

Draft Constitution

THE CONSTITUTION
OF THE
HINDUSTHAN FREE STATE
ACT, 194

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Printed by V. G. Ketkar, Manager, Lokasangraha Press, 624 Sadashiv,
Poona 2, and Published by M. R. Dhamdhere, M. A., LL.B., Pleader.
322/3 Sadashiv Peth, Poona 2.

FOREWORD

(By N. C. Kelkar)

Who will be so bold as to predict a date for the end of the war ? But that end is now positively coming more and more forward in the offing, to use a maritime phrase. And like passengers, bestirring to roll up their beds and tidy up their kits, in view of the end of a perilous and eventful naval voyage, all prominent interests in the world—social, economic, political—are now busy, expecting peace and security for at least some time in the future, making plans for repairs to their damaged goods, re-equipment of their resources, re-habilitation of their status, and reconstruction of their general welfare, as the case may be. Even during the course of the war, efforts were being made, by hectic propaganda, by the Governments of warring nations, to keep up the spirits and preserve the *morale* of their people by various means, the ethics of which need not be considered. But as soon as truce will be proclaimed, and preparations will be taken up for a treaty of peace, these plans will begin to take a more concrete shape and form, under improved conditions for the expression of free public opinion.

The fruits of peace

Among these efforts to realise the fruits of peace there are bound to be two prominent but antagonistic movements (1) by the victorious imperialistic nations to strengthen their position with a view to the economic exploitation of the world ; and (2) by the politically suppressed nations to establish their right to win national freedom. Among the latter will be India, who will claim political freedom both on the strength of (1) the voluntary or involuntary declarations—authorised, semi-authorised, or even unauthorised declarations—made in that respect, by the prominent spokesmen of the British Imperial Government and (2) the strength of the merits of the help rendered by India to the cause of winning the war. This, however, will precisely be the moment when India will have to remain wide-awake and active, to frustrate the repetition of the cynical selfish diplomacy of the British Government, which succeeded in 1918-19 in building up the League of Nations, as a stronghold or fortress of imperialism, (a new but only a fraudulent balance of Power,) and in silencing India, with a seat and a vote on that ornamental organisation in Europe though there was no political advance in the status of this despondency.

The League of Nations was in fact no League of " Nations ", but a league or grouping of victor imperialist powers and of secondary states. The colonial and Indian people were represented on the

League only by their *Masters*. 'The Mandate system was a transparent cover for the division of the colonial spoils of the defeated enemy.'

The League of Nations

It should be remembered in this connection, that a proposal was then made by the *Japanese* (!) to include, in the covenant of the League, a clause recognizing the principle of *equality of nations and Just treatment of their Nationals*. This was defeated by the opposition of Great Britain and America, Lord Hugh Cecil, the arch-constructor of the League, openly saying that "such a suggestion raised *extremely serious problems for the British Empire*", while President Wilson protested that "it would raise the race issue throughout the world." The League was thus ultimately in fact a pseudo international body, which really served as a mere mask, to conceal from the masses, the aggressive aims of the imperialistic policy of certain great powers and their vassals. The Russian diplomat Chicherin, also, pointed out in a note to President Wilson, that "the League was not a League of free people for peace, but an instrument of combined imperialistic domination." In that note of 24th October 1918, Chicherin set out his constructive proposal for the League as under—"Self-determination for all peoples, including those under allied imperialism." "You, Mr. President", he said in that note, "demand the independence of Poland, Serbia, Belgium, and liberty for the people of Austria-Hungary. But strangely enough, *we have not seen among your demands the liberation of either Ireland, Egypt, India or even the Philipines*; and we greatly desire that these peoples, through their *freely elected representatives*, should have an opportunity, jointly with us, to take part in the organisation of the League of Nations." But that suggestion was not heeded. It is well-known that in the voting at the League of Nations the voice was the voice of the Maharaja of Bikaner, as the so-called representative of India, but the hand was the hand of the representative of Imperial Britain.

So far as India is concerned, as the result of the war of 1914-1918, but after an agitation for fifteen years, the Act of 1935 has ushered in a new order of administration in the Provinces, but in the domain of the central administration things have even much worsened than improved. The Act is "immensely complicated, especially by the out-growths of safeguards which outweigh the real body thereof." Then, face to face with War, came the Cripps proposals, which promised independence to India to the point of separation. But they were only a distant prospective promise in return for the *immediate and ready delivery* of the goods of a totalitarian war effort. And unfortunately the experience of the "Perfidious Albion", in the matter of the fulfilment of promises, has been a sad one throughout, which makes India well nigh despair of her future.

The War Aims

The guilty conscience of every war-monger impels him to declare somethings as his 'war-aims'. But England is still not clear about *her* war aims. She has not yet made up her real mind about India. And as some one has wittily observed "the war aims will be the last casualty of the war!" So many Charters have come and gone, but none of them can be said to apply to India. Freedom has indeed been mentioned, but it is for those *fortunate* (!) people who have been lately *conquered*, and whose territories have been occupied, by Germany in the West and Japan in the East. India has evidently lost *her* chance of freedom by Japan having lost *her* chance of invading India !! Friend Burma has *now* deserved it, though on the eve of the war, the Chief Minister of Burma, who went to plead for his nation's freedom, was snubbed, told to mind his own business, and kept in custody. The Cripps offer has been already mentioned, but even that was not cordially endorsed by Churchill. As for Amery, he no doubt has endorsed the Cripps proposals, but he must have done it so, giving to those proposals an inward personal or private interpretation of his own, well knowing perhaps that time will never come even for making good those proposals, owing to the plausible but vicious catch in them about the 'agreement of all political parties in India.' For Mr. Amery is at heart a reactionary dreamer, who dreams of even a more extensive Imperialism for England than at present. In 1935, writing in the *Journal Forward View* (p. 353) Amery proposes as a *modest* (!) *first step* towards the realisation of that dream "the addition of Sweden, Norway, Denmark, Iceland and Greenland to the British Empire!" While Churchill pleads that he has not become the Prime Minister of England to liquidate the British Empire outside Europe, Amery would like to extend that Empire within Europe itself, perhaps under the sweet name of the Commonwealth. Mr. Wendell Wilkie, who recently toured the world, says in his book 'One World'—

"People of the East who would like to count on America are doubtful. They can not ascertain from our attitude towards the problem of India, what we are likely to feel at the end of the war about all the hundreds of millions of Eastern peoples. They can not tell from our vague and vacillating talk whether or not we really do stand for freedom, or what we *mean* by freedom."

In the event of the Allies winning the war, the Churchill party may win the elections, timed so as to ride the tide of victory. In that case there would be very little chance for India to win what she want to win, even what is apparently offered in the Cripps proposals, because the want of the demanded unity among the Indian political parties could plausibly be pleaded as an excuse for withholding the full measure of freedom from India.

The war aims of the Allies, as already observed, are thus still in

the making. In astrological prophecies, the actual event is at once seized up and declared as the very thing that was prophesied! So the war aims of the Allies will be only what will *actually* come about at last from the crazy windmill of international diplomacy. But whatever the real aims or the professions of the British Government, as to the immediate political destination to be reached by India after the war, there is no doubt in the mind of the Indian Nation itself as to what *she* wants and is entitled to. Political Parties in India must be ready with their own proposals as to the exact form of the constitution, through which political freedom may be realised.

The Home-Rule Movement

The formulation of a cut and dried political constitution of a Free National Government in India is a task of constructive statesmanship, at which many parties have tried their hand in India ere this time. Thus was the Commonwealth of India Bill drafted by Mrs. Besant in the days of the Home-Rule Movement in India (1917-20), which was headed by both Mrs. Besant and Lokamanya Tilak, and in which even Mr. Jinnah of the contemporary non-communal age had joined. Mrs. Besant's Bill was conceived in a spirit of compromise and did not visualise the political freedom of India beyond the stage of the Colonial status. She was an ardent supporter of the connection of India with England, whom she sincerely believed as the political saviour of India. She was intimately acquainted with the Home-Rule Movement in Ireland. Seventy years after the birth of the National Movement in Ireland, and after a fair trial given to both the policy of *Union* with and *separation* from England, it was the forensic genius of Issac Butt which invented, or rather discovered, the policy and the phrase of 'Home-Rule', which, while it made for unity, cut asunder a chain of slavery and 'allowed independence without provoking separation.' For, said Issac Butt, "I want to mould the future but could not change the past. The word Home-Rule neither reversed the past nor compromised the future." It was just the golden mean between the autocratic impasse on the one hand, and the separatist republican tendency on the other. These were the sentiments of Mrs. Besant, and her Commonwealth of India Bill was drafted in that spirit.

Nor, speaking frankly, did Lokamanya Tilak's own *immediate* demands go further than Colonial Self-Government. Not that Tilak's *ideal* fell short of ultimate Independence, but he would be content *for the moment*, like Mrs. Besant, with the grant of Home-Rule. He used to say "I stand *for the present* for the mixed Government of the Black and White." He, like Mrs. Besant, would tolerate a British Viceroy at the head of a Self-Governing Indian Federation, as in the case of the Colonies or Ireland.

Things, however, were rapidly advancing, and the advocates of

Self-Government began to be charged by their opponents with the want of *bona fides* (?) in their demand for Self-Government, simply because they had not produced a concrete scheme, of their own, of a political constitution for India, drafted in terms of the sections of a regular Bill! The movement for Self-Government grew and developed since the atrocities of 1919 as it had never before, but the initiative in drafting Bills, for embodying the progressive or immediate stages of development, still lay with the British Parliament, and the Parliamentary Act embodying the Montague Chelmsford reforms, would be a case in point.

Home-Rule and Self-Government were, in a broad sense, practically identical terms. And yet both Government and the moderate custodians of the Indian National Congress in those days looked askance at the word Home-Rule, simply because it was associated with the bitter struggle in Ireland. This ambiguity of meaning has never left such words as Home-Rule, Self-Government, Responsible Government, Colonial Status, Dominion Status etc. As an extreme case of desperation in this predicament, it may be pointed out that in the Statute of Westminster, passed by the British Parliament in 1931, the difficulty of *defining* Dominion Status was solved in the fashion of 'cutting the Gordian knot' by actually using the word Dominion to express its own meaning, and simply *enumerating* the territories falling under that term!

Plans and Planning

The secret plans, made by the warring nations in their minds, about giving effect to their own ambitions will of course remain undivulged. But one can make a guess. Thus I can imagine America planning a big commercial offensive throughout the world, directed especially against England, and in the direction of India. The American exports to India may not be, till recently, more than 20% of the exports of Great Britain to this country. America will now certainly like to increase them; also she will like to have her owned footholds for her aeroplanes in India. England's plans may be concerned not so much with extending her commercial possessions, as strengthening the bonds of *affection* with her colonies, at the same time strengthening the bonds of her *mastery* over India. Also her planning will be concerned with rehabilitating her own status and reputation, as both of them have suffered and gone down in the eyes of the world's nations, owing to the discovery of her real incompetence to play the *role* of a guardian angel for the liberties of small nations, and a disinterested care-taker of the welfare of the world, which she pretends to be. What Russia may be planning can also be easily imagined. Though her first care was to save her life from the armies of Germany, now that that great objective has been attained, and the formidable enemy of communism near Russia's very door is going to be laid low, Comrade Stalin will turn to consider

how Russia may revenge herself upon England, who had consistently insulted Russia by a demonstratively spiteful treatment during the last 23 years. Russia may not actually go back upon her dissolution of the Third International, and the *implied* promise given to stop her former aggressive communistic propaganda in capitalist countries. But the benefits of the rising tide of socialist world opinion will silently fall into her lap, raise her status, and make her, after the war, the most dominating nation only next (?) to America. - What can the poor puppet Governments of secondary European States, driven from their countries by Germany and Japan, and taking shelter in the island sanctuary of England—what can these be planning but that they may be restored to their countries, even at such sacrifices as English diplomacy may demand from them in return for her protection and hospitality ?

The private capitalists of the world are planning extension of their business, as the natural result of the exigencies of reconstruction, while the workers of the world are planning as to how to make their voice and vote more effective, for giving a more pronounced socialistic turn to the Governments of their nations, and securing the maximum of improvement and benefits in the conditions of service, by a better organisation of their Trade Unions and their Federations. And lastly, we may note such altruistic plans also as the Beveridge Scheme to guarantee complete social security, conceived on non-party lines and in pure humanitarian spirit, — security including the removal of unemployment, all life pensions, basic incomes, family provisions, maternity benefits, service amenities, general raising of the standard of living, improvement in health hygiene and education—in fact an all round effort to cut down class barriers and remove the basic inequality as far as may be. In India all these movements are represented, in view of the end of the war, by the work of small independent or affiliated labour agencies. The Indian industrialist and the Indian labourer and worker are thus busy in their own way, making mental blue prints of projected plans to improve their lot after the war.

