



CONSTITUENT ASSEMBLY  
OF  
INDIA

- 1) Memorandum on the principles of the Union Constitution by (S. Varadachariar & Union Constitution Committee)
- 2) Advisory Committee on minorities: Interim report (Chairman: Vallabhbhai Patel)
- 3) Union powers Committee: report. (Chairman: J. Nehru)
- 4) Provincial Constitution Committee: report (Chairman: V. Patel)
- 5) Central Provinces Legislature: Committee appointed to consider the draft Constitution of India: report. (Chairman: Gupta)
- 6) Order of business Committee: report. (Chairman: K.M. Munshi)

**CONFIDENTIAL**

No. CA/63/Cons./47

**CONSTITUENT ASSEMBLY OF INDIA**

COUNCIL HOUSE,  
New Delhi, the 4th July, 1947.

FROM .

PANDIT JAWAHARLAL NEHRU,  
CHAIRMAN, UNION CONSTITUTION COMMITTEE.

To

THE PRESIDENT,  
CONSTITUENT ASSEMBLY OF INDIA.

SIR,

On behalf of the members of the Committee appointed by the Hon'ble the President in pursuance of the resolution of the Constituent Assembly of the 30th April, 1947, to report on the principles of the Union Constitution, I have the honour to submit the annexed Memorandum which embodies the recommendations of the Committee together with explanatory notes where necessary.

I have the honour to be,

Sir,

Your most obedient servant,

JAWAHARLAL NEHRU,

*Chairman.*

**CONFIDENTIAL**

No. CA/63/Cons/47.

**CONSTITUENT ASSEMBLY OF INDIA**

**Memorandum on the Indian Constitution**

**Preamble.**—We, the people of India, seeking to promote the common good, do hereby, through our chosen representatives, enact, adopt and give to ourselves this Constitution.

**PART I**

**FEDERAL TERRITORY AND JURISDICTION**

**1. Name and Territory of Federation.**—The Federation hereby established shall be a sovereign independent Republic known as India.

Save as otherwise provided by or under this Constitution or any treaty or agreement, the territories included for the time being in Schedule I shall be subject to the jurisdiction of the Federation.

[*Note.*—The structure proposed to be established by this Constitution being federal in character, the term Federation has been used.]

“India” has been suggested for the name of the State as being the shortest and the most comprehensive.

The words “save as otherwise provided by or under any treaty or agreement” are necessary, because there may be Indian States which, though unfederated and therefore not in the Schedule, may have ceded jurisdiction for certain special purposes by some treaty or agreement.

**2. Admission of New Territory.**—The Parliament of the Federation may from time to time by Act include new territories in Schedule I upon such terms as it thinks fit.

[*Cf.*—Art. IV, Section 3(1), of the Constitution of the U.S.A. and Section 121 of the Australian Constitution. The power to admit new States is vested in the Congress in the U.S.A. and in the Commonwealth Parliament in Australia.]

As a matter of nomenclature it may be explained that in this draft the Legislature of the Federation is referred to as “Parliament”; Unit Legislatures are referred to as “Legislatures”. The Federal Parliament consists of the President and a National Assembly comprising two Houses.]

**3. Creation of new units and alteration of boundaries of units.**—The Parliament of the Federation may by Act, with the consent of the Legislature of every Province and the Legislature of every Indian State affected thereby,

- (a) create a new unit;
- (b) increase the area of any unit;
- (c) diminish the area of any unit;
- (d) alter the boundaries of any unit;

and may with the like consent make such incidental and consequential provisions as it may deem necessary or proper.

[*Note.*—This corresponds to S. 290 of the Act of 1935, but is wider in that it provides for the possibility of Indian State territory being included in a Province.]

## SCHEDULE I

### TERRITORIES SUBJECT TO THE JURISDICTION OF THE FEDERATION

#### I. Governors' Provinces.

Madras,  
Bombay,  
West Bengal,  
The United Provinces,  
Bihar,  
East Punjab,  
The Central Provinces and Berar,  
Assam,  
Orissa.

#### II. Chief Commissioners' Provinces.

Delhi,  
Ajmer-Merwara,  
Coorg,  
The Andaman and Nicobar Islands,  
Panth Piploda.

#### III. Indian States.

[Here enumerate the acceding or ratifying Indian States:—

- (1) *Single States,*
- (2) *Groups of States.]*

[The Governors' Provinces and the Chief Commissioners' Provinces specified in the Schedule will be automatically within the jurisdiction of the Federation of India. As regards Indian States, some procedure will have to be prescribed for determining which of them are to be included in the Schedule initially. Under the Act of 1935, accession was to be evidenced by "Instruments of Accession" executed by the Rulers. If it is considered undesirable to use this term or adopt this procedure, some kind of ratification may have to be prescribed.]

If any of the Provinces specified in the Schedule should be partitioned before the Constitution comes into operation, the Schedule will have to be amended accordingly.

## \*PART II

\*This Part is subject to the decision of the *ad hoc* Committee on Citizenship Clause.

