was pointed out that in England a pension of a High Court Judge (£3,500 p.a.) was fixed at 70 per cent of the salary (£5,000 p.a.). As Judges of the Supreme Court and the High Courts should, after their retirement, be enabled to live in comfort and dignity consistently with their position and status as former Judges of those Courts, it was felt that the scale of pensions should be raised in this country also to more or less the same proportion, especially as it is proposed to enlarge the scope of the disability to practise after retirement. Some of the Judges also expressed the view that the age of retirement of High Court Judges should be raised to 65. Some of the Judges, however, were of the opinion that owing to climate conditions and other factors peculiar to India the age limit for High Court Judges should not be raised beyond 62. All, however, agreed that the age limit for retirement should be fixed in the constitution itself and should not be left to be determined by the State Legislatures. It was also pointed out that Judges of the Supreme Court had ordinarily to be selected from among the Chief Justices and senior Puisne Judges of the High Courts, or from the leading members of the Bar. The reduced scale of salaries fixed in the draft constitution, it was felt, was too low to attract the latter. Nor would the Chief Justice of a High Court or a senior Puisne Judge with a normal expectancy of promotion to the Chief Justiceship have a sufficient inducement to accept a Puisne Judgeship in the Supreme Court if the age limit for retirement of the Supreme Court and the High Court Judges is the same. The increase of Rs. 500 in the salary, which after deduction of taxes leaves only about Rs. 250 p.m. would be wholly insufficient to off-set the increased expenditure entailed in setting up a new household in Delhi while continuing, as in most cases it would be found necessary for domestic reasons to continue, his establishment in his own place. Even under the present scale of salaries it is by no means uncommon for a Judge of the Federal Court to find himself, month for month, financially worse off than he was while a Judge of the High Court. The honour and prestige associated with a seat on the Supreme Court Bench have their limits as an attraction, and it is the prospect of continuing in service for a period of five more years that chiefly attracts him to the new office. As this attraction would disappear if the age of superannuation for High Court Judges also is raised to 65, Judges

for the Supreme Court will have to be selected from among junior and comparatively inexperienced Judges of the High Court, and a Court thus manned would hardly command the respect and confidence which the Supreme Court in the land ought to inspire. On a careful balancing of these considerations we have come to the unanimous conclusion that:

- (1) It is essential that a difference of 3 to 5 years should be maintained between the retiring age of High Court Judges and that of Supreme Court Judges.
- (2) Age limit for retirement should be raised to 65 for High Court Judges and to 68 years for Supreme Court Judges.
- (3) Only if this is done and the scale of pension is raised so as to bear the same proportion to their salary as in England, but not otherwise, should total prohibition against practice after retirement be enforced.
- (4) Such prohibition should not be enforced against additional and temporary Judges.

In this connection, we would invite attention to para. 12 of Part IV of the Second Schedule which seeks to preserve to the Judges of the Supreme Court and of the High Courts the rights in respect of leave of absence and pension to which they are entitled at present. The pension is now fixed in sterling and is being paid according to the rate of exchange which has been fixed by the Secretary of State. It is suggested that the pension payable to the Judges under the new constitution should also be fixed in rupees by the constitution itself. As regards leave of absence, the Judges of the Federal Court are entitled under the present rules to leave of absence for six months on medical certificate once only during the whole period of their tenure of office and that too on a very small allowance. This was apparently considered sufficient as the Federal Court, under the existing constitution, did not have much work to do. Under the new constitution, however, the Supreme Court will have many more cases coming to it and will in consequence have to work during the greater part of the year. The rights in respect of leave of absence and allowances during the period of such leave for Judges of the Supreme Court should therefore be fixed on a more liberal scale. It is suggested that the rules in regard to these matters applicable to High Court Judges should be made applicable to the Judges of the Supreme Court also and para. 12 (1) amended accordingly. As regards provisions for leave of absence and allowances and salary to be paid during that period as and when an Order in Council or a law is intended to be made, we trust that we shall be consulted. We should also like to point out that, as a result of the definition of "actual service" in para. 13 (b) (ii) of Part IV of the Second Schedule, the salary which is declared in para. 10 to be payable to the Judges of the Supreme Court and of the High Courts "in respect of the time spent on actual service" would not include any pay for the period of absence on leave. This, we presume, could not have been intended. This provision should be suitably amended so as to make it clear that the right of the Judges to draw such allowances during periods of leave of absence as may be prescribed by any law or rules made in that behalf is not affected by anything contained in the constitution.

Salaries of Judges

As has been stated already, it is the unanimous view of the conference that the salary and allowances payable to the Judges of the High Courts as well as their rights in respect of leave and pension should not be liable to be interfered with by the Legislatures of the States concerned but should be made a central subject and included in List I of the Seventh Schedule.

In Article 197 relating to the salaries etc. of the Judges of the High Courts a constitutional guarantee is provided against reduction of the salary below the

amounts specified therein. It is suggested that a similar provision should, for the same reasons, be included in Article 104 relating to the salaries of the Judges of the Supreme Court.

According to the transitional provisions of the draft constitution (Article 80B and 310), the Judges of the Federal Court and of the High Courts of the Provinces holding office immediately before the date of the commencement of the constitution shall "become" the Judges of the Supreme Court and of the High Courts of the corresponding States and shall thereupon be entitled to the salaries, etc. as provided for in Article 104 and 197 respectively. In each of these Articles there is a proviso to the effect that neither the salary of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment. We take it that the word "appointment" as applied to the Judges holding office at the commencement of the Act refers back to their original appointment, as in their case there is no other appointment to which it could refer. If so, the provisos will operate to safeguard the salary and other rights of Judges holding office at the commencement of the new constitution. It is suggested that the position should be clarified by inserting in para. 10 of the Second Schedule a proviso to the effect that the salaries of Judges who continue to hold office by virtue of the provisions of Article 80B(1) and 310 shall continue to be governed by the same provisions which were applicable to them immediately before the commencement of the new constitution. Para. 12 of Part IV of the Second Schedule may also be suitably amended. It need hardly be pointed out that any reduction of salary in their case would not only be an act of grave injustice to them but also an unwarrantable breach of faith. As already stated, they have imposed upon themselves a disability to practise, after retirement, the only profession for which they had been trained, relying on the assurance contained in the provisions governing their salaries etc. in force at the time of their appointment, that such salary shall not be varied to their disadvantage after their appointment. Sections 201 and 221 of the Government of India Act 1935 contain express provisions to that effect. The Indian Independence Act 1947 (10 and 11 Geo VI Ch 13) in pursuance of which the new constitution is being framed repeats the assurance by declaring in s.10(2)(b) that the Judges appointed by His Majesty before the appointed day and continuing to serve as such after that date "shall be entitled to receive from the Government of the Dominion and Provinces * * * the same conditions of service as respects remuneration leave and pension * * * as that person was entitled to immediately before the appointed day". A further guarantee is also extended to these Judges by the communication to them of the telegram No. 2958-S dated 26th July 1947 from H. E. the Governor-General to the Governors of Provinces. It is not our purpose here to canvass the legal aspect of these assurances and safeguards given and repeated from time to time. sensible as we are that the Constituent Assembly as a sovereign body has the power under s.6(2) of the same Act of brushing aside all those statutory guarantees and safeguards as having no binding force. But is this power, so excellent to possess, to be unfairly used to nullify assurances solemnly given and acted upon. We cannot believe that such a thing is intended. There is no provision in the draft constitution for reducing the salaries drawn by the present holders of other high offices in the State, and we are unwilling to assume that Judges are intended to be the special targets for reduction of salaries. Indeed, so far from that appearing to be the case, the draft constitution itself provides similar guarantees to the Judges in Article 104 and 197—guarantees which cannot, however, be expected to be taken seriously if those given and reiterated in the past are now to be ignored.

An analysis of the pay of the present permanent Judges of the different High Courts in the Union of India shows that in the Lucknow and Nagpur High Courts, inclusive of the Chief Justice in each Court, there are 6 and 8

Judges respectively. The total of their salaries will be increased and not decreased if the figures applicable to the other High Court Judges, as mentioned in Part IV of the Second Schedule, are applied to them. In the remaining six High Courts, there are six Chief Justices and sixty-six Judges. In the Federal Court there is a Chief Justice and two Puisne Judges. If the salaries of all these Judges are reduced to the scale mentioned in Part IV of the Second Schedule, we find that the State would save about Rs. 250,000 (net) a year only. It is a matter for serious consideration whether in view of this small saving it is worth while breaking statutory assurances, creating general discontent and feeling of want of security in the highest Judicial service.

If it is thought that the provisions found in the Government of India Act 1935 and the Indian Independence Act 1947 are no longer binding because under the new constitution India is going to be a sovereign State, attention is invited to Article 270 of the draft constitution. The intended Constitution is being framed under the authority conferred by the Indian Independence Act 1947 and the proposed Act violates the assurances contained in section 10(2) of that very Act. It is a matter for consideration whether there should be any distinction between a statutory assurance given under section 10(2) of the Indian Independence Act 1947 and rights and obligations covered by Article 270 of the draft constitution.

It is therefore suggested that the salaries of the permanent Judges holding office immediately before the commencement of the new Act should not be reduced at all. If this suggestion is not accepted and the reduced salaries are not accepted by some of the Judges (who may retire, instead of continuing) they may claim (a) a proportionate pension for the period of service rendered, (b) compensation, and (c) relief against the undertaking given by them when they accepted the office of Judges. This position will have to be more seriously considered in the cases of European Judges who have continued to serve depending on the assurances held out in the Indian Independence Act and the telegram of the Governor-General mentioned above.

As regards the proposed reduction of the salaries (apart from the retrospective operation of the new scale), it is the unanimous view of the Judges assembled at the conference that the reduction proposed is not justified. The present salary of the High Court Judges was fixed over 70 years ago and has since remained unaltered. If it is remembered that the salary was fixed at Rs. 4,000 a month when there was no income-tax to pay and the purchasing power of the rupee was comparatively high, it will be realised that the position of the Judges was recognised to be *sui generis* as being one of great dignity and prestige, and they were expected to live in reasonable comfort maintaining their dignity and keeping themselves above temptation. Since then heavy taxes have been imposed which have substantially reduced the actual income, while the purchasing power of the rupee has steadily declined and wants of civilised life have multiplied, what used to be regarded as luxuries having become the necessities of life. In such circumstances, the Judges are already hard put to make both ends meet, and any cut in their salary is bound to affect adversely their standard of life and thus lower their dignity and status *vis-a-vis* the other sections of the community, which in the larger interests of the community itself should rather be avoided. It is also to be borne in mind in this connection that High Court Judges are normally to be recruited from the Bar and even now it is difficult, as those concerned with the selection of Judges for the High Courts and the Federal Court must know, to find and persuade suitable and distinguished members of the Bar, whose professional incomes are often considerably higher, to accept judgeships. Such members will be less attracted to the Bench if the salary were to be reduced. This would lead to a deterioration in the calibre and efficiency of the Judges, and the reputation and prestige of the highest

Court in the land will inevitably suffer. For all these reasons we would suggest that the proposal to reduce the salaries of Judges be dropped

Miscellaneous Remarks

Consistently with the general principles adumbrated in the foregoing we offer the following remarks on individual Articles in the draft constitution.

Article 49.—Provision may be made against the contingency of the Chief Justice of India not being available for administering the oath.

Article 50(3).—It is perhaps desirable to provide for the appointment of the investigating authority, as has been done in Article 187(3) relating to the impeachment of the Governor.

Articles 67(2) (a) and 150 (3) (a).—Persons having special knowledge or practical experience of law may perhaps also be included among the members to be nominated under these Articles.

Article 103 (1).—There appears to be no reason why the minimum number of Judges in the Supreme Court should be prescribed by the Constitution. The number may be left to be determined from time to time according to the volume of the work coming to the Court.

Articles 103 (3) and 193 (2).—It seems to us desirable to insert a provision in these Articles to the effect that no person should be appointed a Judge of the Supreme Court or of a High Court who has at any time accepted the post of a Minister in the Union of India or in a State. This is intended to prevent a person who has accepted office of a Minister from exercising his influence in order to become a Judge at any time. It is the unanimous view of the Judges that a member of the Indian Civil Service should not be a permanent Chief Justice of any High Court. Suitable provision should be made in this Article for this.

Article 103 (4).—We suggest that this should run on the same lines as Article 304 relating to the amendment of the Constitution, that is to say, the address should be supported by a majority of the total membership of both Houses of Parliament and by a majority of not less than two-thirds of the Members present and voting.

Article 103 (1).—It is suggested that the words "duly qualified for appointment as a Judge of the Supreme Court" may be inserted after the words "a Judge of the High Court" in clause (1) of this Article. We assume it is the intention that the Judge to be selected for serving in the Supreme Court should be qualified for appointment as a Judge of the Supreme Court. Every Judge of a High Court need not necessarily be so qualified—*cf.* Article 103 (3) (a) and 193 (2) (a). The qualifying words we have suggested above also occur in section 202 (2), which is the corresponding provision, in the present Constitution Act.

Articles 107 and 200.—It is not clear whether the person requested to sit and act as a Judge of the Supreme Court and of a High Court will be entitled to draw the salary of such Judge. Does the term "privileges" include the right to draw salary? The matter should be made clear. If such person is to be paid the salary fixed for the office, these Articles would enable the Chief Justice to circumvent the provisions for compulsory retirement. The matter would seem to require further consideration from this point of view.

Article 110 (3).—We think that the scope of an appeal under this Article should not extend to other than constitutional questions except with the leave of the Supreme Court. Otherwise the appellant in a civil appeal of petty value and in every criminal appeal involving a constitutional question would be enabled to agitate even pure questions of fact in the face of concurrent findings

of the courts below, a result which, we believe, could not have been intended. Under the corresponding provisions of the present Constitution Act [section 205(2)], leave of the Federal Court is necessary in such cases, and we consider that a similar limitation is necessary in the appellant's right to raise other grounds.

Article 110—Explanation.—Recently the Federal Court had occasion in *S. Kuppaswami Rao v. The King* to consider the meaning of the expression "final order" in s. 205 of the Government of India Act, 1935. The Constituent Assembly may consider what meaning they propose to give to the expression in the Act.

Article 111(2).—The last two lines appear to be somewhat involved. The substitution of "that a substantial question of a law as to the interpretation of this constitution has been wrongly decided" would perhaps make it simpler.

Article 198(2)(c).—Is it intended that the President after appointing a temporary Judge for a specified time should have the power of revoking the appointment? It seems to us that it is not desirable to confer on the President such a power of revocation. It is suggested that the clause may be omitted.

LETTER FROM THE CHAIRMAN, FEDERAL PUBLIC SERVICE COMMISSION,
No. F. 8/29/48-S, DATED THE 20TH MAY 1948

I have the honour to say that a Conference of the Chairmen of the Provincial Public Service Commissions and the Chairman and Members of the Federal Public Service Commission was held at New Delhi on the 8th instant to consider the provisions relating to Public Service Commissions made in the Draft Constitution of India prepared by the Drafting Committee. I now forward herewith the recommendations of the Conference with regard to some of those provisions; and request that they may be laid before the Constituent Assembly for such action as the Assembly is pleased to take with regard to them.

2. The provision in Clause 285(1) of the Draft Constitution for the appointment of the Chairman and Members of the Union Commission is analogous to that in Clause 124(1) for the appointment of the Auditor-General of India, and in Clause 103 and 193(1) in regard to the Judges of the Supreme Court and Judges of the High Courts in the States, in so far as the appointment of all the officers in question, is made by the President. In regard to the Chairman and Members of a State Commission, the appointment is made by the Governor of the State in his discretion. But in regard to the Judges, both of the Supreme Court and the High Courts in the States, the Draft Constitution further provides that the appointment will be by the President by warrant. This is presumably due to historical reasons and in order to invest the appointments with a certain degree of solemnity: and does not seem to constitute a material difference. The Conference do not, therefore, think it necessary to ask for any change in the matter of the appointment of the Chairman and Members of the Public Service Commissions.