Stalemate in India

But the Indian politician alone finds that he can make no post-war *plans* for the political nation. On the side of the British Government, in England and India, the door has been slammed in the face of the Congress, and the Congress leaders are left, behind the prison bars, to ruminate over their past sins and doings, including the famous resolution of August 1942. The leader of these leaders, *viz.* M. Gandhi, has been released but only on the ground of ill health ! Even so Government regards him, as he regards himself, free to express his opinions on politics. But Gandhiji evades the crucial question of the August Resolution, on the pretence that he is not allowed to come in contact with the real Congress leaders, who are still under detention. In the

meanwhile, he goes on expressing opinions in such a way that, though they may enable a shrewd listener and observer, including Government of course to hear his *inner* voice, faintly as in a jammed radio, and to see dimly the working of the wheels of his mental clock. Still Government may profess to be justified in not taking action to remove the dead-lock. That Gandhiji would like to retrace his steps, if not to make open amends, is obvious. In his recent interviews he has said that, given an opportunity to meet the Congress Working Committee, he would advise them not to enter upon civil disobedience during the course of the war, even if their demand for the immediate establishment of a National Government was not granted! And it is exactly this that makes the difference between *now* and 1942 as Gandhiji naively pleads. But obviously this difference proves that the August Resolution was a mistake. Though he conveniently ignores the Quit India resolution, and the tilt in the fortunes of the war, especially on the eastern frontier of India, there are a number of other points, that M. Gandhi has made in stray conversations with *helpful* friends or Journalists. But even from these it may be seen that he could not properly explain the *Quit India* resolution. If even with a National Government installed at Delhi, the command of the Army and Foreign Policy, such as India may have had, as now Gandhiji is prepared to concede, to remain with the Viceroy, where was the wisdom or the propriety of the *Quit India* Resolution? The difference between now and then consists simply in this that, while in 1942 August there was an impending danger of a real invasion of India by the Japanese, that danger is averted in 1944! The explanations Gandhiji has given are all futile, inconsistent, illogical to the point of untruth. But to act in haste and repent at leisure has always been the fate of the Congress with M. Gandhi as its adviser. His advice has always been fruitful in frustrations, and humiliations for the Congress, during the last 24 years of the policy of non-cooperation; while his boasted creed of truth and non-violence has been made ridiculous and even nauseating by the actual doings of his professed or unavowed followers. The net result of the Gandhi movement since 1918 is of course a firm hold on the popular mind, acquired for the Congress party and used by it in winning elections. But the movement has in no way resulted in forcing Government to actually concede even Responsible Government to India.

The policy of non-cooperation has not been wisely exercised, the latest instance of which was the resignations of their office by Congress Ministers in different Provinces in 1940. If the old logic of India being *dragged into the war without her consent* be valid, and if the conduct of the war is now to be allowed to remain uncontrolled in the hands of the Viceroy, as now conceded by M. Gandhi, then it follows that both the stunt of non-cooperation and the *Quit India* Resolution were patent mistakes of judgment and policy. The result has been

the totalitarian tyranny of the Defence of India Act, the removal of all public non-official opinion and influence from the administration, the formal inauguration of irresponsible rule under section 93 of the Act of 1935, and the consequent helplessness of the people in getting any constitutional redress for any public grievance.

The Great Betrayal

And this betrayal at the hands of the Congress, as advised by M. Gandhi, becomes all the more condemnable, if it be true, as has been claimed, that the Congress Ministries, in their brief tenure of office, had achieved a lot of good to the people and established a deterrent influence upon the British Government. And in this respect I would like to quote what Mr. K. M. Munshi, former Home-Member in the Congress Ministry in Bombay, says in his paper "Social Welfare."—

"Under the Constitution Act the Governors' totalitarianism was preserved in diverse ways. First, the discretionary powers of the Governor were amply preserved at all effective points. Second, his power to dismiss a minister as distinguished from the dismissal of the premier or dissolving the legislature, was also preserved. Third, the Civilian Secretary had direct access to the Governor behind the Ministers' back. Fourth, in matters of discipline the higher officials had a right of appeal to the Governor or the Secretary of State. Fifth, all orders had to be issued by and under the signature of the Secretary.

"The Congress Ministers—as for instance, the Bombay ministry, about which I had first hand knowledge—*resisted* this gubernatorial totalitarianism in the following manner:—

"Firstly, the Governor had to give an assurance to keep in abeyance his discretionary power, with the result that the exercise of the discretion became a first class constitutional issue involving immediate resignation.

"Secondly, the ministers acted as a single unit for all purposes, so much so that a Cabinet meeting, was in important matters, reduced to a dialogue between the Governor and the Minister concerned, backed by all his colleagues.

"In Bombay, our closed door ministerial conferences became a daily affair, at the end of which all ministers came out with one view—a thing which baffled many. But it had the effect of making the ministry the real centre of power.

"Thirdly, by convention the Secretary was made to record the summary of his conversation with the Governor, when he saw him, and the Governor consulted the Minister in all actions, which he proposed to take in matters which under the Act were subject to his discretion.

“ Fourthly, in matters of discipline of the higher services, ministers made a unanimous recommendation, leaving the Governor no alternative but to accept the recommendation or to dismiss the ministers.

“ At the same time all the Ministers discussed matters frankly with the Governor, establishing the relationship which enabled the Governor to exercise his influence on the decision. The discussions by an individual minister with the Governor were reported to the Prime Minister.

“ In this way the ministry became a *compact instrument of popular power*—like, the Cabinet in England or a Dominion, drawing its strength from the majority party returned on as wide a franchise as in any civilized country.

“ The workings of the Coalition ministries in non-Congress provinces are well known. The Governors use their discretion freely. The ministers are not a homogeneous body. Very often a Governor’s ‘goodwill’ maintains a minister in power. A minister or ministers, having an understanding with the Governor against his or their colleagues, is a well-known feature. The Secretaries are known to have acted behind the ministers’ back and in alliance with the Governor. At the Governor’s instance police have watched the ministers’ houses. Prime Ministers with the confidence of the legislatures have been dismissed. Ministers have disowned their parties and, thanks to the Governor, continued in office.

“ When Prof. Coupland, therefore, uses the word ‘totalitarianism’ of the Congress, he means that by reason of the choesive influence of the Working Committee, the Congress Ministers became effective instruments of power, subordinating the bureaucracy to its policies and elevating the Governor to the pedestal of a constitutional monarch. The *coalition ministries* leave the Governor a complete master of ministries. Is this the form of democracy which this learned professor likes to perpetuate in India ? ”

But if, I ask, if a coalition Ministry be *bad*, is not the despotic rule under Section 93 still *worse* ? And who is responsible for the introduction of this despotic rule, if not the Congress and its guide, friend and philosopher M. Gandhi ? Let Mr. Munshi answer.

There should ordinarily be no room for such a polemic of current politics in my introduction to what is mainly a draft of an ideal constitution. But it has been made relevant by the coincidence of drafting this constitution and Gelder interview of M. Gandhi, which is supposed to make a breach in the outer wall of the fortress of the political deadlock in India, erected by the *co-operation* (!) of the Government and the Congress immediately after the war in 1939. It was cooperation in the sense of the Congress doing, in the tempo of its futile anger,

and with the gusto of its cursed unwisdom, exactly what was desired by Government to relieve its own embarrassment of divided authority in a difficult time.

The Communal question

Now let us turn to the communal question which has been used by Government for continuing the deadlock. The communal movement in India has a history of not more than half a century. Not that there were no majorities and minorities racial, religious, cultural, professional ever before, in British India or the Indian States. But the conflict between them had no *political* aspect. And it may broadly be stated that the *development* of the communal question in India has been directly proportional to the *shortening* of the approach to the idea of democratic government, or rather the acquisition of places of emolument, prestige and power,—loaves and fishes. Under the Hindu and Moslem Kings of the 'good or bad old times,' as one may like to call them, there was indeed full and complete despotism. And the only ideal of communal welfare was to win Royal grace and favour, by showing the required capacity for humility, goodwill, and submission of spirit to win those desiderata. The British rule also was frankly despotic, but not in the same fashion as the rule of the Indian Princes; because in theory at any rate the democratic British Parliament had declared itself to be responsible for orderly rule, reign of the law, non-interference in religion, the general social welfare, and also *political advance*, of the Indian people. Under the British Rule, therefore, Communalism, in the early years of that rule, was as dormant as under the rule of Indian Princes. But with advancing time, the aspiration of the Indian people, to get a greater measure of the political power in their hands, led the British Government naturally to question the wisdom of their own liberal policy, and to discover means for counter-balancing the weight of the idealists. And for this they found handy the fanatical and bigoted Moslem community of India.

This community was, for a long time after the mutiny of 1857 in the bad books of the British Government in India, and those wise Muslim leaders like Sir Syed Ahmed, the grand old man of Aligarh, were right in consolidating Muslim position by the advancement of education in the community, rather than political, assertion against the British Rulers. The subsequent history of the Muslim communal movement is well known to my readers, and I shall not waste any space in giving that history here. But I will briefly mention the emergence in *history* of the communal difficulty, the minority problem, which beset also the other patriotic political leaders under the British rule to win self-Government for their nation. Canada, South Africa and Ireland are parallel cases in point. In Canada there was an open conflict between the interests of French and British Colonists, as was the

conflict of religions between Catholics and Protestants in Ireland, and the conflict of communal interest between the different racial communities in South Africa.

Communal Parallels

In 1822 the Colonists themselves in Canada took such a gloomy view, of union between the Northern and Southern Canadians, that they petitioned to the Parliament, *against* the grant of political reforms, in these words: "our petitioners are of opinion that the different origins of the population of the two Provinces, the difference of their *languages, habits, manners, customs and religions*, together with their varied interests, will necessarily produce efforts for ascendancy, create jealousies, strifes, animosities, and contentions, which may break out in consequences of an alarming nature, and all without answering any one desirable object with which we can foresee, or that may balance the least of the evils that appear to us so obvious." Lord Durham also in his report observed that "the hatred of races is not publicly avowed on either side, and yet all the British are on one side, and all the Canadians on the other. What may be the immediate subject of dispute seems to be of no consequence. So surely as there is a dispute on any subject, the great bulk of the Canadians and the great bulk of the British appear ranged against each other. The mutual dislike of the two classes extends beyond politics into social life, where all intercourse is confined to persons of the same origia."

And yet when a constitution of real self-Government was, under inspiration of the Durham Report, given to Canada by the British Parliament, the racial animosity disappeared; and out emerged a United Canada, which is still today a tower of strength to the Empire, but which may go over to America if the British Empire carries its self-seeking in Canada any further. Ireland has now been given, by treaty and statute, the status of a Free State; and we have ceased to hear of the religious conflict between Irish Catholics and Protestants. The only conflict, we now hear of, is not between Irish men themselves, diivided as they are in North and South Ireland, but a conflict between Irish Republicans in South Ireland and the British Imperialists in North Ireland. Similarly as the result of the grant of self government to the South American Federation, the Boers, the Africandars, Uitlanders and the British have now all thrown in their lot with the new constitution. General Botha, who fought with the British army in the Boer war (1900), was seen fighting for the British in South Africa in the last War (1914-18), and even conquering territories for the Empire from the Germans. And today no worse partisan or spokesman for British Imperialism, or rather the British Commonwealth, can be found than Field Martial Smuts. Corroborative testimony to this can also be cited from other nations in the world. As observed by Prof. Dicey

“ Home-Rule under one shape or another has been tried, and found everywhere to solve the problem of combining such communities as were not ready to coalesce into one united nation. Each state throughout the American union, each canton in Switzerland, has something like sovereign independence. And yet United States is strong and prosperous, and Swiss confederation, with many races and religions and languages in it, is now a country completely at harmony with itself, even without a regular army for maintaining its independence in face of the armed powers of Europe.”

The League of Nations formula

I will not dwell on this topic, further, but shall content myself, so far as India is concerned, with referring the reader to the introduction to the Nehru report of 1928, in which the writer has completely answered the objection to the grant of Self-Government to India, based on the communal problem. And although the same objection still persists, and utmost advantage is now taken, by the British Imperialism, of the communal question, originated by itself in pursuit of the policy of divide and rule, it can be easily answered, as has been done before, by reference not only to Canada, Ireland, South Africa, but also by reference to the minority problem in Europe itself. For, in fact, the problem of minorities based on the qualities of human nature is *not peculiar to India*. The League of Nations, though it did not succeed in putting an end to wars in the world, may be said to have at least achieved a great success, in the formulation of a policy and a code of rules, for adjusting relations between minorities in self-governing nations. That policy and that code is, therefore, for the British Imperialism to make use of, if it really wants to grant responsible Self-Government to India. The magician, who by his wand raises ghosts, is also able to lay them down, if he really means to do so. For notwithstanding all the pampering and favouritism bestowed upon Muslims hitherto, Indian Viceroys have been found, now and then, to kill and destroy separatist ghosts and monsters like Pakistan, by even a casual, incidental or implied rebuke to the extremists among the Muslims, who seek to divide India and establish independent sovereignties in the land. In this respect weak-minded and misguided Hindus themselves, like Rajagopalachari and M. Gandhi, have proved greater enemies and foes of the unity of India, against whom, and not so much against British Government, is the force of sane political Indian public opinion to be brought to bear, if India is to be constituted into a single and whole free State. And indeed it is a good sign of the times, that his own admirers and devotees have come out to administer a rebuke to M. Gandhi in sharp words, and to charge him even with betrayal of Indian interests, by clandestine acceptance of the clandestine proposals made by Rajaji to Mr. Jinnah. Fortunately, also otherwise,

the fight against Pakistan, and therefore the fight against communalism, is being developed by a triangular revolt among the Muslims themselves against the dictatorship of Mr. Jinnah.