**CITIZENSHIP**

1. **Citizenship.**—At the date of commencement of this Constitution :—

every person domiciled in the territories subject to the jurisdiction of the Federation—

- (a) who has been ordinarily resident in those territories for not less than five years immediately preceding that date, or
- (b) who, or whose parents, or either of whose parents, was or were born in India,

shall be a citizen of the Federation :

Provided that any such person being a citizen of any other State may, in accordance with Federal law, elect not to accept the citizenship hereby conferred.

*Explanation—*

For the purposes of this clause—

“Domicile” has the same meaning as in the Indian Succession Act, 1925.

2. After the commencement of this Constitution—

- (a) every person who is born in the territories subject to the jurisdiction of the Federation ;
- (b) every person who is naturalised in accordance with Federal law ; and
- (c) every person, either of whose parents was, at the time of such person’s birth, a citizen of the Federation ;

shall be a citizen of the Federation.

3. Further provisions governing the acquisition and termination of Federal citizenship may be made by Federal law.

*Explanation—*

In this Constitution, unless the context otherwise requires, “Federal law” includes any existing Indian law as in force within the territories subject to the jurisdiction of the Federation.

[*Note.*—The provisions regarding citizenship will doubtless rouse keen controversy. The present draft is merely meant as a basis for discussion. Cf. Art. 3 of the Constitution of the Irish Free State, 1922, which runs—

“Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State at the time of the coming into operation of this Constitution, who was

born in Ireland or either of whose parents was born in Ireland, or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State for not less than seven years, is a citizen of the Irish Free State and shall, within the limits of the jurisdiction of the Irish Free State, enjoy the privileges and be subject to the obligations of such citizenship :

Provided that any such person being a citizen of another State may elect not to accept the citizenship hereby conferred ; and the conditions governing the future acquisition and termination of citizenship in the Irish Free State shall be determined by law."

Clause 1 is on the lines of the above provision, except that a period of five years has been substituted for seven years in accordance with §.3(1)(c) of the Indian Naturalisation Act, VII of 1926.

The clause has had to be drafted with due regard to the probability that the Federation will not initially exercise jurisdiction over the whole of India.

A person born in India and domiciled in Bombay, who happens to be resident in London at the commencement of the new Constitution, will be a citizen of the Federation under this clause ; but not one domiciled in Sind or Baluchistan, if the Federation does not initially exercise jurisdiction there. It is, however, open to any person to acquire a new domicile by taking up his fixed habitation in another area before the Constitution comes into operation.

Under the Indian Succession Act, 1925, every person has a "domicile of origin", which prevails until he acquires a new domicile. Briefly, his domicile of origin is in the country in which at the time of his birth his father was domiciled, and he can acquire a new domicile by taking up his fixed habitation in another country. There is also a provision in the Act enabling any person to acquire a domicile in British India by making and depositing in some office in British India, appointed in this behalf by the Provincial Government, a declaration in writing of his desire to acquire such domicile ; provided that he has been resident in British India for one year preceding the date of the declaration. Generally speaking, a wife's domicile during her marriage follows the domicile of her husband. If any person who is at present domiciled, say, in Hyderabad, wishes to acquire a domicile, say, in Delhi, before the coming into operation of this Constitution, he can do so either by taking up his fixed habitation in Delhi or by following the procedure prescribed in the above provision of the Indian Succession Act, so that at the date of commencement of the Constitution he will become domiciled "in the territories subject to the jurisdiction of the Federation."

Clauses 2 and 3 follow the provisions suggested by the *ad hoc* Committee ; clause 2 is not necessary, if we are content to leave the matter to Federal law under clause 3. In this connection, there is much to be said in favour of the view of the Calcutta Weekly Notes :

"It is not possible to define exhaustively the conditions of nationality, whether by birth or naturalisation, by the Constitution. If certain conditions are laid down by the Constitution, difficulties may arise regarding the interpretation of future legislation which may appear to be contrary to or to depart in any way from them. For example,

the draft of the nationality clause placed before the Constituent Assembly lays down that any person born in the Union would be a citizen of the Union. But what about a woman citizen of the Union marrying an alien national or about an alien woman marrying a Union national? Would the Union Legislature have power to legislate in the first case that the woman would lose her Union nationality or in the second case that she would acquire Union nationality (such being the law of most of the countries)? These are intriguing questions, but all these things have to be pondered before a rigid clause is inserted in the Constitution itself. It would, in our opinion, therefore, be better to specify who would be citizens of the Indian Union at the date when the Constitution comes into force as in the Constitution of the Irish Free State and leave the law regarding nationality to be provided for by legislation by the Indian Union in accordance with the accepted principles of Private International Law." (Calcutta Weekly Notes, Vol. LI, No. 27, May 26, 1947).

The same journal in two subsequent issues (Vol. LI, Nos. 28 and 29, June 2, and June 9, 1947) has drawn attention to a host of other questions arising out of clause 2 and on the whole it may be better altogether to omit that clause, leaving the matter at large to be regulated by Federal law under clause 3.]

### PART III

#### FUNDAMENTAL RIGHTS INCLUDING DIRECTIVE PRINCIPLES OF STATE POLICY

1. **Fundamental Rights.**—[Here enumerate the Fundamental rights and principles of State policy as passed by the Constituent Assembly.]

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### PART IV

#### CHAPTER I

#### THE FEDERAL EXECUTIVE

1. **Head of the Federation.**—(1) The Head of the Federation shall be the President (Rashtrapati) to be elected as provided below.