3. In regard to dismissal, however, there is a material difference. The Auditor General [Clause 124 (1)] and Judges [Clause 103 (4) and Clause 193 (1) Proviso (b)] can only be removed by an order of the President passed after an address supported by not less than two-third of the members present and voting has been presented to the President by both Houses of Parliament; whereas provision for the termination of the appointment of a Member of the Union Commission is made by Regulation, which provides that the Governor-General may terminate the appointment on the expiry of six months' notice or at any

time without notice if he is satisfied that a Member is for any reason unable or unfit to continue to perform the duties of his office. The provision for the removal of a Member of a State Commission is analogous. The Conference feel that the necessity for maintaining the independence and integrity of office is the same in the case of Members of a Public Service Commission as in the case of the Auditor-General and Judges of the Supreme and the State High Courts. In the case of the former there is the further ground that on ceasing to hold office, legal disabilities are placed upon their further employment under the Government of India or the Government of a State [Clause 285(3)]. It would therefore, appear reasonable that their career should not be abruptly terminated and there should be adequate safeguards for their removal. The Conference, therefore, recommend that the provision for the termination of the services of a Member should be abrogated; and that provision should be made in the Constitution for the removal of the Chairman and Members of the Public Service Commissions similar to that provided for in the case of the Auditor-General and Judges.

4. The proviso to Clause 285(1) of the Draft Constitution provides that at least one half of the Members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least 10 years either under the Government of India or under the Government of a State. The Conference is of the opinion that in order to provide for the representation of all the interests involved, this proviso should now be amended so as to provide "one-third" in place of "one-half" occurring in the first line of the proviso.

5. Clause 285 (2)(a) of the Draft Constitution provides that regulations may be framed to determine the number of Members of the Commission, their tenure of office and conditions of service. The Conference agree that it would be appropriate to make this provision by regulation and not in the Constitution itself or by Statute, but recommend that a provision analogous to the proviso to Clauses 104 and 124(2) should be made in the Draft Constitution whereby the tenure of office and conditions of service of a Member of a Public Service Commission shall not be varied to his disadvantage after his appointment.

6. Clause 285(2)(b) of the Draft Constitution provides for provision being made by regulation with respect to the members of the staff of the Commission and their conditions of service. The Conference do not think that any change in this procedure is called for, on the analogy of Clauses 122(1) and 124(4) under which the salaries, allowances etc. payable to or in respect of the officers and servants of the Supreme Court and the staff of the Auditor-General shall be fixed by the Chief Justice or the Auditor-General in consultation with the President.

7. Clause 285(3) of the Draft Constitution imposes disabilities on the future employment of the Chairmen and Members of the Public Service Commissions under the Government of India or the Government of a State. The Conference consider that in order that the services of experienced men should, if necessary, be available to Government, it is desirable that the provisions in sub-clauses (a) and (b) should be deleted and the provision made in sub-clause (c) of Clause 285(3) with regard to Members should be made applicable to the Chairmen. The Conference do not agree that all restrictions upon the future employment of the Chairman and Members of a Commission should be abrogated.

8. Clause 286 of the Draft Constitution regarding the functions of the Public Service Commissions provides that regulations may be framed by the President or the Governor of a State, as the case may be, whereby it shall not be necessary for a Public Service Commission to be consulted on matters either generally

or on any particular class of case or in any particular circumstances. The Conference agree that in the existing circumstances certain restrictions on the functions of the Commissions are necessary and inevitable, and further that these restrictions should be imposed by Regulations and not by Statute. But they recommend that the regulations in question should be framed by the President or the Governor in consultation with the Union or the State Commissions, as the case may be.

9. Clause 286(c) of the Draft Constitution provides that subject to the regulations, the Union or the State Commission shall be consulted on certain matters described in sub-clauses (a) to (e). A convention has been established at the Centre that in certain classes of cases referred to the Commission, the recommendation made by that body shall be accepted save in exceptional circumstances. While the Conference felt that it cannot be made obligatory on the Government to accept such advice, a provision might be made for a list of cases where the advice of the Commission has not been accepted to be placed before the Parliament or the appropriate legislature. To this end, the Conference recommend that on the analogy of clauses 127 and 211 provision should be made in the Constitution for the reports of the Public Service Commissions being made annually, and laid before the appropriate legislature.

LETTER FROM THE GOVERNMENT OF MADRAS, No. 919/47-6, DATED THE 24TH
AUGUST, 1948

With reference to the Constituent Assembly's letter No. CA/46/Cons./48, dated the 18th May, 1948, I am directed to offer the following remarks on the revision of the list of the Scheduled Tribes given in Part I of the Eighth Schedule to the Draft Constitution of India:—

- (a) The enumeration of the sub-sects in respect of certain of the tribes in Part I of the Eighth Schedule is not without defects as may be seen from the note* of Sri V. Subbarayan sent with this Government's letter No. 919/47-4 Public (Refugees), dated 24th May 1948. This Government consider that as the parts of the Schedule relating to the other Provinces do not indicate the sub-sects, enumeration of sub-sects of tribes under Part I may also be omitted.
- (b) While the names of certain tribes are given in the singular form, those of many others are given in plural (*viz.* Nos. 2, 3, 6, 7, 8, 10, 16, 17, 21, 22, 23, 24, 27, 28, 29, 35, 41, 42, 44 and 45). It is observed that in the parts of the Schedule relating to the other Provinces the singular form has been used invariably. For the sake of uniformity, the singular form may be adopted for all the names in Part I also.
- (c) Some details in respect of the revision of the names of the tribes where necessary are given below:—
 6. *Dombs*.—The correct form of the tribe's name is 'Domba' or 'Dom'.
 8. *Ghasis and 43. Relli or Sachandi*.—Haddi is the generic name of the tribe of which Relli, Chachaadi and Ghasi are names of particular sects according to their occupation, *viz.*, fruit-selling, scavenging and grass-cutting respectively. It seems sufficient if the generic name, Haddi alone is mentioned.
 14. *Holva*.—The correct name of the tribe is Halava. Pentias (Pentiya being the correct spelling) shown as item 40 in the Schedule is another name for the tribe. These two names may therefore be given under one item.

19. *Kodu*.—This is the Telugu name for 'Konda' or 'Kond' in Odiya language for the tribe whose real name is 'Kui'. They are also called 'Kondh' or 'Khond' (item 24) by English writers. The tribe may be called by the name they give to themselves, i.e., Kodu or Kond. These two may therefore be given as synonymous names.
21. *Konda Doras* and 22. *Konda Kapus*.—These two names stand for the same tribe and may therefore be shown as one item.
23. *Kondareddis* and 42. *Reddi Dhoras*.—These two names represent the same tribe, another well known name for which is Hill Reddis. All the three alternative names of the tribe may be shown in one item.
24. *Kondhs*.—Attention is invited to the remarks relating to item 19, Kodu. The tribe may be shown as 'Kond (Kodu)'.
25. *Kotia*.—Kotas mentioned in the Census Tables, 1941 are found exclusively in the Nilgiris District which is not a partially excluded area. Kotias are found in the partially excluded areas. They are not however a tribe. They are derived from 'Ranas' (No. 44) and hillwomen. This item may therefore be omitted.
27. *Madigas* and 28. *Malas or Agency Malas or Valmikis*.—These two tribes are found in the Agency (Partially excluded areas). Maduga and Malsars referred to in the Constituent Assembly's letter cited appear to be mistakes for Muduga and Malsars mentioned in the Census Tables, 1941. These are tribes not found in the partially excluded areas at all but in the West Coast district of Malabar and Coimbatore districts respectively.
34. *Muria*.—This is not the name of a tribe or a sub-sect. Battandus (item 2) speak a dialect of Odiya, variously called Basturia, Lucia or Muria. From the name of the language, this tribe is sometimes called Muria. This may therefore be shown as a synonym under item 2.
41. *Porjas*.—Neither the Draft Constitution nor the Census Tables, 1941 appears to have given the name correctly. The correct form of the name may be taken to be Poraja.
44. *Rona*.—The correct spelling of the tribe's name is Rana. This may be adopted.
45. *Savara*.—The spelling adopted for the same tribe in the other parts of the Schedule are Savar (Part VI) Sawara (Part VII) and Suora (Savar) (Part IX). The correct form appears to be Savara or Soura.
- (d) The tribes mentioned below *may be omitted* from the Schedule for the reasons stated against each:
3. *Bhumias* This tribe and its sub-sects are outside this Province.
 4. *Bisoy* This is not a tribe but only a title assumed by hill chieftains.
 5. *Dhakkada* This is not a tribe at all. Persons of illegitimate birth are called by this name. In Odiya, it is an abusive term.

11. Kosalya Goudus . . . } These are only sub-divisions of the tribes called 'Goundu'
 12. Maratha Goudus . . . } (10). The last mentioned sub-sect is not found in this
 13. Seerithi Goudus . . . } Province.
15. Jadapus This is an incorrect spelling for No. 16, Jatapur.
19. Kodu }
 34. Muria } These are synonyms of Kondh (No. 24) and Bhottadas
 (No. 2) respectively.
37. Paigarapu This appears to be a mistake for Payakarayi, a title of
 Badhayis included under item 18. Payakarayi is
 also the name of an office corresponding to a Nayak
 and meaning the 'Head Payak'.
38. Palasi There is no such tribe. But there is a caste called
 Malasi.
40. Bontias }
 42. Reddi Dhoras } These are synonyms of Halava (No. 14) and Konda Reddis
 (No. 23).
43. Relli or Sachendi . . . This is included in No. 8 proposed to be revised as
 'Haddi'.

(e) It is observed that a provision has been made in Parts III, IV and VIII in the Eighth Schedule relating to West Bengal, United Provinces and Assam respectively for including any other tribe notified by the Provincial Governments. I am directed to urge that a similar provision should be made for this Province also.

2 I am also to enclose two lists, one list containing tribes revised in the light of the remarks in the preceding paragraph arranged in the alphabetical order for incorporation under Part I of the Eighth Schedule in the place of the existing list and another containing the tribes proposed for incorporation enumerated in the same serial order as in the Draft Constitution. The list of the Scheduled Tribes furnished by Sri V. Subbarayan, I.P., Deputy Inspector General of Police with his remarks is also enclosed for reference.

I

LIST OF SCHEDULED TRIBES.

(To replace Part I of Eighth Schedule.)

1. Amaanaaita.
2. Bagata or Bhakta.
3. Battaada (Muria).
4. Domba or Dom.
5. Gadabs.
6. Gauda.
7. Gond (Gondi).
8. Haddi.
9. Halava or Pentiya.
10. Jaatapu.
11. Kammara.
12. Karti.
13. Kond (Kodu).
14. Konda Dora or Konda Kapu.
15. Konda Reddi or Hill Reddi or Reddi Dora.
16. Koya.
17. Kummara.
18. Maadiga.
19. Ma'a or Agency Mala or Valmiki.
20. Mali.
21. Manne or Manya.
22. Manne Dora or Manya Dora.
23. Muka Dora.
24. Muli or Muliya.
25. Ojulu or Ozulu or Metta Kamasali
26. Paana.
27. Paidi.
28. Pa'ji.
29. Poraja.
30. Bana.
31. Savara (Soara).
32. The residents of the Laccadive, Minicoy and Amindivi Islands.
33. Any other tribe or community notified by the Government of Madras.

II

SCHEDULED TRIBES.

Proposed to replace Part I of Eighth Schedule in the same order as in the Draft Constitution).

1. Bagata or Bhakta.
2. Battaada (Muria).

3. } Omitted.
4. } Omitted.
5. } Omitted.
6. Domba or Dom.
7. Gadaba.
8. Haddi.
9. Gond (Gondi).
10. Gauda.
11. } Omitted.
12. } Omitted.
13. } Omitted.
14. Halava or Pentiya.
15. Omitted.
16. Jaatapu.
17. Kammara.
18. Karti.
19. (Included in item 24).
20. Kummara.
21. } Konda Dora or
22. } Konda Kapu.
23. Konda Reddi or Hill Reddi or Reddi Dora.
24. Kond (Kodu).
25. Omitted.
26. Koya.
27. Maudiga.
28. Mala or Agency Mala or Valmiki.
29. Mali.
30. Manne or Manya.
31. Manne Dora or Manya Dora.
32. Muka Dora.
33. Muli or Muliya.
34. (Included in item 2).
35. Oju'u or Ozulu or Metta Kamsali
- 35 (a). Paana.
- 35 (b). Paidi.
36. Amaanaaita.
37. } Omitted.
38. } Omitted.
39. Palli.
40. (Included in item 14).
41. Poraja.
42. (Included in item 23).
43. (Included in item 8.)
44. Rana.

45. Savara (Soara).
 46. The residents of the Laccadive, Minicoy and Amindivi Islands.
 46(a). Any other tribe or community notified by the Government of Madras.

*List furnished by Shri V. Subbarayan, I.P., Deputy Inspector General of
 Police*

EIGHTH SCHEDULE
[Article 303 (I) (X)]

Scheduled Tribes—Part I—Madras

1. *Bagata or Bhakta.*
2. *Battaada or Muria.*
 Badaa Battada.
 Madhya Battada.
 Sanna Battaada.

Battaada is derived from Bhartagada, the legendary ancestral home somewhere towards Bastar State. These people speak a dialect of Odiya called variously Basturia, Lucia or Muria. Muria is not the name of a sub-sect of this tribe. From the name of the language, this tribe was sometimes called Muria. They are a sub-division of the Gonds. Please see also item 34.

3. *Bhumiya.*—No sub-sects are known. Bhumiyas are the same as Baigas of the Central Provinces. The Bhuri shown as a sub-sect of Bhumiyas is a sub-division of the Gonds, who are also sons of the soil like the Bhumiya. Perhaps the adjective Badaa has been used to distinguish the real Bhumiyas from the Bhuris. I am, therefore, entering Bhuri as a separate tribe under the item 3(a) below.

3 (a) *Bhuri.*—A sub-division of Gond.

4. *Bissayi.*—This is not a tribe, but only a title assumed by hill chieftains belonging to various castes and tribes. The sub-sects mentioned under this item are names of such tribes. This item should be eliminated from the list.

5. *Dhakkada.*
6. *Domba or Dom.*
 Maandiri Domba.
 Aandiniya Domba.
 Soda Bissiya Domba.
 Odiya Domba.
 Mirigani Domba.
 Kabbiria Domba.

The other sub-divisions are not known. They are evidently not correct names. Christian Domba is only the convert to Christianity from this tribe. Telega Domba probably refers to Paidis who are mistakenly shown as a sub-division of item 41, Porajas. Paidis are similar to Dombas, but talk Telugu. Ponaka Domba is probably a mistake for Paanas who are similar to the Domba and the Paidi. I am, therefore, entering Paidi and Paana in the list below since they are considerable in numbers.

7. *Gadaba.*
 Bodda Gadaba or Gutob.
 Alaara Gadaba.
 Paarenga Gadaba.

Kallayi Gadaba.
 Kerang Gadaba or Kapu Gadaba.
 Kattiri or Kattara Gadaba.
 Silla Gadaba.

Cerllam Gadaba is probably a mistake for Silla Gadaba. Bodda, Silla, and Kerang are the names of jungle fibres from which the Gadabas manufacture their cloth. Franji Gadaba is probably a mistake of spelling and repetition of Paranga. Jodia and Pengi, mentioned as sub-divisions in this, belong to item 41 Porajas. Please see remarks under that item.

8. Ghasi.

Chitra Ghasi.

The sub-divisions Bada and Sanna are not known. There is, on the other hand, a class of artisans known as Chitra, Ghasis, who manufacture brass and bronze Jewellery for the hill tribes.

9. Gondi.

Raja Gond.