Quibble About Words

Self-Government is a word with a very elusive meaning and significance. And the British Government have made very skilful use of it, in giving to the Indian people promises of their future political development. At one end of that self-Government may come even a mere Panchayat with a majority of elected members thereon. At the other end there is the Dominion Status, which may be supposed to be the greatest category in the gift of freedom by the British Parliament by a formal statute. Beyond that lies of course *Independence*. But it may be doubted whether that is a thing which can be *given* by any statute! It can come only as the end of a military revolution, when the head of the triumphant army declares in the fashion of Martial Law, "All the previous laws and authority are hereby repealed and abrogated. And it is enacted by *me* hereby as follows. etc."

Till 1917 it was all a representative Government in India and nothing more. A further horizon was for the first time opened by the pronouncement of August 1917, which spoke of "gradual development of Self-Government Institutions, with a view to the progressive realisation of Responsible Government in India." This is the phrase used in the preamble of the Government of India Act of 1921, which remained in force till 1935. But while passing the new Act of 1935, the Parliament performed a double magical trick! It repealed the previous Act, but did not repeal the *preamble* with the words "Responsible Government" in it; and it passed the new Act of 1935 without any preamble at all; thus practically leaving a head without a trunk and a trunk without a head. The preamble remains like the grin of the Cheshire Cat, when the Cat itself has disappeared from behind it!

The quibble about the meaning of Responsible Government in India came to the front, when in a debate in the Legislative Assembly on February 8, 1924, Sir Malcolm Hailey, the then Home-Member of the Government of India, said, "If you analyse the term 'full Dominion Self-Government'" you will see that it is of a somewhat wider extent, conveying that not only will the executive be responsible to the legislature, but the legislature will in itself have the *full powers*, which are typical of the modern dominion. I say there is some difference of substance, because Responsible Government is not necessarily incompatible with a legislature with limited or restricted powers. It may be that full Dominion Self-Government is the *logical* outcome of Responsible Government; nay it may even be the *inevitable* and *historical* development of Responsible Government; but it is a further and a

final step." But this was contested by the Congress Nationalist Party, then called the Swarajya Party, in the Assembly. It was contended, in opposition to the Home-Member, that the distinction, drawn between 'Dominion Status' and 'Responsible Government' was a distinction, which was never sought to be made in 1917 or 1919. Nor was India invited to accept the declaration of August 20, 1917 in the sense that what His Majesty's Government intended to promise to India was 'something less than the Dominion Status,' viz. 'A Responsible Government comprising a legislature with *limited* or *restricted* powers.' In 1905, at the Benares Congress, the late Mr. G. K. Gokhale expressed the aspiration of India to get 'Self-Government on colonial lines.' And unless the British Government were regarded as capable of a deliberate equivocation, and the use of ambiguous misleading words, it could be assumed by India from the Instrument of Instructions issued by the King to the Governor-General, that the intention of the declaration of 1917 was that India was to attain its due place among the *dominions*. Neither the Parliament nor the British Statesmen at the time made this subtle distinction between 'responsible government' and 'dominion status.'" And could that sort of distinction be made, when India was, just like the colonial dominions, a signatory to the peace treaties of 1919 and also an original member, in its own right, of the League of Nations? In the royal Proclamation of December 23, 1919, His Majesty spoke of the Act of 1919 as pointing the way to 'full Responsible Government' and 'the right of the Indian people' to *direct* Indian affairs and *safeguard* her interests. A constitutional lawyer, like Professor Keith, spoke of the elections to the Indian Legislative bodies in 1920 in these words:—"They herald the time when India will possess full autonomy and will rank as an *equal with dominions* and the United Kingdom itself, as a member of the British Commonwealth." But we have all seen how things were shaped after the Government of India Act of 1919. For the last 25 years Government have been solemnly trifling with India, while the status of the colonies was enhanced by the Westminster Statute of 1931. All that India got was the Act of 1935, which is an empty shell from the point of view of political power.

Fantastic alternatives

A beginning in the direction of denying *even* responsible government to India was made by the agencies and spokesmen, set up about that time by the bureaucracy, to argue that the ballot-box itself was not suited to the genius of India, and that India might have self-government without necessarily having 'responsible' government. This reservation sufficiently exposes the wickedness of the ambiguity of the phrase self-Government, which denies to India fitness for operating the ballot-box wisely. It was necessary to show parallels for this; and for that purpose the advocates of despotism did not hesitate to

argue that Parliamentary institutions had failed even in Europe in practically every country other than England! The fact, however, was that, about that very time, even oriental nations like Japan, Turkey and Persia had adopted constitutions of a democratic parliamentary character. Then came forward some ardent 'builders of the new Jerusalem', who said that since India must come down to some safe and sound foundation, it would be better to adopt and improve the indigenous institutions of Indian States than to imitate the Parliamentary model of Europe. India was, in their view, to be handed over to the Indian Princes, with the addition perhaps of a new order of Princes, if necessary; but all the old and new to be under the guidance and control and authority of the British Government. The reactionary imagination went even so far as to suggest, that the British Government, to get rid of the whole trouble of political reforms in India, should rescue from oblivion some surviving descendant of the great Moghal and install him a king at Delhi! For the reinstallation of a King was found, in some cases, a panacea for settling racial democratic troubles in Europe. The clue to this fantastical scheme obviously lies in the real experience of the British Government in India, that they can, if they like, roll up even a first class Indian Prince round their little figure at pleasure! And this idea is not altogether absent from the scheme of the Federation in the Act of 1935. For the Princes in the Federation were supposed to be available to the Imperial Government, as a balancing weight to be thrown on either side, whenever there may be a conflict or tussle between the Indian people and British Bureaucracy. And an alternative also was coming forward that India should be satisfied, if she were given a certain fixed quota of Civil Service posts, that is to say, she should be satisfied with this sort of Indianisation of the higher services. Or there may be Ministers so called but only responsible to the Crown. Or suitable second Chambers may be instituted in the provincial as well as central legislatures, made up of members amenable to official influence, so that Government should have no difficulty in getting the legislative Acts, passed by popular Legislative bodies, modified as they liked, or even upset totally. Or India should be made to be satisfied with mere provincial autonomy, making that autonomy as *attractive* as possible by necessary concessions, and the delegation to it of certain of the powers of the Central Government.

The Nehru Report

But it was the Nehru Report to the All-Parties Conference in 1928, which knocked down on the head all these suggestions of keeping real political power from the people of India, and took a firm stand, for the first time, to the effect that there was 'no half-way house between the present hybrid and genuine real self-government.' It declared that 'even if all the services were completely Indianised everywhere'

that would not satisfy India ; because it would only mean a ' substitution of a brown for a white bureaucracy '. The real issue was whether full responsible power was or was not to be given to the Indian *people*, and whether the British Parliament was or was not to be completely divested of it. It is interesting to see, however, that the constitution, actually embodied into the Nehru Report, was after all regarded a half-way house ! For in the Nehru scheme it was declared that, though there was to be a Commonwealth of India and a Parliament for that Commonwealth, and that the laws of this Commonwealth were to prevail, notwithstanding any act of United Kingdom extending to British India, still the Legislative power of the Commonwealth was to vest in a Parliament which was to consist of the *King of Great Britain and Ireland* and the Indian Parliament.

The executive power of the Indian Commonwealth was to be vested in the King and exercisable by the Governor-General as the King's representative, acting on the advice of the Executive Council, subject to the laws of the Commonwealth. The Prime Minister and the Ministers were to be appointed by the Governor-General. The Executive Council was to be collectively responsible to the Legislature, but the appointment and removal of all officers of the Executive Government was to be vested in the Governor General in Council. The Commander-in-Chief of the Military, Navy and Air forces of the Commonwealth was to be responsible to the Governor-General as the *King's representative* here. Commonwealth was to have Commissioners and other foreign representatives to other nations, but these also were to be appointed by the Governor-General in Council. There was of course to be a *division* between Central and Provincial subjects, but the provinces also were to have Governors appointed by the King ; and the legislative power of provinces was to be vested in the King and Provincial Legislative Councils. All the property of the Commonwealth was to vest in the Governor-General in Council. There was to be a Committee of Defence with the Prime-Minister as the Chairman, whose function was merely to *advise* the Governor-General in Council in all matters concerning defence and discipline of the army, navy, and air-force. The Commonwealth was to continue the same relations, with the Indian States as with the Provincial Governments. The redeeming feature was that the Commonwealth was to have the power of repealing or altering any of the provisions of the new constitution.

It is not necessary to go into further details of this constitution as sketched in the Nehru Report, which was the first full fledged constitution, in terms of concrete sections, designed for India. The constituent assembly for this constitution was the All-Parties Conference, which had its origin at Delhi after the general election of 1923, and after the abrogation of the non-cooperation policy of the Congress. But it was well-known that there were those in the party Conference,

on the one hand, who did not agree to this constitution on account of their pronounced communal tendencies, and those, on the other hand, who possessed the instinct of the race-horse and would always profess to be ready to go one better than all the rest! The Muslim leaders generally retired from the All Parties Conference at an early stage. The example was followed by some extreme Congressmen, who were not satisfied with the demand for the Colonial form of Government or even Dominion Status, and who put their case on the higher plan of complete independence. That explains the poor show of the actual signatories to the Nehru Report. Consequently, the Nehru Report had a pitifully brief existence, during which, however, the politicians of the Gandhi Party and Tilak Party came and worked together and made propaganda for the report. It was thrown out the next year at the Lahore Congress of 1929, when complete independence of India was not only declared as a political ideal, but was actually proclaimed and asserted at a fateful midnight on the banks of the Ravi river—the irony of it all being that the handiwork, at which Pandit Motilal Nehru had toiled for over a year, was destined to be repudiated and thrown out by his son Pandit Jawaharlal Nehru, who had succeeded his father in the office of the President of the Congress. Since then there has been no attempt by the Congress or an all-parties Conference to frame a constitution for India.

The European Nations

Recently I came across an intelligent forecast of what may happen to the different Nations, involved in the war, after the end of the war. This writer says that as the result of the U. S., Great Britain and Russia jointly giving to the uprooted people in the world the *tremendous* promise of allowing them to choose the form of Government under which they desire to live hereafter, a *revolution* has already started in Europe, through which Europeans propose to decide their own future. They foresee some kind of general elections in post-war Europe, in which revolutionary issues will be decided. "The present outbreaks are pre-election skirmishes with rival candidates and platform-jockeying for positions." For the moment, assorted Governments-in-exile were set up in London, which resembled as nearly as possible pre-war Governments. The exiles for the time could only be classed as 'pro-German' or 'anti-German'. But later on England and America will have to make a discrimination between them, with advertence to their intentions about forming future Governments; and putting forward their supposed claims. Because, as observed above, a promise has been given to them that they will be allowed to *choose the form of Government* under which they desire to live. According to this fore-caster, Belgium, Holland, Denmark, Norway and Sweden will be content to retain their pre-war constitutional monarchies, which, even after

the war, may survive without violent political upheavals. Finland, an enemy of Russia, may like to stand on the Anglo-American platform. Switzerland has no reason to change its form of Government, and Czecho-slovakia will be content to revert to its pre-war status. But portions of Finland, Poland, Estonia, Latvia and Lithuania may be claimed by Russia, and their fate will be decided by their free vote. In between the old and the new order will be some doubtful European States, including Germany, Italy, Hungary, Bulgaria, Rumania, Spain, Greece, Yugoslavia and Albania. Germany may probably prefer an *authoritarian* (Communist?) Government with arbitrary powers, though shorn from the point of view of making further trouble for Europe. Germany had tried, after the last war, the Western-style democracy for sometime; but she always is happy under a dictator, whether a King or a Nazi. Germans regard democracy as old-fashioned and outmoded. France will of course remain democratic. But General de Gaulle, the coming man in France, may offer uncompromising resistance to Anglo-American domination. (And three months after this forecast, we now learn that England and America have induced themselves to recognise de Gaulle.) Some countries in Eastern and Central Europe, which experimented with democratic Government after the last war, reverted sooner or later to Dictatorship, and these may be said to be ripe for revolution. But some of them, who want enduring popular Governments, may feel inclined towards Russia. Also because some of them have radical relations with Russia. America will of course be in favour of dictating or recommending to those, who may come under her influence, only the democratic form of Government; but the fear is that the near presence of Russia, and the prestige she has gained in war, may be counted as a reason for these and the others to prefer to follow the road leading to an authoritarian state and controlled economy.