(2) The election shall be by an electoral college consisting of—

(a) the members of both Houses of Parliament of the Federation,  
and

(b) the members of the Legislatures of all the Units or, where a Legislature is bicameral, the members of the Lower House thereof.

In order to secure uniformity in the scale of representation of the Units, the votes of the Unit Legislatures shall be weighted in proportion to the population of the Units concerned.

*Explanation.*—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States, a Unit means the group so formed and the Legislature of the Unit means the Legislatures of all the States in that group.

(3) The election of the President shall be by secret ballot and on the system of proportional representation by means of the single transferable vote.

(4) Subject to the above provisions, elections for the office of President shall be regulated by Act of the Federal Parliament.

[*Note.*—The provision about weighting of the votes according to the population of the Units is necessary to prevent the swamping of the votes of a large Unit by those of a much smaller Unit which may happen to have relatively large Legislature. The mode of weighting may be illustrated thus. In a Legislature where each legislator represents 1 lakh (100,000) of the population, his vote shall count as equivalent to 100, that is, 1 for each 1,000 of the population; and where the Legislature is such that the legislator represents 10,000 of the population, his vote shall count as equivalent to 10 on the same scale.]

**2. Term of office of President.**—(1) The President shall hold office for 5 years:

Provided that—

(a) a President may by resignation under his hand addressed to the Chairman of the Council of States and the Speaker of the House of the People resign his office;

(b) a President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in sub-clause (2).

(2) (a) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of the Federal Parliament, but no proposal to prefer such charge shall be adopted by that House except upon a resolution of the House supported by not less than two-thirds of the total membership of the House.

(b) When a charge has been so preferred by either House of the Federal Parliament the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(c) If as a result of the investigation a resolution is passed supported by not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated declaring that the charge preferred against the President has been sustained, the resolution shall have the effect of removing the President from his office as from the date of the resolution.

(3) A person who holds, or who has held, office as President shall be eligible for re-election once, but only once.

[*Note.*—Sub-clauses (1) (b) and (2) follow Art. 12 (10) of the Irish Constitution; sub-clause (3) is also taken from the Irish Constitution.]

**3. Age qualification.**—Every citizen of the Federation who has completed the age of thirty-five years and is qualified for election as a member of the House of the People shall be eligible for election as President.



[*Note.*—This follows Art. II, Section 1 (5), of the Constitution of the U.S.A. and Article 12 (4) of the Irish Constitution.]

**4. Conditions of President's office.**—(1) The President shall not be a member of either House of the Federal Parliament and if a member of either House be elected President, he shall be deemed to have vacated his seat in that House.

(2) The President shall not hold any other office or position of emolument.

(3) The President shall have an official residence and shall receive such emoluments and allowances as may be determined by Act of the Federal Parliament and until then, such as are prescribed in Schedule                     .

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

[*Note.*—These follow the provisions of Articles 12 (6) and (11) of the Irish Constitution.]

**5. Casual vacancies and procedure at elections.**—Appropriate provision should be made for elections to fill casual vacancies, the detailed procedure for all elections, whether casual or not, being left to be regulated by Act of the Federal Parliament:

Provided that—

(a) an election to fill a casual vacancy shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and

(b) the person elected as President at an election to fill a casual vacancy shall be entitled to hold office for the full term of five years.

**6. Vice-President.**—(1) In the event of the absence of the President or of his death, resignation, removal from office, or incapacity or failure to exercise and perform the powers and functions of his office or at any time at which the office of the President may be vacant, his functions shall be discharged by the Vice-President pending the resumption by the President of his duties or the election of a new President, as the case may be.

(2) The Vice-President shall be elected by both Houses of the Federal Parliament in joint session by secret ballot on the system of proportional representation by means of the single transferable vote and shall be *ex-officio* President of the Council of State.

(3) The Vice-President shall hold office for 5 years.

**7. Functions of the President.**—(1) Subject to the provisions of this Constitution the executive authority of the Federation shall be vested in the President.

(2) Without prejudice to the generality of the foregoing provision—

(a) the supreme command of the defence forces of the Federation shall be vested in the President;

(b) the right of pardon and the power to commute or to remit punishment imposed by any court exercising criminal jurisdiction shall be vested in the President, but such power of commutation or remission may also be conferred by law on other authorities.

[*Note.*—The underlined words in sub-clause 2(b) are necessary, because of the provisions of the Criminal Procedure Code, which, in this respect, will probably continue to be in force even after the commencement of the new Constitution. Similar limiting words occur in the Irish Constitution also.]

**8. Extent of executive authority of the Federation.**—Subject to the provisions of this Constitution, the executive authority of the Federation shall extend to the matters with respect to which the Federal Parliament has power to make laws and to any other matters with respect to which authority has been conferred on the Federation by any treaty or agreement, and shall be exercised either through its own agency or through the Units.

9. The executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects, until otherwise provided by the appropriate Federal authority.