Muria Gond.

Dur Gond.

10. }
 11. } Gaudas.
 12. }
 13. }

Many of the sub-divisions noted here are unrecognizable. Therefore, a list of Goudas, as known here, is written below:

Bhatta Gauda.

Baladiya Gauda.

Pachilia or Pathilia Gauda.

Aapata Gauda

Joria Gauda.

Salla Khandia.

Magata.

Dangayata.

Dumala.

Kolata.

Kamiria.

Ladia.

Loria.

Kosalya.

Basantiya.

14. Halara.—This is the same as item 40, Pentiya.

15. Jadapus.—This is an incorrect spelling for item 16.

16. Jaalapus.—

17. Kammaras.

18. Karti.—From Karta, meaning a saw.

The sub-divisions are:

^ Karti.

^ Kammaras.

^ Lohara

The real generic name is *Badhayi* from Sanskrit *Vardhaki*, meaning a carpenter. *Karti* is a wood-sawyer and *Kammara* and *Lohara* are blacksmiths.

19. *Kodu*.—This is the same as item 24, the name being a Telugu one.

20. *Kummara*.

21. *Konda Dora*.

22. *Konda Kapu*.

23. *Konda Reddy*.

24. *Konda*.

Desya Kond. .

Dongria Kond.

Kuttiya Kond.

Tikiria Kond.

Yeneti or Yanati Kond.

Yanatis are called Yanati Doras and are a separate class.

25. *Payaka or Kotia*.—Kotias are only one class of Payakas. *Payaka* is the generic term and includes members from various castes.

Bariki.

Benaita Odiya.

Dhulia.

Halova.

Pattiya.

Kottiya.

Rana.

Siddha Payaka.

26. *Koyas*.—The following are the sub-sects.

(1) Gutta or Kutta Koya who are also called Racha Koyas.

(2) Gommu Koya.

(3) Kamra Koya.

(4) Musara Koya.

(5) Gampa Koya.

(6) Oddi Koya.

(7) Pattidi Koya.

Items (1) to (7) are hillmen of real Koya origin.

(8) Doli Koya.

(9) Kaka Koya.

(10) Matwa Koya.

Items (8) to (10) are plainsmen admitted into the Koya tribe.

(11) Lingadhari Koya.

These are Telugu Saivites who are not Koyas at all.

27. *Maadiga*.

28. *Malas or Agency Malas of Valmikies*.

29. *Malis*.

Bada or Pedda.

Kosalya.

Payaka Malis.

Pandra Malis.

Sankua Malis.

30. *Manne or Manya.*

31. *Manne Dora or Manya Dora.*

32. *Muka Dora.*

33. *Muli or Muliya.*

34. *Muria.*

35. *Ojulu or Ozulu or Metta Kamsali.*

36. *Amaanaaita.*

36 (a). *Paidi.*

37. *Paigarapu* is probably a mistake for *Payakarayi*, a title of *Badhayis* in item 18.

38. *Palasi.*—not known.

39. *Palli.*

39 (a). *Paana.*

40. *Pentia.*

41. *Porajas.*—They are not one caste or tribe, but are attached to different castes. The *Porajas* known to us are the following:—

(1) *Barang.*

(2) *Pengu.*

(3) *Kondi.*

(4) *Parangi.*

(5) *Munda or Banda or Nanga or Langla.*

(6) *Tagara.*

(7) *Kur or Didayi.*

42. *Reddi Doras.*—They are the same as item No. 23, *Konda Reddis.*

43. *Relli or Sachaari or Chachaaût.*—*Huddi, Relli, Chachaadi* and *Ghas* (item No. 8) are different names of the same caste in different places.

44. *Rana.*

Oddiya Paika.

Rana Paika.

Kuttiya Paika.

Pattiya Paika.

45. *Sararas or Soara.*

Kutta.

Maliya.

Kapu or Rallapu.

46 The residents of the *Laccadive, Minicoy* and *Amindi Islands.*

LETTER FROM THE GOVERNMENT OF BOMBAY, No. 3545/48-H, DATED THE 6TH OCTOBER, 1948

I am directed to state that part V of the Fifth Schedule appended to the draft constitution relates to the Scheduled areas. So far as the Bombay Province is concerned, the scheduled areas have been described as under:—

"In the West Khandesh District: The Nawapur Petha, the Akrami Mahul and the villages belonging to the following Mewasi Chiefs:—

- (1) The Parvi of Kathi,
- (2) The Parvi of Nal,
- (3) The Parvi of Singpur,
- (4) The Walwi of Gaothali,
- (5) The Wassawa of Chikhali and
- (6) The Parvi of Navalpur.

In the East Khandesh District: The Satpura Hills reserved forest areas.

In the Nasik District: The Kalvan Taluka and Peint Petha.

In the Thana District: The Dahanu and Shahapur Talukas and Mokhada and Umbergaon Pathas".

The description of the scheduled areas so far as the West Khandesh district is concerned does not seem to be correct. The Nawapur Petha has been converted into a Taluka as a permanent measure. As regards the Mewasi Estates, the Gaothali Estate is now known as the Raisingpur Estate. The correct name of another Estate is "Nala" and not "Nal." It should be corrected.

The villages comprised in the Mewasi Estates have been described as "villages belonging to the Mewasi Chiefs". In view of the fact that the areas included in the Estates of the Mewasi Chieftains now form part of the Dominion of India, it is doubtful whether the above description of these villages is accurate. In the opinion of this Government the more correct description would be "villages included in the areas of the Mewasi Estates of".

I am to request that you will be so good as to move the Constituent Assembly to consider the feasibility of making the necessary corrections in Part V of the Fifth Schedule to the Draft Constitution.

LETTER FROM THE GOVERNMENT OF WEST BENGAL HOME (C. & E.) DEPARTMENT, CALCUTTA, No. 1534-AR., DATED THE 4TH OCTOBER, 1948

Will you please refer to the correspondence resting with your letter No. CA/46/Cons/48 dated the 26th June, 1948 regarding the revision of the list of Scheduled Tribes as contained in Part III of the Eighth Schedule to the Draft Constitution? I am directed to convey the observations of this Government as follows:—

(1) *Botia*.—"Bhutia" seems preferable because the land from which they migrated to Darjeeling and Jalpaiguri in Bengal is spelt Bhutan and rarely Butan. Different spellings have, however, been observed in the Draft Constitution, Census Report of 1941, Government of India (Provincial Legislative Assemblies) Order, 1936 and also by Dalton (in his Descriptive Ethnology) and Kitta.

(2) *Chakma*.—The spelling is all right but there are practically no Chakmas now in West Bengal. They mostly belong to the Chittagong district which has now fallen in East Pakistan. Their name may be deleted.

(3) *Kuki*.—The spelling is correct. There are, however, no Kukis in West Bengal. Their name may be deleted.

(4) *Lepcha*.—The spelling is correct.

(5) *Munda*.—The spelling is correct.

(6) *Magh*.—There are practically no Maghs in West Bengal. They mostly belong to the eastern regions of East Pakistan.

In this connection mention may be made of another tribe in West Bengal, *via.*, *Mech*. According to the Census of 1941 their population in the whole of Bengal numbered 11,798 out of which 10,978 were in Jalpaiguri and 276 in Darjeeling. This Government think that their name should be included in the Schedule. It may be mentioned that they are already included in the list of Scheduled Castes.

(7) *Mro*.—Both the Census Report of 1941 and Dalton have mentioned the tribe as *Mru*. This spelling may be adopted. In view however of the fact that their number in West Bengal is only 1,497, their name may be excluded from the Schedule.

(8) *Oraon*.—The spelling is correct.

(9) *Santal*.—The spelling is correct.

(10) *Tippera*.—Although different spellings have been found, these do not belong to West Bengal and their name should, therefore, be deleted.

LETTER FROM THE GOVERNMENT OF BIHAR NO. 7584 A. DATED THE 26TH OCTOBER, 1948.

I am directed to say that a resolution was moved in the Bihar Legislative Assembly by Hon'ble Mr. K. B. Sahay on the 27th September, 1948, recommending to Government that the provisions of Part II of the Fifth Schedule to the Draft Constitution of India be so modified as to ensure only proper arrangements being made for the protection of the legitimate interests of the scheduled tribes, promotion of their welfare and raising the level of administration of the scheduled area to that of the administration of the rest of the Province; and it was adopted after discussion. The resolution further recommended that the Provincial Government should urge upon the Constituent Assembly of India to make suitable amendments in the Draft Constitution as in the opinion of the Assembly the Provisions of Part II of the Fifth Schedule as they stood were calculated to cause disintegration of the solidarity of India, to promote class conflict and to create permanent bitterness between the aboriginal and non-aboriginal population.

2. The Provincial Government support the resolution adopted by the Bihar Legislative Assembly and recommend to the Constituent Assembly of India that Part II of the Fifth Schedule to the Draft Constitution of India may be modified as recommended by the Bihar Legislative Assembly.

MEMORANDUM FROM THE PREMIER OF BIHAR ON THE PROVISIONS OF PART II OF THE FIFTH SCHEDULE TO THE DRAFT CONSTITUTION OF INDIA.

The provisions of Part II of the Fifth Schedule to the Draft Constitution of India apply to the States of Madras, Bombay, Bihar, the Central Provinces and Berar, and Orissa and relate to the administration and control of the 'scheduled areas' and the 'scheduled tribes' in the respective States.

2 In Bihar the 'scheduled areas' are:—

The Ranchi and Singhbhum Districts, and the Latehar subdivision of the Palamau District of the Chota Nagpur Division. The Santal Parganas District excluding the Godda and Deoghar subdivisions;

and 'scheduled tribes' means Asur and 82 other tribes or communities residing in any part of Bihar, and Bauri and 7 other tribes or communities residing only in certain specified localities.

3. The statistics of the population of the 'scheduled tribes' in the 'scheduled areas' are contrasted, in the table below, with the rest of the population, according to the census of 1941.

TABLE

Description	Ranchi District	Singhbhum District	Latehar Subdivision of Palamau District.	The Santal Parganas District excluding Deoghar and Godda subdivisions
'Scheduled tribes'	11,03,371	6,44,460	92,923	7,52,749
Rest of the population ...	5,72,042	5,00,257	1,00,632	6,63,996

4. The object of making special provisions in the Constitution for the administration of scheduled areas and scheduled tribes is only to safeguard the interests of the scheduled tribes, particularly those residing in the scheduled areas, and to accelerate their economic and educational progress so as to bring them up to the level of the rest of the population. It is, obviously, not the object of the framers of the Constitution to strengthen the movement for formation of Adibasi Provinces; or to induce concentration of Aboriginal population in the scheduled areas; or to maintain the scheduled tribes as separate social groups for all times; or to administer areas with majority of tribal population in such a manner as to injure the legitimate interests of the non-tribal population. Judged by these criteria, the provisions of Part II of the Fifth Schedule are open to serious objection.

5. *Paragraph 4. Tribes advisory Council.*—The Council will be a statutory body of not less than ten and more than twenty-five members, of whom, as nearly as may be, three-fourths shall be elected representatives of the scheduled tribes in the Legislative Assembly of the State. Its duty will be generally to advise the Government of the State on all matters pertaining to the administration of the scheduled areas and the welfare of the scheduled tribes in the State. There is nothing in these provisions to prevent the Council from becoming a forum for political agitation and propaganda. Ways and means should therefore be found for limiting the activities of the council to purely administrative matters. The best course to achieve this would probably be to make a provision in sub-paragraph (3) of paragraph 4 to the effect that the rules to be framed by the Governor would be such as would exclude discussion of any matter for which a separate provision exists in the Constitution.

6. *Paragraph 5. Law applicable to scheduled areas.*—The proviso to sub-paragraph (1) would lead to most undesirable results. The Tribes Advisory Council would become competent to regulate the application of the law relating to marriage and inheritance even to the non-tribal population, with the possible result that the non-tribal population in the scheduled areas would not be subject to the laws relating to marriage and inheritance by which the general population in the adjoining areas would be governed. This would be

a most anomalous position. Likewise, if the Governor is bound to act according to the recommendations of the Council in respect of matters mentioned in (d) and (e) the interests of the non-tribal population would be consistently subordinated to those of the tribal population. This might have been justified if the non-tribal population constituted a negligible proportion of the total population of the scheduled areas; but the position is that in Ranchi, the non-tribal population is about 35 per cent of the total population; in Singhbhum it is over 43 per cent; in the Santal Parganas, excluding Godda and Deoghar, it is about 47 per cent; and in Latehar it is more than the tribal population. The *proviso* to sub-paragraph (1) of paragraph 5 should, therefore, be amended by adding the words "of the tribes" after (a) marriage, and (b) inheritance of property. The Latehar sub-division of the Palamau District should, further, be excluded from the list of scheduled areas in Table V-Bihar, of Part V of the Fifth Schedule.

7. *Sub-paragraph (3). Trial of cases by headmen or panchayats.*—It would not be possible to fit in investigation by the regular police with the system of trial of cases by Headmen and Panchayats which sub-paragraph (3) envisages. If, therefore, Headmen or Panchayats are empowered by a regulation to try certain categories of cases, it would be necessary to exempt those categories of cases from investigation by the police, and the result would be that the existing unsatisfactory system of investigation by Mankis, etc. would continue. If sub-paragraph (3) stands as it is, there will be other difficulties as well. It is arguable that the tribal population should, subject to certain restrictions, exemptions, etc., be governed by the customary tribal criminal laws; but it cannot possibly be argued that the non-tribal population residing in tribal areas should be governed by tribal laws. The disputes and cases in which both the parties are persons other than members of the scheduled tribes, must be subject to the ordinary laws of the land. Indeed, one may go a step further and say that even in cases in which one of the parties is a person other than a member of a scheduled tribe, it is the ordinary law and not the tribal law which should apply; for, allowing the tribal population to be governed by their own laws is a concession to primitive sentiment and usage, and there can be no justification for subjecting to such usage a person who accepts more enlightened standards of justice.

8. *Paragraph 6. Alienation and allotment of lands to non-tribals in scheduled areas.*—Sub-paragraph (1) of this paragraph is perfectly proper; but there is no need of or justification for the provision contained in sub-paragraph (2). At present except in Damin-i-Koh and Kolhan no land in the scheduled areas vests in the State, but after the Zamindari abolition every inch of land will vest in the State. A person who is not a member of the scheduled tribes will therefore never be in a position to acquire any land in the scheduled areas, if this provision stands. The result in the long run would be that persons who are not members of the scheduled tribes would be driven out from these areas which would become a solid tribal block. It may be added that if this provision stands, agricultural development of the scheduled areas would be held up for decades. Many of the aboriginal tribes are poor cultivators, and, in any case, they would not have the means to bring under cultivation the large tracts of fallow lands to be found in the scheduled areas. This provision must go completely.

9. *Paragraph 7. Regulation of money-lending in scheduled areas.*—The provisions of this paragraph are not likely to help the members of the scheduled tribes. It is a matter of common experience that the borrower in these areas is more anxious to borrow money than the lender to lend it. If credit disappears from these areas the members of the scheduled tribes will suffer, and if breaches of money-lending laws are made punishable with imprisonment credit will certainly disappear. What is really needed is that there should be

law and Government machinery to check the accounts of the money lenders so that they may not realise more than their dues including the interest which should be fixed at 9 per cent. In any case, it should be provided that this provision shall apply only to money-lending operations in which the borrower is a member of a scheduled tribe, but not to other money-lending operations.