In between America and Russia comes England, and it will be a moot question whether she will like to throw her weight on the side of America or Russia. The relevance of this question arises not from the point of view of the form of Government which England herself will adopt after the war. For with the winning of the war at the hands of a Conservative Government, headed by a man like Churchill, there is of course no chance for the communist Maxton or the fascist Mosley to shape England's Government according to their will. We may be sure that the Socialist and the Labour party in England may be able to advance their interest to a certain degree. But it is doubtful whether they will be able to make an impression upon the British electors, for the purpose of doing any real service either to Egypt or India, by way of giving them independence, though it was promised to them by an Imperialistic Government in a frightful moment.

And India ?

And now supposing the war is over, what is to happen in India ? We shall assume that the whole of the Congress party will be out of the prison. M. Gandhi may be invited by the Viceroy for an interview. Civil disobedience will be definitely suspended. But will any real National Government be installed at Delhi ? And will the Congress evince a real desire to help Government in forming a coalition cabinet, though it may not be a 60 per cent Congress Government ? Then, again, there is another 'dark horse'—Mr. Jinnah. Who knows what attitude he may take, that is to say, whether he will join a coalition in a just and nationalist spirit, or claim 50 per cent representation for the Muslims ? Here, therefore, there is much field for speculation, on the ground of the fear that, with the 50 per cent claim by Jinnah and the 60 per cent claim by Congress, there will be mathematically a super integer to be realised ! This by itself will be an impossibility, even apart from the due claims of other parties and interests. And once more the stalemate may continue though the jails may be empty !

But commonsense counsels that, even though the signing of peace treaty may be far away, the British Government, whatever they may do with giving a National Government with full immediate control over civil administration as claimed by M. Gandhi, may make a beginning with setting up a *Constituent Assembly*, which, they shrewdly enough know, will keep the political parties and communal parties wrangling among themselves, and giving Government the needed leisure to participate with the British Cabinet, in making their post-war schemes and settlements, political and economical, in Europe and elsewhere, and adjusting relations with America on the one hand and Russia on the other. Personally, I think, India should be content, in that case, not to insist upon the Constituent Assembly elected by an adult vote ; but may well insist upon immediate elections of the Provincial and Central Legislatures, even under the present Act of 1935. There will be, I think, peace enough for holding such elections within the next six months, if the Heavens will favour us with a good monsoon, a bumper crop and relief from the anxiety of famine. No adjustments or adjournments as such can be claimed by any existing political party in India, so as to make the elections easy or opportune for them. I shall, therefore, vote for all-round elections in the coming January or February. So that each house of the Legislature, lower or upper, may be called upon to elect a few representatives to sit as members of a Constituent Assembly, and to deliberate as long as they like to come to a decision over an ideal constitution of free and independent India.

The question of implementing the constitution, however framed, may next arise. But it is now obvious that whatever the constitution, it will have to come into operation only in the form of a Statute of the

British Parliament. Supposing the war had gone wrong, it might then have been a speculative question as to how India might get what she wants. Three alternative methods are conceivable in this connection.—

(1) There would have been an absolute anarchy with the Quit India slogan being really acted upon; and the British Rulers going back to England with their troops, like the Romans from England two thousand years ago. In this anarchy the old history of India might have been repeated, and one could argue that some ambitious State-Ruler, or a confederacy of them, may be formed to bring back India under the princely rule as before, as has been already suggested by some ultra-imperialist Britishers, spiteful of a democratic India. And well may one argue that, as India existed under princely-rule for thousands of years before, a Kingdom, with or without a constitution, may be a form of Government naturally suitable to the human nature in India. But we may easily bye-pass this alternative.

(2) The second alternative would be an anarchy, but a republican form of government, at the end of it, with a military dictator, as in some of the American States, instead of a King like those in India, or in some European States. In these circumstances also, there will be no constituent assembly, and the form of Government would be the one of the dictator's choice. Even in this form there will be something like a popular Assembly or a Parliament; for dictatorship, as we have seen, is not inconsistent with such so-called popular bodies. Under the latest Russian constitution there are Soviet Parliaments, theoretically ruled by Russian people, but practically ruled by an organised Communist party alone. And in the last parliamentary election in Germany, Hitler obtained 99 per cent of the total vote!

(3) But here, again, we may bye-pass this alternative. For now that the British Imperial Government has nearly won the war, it is impossible to think of self-government for India, *except through the intervention of Parliament and a Parliamentary Statute*. Ordinarily, it would not be reasonable to assume that, in the next instalment of self-government, India will be allowed to gain the exact status even of a former British colony that was not yet a Dominion. But we know that the full status of Dominion was conferred on Canada, Australia, South Africa, New Zealand, Ireland, Newfoundland by a Statute of the Parliament (22 Geo. V. C. 4. 11th December 1931,) and that British Government has promised, though upon a certain condition, this very exact Status immediately for India also. We may, therefore, watch future events along the line only of a parliamentary statute, though of course India may claim that she must have *freedom first to choose* what kind of *freedom* she may have *afterwards*, expressed in a Constituent Assembly.

A Parliamentary Statute

It is possible that with all the compelled goodwill of England, and with all India's earnest insistence, the statute, to be passed by the Parliament, may not be of the same kind as the Westminster Statute. If England really means to give independence to India, that could be achieved only by a single word 'India' being inserted in the Westminster Statute after the word Newfoundland in section I of the Statute ; so that some other sections may consequentially follow. But it is too much to hope that England will go thus far. She will play with the word 'Independence' and will know how to make the substance a mere shadow. It will be then for India to consider whether she accepts such a statute, or goes on with further agitation as before. And it is here once again that opportunity arises for raising a voice of protest against the Congress fashion politics of *non-cooperation*. The example to be followed will rather be that of the Irish patriot De Valera. And, indeed, the parallel between India and the other British colonies is not so close as the parallel between India and Ireland. Ireland had her rebellion in 1798 which was really an incipient war of independence. So also India in 1857. India has agitated for the last seventy years, resorting to all sorts of methods—passive, active, violent, non-violent, co-operative, non-cooperative. India has a right to expect that, like Ireland, she also will have the honour of a preliminary treaty with England ; so that a national form of Government may be prepared on the basis of the treaty, by an assembly, to be named Constituent Assembly, for the purpose. The Irish treaty formed the basis for the draft constitution for Ireland. The third *dail* declared itself to be constituent assembly, and the final draft was passed by the assembly itself, the Act expressly stating that it was only 'implementing the treaty.' We need not go into the details of the Irish constitution with which the new era began in Ireland in 1922. The point is, however that the extremist De Valera, though he did not accept the treaty did not non-cooperate with the Assembly.

The Irish Policy

Winning the assembly election in 1932 he came into power, after a constitutional opposition within the assembly from 1927 to 1932. He did not like the oath imposed by the treaty ; and yet he took the oath, because, without taking the oath, he could not enter the Assembly. Being the leader of a majority party he assumed office, and began to work the constitution from within and without to achieve his idealistic aims. While fully adhering to his republican and anti-treaty convictions, he assumed control of the Government and administration established by a treaty which he did not like. And as a matter of practical statesmanship, conducted on the basis that the treaty was *de facto* operative, he announced that the decision whether the treaty was

ultimately to be maintained or repudiated must be not his personal opinion, but the decision of the Irish people, at a general election, taken on that specific issue. The relations of Ireland with the British Empire were adjusted in consonance with the theory of independence. De Valera ultimately got the oath abolished on the ground that the oath was not *mandatory* in the treaty. He also raised the land annuities, claimed by England on the authority of the treaty, which eventually led to a sort of *economic* war between the two countries.

A new constitution for Ireland came into force in 1937, and it was passed by referendum. Between 1922 and 1937, some seventeen items of constitutional changes were made in the constitution of 1922. Curiously enough this new constitution of Ireland, not recognised by the British Imperial Government, stands on record along side of the Westminster Statute! The British Government, overpowered by Irish obstinacy, simply turned a 'Nelson's eye', that is to say her blind eye on Ireland. So that it can now be argued both that all power in Ireland *does come and does not come* from the people of Ireland, and also *does come and does not come* from the United Kingdom! The British Government has taken the whole affair lying down. While no Irishman takes the oath of allegiance, internationally Ireland is still regarded a member of the British Empire; and yet funnily enough the Irish Free State remains neutral in the war! Ireland *is a dominion and yet not a dominion!* Ireland has not only abstained from taking part in the war on the side of England, but she has ever refused to open her ports to the British navy. All the links and tokens of imperial control between England and Ireland have now disappeared! But there is still one thing which even De Valera has not been able yet to accomplish, *viz.* bringing North Ireland within the free Ireland State; and that is because, though he can go to the point of putting England in the wrong about declaring war upon Ireland, he has not the military strength to go to war against England for bringing North Ireland into the Irish State.

I have gone into these details, because, as I have pointed out above, the cases of Ireland and India go closer together than those of India and the British colonies. The example of De Valera has completely proved the success of 'non-non-cooperation' policy, which, translated in Tilak's words, means 'seize and use what you get, and agitate for the rest.' I am certain that the Congress party did not make proper use of its majority advantage, in excluding itself from the work of the Assembly during the last two years, and handing over the administration to Civilio-Military dictatorship. I would have no quarrel with the Congress even if it could, by winning the elections, form the whole Cabinet at the centre, provided it sticks to its position of office, and moulds the policy and the administration, at least as far as it can, in the direction of nationalism. I know that the Congress may win the elections

if they are held on the specific issue of the formation of a Constituent Assembly. I shall not grudge that to the Congress. The other parties will get what they will have deserved. But even if the Congress secures the largest majority in any Assembly, or consequently in the Constituent Assembly, it must be remembered that it *shall have no right to allow communalism* to enter into the constitution, or to favour a divided India and more than one sovereignties in the Indian territory. We can submit to Congress ascendancy but not to its unwisdom, injustice, or unrighteousness.

The new draft Constitution

Turning now to the 'constitution scheme' to which these pages are intended to be a foreword, I shall content myself with referring the preface written to it by the members of the special committee who have produced the draft. In my view it is an honest straightforward constitution, conceived in a true national spirit, whatever its other defects may be in the eyes of critical readers. It may be argued that this constitution does not go into *details* about the steps to be taken to secure the welfare and ameliorate the lot of the Indian people, with special reference to its backwardness, poverty, want of education and so on. But the answer to that is this scheme discloses only the broad lines of a Statute of a republican, autonomous, democratic, free Government. To go into details of working out the ideals would be out of proportion to its scope. As observed by Pandit Motilal Nehru in his report of 1928, it is the 'sense of struggle with the British Government' which absorbs all the energy of Indian Nationalist, and leaves no leisure to him to deal with details of social and economic reconstruction. All constructive work can be done only when a political party gets decisive political power and authority to give it a shape and put it into actual operation. If one looks at some of the constitutions of the nations of the world, he will find that they too deal with idealistic constructive work only on broad lines.

Constitution-making need not be regarded as a mere idle pursuit. Even the French Abbey, who, it is said, made two constitutions a day, was an active worker in the French Revolution. There can be many more enjoyable subjects, than making a blue print of a constitution, for a parlour pastime. Even if constitution-making may be cynically compared to solving a crossword puzzle, there is involved in that task the serious search for an apt but elusive word, which may alone square up and solve the puzzle. And in making a constitution for the future Indian Free State, that task may well be represented by the bold ingenuity, which is required for bringing in the Indian States and jamming in the rebellious minorities, who seek the disruption of that ideal unit.

There are those, who seek to satisfy their purpose dissuading India from designing a constitution for a single whole Indian free demo-

cratic state, by challenging her genius for originality! But Indians are not such simpletons as to be diverted by this red herring drawn across their path. And in his supplementary Report of 1928, Pandit Nehru well replied by saying " that it is not a special virtue in a constitution that it should be necessarily unique, *i. e. different* from other constitutions." India may be the *last* in the British Empire to seek emancipation through a republican and democratic constitution, but she need not be afraid of the maxim that ' Devil takes the hind most. '

As observed by Prof. Coupland in his introduction to his book ' The Indian Problem ', the factors making for unity are stronger in India than in Europe. " Girt by the Himalayas and the sea, the Indian sub-continent is a natural geographical unit. No real strategical frontiers cross it. It does not possess that broken coast line, those peninsulas and islands, which have fostered the growth of separate nations in Europe. And there is a certain unity underlying all the diversities of Indian culture. The creeds and customs, which from age to age have been woven into that ancient civilisation, have acquired, so to speak, a local colour ; some of them superficially, others profoundly, they have all been Indianised. There is more in Mother India than mere sentiment or mere geography. "

The development of the political demands by India has been, as it has been even in other countries, after the fashion of the parable of Sybil's books. Each refusal of the price of her book led to the destruction of that one book, and to the enhancement of the price of the remaining books. Similarly the refusal of moderate demands made by Indian patriotism resulted in the making of extreme demands. And the refusal of the extreme demands resulted in the making of still *extremes* demands.