[*Note.*—Like the corresponding provision in section 8(2) of the Act of 1935, this clause gives the Rulers of Indian States, who have acceded to the Federation, concurrent executive power even in Federal subjects, until otherwise provided by Federal authority. (In this respect, the position of the Provincial units is rather different: these have no executive power in respect of Federal subjects save as given by Federal law.) Such a clause is necessary, for, otherwise, all statutory powers in respect of Federal subjects will come to an end in the acceding States upon the commencement of this Constitution.]

**10. Council of Ministers.**—There shall be a council of ministers with the Prime Minister at the head, to aid and advise the President in the exercise of his functions.

**11. Advocate-General for the Federation.**—The President shall appoint a person, being one qualified to be appointed a judge of the Supreme Court, to be Advocate-General for the Federation, to give advice to the Federal Government upon legal matters that may be referred to him.

**12. Conduct of business of the Federal Government.**—All executive action of the Federal Government shall be expressed to be taken in the name of the President.

## CHAPTER II

### THE FEDERAL PARLIAMENT

**13. Constitution of the Federal Parliament.**—The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and the National Assembly, comprising two Houses, the Council of States and the House of the people.

14. (1) (a) The Council of States shall consist of—

- (i) not more than 10 members nominated by the President in consultation with universities and scientific bodies;
- (ii) representatives of the Units on the scale of 1 representative for every whole million of the population of the Unit up to 5 millions *plus* 1 representative for every additional 2 millions of the population, subject to a total maximum of 20.

*Explanation.*—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States, a Unit means the group so formed.

(b) The representatives of each Unit in the Council of States shall be elected by the members of the Lower House of the Legislature of such Unit.

(c) The House of the People shall consist of representatives of the people of the territories of the Federation in the proportion of not less than 1 representative for every million of the population and not more than 1 representative for every 750,000 of the population.

(d) The ratio between the number of members to be elected at any time for each constituency and the population of that constituency, as ascertained at the last preceding census shall, as far as practicable, be the same throughout the territories of the Federation.

(2) The said representatives shall be chosen in accordance with the provisions in that behalf contained in Schedule———:

Provided that the elections to the House of the People shall be on the basis of adult suffrage.

(3) Upon the completion of each decennial census, the representation of the several Provinces and Indian States or groups of Indian States in the two Houses shall be readjusted by such authority, in such manner, and from such time as the Federal Parliament may by Act determine.

(4) The Council of States shall be a permanent body not subject to dissolution, but, as near as may be, one-third of the members thereof shall retire in every second year in accordance with the provisions in that behalf contained in Schedule———.

(5) The House of the People, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting and no longer, and the expiration of the said period of four years shall operate as a dissolution of the House:

Provided that the said period may, during an emergency, be extended by the President for a period not exceeding one year at a time and not exceeding in any case beyond the period of six months from the expiry of the period of the emergency.

[Note.—Taking into account only the “willing” Provinces, this clause gives the Council of States a maximum strength of about 200 members and the House of the People a maximum strength of between 800 and 400 members. The following tabular statement will serve to give a general picture of the composition of the Upper House under the above scheme. (The composition of the Lower House will be on a purely population basis).

### COUNCIL OF STATES

#### Provinces

Madras . . . . .	20
Bombay . . . . .	12
Bengal (W) . . . . .	12
U. P. . . . .	20
Punjab (E) . . . . .	9
Bihar . . . . .	20
C. P. . . . .	10
Assam . . . . .	7
Orissa . . . . .	6
<b>TOTAL</b> . . . . .	<b>116</b>

#### States

Hyderabad . . . . .	10
Mysore . . . . .	6
Travancore . . . . .	5
Baroda . . . . .	3
Gwalior . . . . .	4
Jaipur . . . . .	3
Kashmir . . . . .	4
Jodhpur . . . . .	2
Udaipur . . . . .	2
Patiala . . . . .	2
Rewa . . . . .	2
Cochin . . . . .	1
Bikaner . . . . .	1
Kolhapur . . . . .	1
Indore . . . . .	1
<b>TOTAL</b> . . . . .	<b>47</b>

For the groups of the remaining States whose population individually does not amount to one million . . . . . 24

**TOTAL** . . . . . **71**

15. There should be the usual provisions for the summoning, prorogation and dissolution of Parliament, for regulating the relations between the two Houses, the mode of voting, privileges of members, disqualification for membership, Parliamentary procedure, including procedure in financial matters. In particular, money Bills must originate in the Lower House. The Upper House should have power to suggest amendments in money Bills; the Lower House would consider them and thereafter, whether they accept the amendments or not, the Bill as amended (where the amendments are accepted) or in its original form (where the amendments are not accepted) shall be presented to the President for assent and, upon his assent, shall become law. If there is any difference of opinion as to whether a Bill is a money Bill or not, the decision of the Speaker of the House of the People should be final. Except in the case of money Bills both the Houses should have equal powers of legislation and deadlocks should be resolved by joint meetings of the two Houses. The President should have the power of returning Bills which have been passed by the National Assembly for reconsideration within a period of six months.

16. **Language.**—In the Federal Parliament, business shall be transacted in Hindustani (Hindi or Urdu) or English, provided that the Chairman or the Speaker, as the case may be, may permit any member who cannot adequately express himself in either language to address the House in his mother tongue. The Chairman or the Speaker, as the case may be, shall make arrangements for giving the House, whenever he thinks fit, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House.