10 Paragraph 8. *Estimated receipts and expenditure pertaining to scheduled areas to be shown separately in the annual financial statement.*—The utility of a provision like this is difficult to appreciate. On the contrary, this will undoubtedly develop the separatist tendency. In addition, it would be an impossible task to work out, with any precision, the receipts and expenditure pertaining to the scheduled areas. The provinces get a certain share of the net proceeds of the income-tax which is collected through Central agencies. But as the income-tax is not assessed on a regional basis, it is not possible even to say what proportion of the total income-tax collected in the country had accrued in a particular Province; and it would be even more difficult to attribute income-tax receipts to individual districts or sub-divisions. Many industrial and commercial concerns have got ramifications not only all over the province, but all over the country, and for the purposes of income-tax, they are treated as a single unit. In estimating expenditure also, there will be serious difficulties. For instance, there are several items of what may be described as provincial expenditure. How are these to be apportioned among the different districts or sub-divisions? There are, for example, colleges at Patna which take students from all parts of the province; there are, again, the Provincial Secretariat and the High Court; and there are the Provincial Reserves of Military Police.

11. Paragraph 9. *Application of Part II to areas other than scheduled areas.*—This paragraph, if allowed to stand, would create all kind of difficulties, and should go. Though in this matter the Governor is expected to act independently, he will surely, time and again, be advised by the Tribes Advisory Council to agree to the extension of the provisions to non-scheduled areas also. This, in turn, would lead to agitation and counter-agitation, and a great deal of bitterness and antagonism would be created between the aboriginal and non-aboriginal population to the great detriment of the genuine interests of both.

MEMORANDUM FROM THE GOVERNMENT OF ASSAM ON THE FINANCIAL PROVISIONS OF THE DRAFT CONSTITUTION

1. The Government of Assam cordially welcome the provision under Article 255 of the draft constitution which says that special assistance in the form of grants-in-aid is to be given to the province of Assam in respect of the administration of tribal areas and the scheduled tribes. Apart from the sums to be paid towards the cost of approved schemes intended to promote the welfare of the scheduled tribes which by the way form an integral part of the provincial post war schemes, the assistance which is likely to be of consequence to the provincial finances is that proposed for covering the deficit in tribal areas and for raising the administrative standard of these areas. But when the current provincial standard itself is behind the general standard obtaining in the rest of India, a fact to which repeated attention had been drawn in the several memorandum submitted by the Government, the proper measure of the amount of assistance required is not the average deficit in the areas during the three years preceding the commencement of the constitution or the gap between the administrative level in these areas and that in the rest of the province. In the opinion of this Government the grants under this Article should be such as to enable the province to provide the normal Indian standard of services. Such grants can only be determined after a comparative

study of administrative standards by an expert body and it is therefore proposed that for Article 255, the following should be substituted:—

“Such sums, as Parliament may by law provide, shall be charged on the revenues of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:

Provided that there shall be paid out of the revenues of India as grants-in-aid of the revenues of a State for the time being specified in Part I of the First Schedule such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the scheduled tribes in that State or raising the level of the administration of the rest of the *areas of the Union*.

Provided further that there shall be paid out of the revenues of India as grants-in-aid of the revenues of the State of Assam, sums capital and recurring, equivalent to—

(a) the excess of expenditure over the revenues during the three years immediately preceding the commencement of this constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 19 of the sixth schedule and

(b) the cost of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the *areas of the Union*.

Also substitute the following for clause (i) of Article 260.

“The President shall at the commencement of this Constitution and thereafter at the expiration of every fifth year or at such other time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President”.

2. As regards the general allocation of revenues between the Union and the States this Government notes that practically the same system has been proposed as is current under the Government of India Act, 1935. Thus the provincial Governments under this scheme will continue to collect the revenues which they have been assigned under the Government of India Act. So far as this province is concerned it means that her financial position will remain what it is unless something is done to give her a share of the revenues collected by the Union. Having already exhausted the entire field of taxation reserved for her and touched the normal Indian standard in the severity of taxation, and yet being unable to provide the normal Indian standard of services to the people, Assam is compelled to look to revenue sharing as the only source of relief. From statistics relating to the revenue of the provinces during the ten years from 1937-38 to 1946-47, it will be seen that while the *per capita* revenue for all the provinces taken together was Rs. 4-9-0, the corresponding figure for Assam was Rs. 4-3-0 when it is remembered that Assam was among the first to impose a tax on agricultural income and that the range of taxes introduced by her is as wide as, if not wider than that obtaining elsewhere in India, the severity of the ordeal to which this province has subjected herself just to attain balance in her budget becomes apparent. Leaving out the tribal areas where habitation is thin and cultivation is sparse, the average incidence of land revenue per thousand square miles works out to Rs. 5,16,583 against Rs. 3,67,555 for all the provinces together.

As estimated in the budget for the next year the total receipts from provincial heads will amount to 356 lakhs. Even this amount is likely to fall in the next few

years when the return of normal conditions affect the revenues under Forests and Excise. On the other hand, the basic revenue expenditure which is estimated at Rs. 630 lakhs in the next year's budget is the very minimum below which governmental expenditure cannot fall in this province. If anything it will rise with the raising of the pay scales of low paid Government servants a question which has become one of first rate importance after the publication of the Report of the Central Pay Committee. Moreover certain institutions (the University of Gauhati, the High Court, the Medical College and several technical Colleges) have been recently set up to remove a long-felt want in the province. Thus apart from the cost of post-war schemes, the expenditure of the Government of Assam during the next few years, it is expected, will range round about 800 lakhs. As against this the province will have the following revenues:—

Receipts from provincial heads	356 lakhs.
Receipts from the provincial share of Income-tax				113 ..
Receipts from the Jute Export duty	29 ..
				—
			Total	498 ..
				—

There will roughly be a deficit of 300 lakhs on revenue account.

3. This Government has always been of the opinion that the circumstances of Assam are special and that no financial arrangement which ignores this fact is likely to suit her. In the draft constitution no special provision, apart from the one relating to grants for tribal areas and scheduled tribes, seems to have been made. This means that Assam shall have to wait till the Union Centre is able to part with substantial resources for being shared with all the units, or till the Union Parliament by a majority decides that a share of the Excise duties is to be distributed among the units. Even the share of the Jute Export duty which is to be assigned to the jute growing provinces under Article 254 is to be determined by the Parliament by law. All this betrays a tendency to ignore Assam's right to special treatment. By failing to provide for the assignment of the share of the export duty on tea under Article 254 and a share of the excise duty on petroleum and kerosene under Article 253(2) the authors of the draft have tried to treat Assam on a par with the rest of the provinces. Yet the record of this province in respect of the extent and severity of taxation and of the level of administrative services has been such as to mark her out for special treatment. Even the taxes which she wants to share with the Centre are such as to justify a special treatment. The export duty on tea, like the Export duty on jute, is realised primarily on the products of a particular area, and is thus a fit revenue to be shared with that area when there is special need for it. As regards the Excise duty on petroleum and kerosene, there are grounds to show that this tax is not like other excise taxes. It is akin to royalty, in that one of the purposes of the mining lease in India being to give the right to convert, the excise duty collected on the manufacturing of motor spirit which is form of a conversion of crude petroleum is in reality a royalty paid on the mineral. It would therefore not be proper to distribute such a revenue on the basis of consumption, particularly when the province which produces it suffers irreparable loss of her natural capital. The most appropriate use for revenue derived from such a source lies obviously in the compensation for the damage through development of the province.

For reasons given above, this Government propose the following further amendments in the draft constitution:—

After clause (2) of Article 253 add the following:—

Provided that seventy-five per cent. or such higher percentage as may be prescribed of the net proceeds in any financial year of the excise duty on petroleum and kerosene produced in the State of Assam shall not form part of the revenues of the Union but shall be assigned to that State.

For Article 254 substitute the following:—

Notwithstanding anything in article 253 of this Constitution sixty-two and a half per cent. or such higher percentage as may be prescribed of the net proceeds in each year of any export duty on jute or jute proceeds shall not form part of the revenues of India, but shall be assigned to the States in which jute is grown in proportion to the respective amounts of jute grown therein.

Provided that seventy-five per cent. or such higher percentage as may be prescribed of the net proceeds in each year of any export duty on tea shall not form part of the revenues of India, but shall be assigned to the States in which tea is grown in proportion to the respective amounts of tea grown therein.

Clause 266 proposes to impose income-tax, etc., on income derived by Supply, Transport and other state owned industries. This is likely to discourage nationalisation of industries. Supply Department of the state is for equitable distribution of food, etc., to the people and as such should not be considered as a trading concern.

In view of this proviso (a) to Section 266 should be deleted.

MEMORANDUM FROM THE GOVERNMENT OF ORISSA ON ARTICLE 212.

The Government of Orissa have since subjected the matter to a closer examination and are confirmed in their view that the plan of administration of the Orissa group of States formulated by the Drafting Committee is wholly unsatisfactory and would probably be completely unacceptable to all parties concerned. In essence the plan is that those States which have ceded their full and exclusive authority, jurisdiction and powers to the Government of India will under the new constitution be administered on the same lines as centrally administered areas. Article 212(1) of the draft constitution provides that the areas which are now centrally administered will in future be administered through a Chief Commissioner or a Lieutenant Governor to be appointed for the purpose by the Central Government or through the Governor of a neighbouring province or the Ruler of a neighbouring State. The proviso to article 212(1) makes it clear that the Central Government can entrust the administration of a centrally administered area to the Governor of a neighbouring province or the Ruler of a neighbouring State if two conditions are fulfilled: *vis.*,

- (i) the Governor or the Ruler concerned agrees to take over its administration; and
- (ii) the people of the centrally administered area also agree that the Governor or the Ruler concerned should take over its administration.

2. If the above scheme of administration is applied to the States which have ceded their jurisdiction, authority and powers to the Government of

India, the following consequences will clearly ensue:—

- (a) All States which have acceded to the Indian Dominion and which have thereafter ceded their jurisdiction to the Government of India will for ever retain their territorial integrity and individual political entity including such small States as Athgarh and Tigiria. All these Orissa States will in due course presumably be mentioned individually under division B of Part III of the first schedule to the draft constitution. Unlike the United State of Kathiawar, Orissa States have not effected any recognized merger among themselves to form a larger unit; and each of them has separately and individually ceded its authority, jurisdiction and powers to the Government of India. Presumably therefore each of them will be specifically and individually mentioned under division B of Part III of the first Schedule and will for all time to come retain their individual political entity. The Provincial Government are not sure that it is still possible for the Ministry of States to bring about a union of some sort of all the 25 Orissa States, which have ceded their jurisdiction, prior to the inauguration of the new constitution. In case such Union is possible and is effected, the United States of Orissa will form one political unit just as the United State of Kathiawar. Individual States will then lose their separate political entity, and the whole area covered by the 25 States will be administered as a single centrally administered area.
- (b) The question whether any of the Orissa States which has ceded jurisdiction will be administered by the Governor of Orissa on behalf of the Central Government, as a centrally administered area, will be determined in accordance with the wishes of the Governor (who would presumably be advised in this matter by his Ministers) and the wishes of the people of the State concerned. Unless both the parties are agreed that the Governor of Orissa should administer the State, it will have to be administered through a Chief Commissioner or a Lieutenant Governor to be appointed by the Central Government or alternatively (if this is acceptable to the parties concerned) by the Ruler of a neighbouring State, such as Mayurbhanj who has not ceded his authority and jurisdiction to the Government of India. If a union of all the 25 States is formed, it would not be necessary to ascertain the wishes of the people of each individual State; but it will be necessary to ascertain the wishes of the people of all the 25 States collectively as all of them will form one political unit, that is, a 'State' as defined in the new constitution.
- (c) Assuming that the Governor of Orissa is by common consent entrusted with the administration of the Orissa States, the Governor will administer them as an agent of the Central Government. It is not very clear whether in this event—
- (i) the Governor will administer the area independently of his Provincial Ministers and will, for its satisfactory and efficient administration, be responsible to the Dominion Government and through them to the Dominion Legislature; or
- (ii) the Governor will, while administering such an area, be advised by his Ministers, but the Ministry will be responsible not to the Provincial legislature but to the Dominion Government and through them to the Dominion Legislature.

In either case, however, the States will remain a centrally administered area; in fact, each State will be a separate centrally administered area, unless there is a union of all the States before the new constitution is finally enacted.

- (d) The provisions of article 213 of the draft constitution will apply, by virtue of clause (2) of article 212, to each Orissa State, or if there is a prior union of the States, then to the larger unit. The creation of a local legislature and/or a Council of Advisers will, however, be permissible only if the States are administered through a Chief Commissioner or a Lieutenant Governor. If their administration is by common consent entrusted to the Governor of Orissa, it will not be possible to create or continue any local legislative bodies or advisory councils. The legislature for the States will then obviously be the central legislature. Whether legislative authority can be, and if so will be, delegated to the Governor is by no means certain.
- (e) It follows from what has been explained in the preceding sub-paragraph that in case the Governor of Orissa is entrusted with the administration of the States, it will not be possible to continue even the present system of administration, which the Provincial Government have devised in exercise of the powers and authority delegated to them under the Extra Provincial Jurisdiction Act. That Act will have to be adapted to fit in with the new Constitution Act, and as far as the Provincial Government can judge, it will not be possible to take power in the adapted Act to modify in any way the constitutional Scheme as envisaged in Article 212(2), in regard to the States coming within the purview of that article. If indeed the scope of the adapted Act is restricted to jurisdiction outside the States as defined in the draft constitution (there will be no administrative units known as provinces), then the Act will apply only to areas which are at present not included in either the provinces or the Indian States. This means that it will not be possible to associate popular opinion in any manner with the Governor's administration of the Orissa States, and it will be impossible to continue the local advisory committees or the States Assembly or the Executive Council, which the Provincial Government have set up to aid and advise them in the day to day administration of the States.
- (f) The Provincial Government have no doubt that if the wishes of the people were ascertained with references to the constitutional scheme visualised by the drafting committee, they would almost to a man vote against any suggestion that the administration of the States should be conducted through the Governor of Orissa. This is only natural, because were the States to be administered through the Governor of Orissa, the people of the States would be completely deprived of any kind of participation in the task of administration, in other words, of even a modicum of self Government. Actually it seems to the Provincial Government that the alternative of administration of a "ceded" State through the Governor of a neighbouring province or the Ruler of a neighbouring State is intended to apply to isolated small and undeveloped States which are not yet fit for local autonomy in any form and in respect of which the question of associating popular opinion with its administration is of no importance. For a group of partially developed States like the Orissa States, which cover a large contiguous area and have a considerable population, of which the more advanced section are

definitely politically conscious and keen on full participation in the task of local administration, the alternative which would have obviously to be adopted is governance through a Lieutenant Governor or a Chief Commissioner.

- (g) Assuming that the States will be administered through a Chief Commissioner or a Lieutenant Governor and not through the Governor of Orissa, the constitutional scheme proposed by the drafting committee implies that the Chief Executive may or may not have a local legislature and/or a Council of Advisers. It is unthinkable that each of these Orissa States including the smallest ones should have a separate legislature and a separate advisory council. Even assuming, however, that they are formed into a union prior to the inauguration of the new constitution and are then given a common local legislature as well as an advisory council under a Lieutenant Governor or a Chief Commissioner, the type of local autonomy which they will enjoy will naturally be very limited and fall far short of "provincial autonomy".

3. If the implications of the constitutional set-up proposed for the States, which have ceded their authority and jurisdiction to the Central Government, have been correctly appreciated in the preceding paragraph, the broad position appears to be as follows. In no circumstances would the people of the States enjoy full control over "provincial" affairs. They will have a limited voice in the governance of their territory if the Central Government decide to conduct their administration through a Lieutenant Governor or a Chief Commissioner. On the other hand, they will not have even this limited voice if by their consent the administration is entrusted to the Governor of Orissa. Even if the impossible happens and under these conditions the people of the States vote for their governance through the Governor of Orissa, the legislature of Orissa will have no concern with the administration of the States, nor will it include elected representatives of the people of the States. The legislative authority for the States will be the Union Parliament, and the executive authority will be the Governor acting either in his discretion or on the advice of his Ministers—in either case, however, the Governor being responsible to the Union Executive and through them to the Union Parliament. In the absence of political integration, it will be impossible to secure administrative integration, even given all goodwill and mutual understanding. If there are 25 local Governments in 25 states, administrative integration will depend on the wishes of the 25 Governments. Even if they all agree, there will be almost insuperable practical difficulties arising largely from the fact that the administrative personnel must be under one master and not under 25 partly autonomous Governments and one fully autonomous Government or even one fully autonomous Government and one partly autonomous Government. It is impossible to visualise a common secretariat for a fully autonomous and responsible administration and a partly autonomous and partially responsible administration, the political chief of the two administrations being altogether different personalities. It is obvious also that it will not be possible to constitute common services for the States and the province; eternal differences would crop up with regard to disciplinary control, postings, promotions, etc; even common Heads of Departments will not be feasible. In brief, Orissa will forever remain apart from the Orissa States.