Professor Coupland, in his book, has pleaded that India has come to the end of her goal even more quickly than some nations in Europe or even England. But as he himself has pointed out, it takes a longer time to *make* precedents than to *follow* them. The momentum gathered by the experience of the nations, that have gone before, in striving for attaining political freedom, could not be wasted on India. Further, even according to the law of biological evolution, the foetus in the human womb goes, only in nine months, through all the previous stages of its development of life, from the very beginning, which had taken thousands of years for the purpose.

To,
The Chairman,
Board of Trustees,
of the
"Bhopatkar Satkar Nidhi"

POONA 2

Sir,

In the meeting of the Board of Trustees of "The Bhopatkar Satkar Nidhi" held on 29th May, 1944, the Trustees resolved as follows:

"A Constitution for Hindusthan be so framed as would, on one hand, unify the divergent elements and interests in the country, and on the other, enable Hindusthan to play its rightful role in the comity of the free nations in the world," and for that purpose appointed a Committee consisting of :—

- (1) Mr. D. V. Gokhale, B.A.L.L.B. (Chairman),
- (2) Mr. L. B. Bhopatkar, M.A.L.L.B.,
- (3) Mr. K. V. Kelkar, M.A.L.L.B., and
- (4) Mr. M. R. Dhamdhere, M.A.L.L.B. (Secretary).

2. The Committee met for the first time on 31st May, 1944, and had had in all thirty-five sittings. The sum total of the deliberations and decisions of the Committee is contained in "*The Constitution of the Hindusthan Free State*," which the Committee begs to submit along with this Report.

3. While arriving at its decisions, which are embodied in the accompanying Constitution, the Committee consulted almost all the existing Constitutions in the world, and the official and non-official literature published in regard to Hindusthan in this behalf.

The Committee also gave its most careful and anxious consideration to the various problems that confront Hindusthan at present, in particular, the problems of minorities, the Indian States and the relations of Hindusthan with the United Kingdom. The Committee considered all these problems in all their bearings and from all angles of vision with a mind free from any prejudice or predilection.

4. After a good deal of deliberation; some of the important points on which the Committee unanimously took decisions and on which the super-structure of the Constitution has been raised, were as hereunder :

- (1) The name of the country.

- (2) The relationship that should exist between Hindusthan and Great Britain.
- (3) Hindusthan to remain one indivisible entity.
- (4) The form of Government to be democratic, republic, and federal with the residuary powers at the centre.
- (5) Legislature to be bi-cameral both at the Centre and in the Province.
- (6) Formation of the two Chambers at the Centre and in the Province.
- (7) The Executive to be responsible to the Legislature, and both to be responsible to the people.
- (8) Referendum, Initiative and Recall.
- (9) Fundamental rights of the Citizens.
- (10) Provision for admission into and training in the Army, Navy and Air forces without distinction of martial and non-martial races.

I.

5. The first question that arose for discussion was, under what name and style this country should be called in future? Should it be called India as at present or Hindusthan as in the past? It was found that there was absolutely no warrant in the past history of this country for styling it as "India". In fact, the name, India, is a meaningless term. The Committee, therefore, decided that the name, India, should be discarded, and that the old name, Hindusthan, should be substituted in its place. The Constitution has, therefore, been styled, as "*the Constitution of the Hindusthan Free State.*"

II.

6. As regards the relationship that should exist in future between Hindusthan and the United Kingdom, the Committee reached the decision that it was alliance rather than partnership that would be not only in tune with the spirit of the times, but would ultimately be beneficial to both the parties concerned. Not even the colonial form of Government in accord with the Westminster Statute would achieve the end in view. The Committee found that whatever the professions or protestations of the British statesmen and politicians be, the British mind was so deeply saturated with superiority-complex that it had become incapable of treating this country as a really equal partner and not as a mere hand-maid of Britian. The Committee further found that signs were not wanting to indicate that Hindusthan must be free and independent at the earliest possible moment, as it would, at no distant date, be called upon to play an important part in the maintenance of the peace and order of the world, holding as it did a strategically vital position in the geography of the world. A free and unfettered

Hindusthan was as it were the *sine qua non* of the world-peace and world-order. It was an independent Hindusthan, and not one bound to the chariot-wheels of British Imperialism that would surely be one of the few powers in the world strong enough to hold the scales even between warring interests, and thereby to avoid world-wars and the consequent holocaust of all human values. The Committee, therefore, decided to frame a Constitution on the basis of Hindusthan being a free state, and not a servient member or even a partner of any other State or Commonwealth. The Constitution has, of course, left enough room for Hindusthan to enter into an alliance, whether defensive or offensive, with Great Britain or with any other Free State in the world.

III.

7. After having determined the boundaries of Hindusthan several questions naturally cropped up, to wit, should the proposed constitution be framed on the basis of Hindusthan being one, whole and entire State? Or should the present-day division of India into British India and Indian India be permitted to continue, and a constitution be framed primarily for British India, leaving therein enough space for Indian India to step in? And further, should British India be allowed to be vivisected into Hindusthan proper and Pakistan, and a constitution be framed for such Hindusthan, leaving it to the pleasure of Pakistan to join it or pursue its own destiny on separate and independent lines?

The Committee found these questions to be the hardest nuts to crack. It dispassionately, even sympathetically, considered in great detail all the *pros and cons* thereof. In regard to the Indian States it came to the conclusion that the Indian States in Hindusthan were not only an anachronism, but a standing menace to the peace and safety of what at present was called British India; that it would be suicidal to leave about eight crores of people to the tender mercies of the Indian Chiefs and Princes; that the excuse of treaty-obligations put forth by interested parties for the continuance of States was too thin to stand any close scrutiny; that it would be more in the interest and for the benefit of these Chiefs and Princes themselves that their territories should be amalgamated with British India now than that they should be swept away, as they are certain to be swept away, before the onward rush of new ideas and ideals. In the result, the Committee decided that most of the smaller States should be absorbed into the existing Provinces of British India, and the rest should be divided into five or six new Provinces, and a constitution be framed on that basis.

As regards Pakistan, the Committee decided that the cry for Pakistan was more an outcome of British machinations than the result of any legitimate rights or grievances; that nature itself had created Hindusthan as one, whole and entire entity, and so it must remain, whatever the cost may be; that from times immemorial it had come

down as an indivisible and indissoluble whole ; that all the races and communities inhabiting Hindusthan, be their modes of worship as they may, were historically, ethnologically and culturally one ; that in circumstances like these to permit Pakistan was, to all intents and purposes, to Balkanise Hindusthan, to turn it into a cock-pit for civil wars, and to invite invasion from abroad ; in a word, it amounted to the political suicide of Hindusthan as a whole.

It was, therefore, decided to frame a Constitution for the whole of Hindusthan, including the territories ruled over by the Indian Chiefs and Princes, and irrespective of the demand made in some Muslim quarters for Pakistan.

IV.

8. The Committee next addressed itself to a consideration of the nature and form of Government that would best suit the Hindusthan Free State. After considering the merits and demerits of every existing form of Government, it finally concluded that the Hindusthan Free State should be democratic, republican and federal in character. As regards Federation the Committee had to choose between two models, and it chose the model according to which the residuary powers reside at the centre and not at the federating units. The Committee believes that the federalism as adumbrated in the Constitution would serve as a strong remedy for a virulent disease, and not merely as a healing lotion to be spread over Hindusthan.

V.

9. Having cleared the ground so far, the next question which the Committee had had to consider was, what should be the structure of the Federal and Provincial Legislatures ? Should it be uni-cameral or bi-cameral ? Experience has proved that the sense of unchecked power on the part of a single Chamber too often leads to abuse of power and tyranny, and that a second Chamber constituted on proper lines does not fail to operate as a check and a balance on this sense. After having carefully weighed the benefits and burdens of both Chambers, the Committee decided that the Legislature both at the Centre and in the Province should be bi-cameral and not uni-cameral and that larger powers should be given to the Lower Chamber than to the Upper one.

VI.

10. But how should the two Chambers both at the Centre and in the Provinces be named and constituted ? What should be the kind of suffrage granted to the people ? Should it be manhood suffrage or adult suffrage ? And what should be the voting age ?

After considering the constitutions of the other free nations the Committee decided that while the two Chambers at the Centre should be named as the Senate and the House of Representatives, those in the Provinces should be called as the Legislative Council and the Legislative Assembly ; that the elections to the House of Representatives and the Legislative Assembly should be direct on the basis of not manhood suffrage, but of adult franchise irrespective of sex; that the principle of " one man, one vote " was a sufficient guarantee to all and sundry ; that while the Senate should consist of the representatives of the members of the Provincial Legislatures, the Legislative Council should be formed on the basis of vocational franchise with a view to make the advice and guidance of vocational experts easily available to the Legislative Assembly in whose hands the development of the nation-building departments would essentially lie ; and that all the electorates should be joint and multi-member, and the voting age should be twenty-one in the case of direct elections and a little higher in the case of indirect ones. The question of weightage or of reservation of seats and so forth did not logically arise.

VII.

11. At this stage two questions arose for consideration. The *first* was, how are the powers to be divided between the Federal and Provincial Legislatures ? And the *second* was, how are the powers given to the Federation and the Provinces to be sub-divided ?

As regards the first point, the Committee arrived at the decision that all conceivable subjects should be divided into two Legislative Lists, to be called the Federal Legislative List and the Provincial Legislative List, the former containing only such subjects as are common to all the Provinces and as are of national importance, while the latter containing all possible subjects of more or less Provincial interest and importance, but with the reserve of powers at the Centre.

In regard to the second question the Committee's reply was that all powers of Government, whether Federal or Provincial, should, as usual, be divided into the legislative, executive and judicial ones, and that while the Executive should be responsible to the Legislature, both their turn should be responsible to the people in whom all sovereignty vests.

VIII.

12. The Committee was further of the opinion that, if in the last analysis, the people were the fountain-source of all power and authority of the State, it but stood to reason that they should have the power to initiate legislation, to get any proposed legislation referred to themselves for their approval, or otherwise, and to recall their

representatives in circumstances which they deemed to be proper and necessary. Consequently, a provision has been made in the Constitution for the People's Rights of Initiative, Referendum and Recall.

IX.

13. A man is born with a bundle of natural rights, out of which some he transfers to the State for political necessity or social security, and retains the rest for and with himself. The rights so retained are what are commonly called the fundamental rights of man. The Committee has categorically tabulated and provided for them in the Constitution. The fundamental rights of man can be condensed in the words of President Roosevelt as: "four freedoms, namely, freedom from want, freedom from fear, freedom of expression and freedom of worship."

X.

14. And last but not least, the Committee rejecting the distinction hithertofore made between martial and non-martial races expressly provided in the Constitution itself, that honest endeavours should be made to admit and train people from all the Provinces in all the branches of the Army, consistently, of course, with its standard of discipline and efficiency.

15. The above are some of the more important principles on which the accompanying Constitution has been based. The Committee has therein embodied the main structure, though, for obvious reasons it has refrained from filling in all the details. The Committee has within brackets added explanatory notes, wherever necessary. The Constitution has been based on the principles of pure, unadulterated freedom, nationalism and democracy, as in the Committee's opinion any tinkering with or compromise of these principles will not fail to frustrate the ends of any Constitution worth the name, and to perpetuate the evils from which the country is suffering at present.

16. The Committee hereby expresses its deep sense of indebtedness to all such Constitutions on which it has freely drawn where it agreed with the provisions thereof.

With respects,

*We beg to remain,
Sir,
Sincerely Yours,*

July 15th, 1944

D. V. GOKHALE
L. B. BHOPATKAR
K. V. KELKAR
M. R. DHAMDHARE

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The Constitution of the Hindusthan Free State Act, 194

(No. of 194 .)

*An Act to provide Constitution for the governance
of the Hindusthan Free State.*

Whereas all sovereignty vests in the people, and Preamble.

Whereas the people of Hindusthan including the people in territories at present ruled by Indian Princes and Chiefs are the sole source of all state power in Hindusthan Free State, and

Whereas the people of Hindusthan constitute free, independent and indivisible State, and

Whereas it is the inalienable right of the people of Hindusthan to have freedom and to enjoy the fruits of toil and to have the necessities of life, so that they may have full opportunities for self-expression and growth, and

Whereas the people of Hindusthan are inspired by the determination to establish their realm in freedom and justice, to be of service to the cause of peace at home and goodwill abroad and to further progress in all aspects,

IT IS hereby proclaimed that the Hindusthan Free State is established and in the exercise of its undoubted right, it is enacted as follows :—

[Note :—The preamble of the Act is its key. It affords a useful light as to what the Act intends to reach. It contains *four principles*, which are recognized as the result of modern political thought, to wit, *first*, that the people are the source of all power, as sovereignty vests in the people, and not in an individual or a group of individuals; *secondly*, that it is their birth-right to be free and independent, so that they may be the full-fledged masters of themselves and of what they own and possess, and of what they produce and what and how they distribute; *thirdly*, that they have the right to constitute them-

selves into a one, whole and entire State; and *fourthly*, that they have also the right, and are, therefore, determined to establish peace at home and goodwill among all the nations of the world with a view to avoid world-conflicts and the consequent loss of life, liberty and property.]