[*Note.*—This follows the corresponding provision in the Constituent Assembly Rules.]

## CHAPTER III

### LEGISLATIVE POWERS OF THE PRESIDENT

17. **Power of President to promulgate ordinances during recess of Parliament.**—(1) If at any time when the Federal Parliament is not in session the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Parliament assented to by the President, but every such ordinance—

(a) shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of the Federal Parliament, or, if before the

expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

(3) If and so far as an ordinance under this section makes any provision which the Federal Parliament would not under this Constitution be competent to enact, it shall be void.

[*Note.*—The ordinance-making power has been the subject of great criticism under the present Constitution. It must however be pointed out that circumstances may exist where the immediate promulgation of a law is absolutely necessary and there is no time in which to summon the Federal Parliament. In 1925, Lord Reading found it necessary to make an ordinance suspending the cotton excise duty when such action was immediately and imperatively required in the interests of the country. A democratically elected President who has moreover to act on the advice of ministers responsible to Parliament is not at all likely to abuse any ordinance-making power with which he may be invested. Hence the proposed provision.]

## CHAPTER IV

### THE FEDERAL JUDICATURE

18. **Supreme Court.**—There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary, except that a judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other judges of the Supreme Court as also such judges of the High Courts as may be necessary for the purpose.

[*Note.*—The *ad hoc* Committee\* on the Supreme Court has observed that it will not be expedient to leave the power of appointing judges of the Supreme court to the unfettered discretion of the President of the Federation. They have suggested two alternatives, both of which involve the setting up of a special panel of eleven members. According to one alternative, the President, in consultation with the Chief Justice, is to nominate a person for appointment as puisne judge and the nomination has to be confirmed by at least seven members of the panel. According to the other alternative, the panel should recommend three names, out of which the President, in consultation with the Chief Justice, is to select one for the appointment. The provision suggested in the above clause follows the decision of the Union Constitution Committee.]

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\* For Committee's Report see Appendix.

## CHAPTER V

### AUDITOR-GENERAL OF THE FEDERATION

19. **Auditor-General.**—There shall be an Auditor-General of the Federation who shall be appointed by the President and shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court.

20. **Functions of Auditor-General.**—The duties and powers of the Auditor-General shall follow the lines of the corresponding provisions in the Act of 1935.

## CHAPTER VI

### SERVICES

21. **Public Service Commission.**—There shall be a Public Service Commission for the Federation whose composition and functions shall follow the lines of the corresponding provisions in the Act of 1935, except that the appointment of the Chairman and the members of the Commission shall be made by the President on the advice of his ministers.

22. Provision should be made for the creation of All-India Services whose recruitment and conditions of service will be regulated by Federal law.

## CHAPTER VII

### ELECTIONS

23. **Elections to the Federal Parliament.**—Subject to the provisions of this Constitution, the Federal Parliament may, from time to time, make provision with respect to all matters relating to or connected with elections to either House of the Federal Legislature including the delimitation of constituencies.

24. **Superintendence, direction and control of elections.**—The superintendence, direction and control of all elections, whether Federal or Provincial, held under this Constitution including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President.

## PART V

### DISTRIBUTION OF LEGISLATIVE POWERS BETWEEN THE FEDERATION AND THE UNITS

The provisions to be inserted under this head will depend upon the decisions that may be taken upon the report of the Union Powers Committee. The Union Constitution Committee has, however, decided that

- (1) the Constitution should be a Federal structure with a strong Centre;

- (2) there should be three exhaustive legislative lists. *viz.*, Federal, Provincial and Concurrent, with residuary powers to the Centre;
- (3) the States should be on a par with the Provinces as regards the Federal Legislative list subject to the consideration of any special matter which may be raised when the lists have been fully prepared.

## PART VI

### ADMINISTRATIVE RELATIONS BETWEEN THE FEDERATION AND THE UNITS

1. The Federal Parliament in legislating for an exclusively Federal subject may devolve upon the Government of a Unit, whether a Province, an Indian State or other area, or upon any officer of that Government, the exercise on behalf of the Federal Government of any functions in relation to that subject.

2. (1) It will be the duty of the government of a Unit so to exercise its executive power and authority in so far as it is necessary and applicable for the purpose as to secure that due effect is given within the Unit to every Act of the Federal Parliament which applies to that Unit: and the authority of the Federal Government will extend to the giving of directions to a Unit Government to that end.

(2) The authority of the Federal Government will also extend to the giving of directions to the Unit Government as to the manner in which the latter's executive power and authority should be exercised in relation to any matter which affects the administration of a Federal subject.

[*Note.*—*Cf.* Sections 122, 124 and 126 of the Government of India Act, 1935.]

## PART VII

### FINANCE AND BORROWING POWERS

1. Revenues derived from sources in respect of which the Federal Parliament has exclusive power to make laws will be allocated as Federal revenues, but in the cases specified in the next succeeding paragraph the Federation will be empowered or required to make assignments to Units from Federal revenues.

2. Provision should be made for the levy and, if necessary, distribution of the following taxes, *viz.*, customs, Federal excises, export duties, death duties and taxes on income other than agricultural income and taxes on companies.