4. The Provincial Government venture to suggest that the scheme visualised by the drafting committee of the Constituent Assembly is impracticable, if what is proposed is separate administration of each State as a centrally administered area. At best it will mean perpetuation of all the administrative drawbacks and evils attendant on the old regime which, the Provincial Government had hoped, were gone for good. The scheme may be feasible if a union of

the 25 States is constituted to form a larger political and administrative unit; but it would still be open to the grave objections to which this Government drew attention in their memorandum on the constitutional future of Orissa States which was submitted to the States Ministry in the middle of December last. As they fully explained there, the only satisfactory constitutional solution so far as the Orissa States are concerned is their complete merger and unification with the province of Orissa and that none of the other possible solutions, such as—

- (a) constitution of a separate province,
- (b) constitution of a sub province or
- (c) partial integration with Orissa

is either expedient or feasible. Almost all the objections which the Provincial Government then urged against these alternative solutions applies equally well to the plan of central administration formulated by the drafting committee because the plan essentially involves the creation of a separate province or a sub-province or, perhaps, several separate provinces or sub-provinces. The Provincial Government do not wish to reiterate in detail all those objections (for a proper appreciation of which they must refer to their previous memorandum of December 1947), but briefly the main drawbacks are:

(a) The proposed scheme would deny provincial autonomy to half of natural Orissa for which the Provincial Government can see no justification whatsoever.

(b) The implementation of the drafting committee's scheme would involve the consequence that the unnatural division of Orissa, mainly for historical reasons, into several administrative units will be perpetuated and the right of all Oriya-speaking people to form a single autonomous unit of India will be deliberately denied. If this consequence ensues, the National Government of Independent India will do the greatest disservice and the gravest wrong to the Oriya people. The scheme proposed will in short perpetuate the criminal dismemberment of Orissa, frustrate any hope of building up a strong, stable, prosperous and racially and linguistically homogeneous province and condemn Orissa to remain for ever an insignificant unit of the Union of India. Whatever may be the position elsewhere in India, in Orissa there cannot be the slightest doubt that all these Orissa States owe their origin as separate administrative units to mere fortuitous circumstances in comparatively recent times. The history of Garhjat and Moghalbandi is well known. These States are in every way, historically, ethnologically and culturally, inseparable parts of the old Utkal. It will be lamentable if in the new constitution all these States, mostly petty ones, are entered, as it is proposed that they should be entered, in part III of the first schedule as separate entities. As the Provincial Government pointed out in their previous memorandum, "Orissa and Orissa States are parts of one greater whole indissolubly linked by natural and traditional ties of trade and commerce and social and cultural intercourse. They are convinced that neither part can prosper unless the other does."

(c) Unless the States are included in the province, the provincial administration would never be either efficient or even satisfactory, as all administrative problems are common to the States and the province on account of their relative geographical situation, economic interdependence and other factors.

(d) The States will be unable to pay their way and will be for ever a drag on the rest of the country and their own chances of development will be remote. As was pointed out in the memorandum submitted by the Provincial Government in December last "the total revenue of all the States is just over Rs. 1 crore including revenue from Central sources of income. If revenue

from the Central sources is omitted and if generous allowances are made for the Rulers privy purses, the net revenue that will be left will be entirely inadequate for the bare needs of a provincial administration; and certainly nothing at all will be left for development of the new province."

(e) Finally, there is really no need and no justification for setting up the States as a separate administrative unit and thereby add to the overhead cost of provincial administration in India. It is not the case that the States form a distinct racial or linguistic area apart from the province. Both in Orissa form in the Orissa States, Oriya is the common language barring a number of aboriginal dialects in both parts, and the people are Oriyas except the aboriginals who exist, though in a varying degree, both in the Orissa province and in the Orissa States.

5. Even if it be assumed that article 213 of the draft constitution will be suitably amended so as to permit the creation of a local legislature and/or a council of advisers in respect of "ceded" States the administration of which is by the consent of their people entrusted to the Governor of a neighbouring province, the objections which have been urged in the two preceding paragraphs would still substantially remain. If no union of the States is formed, the Central Government may set up for each State either a local legislature or a council of advisers or both and specify their constitution, powers and functions. If there is a union of the States, the Central Government may similarly set up a legislature for the union or a Council of advisers or both. In either case the Provincial Government of Orissa as such, that is, the Orissa Ministry will not presumably function in the Orissa States. If the Central Government appoint by common consent the Governor of Orissa to administer the States, the Governor of Orissa will be the only constitutional link between the province and the States. Whether the States are administered as separate political units or together as a single unit, and whether one or more local legislatures or councils of advisers are set up or not, the Orissa legislature would not be competent to legislate for the States, and the Orissa Ministry will have nothing to do with their administration except perhaps in so far as the Ministry may be able to influence that administration through the personality of the common Governor. The net result will be the same as would follow from the administration of the States through a Lieutenant Governor or a Chief Commissioner; and natural Orissa would be split up into anything between two and twenty-six separate administrative units. Consequently all the objections that have been urged in paragraphs 4 and 5 would apply with equal force to such an arrangement.

6. The Provincial Government cannot indeed help feeling that any statutory provision which would make it necessary to ascertain the wishes of the people as to whether they would prefer the States to be administered through the Governor of Orissa may have many embarrassing consequences. Even now from several quarters can be heard rumblings of anti-merger propaganda. If the President of the Union proceeds to ascertain the wishes of the people, the Provincial Government feel pretty certain that there will be very undesirable excitement in each State over the issue of merger *versus* non-merger. The people in many States, particularly the bigger States, might have visions of their own Ministries and Legislative Councils and separate independent existence. A good deal of public time will be wasted in all these controversies and then again there may be demand from neighbouring provinces for administration of particular States to be handed over to them. This is a possible development which must be strongly deprecated in the public interest.

As a matter of fact, the people of the Orissa States have been repeatedly assured that under the new constitution they will form parts of Orissa and will

have their due share in the Provincial Legislature and administration, and further that they will be completely integrated with the present Orissa districts. It will be intolerable if under the new constitution these hopes and promises are belied and the States continue to be separate entities to be administered quite separately by the Governor exercising delegated authority from the Central Government. Though the constitution does not provide for this, it may well be argued that it will be open at any time to the President of the Union to withdraw the delegated authority and to take the administration in his own hands through a Lieutenant Governor or a Chief Commissioner. All this would lead to a new field of constant friction and agitation and excitement in the public mind.

7. The Provincial Government are accordingly strongly of the opinion that these Orissa States should lose their individual existence and be finally amalgamated completely and irrevocably with the Orissa districts just as in the Saurashtra and other unions of such States they have merged irrevocably into a bigger whole. The Provincial Government do not see any difficulty in the way of bringing about a similar union between a Governor's province and some of the States which would have the result that it would not then be necessary to mention these States at all in the list of the States in part III of the first schedule as States which have acceded to the Union. The drafting committee itself proposes that new linguistic provinces may be constituted before the constitution begins to function so that these may be mentioned in the list of Governor's provinces. The Provincial Government must strongly press that so far as the Orissa States are concerned, they should even now be regarded as a part of natural Orissa, and it should be at once accepted that their political salvation lies in their complete merger with the province of Orissa, in other words, in their complete integration with the province by extension of its boundaries in order that the larger province may be a single administrative and political unit with a single legislature and a single executive.

8. If the strong views which the Provincial Government have in the matter are held to be justified and their considered recommendation is accepted, there seem to be three alternative ways of implementing it:

(a) The solution which the Provincial Government would prefer and which appears to them to be the most satisfactory is that the area of the province of Orissa should be immediately enlarged by the addition thereto of all the 25 Orissa States by an order under section 290 of the adapted Government of India Act, 1935. The Provincial Government are advised that there is no legal or constitutional objection to this course inasmuch as the Rulers of these States have definitely and irrevocably transferred their States to the Central Government for administration, and they have withdrawn all their rights and privileges therein excepting those specifically enumerated. For all practical purposes, the Rulers have no interest in the territories of these States or the management of their affairs except for their guaranteed allowances. The Provincial Government suggest that in these circumstances it is open to the Governor General to declare an increase of the province of Orissa by these States. If this order is made before the promulgation of the new constitution, it would follow that in the list of the States in part III of the first schedule, the names of these particular States will not be mentioned at all; nor will it be necessary to follow the procedure about the ascertainment of the wishes of the people.

The Provincial Government do not consider that there are any insuperable administrative difficulties in the immediate and complete merger of the States in the province. The States are in their view developed enough to safely permit introduction of part III of the Government of India Act. Actually during the last three months this Government have been actively engaged in the task of administrative re-organisation of the States and this work is now nearing

completion. In a few weeks' time there will be a common administrative machinery in the States and in the province and common administrative personnel in all branches of administration on the same rates of pay who will be freely interchangeable between the two parts according to administrative convenience and needs. The provincial cadres of the All India Services are being built on the assumption that the States and the province will be a single administrative unit having a common administration. Further, the question of unification and integration of laws in force in the province and the States is being tackled in serious earnest; and although the process of this integration must necessarily be somewhat slow, the Provincial Government have every hope that so far as the essential laws are concerned, there will in a few months time be just one set of them in the province and the States.

(b) Alternatively, the Provincial Government would suggest that the new constitution should expressly contain provisions recognizing the factum of the *de facto* mergers that have already taken place and declare specifically, so far as Orissa is concerned, that as from the date of the coming into effect of the constitution, the province of Orissa should be deemed to have been increased by the territories of these States and the inhabitants thereof shall, like residents of Orissa, be entitled to elect their representatives to the provincial and Central legislature. Such provisions should leave no room for doubt that the States would for all purposes form an integral part of Orissa and that there will be no question of any delegation of authority by the Central Government to the Governor of Orissa for their administration. If this solution is preferred by the Government of India, some amending clauses will have to be inserted in the draft constitution; and the Provincial Government would be extremely grateful if they are allowed an opportunity to see the amendments in draft.

(c) The third and in the view of the Provincial Government the least satisfactory method is to take action under articles 3 and 4 of the draft constitution. This is open to the objection that complete and legal merger of the States with the province must wait till the new constitution is inaugurated and a law is passed by the future Union Parliament uniting the States and the province of Orissa to form a single "State". It would appear that under the proviso to article 3, two conditions will have to be fulfilled before two or more States can be united to form a new State namely,

- (i) the legislature of the State whose boundaries will be affected by the proposal will have to adopt a resolution in this behalf; and
- (ii) since the proposal would affect the boundaries of a State (or States) for the time being specified in part III of the first schedule, the previous consent of the State (or States) to the proposal will have to be obtained.

The Provincial Government presume that in respect of any proposal to unite the Orissa States with the province of Orissa with a view to form a new State, the resolution referred to in (i) will have to be passed by the Orissa Legislative Assembly. With regard to condition (ii), the position appears to be that although the States in question will be specified in part III of the first schedule, they will be those which have ceded full and exclusive authority and jurisdiction and powers to the Government of India. The expression "State" as used in article 3(b) can be reasonably taken to mean only the authority which has executive and legislative powers in it; and since the Government of India will exercise full executive and legislative powers in the Orissa States, the Provincial Government presume that the authority which would be competent to accord previous consent on behalf of the States will be, not their nominal Rulers, but the Government of the Union of India. If this is the correct legal and constitutional position, the Provincial Government would be prepared to

wait for the enactment of the necessary law by the Union Parliament, in case the Government of India are for any reason not prepared to consider at present either of the other two alternatives (a) and (b), *provided* however they can be assured that immediately on the promulgation of the new constitution and on an appropriate resolution being adopted by the Orissa Legislative Assembly set up under that constitution, the Dominion Government will consent to the merger of the Orissa States with the province of Orissa and will thereafter introduce a bill in the Parliament for uniting the States with the province in order to form a new State.

9. For many reasons, however, the solution last mentioned in the preceding paragraph is not in the view of the Government of Orissa at all satisfactory. Apart from the fact that it is doubtful if the present Government of India can bind their successor Government to a definite course of action, the political and constitutional future of the States will under this plan continue to be uncertain for a long time to come, and there will in consequence be constant agitation and excitement in the public mind and there will be no inclination in any quarter to settle down to the hard task of giving the people of the States good and efficient administration. From all points of view, therefore, it would be definitely expedient to reach an immediate clear-cut decision on the political future of the Orissa States so that no room for uncertainty on any score may exist, all opportunities for agitation of any sort may at once be eliminated, and all parties concerned may have time to reconcile themselves to the decision well before the new constitution is inaugurated. The Provincial Government would accordingly strongly press for the immediate acceptance of either of the alternatives (a) and (b) suggested in the preceding paragraph—and preferably the first alternative, the adoption of which would at once and forever set at rest the controversy that has already raged for an undesirably long time over the constitutional future of the Orissa States. No matter what the position may be in regard to other States in other parts of India, for Orissa this integration of the neighbouring States with the present province is for the people of Utkal a matter of almost life-and-death importance on which might lie the whole prosperity of this part of India and its people. The Provincial Government submit that there ought not to be any hesitation on the part of the Government of India in adopting the suggested solution for which there is obviously every justification. As already stated, none can seriously challenge the basic facts that historically, culturally and ethnologically the States are inseparable and integral parts of the old Utkal; that the people of the two parts, Moghalbandi and Garhjat, are the same and are bound by the natural ties of geographical contiguity, of a common language, a common culture and common traditions, of trade and commerce and of social and cultural intercourse; that the prosperity of one part depends on that of the other; and that administrative efficiency in what is now the province of Orissa would be perpetually hampered unless the States form an integral part of the province. The larger province which will emerge from the amalgamation of the two parts will be a completely homogeneous administrative unit, both racially and linguistically, and will have enormous possibilities of development and no minority problems. If properly developed, it will in the end be a stronger and more useful limb of the future Union of India than either the present province of Orissa or the two or more administrative units in which natural Orissa may be split up in case, unfortunately, little heed is paid to the realities of the situation and undue importance is attached to legalistic considerations and the selfish propaganda of interested parties. The aim of the Provincial Government is to build up a larger and more prosperous Oriya-speaking province which will be able to take its rightful place among the united peoples of India; and they are confident that a realistic approach to the problem will

convince the Dominion Government that the solution which they have advocated is not only expedient but would be just and fair to all parties as well and would, moreover, best serve the true interests of India as a whole.

Amendments proposed by the Government of Orissa

1. In Part I of the First Schedule, the following proviso shall be inserted, namely:—

"Provided that the undermentioned Indian States which have ceded full and exclusive authority, jurisdiction and power to the Government of India shall be deemed to form part of the Governor's Province of Orissa. *

(Specify all the Orissa States)"

2. In Division 'B' of Part III of the First Schedule, after the words "Indian States", the following words shall be inserted namely:—

"Excluding the Indian States specified in the proviso to Part I." and such other consequential amendments to the various sections of the New Constitution Act as may be required.