PART I.

Preliminary.

Short Title.

1. This act may be cited for all purposes as the Constitution of The Hindusthan Free State Act, 194 .

Commencement.

2. It shall come into force immediately.

Nature.

3. The Hindusthan Free State is free and democratic.

[**Note** :—The Hindusthan Free State shall be a *Free State* like any other Free State in the world, that is to say, it shall not be subordinate in any manner or matter to any other State, though it may, of its own free will and choice, enter into an alliance with any other State in the world for purposes which it may deem to be proper and necessary.

It shall also be *democratic* in nature, that is to say, a State of the people as a whole, and not of either the so-called classes or of the so-called masses. It refuses to make any distinction between man and man. It shall be the State of the people, for the people, and run by the people as a whole.]

Extent.

4. The territories of the Hindusthan Free State shall be bounded on the North by the U. S. S. R., by the territories beyond the Hindukush and the Himalayas, Tibet and Nepal; on the East by the river Irawaddy and the Indian Ocean; on the South by the Indian Ocean; on the West by the Arabian Sea, and Iran. They shall consist of the following provinces which are at present named as:—1. The North-Western Frontier Province; 2. The Punjab; 3. The Sind; 4. Baluchistan; 5. The United Provinces; 6. Bihar; 7. Assam; 8. Bengal; 9. Orissa; 10. The Central Provinces and Berar; 11. Bombay; 12. Madras; 13. Ajmer-Merwara; 14. Coorg; 15. Delhi; and 16. The territories at present ruled by the Indian Princes and Chiefs.

[**Note** :—The extent of the Hindusthan Free State has been clearly defined as including 15 provinces and the territories which, at the commencement of the Act, may be under the rule of the Indian Chiefs and Princes.

A time has arrived in the development of the Indian polity of Hindusthan when it is expedient from every point of view to wipe away all distinctions between class and class, community and community, and territory and territory, and to place all classes, communities and territories on one and the same level, with a view to ensure national life, unity and solidarity.

The old division of Hindusthan into British India and Indian India not only proved in the past more a hindrance than help in the political advance of Hindusthan, but, if continued, is sure to operate as such also in the future. No advance, whether political, economic or social, worth the name will or can be achieved by one part of Hindusthan without a corresponding advance of the other part thereof. It is bound to be more a shadow than substance. From the trend of world-events it is manifestly clear that unless and until all the people of Hindusthan weld themselves into an indissoluble unity and make themselves stronger and more organised in the arts of peace and of war as well, they will not be powerful enough to hold their own against the aggressive nations of the world. Any failure on their part to appreciate this danger in its proper perspective is sure to result in their political and economic set-back for at least some decades to come. It is, therefore, high time for all and sundry to rise to the occasion and to offer the best and noblest in them at the altar of the Motherland. Nationalism, pure and simple, will act as the most effective solvent of all the problems, whether communal or in respect of the Indian States.

Considering the total area, population and revenues of the Indian States, most of them can well be absorbed in the adjoining Provinces, and the rest can be conveniently constituted into five or six separate Provinces.

The problem of the States is not as difficult of solution as it is represented to be. It is only a handle used by British interests to subserve their own ends. The so-called treaties, of which so much is usually made, are treated by the British Imperialism itself as mere scraps of paper, though they may have left the Indian Princes as autocrats *vis-a-vis* their own subjects. The treaties, having crushed all manhood and initiation in the Princes, have rendered them almost the eyesore of the Indians and the laughing-stock of the world.

The days of one-man rule are past and gone.

Autocracy is fast giving place to popular sovereignty. The on-rush of new ideas and ideologies is sweeping away before itself the already crumbling thrones and kingships.

It is, therefore, time for the Indian Chiefs and Princes to waken up betimes to a true realization of their own position and to the portents of events to come. Coming events have already cast their shadows before. The Hindusthan Free State affords them an opportunity to merge themselves in a higher and nobler entity, and to rise phoenix-like from their own ashes to a new light, a new duty, and a new glory. Herein lies their tradition, and their salvation as well.

It may be stated here that this Constitution leaves sufficient room for mutual adjustment of the private rights and privileges of the Indian Rulers.]

**Source & Exercise
of Powers and
Authority.**

5. All powers of government and all authority, legislative, executive and judicial in Hindusthan, are derived from the people of Hindusthan and the same shall therein be exercised through the institutions established by or under and in accord with this Act.

[**Note** :—The first part of the section is but an amplification of the principle: “all sovereignty vests in the people;” and the second part expressly provides that all powers of Government and all authority, whether legislative, executive or judicial, are to be exercised by them not independently of the Constitution, but through the institutions established by or under and in accord therewith. By framing the Constitution the people lay down the channels through which alone their sovereignty shall be exercised, and not otherwise. Any exercise of any such power or authority by means not sanctioned by the Constitution will be treated as an act of defiance thereof, and will, therefore, expose the doer to the penalties prescribed by law.]

PART II.

Fundamental Rights.

Citizen defined.

6. Every person, without distinction of sex, domiciled within the limits of the jurisdiction of the Hindusthan Free State at the date of the coming into operation of this Constitution, who was born in Hindusthan or either of whose parents was born in Hindusthan or who has been ordinarily resident within the limits of the jurisdiction of the Hindusthan Free State for not

less than seven years, is a citizen of the Hindusthan Free State, and shall within such limits enjoy the rights and 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 offered ; and the conditions governing the future acquisition or termination of citizenship in the Hindusthan Free State shall be determined by law.

[**Note** :—This is one of those sections which constitute as it were the corner-stones of the Constitution. It defines what a citizen means and includes ; and while it statutorily entitles every citizen to enjoy the rights and privileges attached to the status of citizenship, it renders him liable to the obligations thereof.

The section gives an option to a citizen of another State either to accept or reject the citizenship hereby offered. The future acquisition or termination of citizenship will rest on such terms and conditions as will be laid down by law in that behalf.]

7. The fundamental rights of all citizens of the Hindusthan Free State shall be as hereunder—

Fundamental rights.

- (i) All men and women shall have equal rights as citizens.
- (ii) All citizens are equal before the law and possess equal civic rights. There shall be no law, civil or penal, substantive or procedural, of a discriminative nature.
- (iii) All citizens have an equal right of access to, and use of, public roads, public wells and all other places of public resort.
- (iv) All citizens have the right to free elementary education, and of admission into any educational institution maintained or aided by the State without any distinction of caste, colour or creed.
- (v) Every citizen shall have the right to keep and bear arms in accordance with the regulations made in that behalf.
- (vi) The State shall make suitable laws for the maintenance of health and fitness for work of all citizens, securing of a living wage for every worker, the protection of mother-hood, welfare of children, and the economic consequences of

old age, infirmity and un-employment, and the State shall also make laws to ensure fair rent and fixity and permanence of tenure to agricultural tenants.

- (vii) All persons are by nature equally free and independent and have certain inherent rights; *viz.*, the enjoyment of life and liberty with the means of acquiring and possessing property and pursuing and obtaining happiness and safety without any exploitation of man by man.
- (viii) The liberty of the person is inviolable and no one shall be deprived of his liberty of person except in accordance with law. The privilege of the writ of Habeas Corpus shall not be denied to any person, unless, in case of rebellion or invasion, the public safety requires such denial and then only in such manner as shall be prescribed by law.
- (ix) No person's dwelling or property shall be entered, sequestered or confiscated save in accordance with law.
- (x) The right of free expression of opinion, as well as the right to assemble peaceably and without arms, and to form associations or unions, is hereby guaranteed for purposes not opposed to public order or morality.
- (xi) Freedom of conscience and the free profession and practice of religion and the protection of culture and language are, subject to public order and morality, guaranteed to every citizen, and no law shall be made either directly or indirectly to endow any religion, or prohibit or restrict the free exercise thereof, or give any preference or impose any disability on account of religious belief or religious status.
- (xii) No person attending any school receiving State-aid or other public money shall be compelled to attend the religious instruction that may be given in the school.
- (xiii) No person shall, by reason of his colour, caste or creed, be prejudiced in any way in regard to public employment, office of power

or honour and the exercise of any profession, trade or calling.

- (xiv) No public money or property shall ever be appropriated, applied, donated or used directly or indirectly, for the use, benefit or support of any sect, denomination, sectarian institution or association or system of religion, or for charitable, industrial, educational or benevolent purposes not under the control of the State.
- (xv) There shall be no State-religion for the Hindusthan Free State or for any of its Provinces.
- (xvi) Every citizen shall have the right to petition to the Supreme Court in respect of any infringement of his fundamental rights, and the decision of the said Court shall be final and binding on him, the State and the Provinces concerned.

[**Note:**—A constitution is defined as : “ a frame of political society, organised through and by law, that is to say, one in which law has established permanent institutions with recognised functions and definite rights. ”

It is now generally agreed that whatever its form, a constitution is the result of a sort or kind of compact, express or implied, by which the people abandon certain of their natural rights, but only those which are necessary to the establishment of “ a frame of political society. ” If so, the object of any such political society must, therefore, be to secure that the rights not so abandoned continue to be guaranteed to the citizens by and through the constitution itself. The rights not so abandoned are called “ the Rights of Man and of Citizen, or the Natural or Fundamental Rights. ”

- (1) Section 7 provides for what are called the “ *Fundamental Rights of Man.* ”
- (2) Clauses (i) to (vi) guarantee to every citizen of the Hindusthan Free State—
 - (a) The equality of man and woman as citizens of the Hindusthan Free State.
 - (b) The equality of citizens before and in law, and their equality as regards the possession of civic rights.
 - (c) Equal right of access to and use of all places of public resort.

- (d) The right to receive free elementary education.
 - (e) The right to keep and bear arms.
 - (f) Insurance against unemployment.
 - (g) Living wage to every worker.
 - (g) Maternity benefit.
 - (h) Old age pension.
 - (j) Fair rent ; and
 - (k) Fixity and permanence of agricultural tenures.
- (3) Clause (vii) provides that all persons are by nature free and independent, and are as such entitled to certain inherent rights mentioned therein, one of which is the acquisition of property, happiness and safety without any exploitation of man by man. This right assures all that under the Constitution labour, whether manual, skilled, intellectual or organizational, will not be allowed to be exploited to the enrichment or aggrandisement of any man or class of men.
- (4) Clauses (viii) to (xiii) guarantee to every citizen, subject to such limitations as may be prescribed by law,—
- (i) The inviolability of person and property.
 - (ii) The right of free expression of opinion and of association ;
 - (iii) Freedom of conscience and the free profession and practice of religion, culture and language.
 - (iv) The right to attend any school receiving State-aid without being compelled to receive any religious instruction therein.
 - (v) The right to hold public employment and office of power or honour ; and
 - (vi) The right to follow any profession, trade or calling.
- (5) Clause (xiv) lays down that an institution, not under the control of the State, shall not be entitled to any public money or property.
- (6) Clause (xv) provides that there shall be no religion for the State or for any Province thereof.
- (7) And clause (xvi) guarantees to every citizen the right to petition to the Supreme Court in respect of any infraction of any of these fundamental rights.

- (8) In fine, the fundamental rights guarantee to the people of the Hindusthan Free State the essence of what President Roosevelt has styled as the "Four Freedoms" namely, (1) Freedom from fear, (2) Freedom from want, (3) Freedom of expression, and (4) Freedom of worship.]

PART III.

CHAPTER I.

Federation of Hindusthan.

8. It is hereby enacted that from ————the day of the month of—————of the year one thousand nine hundred and forty—————there shall be united in a federation under the name and style of the Hindusthan Free State all the parts of Hindusthan as mentioned in section 4 of this Act.

Establishment
Federation.

CHAPTER II.

The Federal Legislature.

9. (1) The legislative power of the Hindusthan Free State shall be vested in the Congress.
- (2) The Congress shall consist of the President and two Chambers, to be known respectively as the Senate and the House of Representatives.
- (3) The Senate shall consist of three hundred representatives to be elected by the members of the Provincial Legislatures by the method of proportional representation with single transferable vote, seats being allotted to each province on the basis of population.
- (4) No person, who has not completed thirty years of his age on the date of nomination, shall be a member of the Senate.
- (5) The House of Representatives shall consist of six hundred representatives to be elected by constituencies as determined by law on the basis of population.
- (6) No person, who has not completed twenty-five years of his age on the date of nomination,

Congress and its
Constitution.

shall be a member of the House of Representatives.

- (7) The representatives of the Senate and the House of Representatives shall be chosen in accordance with the provisions in that behalf contained in the—Schedule to this Act.
- (8) No person shall be a member of both the Chambers and a person who has been elected as a member of both the Chambers shall be deemed to have vacated the seat to which he was first elected.
- (9) The Senate shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire every third year in accordance with the provisions in that behalf contained in the—Schedule annexed hereto.
- (10) The House of Representatives, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting but no longer, and the expiration of the said period shall operate as a dissolution of the Chamber.