3. The Federal Government will have power to make subventions or grants out of Federal revenues for any purpose, notwithstanding that the purpose is not one with respect to which the Federal Parliament may make laws.



4. The Federal Government will have power to borrow for any of the purposes of the Federation upon the security of Federal revenues subject to such limitations and conditions as may be fixed by Federal law.

5. The Federal Government will have power to grant a loan to, or guarantee a loan by, any Unit of the Federation on such terms and under such conditions as it may prescribe.

[*Note.*—*Cf.* Sections 136 to 140, 162 and 163 (2) of the Government of India Act, 1935.]

## PART VIII

### DIRECTLY ADMINISTERED AREAS

1. The Chief Commissioners' Provinces should continue to be administered by the Centre as under the Government of India Act, 1935, as an interim measure, the question of any change in the system being considered subsequently, and all centrally administered areas including the Andamans and the Nicobar Islands should be specifically mentioned in the Constitution.

2. Appropriate provision should be made in the Constitution for the administration of tribal areas.

[*Note.*—The provision to be made regarding tribal areas should incorporate the scheme for the administration of such areas as approved by the Constituent Assembly on the report of the Advisory Committee.]

## PART IX

### MISCELLANEOUS

The provisions for the protection of minorities as approved by the Constituent Assembly on the report of the Advisory Committee should be incorporated in the Constitution.

## PART X

### AMENDMENT OF THE CONSTITUTION

An amendment to the Constitution may be initiated in either House of the Federal Parliament and when the proposed amendment is passed in each House by a majority of not less than two-thirds of the members of that House present and voting and is ratified by the legislatures of not less than one-half of the Units of the Federation, it shall be presented to the President for his assent; and upon such assent being given, the amendment shall come into operation.

*Explanation.*—“Unit” in this clause has the same meaning as in clause 14 of Part IV. Where a Unit consists of a group of States, a proposed amendment shall be deemed to be ratified by the legislature of the Unit, if it is ratified by the majority of the legislatures of the States in the Group.

## PART XI

## TRANSITIONAL PROVISIONS

1. The Government of the Federation shall be the successor to the Government of India established under the Government of India Act, 1935, as regards all property, assets, rights and liabilities.

[If, before the commencement of this Constitution, two successor Governments should be set up in India, this clause may have to be amended, inasmuch as there may be a division of assets and liabilities.]

2. (1) Subject to this Constitution, the laws in force in the territories of the Federation immediately before the commencement of the Constitution shall continue in force therein until altered, or repealed, or amended by a competent legislature or other competent authority.

(2) The President may by Order provide that as from a specified date any law in force in the Provinces shall, until repealed or amended by competent authority, have effect subject to such adaptations and modifications as appear to him to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Constitution.

3. Until the Supreme Court is duly constituted under this Constitution, the Federal Court shall be deemed to be the Supreme Court and shall exercise all the functions of the Supreme Court :

Provided that all cases pending before the Federal Court and the Judicial Committee of the Privy Council at the date of commencement of this Constitution may be disposed of as if this Constitution had not come into operation.

4. Excepting holders of the offices specified in Schedule every person who, immediately before the date of the commencement of this Constitution, was in the service of the Crown in India, including any judge of the Federal Court or of any High Court, shall, on that date be transferred to the appropriate service of the Federation or the Unit concerned and shall hold office by a tenure corresponding to his previous tenure.

[*Note.*—Under the next succeeding clause there will be a provisional President from the commencement of the new Constitution, so that there will be no room for a Governor-General. Similarly, in the Provinces there will be no room for any Governor appointed by His Majesty. The same may be true of the holders of certain other offices. All such offices may be enumerated in a Schedule: The proposed provision applies to persons holding offices other than those mentioned in the Schedule. Cf. Article 77 of the Transitory Provisions of the Constitution of the Irish Free State, 1922, reproduced below :—

“Every existing officer of the Provisional Government at the date of the coming into operation of this Constitution (not being an officer whose services have been lent by the British Government to the Provisional Government) shall on that date be transferred to and become an officer of the Irish Free States (Saorstát Eireann), and shall hold office by a tenure corresponding to his previous tenure.”]

5. (1) Until both the Houses of the National Assembly have been duly constituted and summoned under this Constitution, the Constituent Assembly shall itself exercise all the powers and discharge all the duties of both the Houses.

*Explanation.*—For the purposes of this sub-clause, the Constituent Assembly shall not include any members representing territories not included in Schedule I.

(2) Such person as the Constituent Assembly shall have elected in this behalf shall be the provisional President of the Federation until a President has been elected as provided in Part IV of this Constitution.

(3) Such persons as shall have been appointed in this behalf by the provisional President shall be the provisional council of ministers until ministers are duly appointed as provided in Part IV of this Constitution.

[*Note.*—It is essential that on the date of commencement of this Constitution there should be a Legislature and an Executive ready to take over power. The most practicable course is that the Constituent Assembly should itself be the provisional Legislature. The clause regarding the provisional Executive is consequential. These provisions may however require modification after the passing of the new Dominion Act amending the Government of India Act, 1935.]