I am directed to bring to the notice of the Constituent Assembly the following further points in connection with the provisions in part II of the Fifth Schedule to the draft constitution of India:—

- (1) Under section 92 (1) of the Government of India Act, 1935, no Act of the Federal or Provincial Legislature applies to a partially excluded area unless the appropriate Provincial Government so directs by a notification. The plan followed in the draft constitution of India is, however, fundamentally different. The idea underlying paragraph 5 (1) of Part II of the Fifth Schedule to the draft constitution is that as soon as an Act of the Federal or the Provincial Legislature is passed, it will apply automatically to all 'scheduled areas' unless the Governor on the advice of the Tribal Advisory Council directs, in respect of any particular legislation, either that it shall not apply to any specified scheduled areas or that it shall apply to such areas, subject to specified exceptions and modifications. Although on the whole the Government of Orissa prefer the plan indicated in para. 5 (1) of part II of the Fifth Schedule to the Draft Constitution, to the provision of section 92 (1) of the Government of India Act, 1935, they apprehend that difficulties, mainly of an administrative nature, might arise out of the inevitable time lag between the passing of an Act by either the Dominion or the State Legislature and the decision of the Governor either that the Act shall not apply to any scheduled area or that in its application to such an area, it shall be subject to certain modifications and exceptions. Since the position will be that as soon as an Act is passed by a Legislature it will apply in all scheduled areas, certain rights and obligations will be created or modified by virtue of the Act. The accrual of such rights and obligations in the interim period might give rise to an awkward situation if it is decided subsequently (and a direction is made to that effect) either that the Act shall not apply to scheduled areas or that it shall apply to such areas subject to certain specified exceptions and modifications. It is, of course, possible to give retrospective effect to the directions

made under para. 5 (1) in order to secure that the exceptions and modifications, subject to which the Act is applied to scheduled areas, will have effect therein from the date of the passing of the Act. If that is done, consequential provisions will have to be inserted by way of 'modifications' in order to regularise anything done under the Act during the interim period. Even so, however, it is likely that the rights of several parties might be seriously affected and there might be much confusion. The Provincial Government, however, see no easy solution of such difficulties if the plan envisaged in para. 5(1) of part II of the Fifth Schedule is adhered to.

- (2) With reference to the Governor's power to make regulations under para. 5 (2) of part II of the fifth schedule, the question has been raised whether the power is as plenary as the power at present conferred by section 92 (2) of the Government of India Act, 1935. A regulation made under section 92(2) may deal with any subject irrespective of whether it is included in the Central, Provincial or Concurrent Lists; it may even amend a Central Act. Since, however, sub-para. (4) of para. 5 of part II of the fifth schedule does not specifically refer to the Dominion Parliament, the Provincial Government are doubtful if the power to make regulations conferred by sub-para. (2) of para. 5 will be equally plenary or will be restricted to matters on which the State legislature will be competent to legislate. Although the term 'appropriate legislature' used in sub-para. (4) of para. 5 would etymologically include the 'Dominion Parliament' as well as 'the State legislature', it appears from a perusal of the Draft Constitution that the draftsman made a distinction between "Parliament" on one hand and "State legislature" on the other. It may, therefore, be the intention of the Draft Constitution that the Governor's power to make regulations under sub-para. (2) of para. 5 will not extend to matters included in the Central list. If that is the plan, the Provincial Government beg to differ from it, as they feel that the Provincial Government's power to make regulations for the good Government of scheduled areas should continue to be as plenary as it is at present.

I am to request that the difficulties pointed out above may be brought to the notice of the Constituent Assembly for their consideration and for taking such steps for their removal as the Assembly may consider appropriate. A copy of this letter is being sent to the Government of India in the Ministry of Home Affairs for information and such action as they may consider necessary.

MADRAS LEGISLATIVE ASSEMBLY

The Madras Legislative Assembly, after discussing the Draft Constitution and the various amendments of which notice had been given by the members of that Assembly on 26th, 27th and 28th April, 1948, adopted a motion that the motion of the Leader of the House for consideration of the Draft Constitution together with all the amendments given notice of by members be forwarded to the President of the Constituent Assembly. The motion as well as the amendments are reproduced below:—

The Hon. Sri B. GOPALA REDDI:—"Mr. Speaker, Sir, I move 'that the Draft of the New Constitution of India as settled by the Drafting Committee appointed by the resolution of the Constituent Assembly of August 29, 1947, be taken into consideration'."

LIST OF AMENDMENTS GIVEN NOTICE OF BY MEMBERS

SRI M. G. NATESA CHETTIYAR:

Add the following at the end:—

“and on such consideration, this Assembly is of opinion that.”

1. In the Preamble, *for* words “Democratic Republic,” the words “Federal Republic” shall be *substituted*.

M. MUHAMMAD ISMAIL SAHIB BAHADUR:

In the Preamble, *for* the word ‘Republic’ after the words “Sovereign Democratic,” the word ‘State’ shall be *substituted*.

SRI G. RAJAMANNAR CHETTI:

1. In the Preamble, *for* “Sovereign Democratic Republic,” *substitute* “Sovereign Democratic Socialist Republic.”

2. In the Preamble, after the words “Justice, social, economic and Political,” *add* “Economic and social freedom.”

SRI M. G. NATESA CHETTIYAR:

2: A new Article shall be inserted after the Preamble in regard to the “Flag of India” and the “Coat of Arms of India”.

In Article 1 (1) *for* the words “Union of States,” the words “Sovereign Federal Republic” shall be *substituted*.

SRI G. RAJAMANNAR CHETTI:

In Article (i), *for* the word “Union of States” *substitute* “Union of Socialist Republican States.”

SRI K. BHASHYAM:

In the matter of citizenship rights in clause (a) of Article 5, there should be positive enactment to the effect that the citizen should have either permanent abode in India or must have the intention to reside permanently here.

SRI M. G. NATESA CHETTIYAR:

In Article 5, the acquisition of citizenship for refugees from Pakistan or any other Indian State must be specified definitely for them as such; in regard to others a period of seven years residence with or without property to acquire citizenship of India may be fixed.

SRI K. BHASHYAM,—

SRI K. BRAHMANANDAM REDDI:

In Article 5, explanation (ii), *for* the words “one month” the words “six months” be *substituted*.

ABDUL HAMEED KHAN SAHIB BAHADUR:

The following new articles be added:—

“that no right guaranteed to the Citizen in the Constitution shall be modified or withdrawn except by law made by the Parliament by a two-thirds majority;

“that the residual powers should vest in the Constituent States of the Union of India.”

SRI T. VISWANATHAM:

That the Draft Constitution requires amendment so as

- (1) to make previous sanction of the President of the Indian Union necessary for introducing or taking into consideration, in a State Legislature, any law or rule having the force of law which seeks to affect the Fundamental Rights of a Citizen, and to reserve such Bills passed by a State Legislature for assent by the President;
- (2) to make it clear that the right of citizenship of the Union includes and extends to the right of being admitted into (a) Government Service and (b) Educational institutions in any State, subject only to prescribed qualifications and standards and considerations of space in the latter case, and to no other reservations or proportions based on community, caste, religion or place of birth except for reservations in favour of Harijans for a period of 15 years;
- (3) to prohibit the introduction or consideration of legislation which (a) seeks to affect *bona fide* rights acquired under law in force at the time of such acquisition, (b) bars the jurisdiction of Civil Courts to adjudicate rights of private parties as amongst themselves or as between private parties and Government of a State or Union, (c) which purports to have retrospective effect as from a date prior to the date of publication of the Bill except of laws indemnifying Government servants (Civil, Military, Naval or Aerial services) under extraordinary circumstances, or (d) which restricts free trade and commerce between States or discriminates against particular State or States.

BEGUM SULTAN MIR AMIRUDDIN:

In Part III, *insert* a new Article, stating that the Fundamental Rights mentioned in this Part cannot be curtailed except by an amendment to the Constitution.

And make consequential amendments in the other Articles.

M. MUHAMMAD ISMAIL SAHIB BAHADUR:

In Article 10 (4) for the article 'a' occurring between the words "person professing" and "particular religion" and between the words "belonging to" and "particular denomination," the word 'that' shall be *substituted*, and the words "to which that institution belongs" shall be *added* at the end.

ABDUL HAMEED KHAN SAHIB BAHADUR:

In Article 12, clauses (1) and (2) the word "title" should be defined.

SRI K. BRAHMANANDAM REDDI:

In Article 12 (2), *add* at the end "except under the written approval of the President."

SRI K. BHASHYAM,—

BEGUM SULTAN MIR AMIRUDDIN:

In Article 13, clause (1), *add* the following sub-clause after (g):—

(h) "to freedom of worship and religion."

BEGUM SULTAN MIR AMIRUDDIN:

In Article 13, *omit* clauses (2) to (6).

ABDUL HAMEED KHAN SAHIB BAHADUR:

Add the following after Article 13 under the heading "Rights relating to Religion":—

"The State shall have no religion."

ABDUL HAMEED KHAN SAHIB BAHADUR:

Add another Article under the heading "Rights relating to Religion":—

"No one belonging to any religion shall indulge in attacking any other religion or its religious head."

In Article 19, clause (1), after the word 'practice' and before the word 'and' *insert* the following words "pray undisturbed in Moseques, Temples and Churches."

In Article 19 in clause (1), after the word 'practice,' *add* the following words "without interfering with the principles of religion."

In Article 19, *delete* the 'Explanation' to clause (1).

SRI K. BHASHYAM:—

In the Explanation under Article 19 (1) the measurement and size of the kirpans to be worn and carried by the Sikhs as part of their religion should be defined.

BEGUM SULTAN MIR AMIRUDDIN:—

In Article 19, clause (2), *omit* sub-clause (a).

H. S. HUSSAIN SAHIB BAHADUR:

Add the following Explanation to clause (2) of Article 19:—

"*Explanation.*—Nothing in this clause shall be deemed to affect the personal law of the religious minorities, prescribed by their religion for the regulation of their economic, financial or other secular affairs."

SRI G. RAJAMANNAR CHETTI:

In Article 20, *add* at the end, the words "subject to the control and restrictions the Government may impose."

M. MUHAMMAD ISMAIL SAHIB BAHADUR:

In Article 21, *add* at the end, the words "to which that person does not belong".

In Article 22 (1), for the words "No religious instruction be provided by the State in any educational institution wholly maintained out of State funds," *substitute* the following:—

"No instruction shall be imparted in any educational institution to any person against his will or if he is a minor against his guardian's will in a religion to which he does not belong."

ABDUL HAMEED KHAN SAHIB BAHADUR:

For Article 22, *substitute* the following:—

"Adequate religious instruction should be made by the State in all educational institutions for all the communities who demand such provision be made" and make the necessary consequential changes in the proviso.

Add an additional Article:—

"No educational institution which restricts admission to any particular community or communities on the basis of religion shall receive any financial aid or assistance from State funds."

SINNA KAZIAR HAJI MOULVI S. A. F. IBRAHIM SAHIB BAHADUR:

For Article 22 (2), with its proviso *substitute* the following:—

"Religious instruction shall be provided in any educational institution partially or wholly maintained by the State if sufficient number of persons

attending such institution, or if they are minors, their guardians desire such provision of religious instruction, provided that no person shall be compelled to take instruction in a religion to which he does not belong."

M. MUHAMMAD ISMAIL SAHIB BAHADUR:

In Article 22 (3), for the word 'providing,' the words "being permitted to provide" shall be substituted, and between the words 'institutions' and 'outside,' the words 'in or' shall be inserted.

DR. M. J. SAMUEL:

In Article 22, clause (3), for the words "outside its working hours," substitute "within the school curriculum and during the working hours of the schools."

M. MUHAMMAD ISMAIL SAHIB BAHADUR:

In Article 23 (1), between the words 'script and' and 'culture of,' the word 'or' shall be inserted.

SRI V. RAGHAVAYYA:

For clause (2) and (3), of Article 24, the following shall be substituted:—

"As inequalities in property have been the nursery of all disputes, animosities, and wars and have been responsible for all the misery of man, no individual ownership in immovable property will be recognised and to give effect to this all land will be treated as State-owned."

SRI G. RAJAMANNAR CHETTI:

For Article 24 (2), substitute the following:—

"Any property, movable or immovable, including any interest in, or in any company owning any commercial or industrial undertaking may be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition."

BEGUM SULTAN MIR AMIRUDDIN:

In Article 24, clause (2) insert the word 'equitable' before the word 'compensation' in line 7.

SRI K. BRAHMANANDAM REDDI:

In Article 24 (2), (1) after the words "industrial undertaking shall be," the words "taken possession of or" be omitted.

(2) After the word 'authorizing' in line 5, the words "taking of such possession or" be omitted.

(3) After the word 'property' in line 7, the words "taken possession of or" be omitted.

(4) In Article 24 (3) (b), after the words "promotion of," add the word "well being generally of the common man and."

BEGUM SULTAN MIR AMIRUDDIN:

Omit the proviso to Article 27.

SRI G. RAJAMANNAR CHETTI:

6. For Article 30, substitute the following:—

"The State shall strive to promote the welfare of the people by establishing a new social order based on economic freedom and social and political justice."

For Article 31, clause (i) to (iv), the following shall be substituted:—

The State shall direct its policy towards securing

- (i) the establishment of a classless society in which the exploitation of one man by another, one class by another, one nation by another will cease, in which private ownership will be replaced by the ownership of the State, over the entire resources of the nation's wealth and production, industries and communications,
- (ii) the development of production and equitable distribution of wealth on the basis of a planned economy,
- (iii) the creation of a social order in which all the amenities of a happy peaceful and ever progressive life will be available to every man by law,
- (iv) the social equality for woman through the achievement, of economic independence for them.

M. MUHAMMAD ISMAIL SAHIB BAHADUR:

In Article 35 *add* the following proviso at the end:—

“provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law.”

BEGUM SULTAN MIR AMIRUDDIN:

In Article 35, *add* the following proviso:—

“provided the religious minorities shall be at liberty to be governed by their own personal law.”

SRI R. V. SWAMINATHAN:

In Article 37, before the words “the Scheduled castes,” the words “the backward Communities” shall be inserted.

SRI M. G. NATESA CHETTIYAK:

Article 44 shall be recast to the effect that only such members who represent the fraction of a lakh of votes will be eligible to exercise their franchise in proportion in voting for the election of the President of India.

SRI K. BHASHYAM:

In Article 45, the term of the office of the President be extended to seven years.

SRI M. G. NATESA CHETTIYAR:

In Article 45, the term of office of President shall be fixed as six years instead of five years.

SRI K. BRAHMANANDAM REDDI:

In Article 45 (c), after the words “his term,” *add* the words “except when removed under clause (b).”

SRI K. BHASHYAM:

In Article 47 (1) (b), the age of the President be raised to 40 years.

In Article 55 (3) (b), the age of the Vice-President be raised to 40 years.

SRI M. G. NATESA CHETTIYAR:

In Article 56, the term of office of the Vice-President shall be fixed as six years instead of five years.

In Article 56, proviso (b) be amended so that the Vice-President may be removed from office only on two-thirds majority of the Council of State.

M. MUHAMMAD ISMAIL SAHIB BAHADUR:

In Article 60, the proviso to sub-clause (1) be omitted.

SRI K. BHASHYAM:

In Article 63, it should be made clear that the age restrictions either for appointment or for retirement should not apply to the Attorney-General for India.

In Article 67, clause (2), item (a), the words "law and medicine" may be added.

BEGUM SULTAN MIR AMIRUDDIN:

In Article 67, clause (2), *add* the following sub-clause after (d):—
 "(e) law and medicine."

SRI M. G. NATESA CHETTIYAR:

Article 67 be amended so that the members of the "House of People" are elected by the Legislatures of the States forming the Federation.

SRI K. BHASHYAM:

In Article 67, clause (7), with regard to the representation in the House of the People of territories other than States, the Parliament shall make provision for consulting in the best way possible, the wishes of the people of the State.

In Article 82, clause (3), the Constitution Act may provide for forfeiture of the seat of a member in the House on account of absence, but power should be given to the Parliament to reinstate the member if reasons given for his absence are satisfactory to the House.