[Note :—The constitution as adumbrated here embodies the best features of the forms of government at present in vogue in the free nations of the world. The proposed constitution, marking as it does a distinct advance upon the past efforts to frame a constitution for Hindusthan, boldly attempts to reconcile the apparently irreconcilable claims of a federal and a unitary state. While on one hand, it does not confer sole authority on the Central Legislature, on the other, it refuses to consider the provinces as sovereign bodies. Moreover, as it is based on the principle of Hindusthan as being one and indivisible nation, it does not accept the provinces as forming themselves into a mere union and not a unity. Considering the peculiar political conditions of Hindusthan and its importance in the geography of the world, and visualizing the role which it will be called upon to play in the world-politics of tomorrow, a constitution like the one presented here will be the only solution of the problems that face it today, and the only means of setting Hindusthan on the path of progress and glory in future.

As to the division of powers, the constitution makes

a double division : *first*, it divides the three main functions or departments of government into legislative, executive and judicial, and *secondly*, it divides the powers between the Federal State and the Provinces in such a manner as to confer the largest measure of powers on the federating units, and to secure to the federal authority all the other powers not absolutely necessary to such units for the common benefit.

The Act provides for the Federal Legislature as hereunder—

- (1) The Federal Legislature consists of the Senate and the House of Representatives. In other words, it shall be bi-cameral and not uni-cameral.

While uni-cameral constitutionalism, that is to say, government by one Chamber is a comparatively rare phenomenon in the history of great states, bi-cameral constitutionalism *i.e.* government by two Chambers is the method characteristic of all important states of today. Moreover, experience shows that a bi-cameral government yields better and richer results than government by a single chamber.

- (2) The Senate shall consist of three hundred and the House of Representatives of six hundred members.

Though at first glance the above figures appear to be rather large, yet in view of the extent of the Hindusthan Free State, and of the desirability to give adequate representation to all the parts thereof, the numbers of the Senate and the House of Representatives are fixed at 300 and 600 respectively. When compared with the numbers of the members of similar institutions in other free nations, they are in fact only too meagre.

- (3) The qualification of age is imposed on the membership of both the Senate and the House of Representatives in order to harness the comparatively ripe experience and mature judgment of their members to the decision of the federal subjects.
- (4) While the election of the House of Representatives shall be direct and on the basis of adult franchise, that of the Senate shall be indirect and by the members of the Provincial Legislatures by proportional representation with single transferable vote, for the reasons: *firstly*,

that such members will return to the Senate only such persons as would best serve the purpose for which that House is primarily meant and established; and *secondly*, that proportional representation will enable all shades of public opinion to be represented on the Senate. While the Senate shall be a permanent body subject to retirement by rotation of one-third of its members every third year, the life of the House of Representatives shall be of five years only.

The Senate is intended as in other constitutions to act as a check and balance upon the House of Representatives. It is conceived as an influence for stability by putting a brake on ill-considered or hasty action. It is commonly agreed that it is better that a few good laws should be delayed, nay, even fail of passage, than that the country should be flooded with unwise legislation. For, experience too often dictates that it is wiser to endure wrongs than to effect disastrous changes in which the proposed remedy may prove to be worse than the evil itself. As is happily said: "a majority held in restraint by constitutional checks and limitations is the only true sovereign of a free people." It is with this object in view among others that the Senate is created as a statutory body with a perpetual life, but subject to this safe-guard that one-third of its members shall retire by rotation every third year. Thus, viewed in one light, though it is a permanent body, yet viewed in the other, it is a fluctuating Chamber.]

Provisions as to Members of Federal Legislature.

Disqualifications for membership.

10. (1) A person shall be disqualified for being chosen as, and for being, a member of either Chamber—

(a) If he holds any office of profit under the State other than an office declared by an Act of the Federal Legislature not to disqualify its holder in that behalf.

For the purposes of this section a Minister either for the Federation or for a Province shall not be deemed to hold an office of profit.

(b) If he is of unsound mind and stands so declared by a competent Court.

- (c) If he is an undischarged insolvent.
- (d) If, whether before or after the establishment of Federation, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty of any offence or corrupt or illegal practice relating to elections, which has been declared by an Act of the Federal Legislature to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf by the provisions of that Act.
- (e) If, having been nominated as a candidate for either Chamber of the Federal Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in manner required by any Act of the Federal Legislature or by any Rule of Standing Order made under this Act, unless five years have elapsed from the date by which the return ought to have been lodged, or the President, acting in his discretion, has removed the disqualification :
- Provided that a disqualification under clause (e) of this sub-section shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the President, in his discretion, may in any particular case allow.
- (f) If, whether before or after the establishment of the Federation, he has been convicted of any other offence by a Court in Hindusthan and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the President, acting in his discretion, may allow in any particular case, has elapsed since his release,

- (2) A person shall not be capable of being chosen a member of either Chamber while he is serving a sentence of transportation or imprisonment for a criminal offence.
- (3) When a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of clause (d) or clause (f) of sub-section (1) of this section is at the date of disqualification a member of the Legislature, his seat shall, notwithstanding anything in this section, not become vacant by reason of the disqualification, until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is made in respect of the conviction or the sentence, until that appeal or the petition is disposed of, but during any period during which his membership is preserved by this sub-section he shall not sit or vote.

[**Note:**—The section enumerates the various circumstances in which it is desirable in the interests of public morality and purity of public life that a person should be held disqualified for being chosen as, and for being, a member of either Chamber.]

Penalty for sitting or voting when not qualified or when disqualified. 11. If a person sits or votes as a member of either Chamber when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of sub-section (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

Vacation of seats.

12. If a member of either Chamber—

- (a) becomes subject to any of the disqualifications mentioned in sub-section (1) of section 10; or
- (b) by writing under his hand addressed to the President resigns his seat; or
- (c) if for sixty days a member of either Chamber without the permission of the Speaker or in his absence of the Deputy Speaker is absent from all meetings thereof, his seat shall thereupon become vacant;

Provided that in computing the said period of sixty days, no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

The vacancy created for any of the foregoing reasons shall be filled by election in a manner to be determined by law.

13. Every member of either Chamber shall, before taking his seat, make and subscribe before the President or some person authorized by him, an oath according to that one of the forms set out in the—Schedule to this Act which the member accepts as appropriate in his case.

Oath.

14. Subject to the provisions of this Act and to the Rules and Standing Orders regulating the procedure of the Federal Legislature—

Privileges &c. of members.

- (1) There shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any committee thereof.
- (2) No member shall, except in cases of treason, felony or breach of peace, be liable to be arrested in going to and returning from and while within the precincts of either Chamber.
- (3) No person shall be liable to any proceedings in any Court in respect of the publication by or under the authority of either Chamber of the Legislature of any report, paper, votes or proceedings.
- (4) In other respects the privileges of the members of the Chambers shall be such as may from time to time be defined by an Act of the Federal Legislature.
- (5) The Federal Legislature, or either Chamber, or both Chambers sitting together, or any Committee, or any officer of the Legislature shall have no power other than a power to remove or exclude persons infringing the Rules or Standing Orders, or otherwise behaving in a disorderly manner.
- (6) The provisions of sub-sections (1) to (5) of

this section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of, a Chamber as they apply in relation to members of the Legislature.

[**Note** :—It is evident that it would not be possible for the members of the Chambers to enter into a free and frank discussion of the questions arising before them for decision, unless the privileges and immunities mentioned in the section are assured to them by the Act itself.]

Salaries & Allowances of members.

15. Members of either Chamber shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Federal Legislature.

General

Sessions of the Legislature, Prorogation & Dissolution.

16. (1) The Chambers of the Federal Legislature shall be summoned by the President of the Hindusthan Free State to meet for their first session on such day as he may specify in that behalf, but such day shall not be later than—days after his election.

(2) The Chambers of the Federal Legislature shall be summoned by him to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the day appointed for their first sitting in the next session.

(3) Subject to the provisions of this section, he may in his discretion from time to time—

(a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit ;

(b) prorogue the Chambers ;

(c) dissolve the House of Representatives.

(4) The sittings of each Chamber shall be public.

In cases of emergency either Chamber may hold a private sitting with the assent of its presiding member.

[**Note** :—While on one hand, the section imposes a duty on the President to summon the Chambers to meet in their first meeting as also to meet at least once in a year, on the other, it confers a right on him to summon a Chamber or Chambers at his pleasure, to prorogue them, or even to dissolve the House of Representatives.

This power can be tactfully employed by him to serve as a check on the Federal Legislature.]

- 17. (1)** Each Chamber shall as soon as may be elect two of its members to be respectively the Speaker and Deputy Speaker thereof, and, so often as the office of the Speaker or Deputy Speaker becomes vacant, the Chamber concerned shall elect another member to be the Speaker or Deputy Speaker, as the case may be. **Officers of Chambers.**
- (2)** A member holding office as the Speaker or Deputy Speaker of his Chamber shall vacate his office—
- (a)** if he ceases to be a member of his Chamber; or
 - (b)** if he resigns his office by writing under his hand addressed to the President; or
 - (c)** if he is removed from his office by a resolution passed by a majority of all the then members of his Chamber; but no resolution for this purpose shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.
- (3)** The Speaker shall preside over the sittings of his Chamber and perform all other duties of his office, and in his absence the Deputy Speaker shall do so; in the absence of both the Speaker and the Deputy Speaker, the Chamber shall elect its own Speaker for the time being from among its members.
- (4)** The Speaker and the Deputy Speaker of each Chamber shall be paid such salaries as may be respectively fixed by an Act of the Federal Legislature.
- 18. (1)** All matters at any sitting or joint sitting of the Chambers shall, save as otherwise provided by this Act, be determined by a majority of votes of the members present and voting. **Voting and Quorum.**
- (2)** The Speaker or the Deputy Speaker or any other person performing the duties of the Speaker shall not vote in the first instance but shall have and exercise a casting vote in case of an equality of votes.

- (3) A Chamber of the Federal Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature shall be valid notwithstanding that it is discovered subsequently that some person, who was not entitled so to do, sat or voted or otherwise took part in the proceedings.
- (4) If at any time during a meeting of a Chamber members sufficient to form a quorum of the Chamber are not present, it shall be the duty of the Speaker or person acting as such either to adjourn the Chamber, or to suspend the meeting until the quorum is formed.

Right of audience. 19. Every Minister and the Attorney-General shall have the right to speak in, and otherwise to take part in the proceedings of either Chamber, any joint sitting of the Chambers, and any Committee of the Legislature of which he may be named a member, but shall not by virtue of this section be entitled to vote.

[**Note:**—The right of audience is given to the Attorney-General in order to give the Chambers or their committees the benefit of his expert legal advice.]

Language. 20. (i) All proceedings in the Federal Legislature shall be conducted in the Hindi or English language.

(ii) The Hindi language shall be the official language of the Hindusthan Free State.

Legislative Powers of the Federal Legislature.

Legislative powers of the Federal Legislature. 21 (1) All legislative powers herein granted shall be vested in the Federal Legislature.

(2) The Federal Legislature shall have power to make laws —

(a) for the peace, order and good government of the Hindusthan Free State in relation to all matters not coming in the classes of subjects by Schedule—to this Act assigned to the Provincial Legislatures;

(b) for the nationals and servants within all parts of Hindusthan, as well as those without and beyond Hindusthan;

(c) for the government officers, soldiers

airmen, navymen, mariners, followers and others in its military employ.

- (3) In cases of great emergency and in matters of dispute between Provinces, the Federal Government and the Federal Legislature shall have all the powers necessary and ancillary including the power to suspend or annul the acts, executive and legislative, of a Provincial Government.
- (4) No court shall have jurisdiction in cases where the Federal Government or the Federal Legislature has acted in the exercise of the powers under the preceding sub-section.

[**Note**:—One of the ways in which Federal States vary from each other is the manner in which the powers are distributed between the federal state and its federating units. The powers may be distributed in one of two ways, namely, *either* the Constitution states as in the case of the United States of America or the Commonwealth of Australia what powers the federal authority shall have and leaves the remainder, which is generally called "the reserve of powers" or "residuary powers," to the federating units, *or* it states as in the case of the Constitution of Canada what powers the federating units shall possess and leaves the remainder to the federal authority. By whichever of these two ways the division of powers is carried into effect it implies that both the federal legislature and that each of the federating units are limited in their scope and that neither of them is supreme. This Constitution has adopted the Canadian model, and has, therefore, styled the federating units as Provinces instead of States.

The necessity for sub-section (3) is quite evident. The sub-section no doubt confers extraordinary powers, but no Federal Government can be carried on without those powers, considering the safety and security of the State.]

22. (1) The President shall in respect of every financial year cause to be laid before both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of that year called the "annual financial statement."

Annual financial statement.

- (2) Such statement shall be so placed by a member of the Council of Ministers.