6. As there may be unforeseen difficulties during the transitional period, there should be a clause in the Constitution on the following lines :—

The Federal Parliament may, notwithstanding anything contained in Part X, by Act—

(a) direct that this Constitution, except the provisions of the said Part and of this clause, shall, during such period, if any, as may be specified in the Act, have effect subject to such adaptations and modifications as may be so specified;

(b) make such other provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the Act.

No act shall be made under this clause after the expiration of three years from the commencement of this Constitution.

[*Note.*—The-removal-of-difficulties-clause is now quite usual: see, for example, section 310 of the Government of India Act, 1935. The period of three years has been borrowed from Article 51 of the Irish Constitution. This clause will make the process of amendment comparatively easy during the first three years.]

## APPENDIX I

## CONSTITUENT ASSEMBLY

*Ad hoc Committee on Supreme Court*

We, the undersigned, members of the Committee appointed to consider the constitution and powers of the Supreme Court have the honour to submit this our report.

2. We consider the question under the following heads:

I. Jurisdiction and powers of the Supreme Court.

II. Advisory jurisdiction of the Court.

III. Ancillary powers of the Court.

IV. Constitution and strength of the Court.

V. Qualifications and mode of appointment of judges.

VI. Tenure of office and conditions of service of judges.

I. JURISDICTION AND POWERS OF THE SUPREME COURT

3. A Supreme Court with jurisdiction to decide upon the constitutional validity of acts and laws can be regarded as a necessary implication of any federal scheme. This jurisdiction need not however belong exclusively to the Supreme Court. Even under the existing Indian Constitution, the question of the validity of acts and laws is permitted to be raised in any court whenever that question arises in a litigation before that court.

4. A Supreme Court for certain purposes being thus a necessity, we consider that the Court may well be given the following additional powers under the new India Constitution:—

(a) *Exclusive jurisdiction in disputes between the Union and a Unit or between one Unit and another.*

5. The Supreme Court is the best available forum for the adjudication of such disputes, and its jurisdiction should be exclusive.

(b) *Jurisdiction with respect to matters arising out of treaties made by the Union.*

6. The treaty-making power belongs to the Union as part of the subject of 'Foreign Affairs'. It would therefore be appropriate to invest the Supreme Court of the Union with jurisdiction to decide finally, though not necessarily in the first instance, upon all matters arising out of treaties including extradition between the Union and a foreign State. At this stage we do not deal with inter-unit extradition, because this will depend upon the ultimate distribution of powers between the Union and the Units.

(c) *Jurisdiction in respect of such other matters within the competence of the Union as the Union Legislature may prescribe.*

7. If the Union Legislature is competent to legislate on a certain matter, it is obviously competent to confer judicial power in respect of that matter on a tribunal of its own choice; and if it chooses the Supreme Court for the purpose, the Court will have the jurisdiction so conferred.

(d) *Jurisdiction for the purpose of enforcing the fundamental rights guaranteed by the Constitution.*

8. Clause 22 of the draft of the Fundamental Rights provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights is guaranteed. We think, however, that it

is undesirable to make the jurisdiction of the Supreme Court in such matters exclusive. The citizen will practically be denied these fundamental rights if, whenever they are violated, he is compelled to seek the assistance of the Supreme Court as the only Court from which he can obtain redress. Where there is no other Court with the necessary jurisdiction, the Supreme Court should have it; where there is some other Court with the necessary jurisdiction, the Supreme Court should have appellate jurisdiction, including powers of revision.

(e) *General appellate jurisdiction similar to that now exercised by the Privy Council.*

9. Under the new Constitution the jurisdiction of the Privy Council as the ultimate appellate authority will disappear and it is obviously desirable that a similar jurisdiction should now be conferred on the Supreme Court. So far as the British Indian Units are concerned, this jurisdiction should be co-extensive with the present jurisdiction of the Privy Council. As regards the Indian State units, there are at least two classes of cases where, in the interests of uniformity, it is clearly desirable that the final decision should rest with the Supreme Court, namely,

- (1) cases involving the interpretation of a law of the Union, and
- (2) cases involving the interpretation of a law of a Unit other than the State concerned.

Sir B. L. Mitter suggests that such uniformity can be obtained either by invoking the appellate authority of the Supreme Court or by a reference of the particular issue to the Supreme Court. Cases involving the constitutional validity of a law of the Union or of any Unit have already been dealt with; they will all necessarily fall within the Supreme Court's jurisdiction.

10. It will also, of course, be open to any Indian State Unit to confer by special agreement additional jurisdiction upon the Supreme Court in respect of such matters as may be specified therein.

## II. ADVISORY JURISDICTION OF THE COURT

11. There has been considerable difference of opinion amongst jurists and political thinkers as to the expediency of placing on the Supreme Court an obligation to advise the Head of the State on difficult questions of law. In spite of arguments to the contrary, it was considered expedient to confer advisory jurisdiction upon the Federal Court under the existing Constitution by Section 213 of the Act. Having given our best consideration to the arguments pro and con, we feel that it will be on the whole better to continue this jurisdiction even under the new Constitution. It may be assumed that such jurisdiction is scarcely likely to be unnecessarily invoked and if, as we propose, the Court is to have a strength of ten or eleven judges a pronouncement by a full Court may well be regarded as authoritative advice. This can be ensured by requiring that references to the Supreme Court for advice shall be dealt with by a full Court.