In Article 83 (1), with regard to the disqualifications for membership, the age-limit need not necessarily be coincident with that of the voter, but it should be prescribed at 25.

SRI K. BRAHMANANDAM REDDI:

Article 86, be numbered as 86 (1), and the following be added as clause (2):
 "No member of either House of Parliament shall during the continuance of such membership engage himself in any other profession, trade or business, provided that agriculture shall not be deemed to be one such."

(1) In Article 91, proviso (1), the words "if it is not a Money Bill" be omitted.

The following words be added at the end:—

"and the Bill as passed, on such reconsideration supported by not less than two-thirds of the House of the People shall be deemed to have obtained the assent of the President."

ABDUL HAMEED KHAN SAHIB BAHADUR:

In Article 99, clause (1), for the word 'Hindi,' substitute the word 'Hindustani'.

SRI K. BHASHYAM:

In Article 102, relating to the powers of the President to promulgate Ordinances, provision may be made (1) for requiring the President to consult the Council of Ministers before the issue of an Ordinance and before he expresses satisfaction that an emergency exists; and (2) in clause (3), instead of restricting the power of the President in the issue of the Ordinances to matters on which the Parliament is competent to enact, the provision may be made general so as to include Provincial and Concurrent subjects also as in some cases an emergency may arise which may require such action to be taken in respect of them also.

(13) in Article 103—

- (1) in sub-clause (2), in the matter of appointment of Judges to the Supreme Court, the provision for the consultation of the Judges of the Supreme Court and of the High Courts in the States as may be necessary for the purpose is not clear and the personnel of the Judges who must be consulted should be specified;
- (2) in sub-clause (3) (b), the words 'just proceeding the date of appointment' may be added after the words "ten years" and before 'an advocate'; and
- (3) in Explanation to sub-clause (3), the judicial office must be more clearly defined and must be an office of a grade not less than that of a District Judge.

BEGUM SULTAN MIR AMIRUDDIN:

In Article 103, clause (2), the personnel of the Judges must be specified.
SRI K. BRAHMANANDAM REDDI:

In Article 103 (4), *after* the words "for such removal," *insert* "on the ground of misbehaviour, incapacity and the like or except by an order of the President passed".

BEGUM SULTAN MIR AMIRUDDIN:

In Article 107 the circumstances under which the power should be exercised must be specified.

SRI K. BHASHYAM:

(14) in Article III, clause (1) (a), for the words "twenty thousand," the words "ten thousand" may be substituted.

SRI K. BRAHMANANDAM REDDI:

(14) in Article III, clause (1) (a), for the words "twenty thousand," the words "ten thousand" may be substituted.

SRI K. BHASHYAM:

In Article 115, the power of the Supreme Court to issue directions by way of *habeas corpus*, etc., need not wait till the Parliament passes law to the effect, and such power may be conferred on them by this Constitution Act itself.

SRI M. G. NATESA CHETTIYAR:

SRI K. T. KOSALRAM:

In Article 131, the original article providing for direct election of Governor be retained.

SRI PYDAH VENKATANARAYANA:

SRI B. SATYANARAYANA RAJU:

Delete the alternative to Article 131 and the footnote thereof.

SRI K. BHASHYAM:

In Article 131, relating to the election of the Governors, the alternative system may be approved.

M. MUHAMMAD ISMAIL SAHIB BAHADUR:

In Article 131, for the existing Article and its alternative the following

shall be substituted:

"The Governor of a State shall be elected according to the system of single transferable votes by a college of electors which shall be composed of the members of the Legislative Assembly of a State, the members of the Legislative Council where there is one, the Presidents for the time being of the District Boards in the State and the Chairmen of the Municipal Councils in the state' and consequential amendments be made in other Articles."

BEGUM SULTAN MIR AMIRUDDIN:

For Article 131, and the alternative, substitute the following:—

"The Governor of a State shall be elected, in accordance with the system of proportional representation by means of the single transferable vote, by an electoral college comprising of members of the Legislature, District Boards, Municipalities and University Bodies together."

ABDUL HAMEED KHAN SAHIB BAHADUR:

For Article 131 substitute "The Governor of a State shall be appointed by the President by warrant under his hand and seal and the person so appointed shall as far as possible be one who belongs to a Province other than that to which he is appointed."

SRI K. BHASHYAM:

In Article 132, the term of office of the Governor should be extended to seven years so that the elections to the various Legislatures should not be coincident with the election of the Governor himself.

SRI M. G. NATESA CHETTIYAR:

In Article 132, the Governor's term of office be fixed at six years.

In Article 132 Proviso (b) the grounds for impeachment should be made clear.

SRI K. BRAHMANANDAM REDDI:

In Article 132 (c) after the word 'term' the words "except when removed under clause (b)" be inserted.

SRI K. BHASHYAM:

In Article 134, the age-limit for a Governor should be raised to 45.

In Article 138, in the provision to allow the President to make such provisions as he thinks fit for the discharge of the functions of the Governor in any emergency, a clause may be inserted so as to compel the President to consult the Council of Ministers before doing so.

The President must also be authorized to transfer a case from the High Court of one State to that of another in extraordinary circumstances, as provided for in section 25 of the Civil Procedure Code.

SRI M. G. NATESA CHETTIYAR.

In Article 138 the President of the Union may be given absolute power instead of the State Legislature.

Article 142 may be amended so that the executive power of the State shall extend to residuary powers.

In Article 144, proviso Madras may also be added to the States mentioned therein.

In Article 144 (8) provision may be made also for Minister's minimum attendance in the Legislature.

SRI K. BHASHYAM:

In Article 145 (1), it may be made clear that the age restrictions for the retirement of appointment of Judges should not apply to the Advocate-General.

SRI K. BRAHMANANDAM REDDI:

In Article 145 (1) after the word "shall" the words "on the recommendation of the Chief Minister" be added.

SRI K. BHASHYAM:

In Article 148, the Legislature shall consist of only one House.

BEGUM SULTAN MIR AMIRUDDIN:

In Article 148, substitute the following for clause (1) "in every State there shall be a Legislature which shall consist of only one House."

In Article 148, substitute the following for clause (2) "The Legislature shall be known as the Legislative Assembly."

SRI M. G. NATESA CHETTIYAR:

The unicameral Legislature under Article 148 be indicated by a distinctive name.

SRI K. BHASHYAM,—

BEGUM SULTAN MIR AMIRUDDIN:

In Article 150, clause (3), add the following after sub-clause (d):—

(e) Law and medicine.

SRI M. G. NATESA CHETTIYAR:

Article 151 may be amended so that the dissolution of the Assembly may also take place with an address of the Governor.

In Article 152 the age-limit for membership of the State Legislature be reduced to 21 years for the Legislative Assembly and 30 years for the Council of State.

In Article 153 (1) "three months" may be substituted for six months.

The discussion referred to in Article 155 may be at a Joint Sitting with the Governor or the Speaker in case of indisposition of Governor.

Article 183 may be modified so that the Governor may preside at Joint Sittings.

BEGUM SULTAN MIR AMIRUDDIN:

After Article 186 add a new Article to prohibit the introduction of legislation which bars the jurisdiction of civil courts to adjudicate rights of private parties as amongst themselves or as between private parties and Government of a State or Union.

Renumber the subsequent Articles.

SRI K. BHASHYAM:

In Article 188 (1), relating to the powers of the Governor during grave emergencies, provision must be made that the Governor shall not act in this matter except upon the advice of the Council of Ministers and that in case of difference of opinion between him and the Council he should refer it to the President for final decision.

BEGUM SULTAN MIR AMIRUDDIN:

In Article 193, clause (1) *delete* the following:—

“or such higher age not exceeding 65 years as may be fixed in this behalf by law of the Legislature of the State.”

SRI K. BHASHYAM:

In Article 198—

- (1) the age-limit for the retirement of High Court Judges in the States may be fixed once for all at 65 instead of leaving it to the Legislature of the State to prescribe the age;
- (2) in Explanation to clause (2), the Judicial office referred to must be of a grade not less than that of a District Judge.

BEGUM SULTAN MIR AMIRUDDIN:

In Article 200 the circumstances under which the power should be exercised should be specified.

SRI M. G. NATESA CHETTIYAR:

The Chapter on Legislative relations be changed so as to vest residuary power in the State and not in the Centre.

SRI K. BHASHYAM:

In Article 216, in sub-clause (2), where provision is made that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation, it must be made clear whether it means extra-territorial beyond India or will have operation even in case where the Provincial Government has exclusive jurisdiction.

In section 220, the division of powers between the provision in this section for the Legislature of the State to make laws with respect to the constitution and organization of State High Court, and the power given in Chapter VII, Part VI—High Courts in the States, to the President for the purposes of appointment, etc., should be clearly defined.

M. MUHAMMED ISMAIL SAHIB BAHADUR:

Article 223 shall be *omitted*.

DR. M. J. SAMUEL:

At the end of Article 224 *after* clause (c) the following shall be *added*:—

- (d) Parliament shall not unreasonably refuse to entrust to the Government of any State such functions with respect to Broadcasting as may be necessary to enable that Government:
 - (i) to construct and use transmitters in the State,
 - (ii) to regulate and impose fees in respect of construction and the use of transmitters and the use of receiving apparatus in the State.

M. MUHAMMED ISMAIL SAHIB BAHADUR,—

BEGUM SULTAN MIR AMIRUDDIN,—

SRI K. BRAHMANANDAM REDDI:

Article 226 shall be *omitted* and consequential amendments be made in the other Articles.

SRI PYDAH VENKATANARAYANA:

SRI B. SATYANARAYANA RAJU:

The recommendations of the expert committee on the financial provisions of the Constitution with regard to the distribution of revenue between the Union and the States be embodied in Part X, Chapter I (Finance).

BEGUM SULTAN MIR AMIRUDDIN:

In Part XII, page 133, fundamental safeguards in favour of the services should be incorporated.

In Article 286 delete clause (3) and substitute the following:—

“the Union Commission, or as the case may be. The State Commission shall be consulted.”

M. MUHAMMAD ISMAIL SAHIB BAHADUR:

BEGUM SULTAN MIR AMIRUDDIN:

In Article 292, renumber the present Article as 292 (1) and add the following as sub-clause (2):—

(2) the seats reserved under clause (1) for the minority communities shall be filled by the members of the respective communities elected by constituencies of voters belonging to the said respective communities.

M. MUHAMMAD ISMAIL SAHIB BAHADUR:

BEGUM SULTAN MIR AMIRUDDIN:

13. In Article 294 (1) the following shall be inserted as clause (2)—

“(2) the seats reserved hereby for the minority communities shall be filled by the members of the respective communities elected by constituencies of voters belonging to the said respective communities”;

and the other sub-clauses be renumbered accordingly.

SRI A. S. SAHAJANANDA:

In line 5 of Article 297 (1), for the words “ten years” the words “fifty years” be substituted.

BEGUM SULTAN MIR AMIRUDDIN:

In Article 303, clause (1), the terms “Government of India” “Government of a State” should be defined.

SRI K. BRAHMANANDAM REDDI:

In Article 304, the following shall be inserted as clause (1) and existing clauses (1) and (2) shall be renumbered as (2) and (3)—

“An amendment of the constitution regarding enumeration of States in Part I of the First Schedule shall be made by the President so as to get into being States based on languages and contiguity within two years of the coming into force of the Constitution of India provided that within the said period of two years India is not in or at war or in the opinion of the President is not threatened with imminent war with any Foreign State or country and provided further that India is not in, or threatened with such grave internal disorder as in the opinion of the President such an above said amendment cannot be made and provided further that the said period of two years shall begin or run as the case may be as soon as the emergency mentioned in the two preceding provisos ends.”

BEGUM SULTAN MIR AMIRUDDIN:

In Article 304 dealing with amendments to the Constitution the States should also be empowered to propose amendments by two-third majority.

SRI K. BHASHYAM:

In the matter of protection of minorities there must be a provision enjoining the President to appoint a commission at lease at the end of ten years to investigate the conditions of socially and educationally backward class.

SRI M. G. NATESA CHETTIYAR:

Article 305 may be so altered as to make an exemption of representation in Madras Province by communities on the population basis of each community in respect of scheduled castes and backward classes of the province for a period of not less than 25 years.

SRI A. S. SAHAJANANDA:

In line 8 of Article 305 for the words "ten years," the words "fifty years" shall be substituted.

SRI T. VISWANATHAM:

That the Draft Constitution requires amendment so as to alter the enumeration of States in Part I of the First Schedule so as to make it consist of Linguistic Provinces (on the lines stated in the Constitution of the Indian National Congress), namely, (1) Andhra, (2) Assam, (3) Bihar, (4) Bengal, (5) Gujarat, (6) Karnatak, (7) Kerala, (8) Mobakoshal, (9) Maharashtra, (10) Punjab, (11) Tamil Nadu, (12) United Provinces, (13) Vidarbha and (14) Utkal.

(b) to add to Part II of the First Schedule Bombay and Madras Cities, and

(c) to make provision for carrying out 'bi-lingua' areas where necessary and include them in Part II of the First Schedule.

SRI K. BOKKAI GOWDER:

In Part II of the First Schedule "the Nilgiris district or" be added.

SRI M. G. NATESA CHETTIYAR:

That the Chief Commissioner's provinces be listed along with the other provinces in Part I instead of as Part II of the First Schedule.

BEGUM SULTAN MIR AMIRUDDIN:

In the Second Schedule, Part IV, clause 10, substitute the following for the salary of the Judges:—

	Rs.
Chief Justice of the Supreme Court	4,500
Any other Judge of the Supreme Court	4,000
Chief Justice of the High Court	3,500
Any other Judge of the High Court	3,000

M. MUHAMMAD ISMAIL SAHIB BAHADUR:**BEGUM SULTAN MIR AMIRUDDIN:**

In List I in the Seventh Schedule, item 5 shall be omitted.

M. MUHAMMAD ISMAIL SAHIB BAHADUR:

In List I, Seventh Schedule, the following words shall be added at the end of item 13:—

"In consultation with the respective States where subjects of the State List are concerned."

Items 31 and 32 shall be omitted.

SRI K. BHASHYAM:

In List I in the Seventh Schedule, the following be added as a new item 40 (a) after existing item 40:—

"40 (a) University education, Scientific Research."

BEGUM SULTAN MIR AMIRUDDIN:

In List I of the Seventh Schedule omit item 66.

M. MUHAMMAD ISMAIL SAHIB BAHADUR:

In List I, Seventh Schedule, item 91 shall be omitted.

SRI K. BHASHYAM:

In List II, Seventh Schedule, in item 18, the words "and 40 (a)" shall be added after "40".

In List II, the Seventh Schedule, the words "other than mechanically propelled vehicles" in item 19 be omitted.

SRI K. BRAHMANANDAM REDDI:

Add to List II State List in the Seventh Schedule—

"Any other subject not specifically mentioned either in the Union or Concurrent List."

BEGUM SULTAN MIR AMIRUDDIN:

In List II in the Seventh Schedule, add the following item:—

(67) Regulation of mines and oil fields and mineral development.

SRI K. BHASHYAM:

In List III, in the Seventh Schedule, item 21 be omitted.

BEGUM SULTAN MIR AMIRUDDIN:

In List III, in the Seventh Schedule, add the following item:—

(38) Industries necessary for the purpose of defence on prosecution of war.

SRI PYDAH VENKATANARAYANA:

In the Seventh Schedule, delete List No. 111 and add it to List No. II.

M. MUHAMMAD ISMAIL SAHIB BAHADUR:

In List III, in the Seventh Schedule, items 17, 18, 19, 20, 21, 23, 24, 30 and 31 may be omitted and entered under List II.