## III. ANCILLARY POWERS OF THE COURT

12. Power should be conferred upon the Supreme Court as under section 214 of the Act of 1935 to make rules of procedure to regulate its work and provisions similar to those contained in Order 45 of the Civil Procedure Code should be made available so as to facilitate the preparation of the record in appeals to the Supreme Court as well as the execution of its decrees. It does not seem to us necessary to continue the restriction now

placed on the Federal Court by section 209 of the Act of 1935. If the Supreme Court takes the place of the Privy Council, it may well be permitted to pronounce final judgments and final decrees in cases where this is possible or to remit the matter for further inquiry to the Courts from which the appeal has been preferred where such further inquiry is considered necessary. Provision must also be made on the lines of section 210 of the Act of 1935 giving certain inherent powers to the Supreme Court.

#### IV. CONSTITUTION AND STRENGTH OF THE COURT

13. We think that the Supreme Court will require at least two Division Benches and as we think that each Division Bench should consist of five judges, the Court will require ten judges in addition to the Chief Justice, so as to provide for possible absences or other unforeseen circumstances. Moreover, one of the judges may be required to deal with many miscellaneous matters incidental to appellate jurisdiction (including revisional and referential jurisdiction).

#### V. QUALIFICATIONS AND MODE OF APPOINTMENT OF JUDGES

14. The qualifications of the judges of the Supreme Court may be laid down on terms very similar to those in the Act of 1935 as regards the judges of the Federal Court, the possibility being borne in mind (as in the Act of 1935) that judges of the superior courts even from the States which may join the Union may be found fit to occupy a seat in the Supreme Court. We do not think that it will be expedient to leave the power of appointing judges of the Supreme Court to the unfettered discretion of the President of the Union. We recommend that either of the following methods may be adopted. One method is that the President should in consultation with the Chief Justice of the Supreme Court (so far as the appointment of puisne judges is concerned) nominate a person whom he considers fit to be appointed to the Supreme Court and the nomination should be confirmed by a majority of at least 7 out of a panel of 11 composed of some of the Chief Justices of the High Courts of the constituent units, some members of both the Houses of the Central Legislature and some of the law officers of the Union. The other method is that the panel of 11 should recommend three names out of which the President, in consultation with the Chief Justice, may select a judge for the appointment. The same procedure should be followed for the appointment of the Chief Justice, except, of course, that in this case there will be no consultation with the Chief Justice. To ensure that the panel will be both independent and command confidence, the panel should not be an *ad hoc* body but must be one appointed for a term of years.

#### VI. TENURE OF OFFICE AND CONDITIONS OF SERVICE OF JUDGES

15. The tenure of office of the judges of the Supreme Court will be the same as that of Federal Court judges under the present Constitution Act and their age of retirement also may be the same (65). Their salary and pensions may be provided for by statutory rules. It is undesirable to have temporary judges in the highest Court in the land. Instead of having temporary judges, the system of having some *ad hoc* judges out of a panel of Chief Justices or judges of the High Courts may be adopted. In this connection we invite attention to the Canadian practice as embodied in section 30 of the Canadian Supreme Court Act. The section runs as follows:—

“30. *Appointment of ad hoc judge.*—If at any time there should not be a quorum of the judges of the Supreme Court available to hold or continue any session of the Court, owing to a vacancy or vacancies, or to the absence through illness or on leave or

in the discharge of other duties assigned by statute or order in council, or to the disqualification of a judge or judges, the Chief Justice, or, in his absence, the senior puisne judge, may in writing request the attendance at the sittings of the Court, as an *ad hoc* judge, for such period as may be necessary; or a judge of the Exchequer Court, or, should the judges of the said court be absent from Ottawa or for any reason unable to sit, of a judge of a provincial superior court to be designated in writing by the Chief Justice or in his absence by any acting Chief Justice or the senior puisne judge of such provincial court upon such request being made to him in writing.

*Duties.*—It shall be the duty of the judge whose attendance has been so requested or who has been so designated in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance shall be required, and while so attending he shall possess the powers and privileges and shall discharge the duties of a puisne judge of the Supreme Court."

10. Not all the recommendations that we have made need find a place in the Constitution Act. The main features may be embodied in the Constitution Act and detailed provisions in a separate Judiciary Act to be passed by the Union Legislature. The form of procedure in the Supreme Court, *e.g.*, for the enforcement of fundamental rights may also be provided for in the Judiciary Act. We may point out that the prerogative writs of *mandamus*, prohibition and *certiorari* have been abolished in England by a statute of 1938. Corresponding orders have been substituted and the Supreme Court of Judicature has been empowered to make rules of court prescribing the procedure in cases where such orders are sought. [See sections 7—10 of the Administration of Justice (Miscellaneous Provisions) Act, 1938.]

17. We understand our terms of reference to relate only to the constitution and powers of the Supreme Court. We have, therefore, said nothing about the High Courts of the Units, although we have had to refer to them incidentally in some of our suggestions relating to the Supreme Court.

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A. KRISHNASWAMI AYYAR.  
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K. M. MUNSHI.  
B. N. RAU.

NEW DELHI:  
May 21, 1947.