MADRAS LEGISLATIVE COUNCIL

PROPOSED AMENDMENTS TO THE DRAFT CONSTITUTION OF INDIA ADOPTED BY THE MADRAS LEGISLATIVE COUNCIL

1. That in article 10(3) the word "backward" be omitted.
2. That in article 23(2) add the words "subject to the provisions of Article 37."
3. That for article 67(3) substitute the following:—
 - (3) The representatives of each State for the time being specified in Part I or Part III of the First Schedule in the Council of States shall be elected by the people directly from territorial constituencies based and constituted on property, trade, educational or taxation qualifications super-added to adult suffrage."
4. That for article 150(2) substitute the following:—
 - "The members of the local Council of State shall be elected by the people directly from territorial constituencies based and constituted on property, trade, educational or taxation qualifications super-added to adult suffrage."

5. That for article 43, substitute the following:—

“The President shall be elected by electoral delegates chosen by the peoples of the states on the analogy of clause 2, section 1 of Article II and Article XII of United States of America.”

BIHAR LEGISLATURE

LETTER FROM THE GOVERNMENT OF BIHAR, DATED THE 30TH
SEPTEMBER, 1948.

I am directed to forward for the information of the Hon'ble President, Constituent Assembly of India, a resume of the debates in the Bihar Legislative Assembly and the Bihar Legislative Council on certain provisions of the Draft Constitution of India. The debates lasted for five days in the Assembly and for two days in the Council. The members evinced interest on the following points:—

1. Scheduled and Tribal Areas (Articles 189 and 190).
2. Language to be used in Legislatures of States and the Parliament (Articles 99 and 184).
3. Reservation of seats for Minorities (Articles 292 and 294).
4. Appointment of Governor (Article 131).
5. Impeachment of Governor (Article 137).
6. Constitution of Legislatures in States (Article 148).
7. Primary education (Article 36).
8. Financial proposals: Distribution of duty on jute or jute products and Grants from the union to certain states (Articles 251, 254, 255 and 266).
9. Finance Commission (Article 266).
10. Formation of new States and alteration of areas, boundaries or names of existing States (Articles 2 and 3).
11. Power of Parliament to legislate for one or more States by consent and adoption of such legislation by any other State, (Article 229).
12. Name and territory of the Union (Article 1).
13. Establishment and constitution of Supreme Court (Article 10).

A resume of the debate on the Draft Constitution of India in the Legislative Assembly and the Legislative Council, Bihar.

A number of members both of the Assembly and the Council participated in the debate which went on for five days in the Assembly and for two days in the Council. The general trends were as follows.

Scheduled and Tribal Areas

Arts. 189 & 190

Dr. Purnā Chandra Mitra, M.L.A., was against giving a permanent majority to the aboriginals in the Tribes Advisory Council. He wanted the police stations of Ranchi Kotwali, Ranchi Sardar, Sili, Angara, Bundu, Sonahatu, the municipal limits of Lohardaga town, the towns of Jamshedpur and Chaibassa and the whole of Latehar Sub-division of Santhal Parganas to be excluded from the "Scheduled Area."

Mr. Muhammad Abdul Ghani, M.L.A., opposed all distinction between one area and another as the specially treatment proposed for "Scheduled Area" implied.

Mr. Deokinandan Prasad, M.L.A., suggested exclusion of the districts of Ranchi, Singhbhum and Santal Parganas from "Scheduled Area."

Mr. Lambodar Mukherji, M.L.A., was against all special provisions for Excluded and Partially Excluded areas since all reasonable protection could be afforded to those areas through laws passed by the provincial legislature.

Mr. Murli Manohar Prasad, M.L.A., expressed himself against constitution of a Tribes Advisory Council and the provisions regarding non alienation of property of aboriginals as made in para. 6 of Fifth Schedule of the Constitution.

Mr. Rajkishore Singh, M.L.A., wanted Latehar subdivision of Palamau district to be excluded from "Scheduled Area."

Mr. Brijlal Dokania, M.L.A., opposed inclusion of Santal Parganas district as a whole in "Scheduled Area."

Mr. Radha Govind Prasad, M.L.C., thought as unnecessary the provisions designed to afford protection to scheduled castes and tribal areas as made in Articles 13 (5) and 37 of the Constitution. He opposed the recommendations of the Excluded and Partially-Excluded Areas Sub-Committee of the Constituent Assembly regarding non-settlement of land with non-aboriginals except in consultation with the Tribes Advisory Council on the ground that about half the local population is non-aboriginal and right to acquire property should connote the same legal status for all residents. He objected to the provision for separate budget for "Scheduled Areas", such a provision being against all principles of public finance.

Shrimati Sushila Samanta, M.L.C., supported the provisions of Article 255 under which the Union would be required to give grants-in-aid to States for promoting the welfare of the scheduled tribes and for raising the level of administration of the "Scheduled Area."

Mr. Boniface Lakra, M.L.C., supporting the provisions made for Scheduled Tribes pleaded for a separate Minister in the province to look after the "Scheduled Area" and tribes.

Mr. Devendra Nath Samanta, M.L.C., did not see any objection to the three-fourths majority of aboriginals in the Tribes Advisory Council as his experience as a member of the Excluded and Partially-Excluded Areas Sub-Committee of the Constituent Assembly had been that members of legislatures and Governors had all been in favour of such provisions.

Generally speaking, members were against the present provisions in respect of "Scheduled Area".

Articles 99 and 184

Language to be used in the Legislatures of States and the Parliament.

Majority of the members who touched this subject in their speeches were Muslims and pleaded for introduction of Hindustani with Hindi and Urdu scripts.

Messrs. Saiyid Badruddin Ahmad, M.L.A., and Muhammad Abdul Ghani M.L.A., observed that Hindustani should be the official language of India since it is written in Urdu and Devanagri scripts.

Mr. Zeaur Rahman, M.L.A., wanted Urdu as such to be allowed to maintain the status quo.

Mr. Muhammad Mobarak Karim, M.L.A., conceded that Hindi should be the language of the State but Urdu should also be allowed to retain its existing position. In his opinion every member should have the liberty of speaking in his mother tongue without permission of the Chair and the speech should be recorded in the script of that tongue instead of the gist of the speech being given in English or Hindi.

Mr. Muhammad Raziuddin, M.L.A., argued that the State language should be Hindustani and the people should be free to use either the Devangari script or the Urdu script.

Mr. Shah Muhammad Ozair Munemi, M.L.C., emphasised the necessity of giving Urdu the same position as given to Hindi and English.

Mr. Satis Chandra Sinha, M.L.C., said that India being a vast country it was desirable that more languages than one should serve the linguistic needs of the State.

Rai Brijraj Krishna, M.L.C., favoured Hindi as State language in the interest of maintenance of unity and integration of the State.

Mr. Puneydeo Sharma, M.L.C., recommended easy and unsanskritised Hindi to be used as the language of the State.

Mr. Saiyid Mobarak Ali, M.L.C., favoured Hindustani with Hindi and Urdu scripts. Constitutions of other countries provided a parallel in this respect.

Mr. Abdul Malik, M.L.C., also preferred Hindustani.

Articles 292 and 294

Minorities: Reservation of Seats for, etc.

Opinion on this issue got fairly divided, while some Muslim members were against reservation of seats, others wanted it with separate electorates. The majority opinion was against reservation of seats, 7 M.L.As. and 5 M.L.Cs. being against and 6 M.L.As. and 3 M.L.Cs. being for reservation.

Messrs. Saiyid Badruddin Ahmad, Lambodar Mookherji, Muhammad Raziuddin, Muhammad Tahir and Brijlal Dokania, M.L.A.s, were against reservation of Seats on the ground that it was likely to promote formation and growth of communal organisations. Mr. Muhammad Nauman, M.L.A., also did not want reservation, but if special representation was to be there, it should be through separate electorate or any other method like the single transferable vote.

Messrs. Muhammad Abdul Ghani and Zeaur Rahman, M.L.A.s, favoured reservation of seats with separate electorate.

Messrs. Jitu Ram and Chetu Ram, M.L.A.s, also wanted reservation of seats for minorities.

Messrs. Bariar Hembrom Sakti Kumar and Rajkishore Singh, M.L.A.s, supported reservation.

Mr. Murti Manohar Prasad, M.L.A., wanted the Scheduled castes to be put on the same footing as the Muslim minority in the matter of reservation of seats.

Mr. Saiyid Muhammad Mahdi, M.L.C., recommended doing away with all provision for reservation of seats as such special treatment was likely to produce a beneficial effect upon the common brotherhood of man and would thus foster a sense of separatism, keeping the minorities away from the majority community and creating a "diluted form of separate electorates".

Messrs. Puneydeo Sharma, Saiyid Mobarak Ali, Radha Govind Prasad, and Ganganand Singh, M.L.C.s, opposed reservation of seats for minorities.

Shrimatis Saraswati Devi and Sushila Samanta, M.L.C.s, pleaded for reservation of seats for women in the legislature and in the services and institutions as was envisaged in the case of backward classes.

Mr. Devendra Nath Samanta, M.L.C., favoured reservation of seats for those who were backward in education and otherwise.

Articles 131 and 137

Appointment of Governor, etc.

All members who spoke favoured the alternative given in Article 131 under which the appointment is to be made by the President from the panel of four names to be elected by the Legislative Assembly of the State concerned:

Messrs. *Muhammad Abdul Ghani, Jhulan Sinha, Muhammad Nauman, Lambodar Mookherji, Raziuddin and Brijlal Dokamia, M.L.A.s*, all favoured the election of a panel of four names by members of the Legislative Assembly of the State from which the President would appoint a person as Governor,

Messrs. *Ghani and Nauman* wanted at least 10 to 15 per cent. of the members to move the resolution of impeachment.

Mr. *Lambodar Mookherji* suggested that if the Governor was to come in by direct election he should be empowered to constitute his cabinet of Ministers.

The reason which was advanced by the members in favour of the alternative was that this course would ensure collaboration between the Head of the State and his Ministers.

Rai *Brijraj Krishna, Messrs. Radha Govind Prasad, Jaideva Prasad, and Abdul Malik, M.L.C.s*, favoured the alternative of electing a panel of four names. They thought the Premier and the Governor both should not be elected by the people. Rai *Brijraj Krishna* argued that in the event of a difference of opinion between the Governor and his Ministers the wishes of the latter are bound to prevail which would mean adverse reflection on the people, Mr. *Jaideva Prasad* would, however, limit his term of office to 5 years.

Article 148

Constitution of Legislatures in States

The opinion on this issue got sharply divided, Members of Assembly expressing themselves unanimously in favour of a unicameral legislature with emphasis on the point that the Bihar Assembly at its session held on the 12th September, 1947, had already passed unanimously a resolution that the Upper Chamber in Bihar be done away with, and Members of Council lining themselves in favour of a bi-cameral legislature on the analogy of the composition of the Indian Parliament.

Messrs. *Deokinandan Prasad, Lambodar Mookherji, Murali Manohar Prasad, Muhammad Raziuddin, Sidui Hembrom and Brijlal Dokania, M.L.A.s*, deprecated the idea of maintaining a bi-cameral legislature on the ground of redundancy and waste of public funds.

Messrs. *Maheshwar Prasad Narayan Singh, Shah Muhammad Ozair Munemi, Rai Brijraj Krishna, Satis Chandra Sinha, Saiyid Mobarak Ali, Radha Govind Prasad, Jaideva Prasad, Ganga Nand Singh, and Devenra Nath Samanta, M.L.C.s*, spoke for retention of the Upper Chamber arguing that if a second chamber was considered necessary for the Central Legislature and if such a chamber existed in other countries there was justification for its existence in Bihar also.

Article 36

Primary Education

Only two M.L.A.s, and one M.L.C. took part in the debate on this question and their views are given below:—

Messrs. *Md. Abdul Ghani and Muhammad Raziuddin, M.L.A.s*, wanted the age-limit to be lowered to 10 years in the case of *pardah-nashin* girls as they thought girls of 14 became mature and they should not be made to attend schools.

Mr. *Shah Muhammad Ozair Munemi*, M.L.C., suggested an exception in the case of those children who were receiving private education at home. He claimed that there were boys amongst them, comparatively of tender age, in enlightened families whose knowledge was superior to that of students of higher classes in schools and if compulsion was resorted to send them to school the result would be a prejudicial effect on their educational equipment.

Articles 251, 254, 255 and 266

Financial proposals: Distribution of Duty of jute and jute products and Grants from the Union to certain states

There was a strong feeling as to the allocation of proper share of the duty on jute or jute products and the proceeds of Income-tax, members being vehement in claiming that a State in which an industry is located (and not that State in which the head office of the industry is located) should get its due share of the proceeds of the income and other taxes. Messrs. *Muhammad Nauman and Murli Manohar Prasad*, M.L.A.s, and *Rai Brijraj Krishna* M.L.C., took part in the debate on the subject. Mr. *Murli Manohar Prasad* urged that a definite percentage of the Jute export duty must be fixed in the light of Bihar's claim, right and need. He also suggested that an export duty of -4/- a ton on any mineral exported from Bihar should be levied.

Rai Brijraj Krishna said that the tax assignable to a State should depend on the income earned in it and not leviable in it as provided for in Article 251. Illustrating his point he lent support to the argument advanced by Mr. *Murli Manohar Prasad* in the Assembly that the head offices of a number of industries in Bihar were either in Calcutta or Bombay although the industries themselves were actually operated in Bihar which meant that the income was earned in Bihar. Under the existing and the proposed arrangements the taxes are levied in Calcutta and Bombay whereas in fairness the taxes levied on those industries should be assigned to Bihar. *Rai Brijraj Krishna* also urged that the proposals contained in Article 266 of the Constitution under which the States would be liable to taxation by the Centre for trade and business operations undertaken by them are very likely such as would hamper nationalization of industries by the States.

Article 266

Finance Commission

Mr. Hridayans Sahay, M.L.A., and Messrs. *Rai Brijraj Krishna and Radha Govind Prasad*, M.L.C.s, wanted the Finance Commission to come into existence simultaneously with the Constitution.

Articles 2 and 3.

Formation of Provinces on linguistic basis, etc.

Only two members of the legislature, Messrs. *Radha Govind Prasad and Ganga Nand Singh*, M.L.C.s, referred to the provisions of Article 3 whereby Parliament could on a representation by a majority of the representatives in the legislature of a State create a separate State by law, Mr. *Radha Govind Prasad* describing this provision as dangerous and retrograde since in effect it would lead to promotion of separatist tendencies culminating in undesirable fragmentation of States, and Mr. *Ganga Nand Singh* looking with disfavour of agitations calculated to bring about divisions of provinces. Mr. *Ganga Nand Singh* would instead have sub-provinces created within a State having separate legislatures and cabinets enjoying a certain amount of autonomy, the Centre dealing with matters of common interest to the province as a whole.

Article 229*Function of Parliament to legislate for States*

Mr. Muhammad Abdul Ghani, M.L.A. and Messrs. Radha Govind Prasad, and Ganga Nand Singh, M.L.C.s, considered the provisions of article 229 as retrograde and undesirable since the State Legislature is not empowered to amend or repeal the laws made in this behalf by the Parliament.

Article 1*Name and territory of the Union*

Messrs. Bundi Ram Oraon, Deokinandan Prasad and Harivans Sahay, M.L.A.s, wanted "Bharatvarsha" or "Hindustan" to take the place of "India". Like wise, "Bhartiya Sangh" should replace "Indian Union" in their opinion.

The Supreme Court and the High Court.

All members who spoke on the function of the judiciary pleaded for the complete independence of it and detachment from party politics.

BARODA DHARA SABHA

TELEGRAM FROM THE DEWAN OF BARODA, DATED THE 27TH OCTOBER 1948.

Dhara Sabha Baroda State unanimously adopted on October twentyfirst following resolution. "The Baroda Legislative Assembly generally approves of the Draft Constitution prepared by the Drafting Committee of Constituent Assembly of India and suggests that Article 225 of the Constitution requires to be reconsidered and modified".