- (3) The estimates of expenditure embodied in the annual financial statement shall be submitted in the form of demands for grants to the House of Representatives and thereafter to the Senate, and either Chamber shall have power to assent or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein.
- (4) If the Chambers differ with respect to any demand the President shall summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree, and the decision of the majority of the members of both Chambers present and voting shall be deemed to be the decision of the two Chambers.

Supplementary grant.

23. If in respect of any financial year further expenditure from the revenues of the Federation becomes necessary over and above the expenditure theretofore authorised for that year, the President shall cause to be laid before both Chambers of the Federal Legislature a supplementary statement showing the estimated amount of that expenditure, and the provisions of sub-sections (2), (3) and (4) of section 22 shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

Authentication of authorised grants.

- 24.** (1) The President shall authenticate by his signature a Schedule specifying the grants authorised by the two Chambers of the Federal Legislature under sections 22 and 23.
- (2) No expenditure from the revenues of the Federation shall be deemed to be duly authorised unless it is specified in the Schedule so authenticated.

Money bill defined.

25. A money bill means a bill which contains provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration or regulation of taxation; the imposition, for the payment of debt, or other financial purposes, of charges on public revenues or monies, or the variation or repeal of any such charges; the supply, appropriation, receipt

custody, issue or audit of accounts of public money ; the raising of any loan or the repayment thereof ; or subordinate matters incidental to those subjects or any of them. In this definition the expression 'taxation', 'public money' and 'loan' respectively do not include any taxation, money or loan raised by local authorities or bodies for local purposes.

26. The Speaker or in his absence the Deputy Speaker of the House of Representatives shall certify a bill which in his opinion is a money bill to be a money bill and such certificate shall be final and conclusive :

Speaker's certificate

Provided that if before the expiration of— days from the day on which a bill so certified is sent by the House of Representatives to the Senate for its consideration, two-fifths of the members of either Chamber by notice in writing addressed to the Speaker or in his absence to the Deputy Speaker of the Chamber of which they are members so require, or a majority of the members of the Senate present and voting at a sitting of the Senate at which not less than—members are present so resolve, the question whether a bill is a money bill or is not so shall be forthwith referred to the Chief Justice of the Supreme Court and his decision shall be final and conclusive.

[**Note** :—The proviso is intended to operate as a check upon a mistaken view or any hasty action on the part of the House of Representatives and its Speaker or Deputy Speaker.]

27. (1) A money bill shall be introduced only by a member of the Council of Ministers and shall only originate in the House of Representatives.

Originating Chamber.

(2) Any other bill may be initiated in either Chamber of the Federal Legislature and if passed by the originating Chamber, shall be introduced in the other Chamber for being passed.

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

Passing of money bill.

29. (1) A bill other than a money bill shall not be

Passing of other bills

deemed to have been passed by the Federal Legislature unless it has been agreed to by both Chambers, either without amendments or with such amendments only as may be agreed to by both Chambers.

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

[**Note** :—This section and the preceding one make a distinction in the mode in which a money bill and a bill other than a money bill shall be taken to have been passed by both Chambers. In the case of a money bill the House of Representatives has been granted powers larger than those which the Senate possesses, and rightly so. But in the case of a bill other than a money bill the powers of both Chambers are co-equal, and if they disagree in respect thereof, the matter has got to be decided by majority in a joint sitting of the two Chambers.]

**President's assent
to bills or other-
wise.**

- 30.** (1) So soon as any bill shall have been passed by both Chambers, it shall be presented to the President for the signification of his assent, and he may signify such assent or withhold the same.
- (2) A bill passed by both Chambers shall not become an Act unless and until the President signifies his assent thereto.
- (3) In case where the President withholds his assent to a bill passed by both Chambers, he shall return the bill for reconsideration

to the originating [Chamber with his own amendments thereto.

- (4) A bill so returned shall be further considered by both Chambers together with the amendments recommended by the President, and if it is reaffirmed with or without amendments by both Chambers, it shall be deemed to have been assented to by the President and shall become an Act.

[**Note** :—This section enables the President to withhold his assent to a bill, even if it is passed by both the Chambers. This right to withhold assent to a bill and to remit it for reconsideration with his own amendments thereto, if properly exercised, will not fail to have a salutary effect on the mental outlook of the Chambers in respect of the bill and to give them the right angle of vision to approach it, even though the final authority to deem it as assented to by him resides in the two Chambers.]

CHAPTER III.

The Federal Executive.

31. The executive authority of the Hindusthan Free State shall be vested in the President and shall be exercisable in accordance with law, practice and constitutional usage. **President, executive authority.**

32. The President shall be elected by all the voters of the House of Representatives and his term of office shall be six years from the date he takes office. **President's election.**

33. (1) There shall be a Council of Ministers to aid and advise the President in the government of the Hindusthan Free State. The Council of Ministers shall consist of not less than six ministers of whom one to be called the Prime Minister shall be appointed by the President on the advice of the leader of the majority party in the House of Representatives. The Prime Minister shall nominate and appoint other ministers, who along with himself shall be members either of the House of Representatives or of the Senate. **Council of Ministers**

- (2) The Council of Ministers shall be collectively responsible to the House of Representatives for all matters concerning the departments of Hindusthan Free State administered by them

and generally for all advice tendered to the President.

- (3) Ministers shall receive such remuneration as may from time to time be prescribed by law, but the remuneration of any Minister shall not be diminished during his term of office.

Command-in-Chief. 34. The Command-in-Chief of the military, naval and air forces of the Hindusthan Free State is vested in the President, who may call out the same to execute the laws, to suppress insurrection or repel invasion.

President's right to address and send messages to Chambers. 35. The President may in his discretion—

(a) address either Chamber of the Federal Legislature or both Chambers assembled together and for that purpose require the attendance of members; or

(b) send messages to either Chamber of the Federal Legislature, whether with respect to a bill then pending in the Legislature or otherwise, and a Chamber to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration.

president's powers. 36. (1) The President shall take care that the laws are faithfully executed. He shall commission all officers of State. He may at any time require information, in writing or otherwise, from the officers of the executive department upon any subject relating to their respective offices.

(2) He shall have power to grant reprieves, commutations and pardons after conviction for all offences subject to such regulations as may be provided by law relative to the manner of applying therefor.

(3) He and all civil officers except such inferior officers as may by law be exempted, shall, before entering on the duties of their respective offices, take and subscribe the following oath or affirmation :—

I do solemnly swear/affirm that I will support and defend the Constitution of the Hindusthan Free State and that I will faith-

fully discharge the duties of the office of—
——to the best of my ability.

- (4) He shall have power, by and with the advice and consent of two-thirds of the members present in a joint meeting of both the Chambers, to declare war or make treaties.
- (5) He shall have power, by and with the advice and consent of the Council of Ministers, to appoint ambassadors and consuls.

37. In case of resignation which shall be tendered to the House of Representatives, death, impeachment, or other disability of the President, the powers and duties of the office shall devolve upon the presiding officer of the House of Representatives until the disability be removed, or until a new president is elected.

President's resignation etc.

38. The salary of the President shall be fixed by the House of Representatives in keeping with the dignity, position and status of his office and shall be charged on the revenues of the State. Suitable provision shall also be made out of those revenues for the maintenance of his official residence and establishment.

Salary, official residence & establishment of President.

39. The House of Representatives and the Senate may, upon due notice and opportunity for defence given, remove or retire the President from office upon the concurrence of two-thirds of all the members elected to the two Chambers.

Removal & retirement of President.

CHAPTER IV.

Audit and Accounts.

40. The President in consultation with the Council of Ministers shall appoint an Auditor-General to act on behalf of the Hindusthan Free State. He shall control all disbursements and shall audit all accounts of moneys administered by or under the authority of the Federal Legislature and shall report to the House of Representatives at stated periods determined by law. He shall prescribe the form in which the accounts of the Federation shall be kept and may give directions with regard to the methods or principles in accordance with which any accounts of provinces ought to be kept.

Auditor-General

41. The Auditor-General shall be removed from office in like manner and on the like grounds as a Judge of the Supreme Court, subject to this provision that the terms and conditions of his tenure of office shall

Removal.

be fixed by law. He shall not be a member of the Federal Legislature nor shall he hold any other office or position of emolument.

Salary, allowance
and pension.

42. The salary, allowances and pension payable to the Auditor-General and the members of his staff shall be charged on the revenues of the Federation.

CHAPTER V.

Federal Judiciary.

Establishment &
constitution of
Supreme Court.

43. (1) The judicial power of the Hindusthan Free State shall be exercised and justice administered in the public Courts established by the State by Judges appointed in the manner hereinafter provided.

(2) There shall be a Supreme Court consisting of a Chief Justice and such number of other Judges as the President may deem necessary, but unless and until a resolution has been presented by the Federal Legislature requiring an increase in the number of Judges, the number of puisne judges shall not exceed six.

(3) Every Judge of the Supreme Court shall be appointed by the President by warrant in consultation with the Council of Ministers and the All-India Bar Association, if any, and shall hold office until he attains the age of sixty-five years.

Provided that—

(a) A judge may by mere signation under his hand addressed to the President resign his office.

(b) A judge may be removed from his office by the President by warrant on the ground of misbehaviour, incapacity or infirmity of mind or body.

(4) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he—

(a) has been for at least five years a judge of a High Court ; or

(b) is a barrister, an advocate or a pleader

of at least ten years' standing actively working as such in any High Court.

Provided that a person shall not be qualified for appointment as Chief Justice unless he is, or when first appointed to a judicial office was, a barrister, or an advocate or a pleader of at least fifteen years' standing ; and

In computing for the purposes of this sub-section the standing of a barrister, or an advocate or a pleader any period during which a person has held judicial office after he became a barrister, an advocate or a pleader, as the case may be, shall be included.

- (5) Every person approved to be a Judge of the Supreme Court, shall, before he enters upon his office make and subscribe before the President or some person appointed by him an oath according to the form set in section 36, sub-section (3) of the Act.
- (6) The Judges of the Supreme Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pension as may from time to time be fixed by the President.
- (7) If the office of the Chief Justice becomes vacant or if the Chief justice is, by reason of absence or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by the President to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other judges of the Supreme Court as the President may in his discretion appoint for that purpose.

44. The Supreme Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice may with the approval of the President from time to time appoint.

Seat of Supreme Court

**Original Jurisdiction
Supreme Court.**

45. Subject to the provisions of this Constitution the Supreme Court shall, to the exclusion of any other Court, have an original jurisdiction—

- (1) in any dispute between the Federal Government and a Provincial Government if and in so far as the dispute involves any question whether of law or fact on which the existence or extent of a legal right depends.
- (2) It shall also have original jurisdiction in all matters—
 - (i) referred to the Supreme Court by the President;
 - (ii) in which the Federal Government or a person suing or being sued on behalf of the Federal Government is a party ;
 - (iii) affecting consuls or other representatives of other countries ;
 - (iv) between Provinces ;
 - (v) arising under this Constitution or involving its interpretation.

**Appellate Jurisdiction
of Supreme
Court in appeals
from High Courts.**

- 46.** (1) The Supreme Court shall have jurisdiction with such exceptions and subject to such regulations as the Federal Legislature may prescribe, to hear and determine appeals from all judgments, decrees, orders and sentences,
- (a) of any Justice or Justices exercising the original jurisdiction of the Supreme Court;
 - (b) of a High Court if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution or any Order in Council made thereunder, and it shall be the duty of every High Court to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.
- (2) The Federal Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Supreme Court from a judgment, order or final decree of a High Court of a Province without any

such certificate as aforesaid, but no appeal shall lie under any such Act unless the amount or value of the subject-matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than one lac of rupees, or the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value, or the Supreme Court gives special leave to appeal.

47. (1) The Supreme Court shall, where it allows an appeal, remit the case to the Court from which the appeal was brought with a declaration as to the judgment, decree or order which is to be substituted for the judgment, decree or order appealed against, and the Court from which the appeal was brought shall give effect to the decision of the Supreme Court. Form of judgment on appeal.
- (2) Where the Supreme Court upon any appeal makes any order as to the costs of the proceedings in the Supreme Court, it shall, as soon as the amount of the costs to be paid is ascertained, transmit its order for the payment of that sum to the Court from which the appeal was brought and that Court shall give effect to that order.
- (3) The Supreme Court may, subject to such terms or conditions as it may think fit to impose, order a stay of execution in any case under appeal to the Court, pending the hearing of the appeal, and execution shall be stayed accordingly.
48. (1) All authorities, civil and judicial throughout the Hindusthan Free State, shall act in aid of the Supreme Court. Enforcement of decrees & orders of Supreme Court.
- (2) The Supreme Court shall have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of Court which any Provincial High Court has power to make as respects the territory within its jurisdiction, and any such orders,

and any orders of the Supreme Court as to the costs of and incidental to any proceedings therein shall be enforceable by all courts and authorities in every part of the Hindusthan Free State as if they were orders duly made by the High Court exercising civil or criminal jurisdiction, as the case may be, in that part.

Law declared by Supreme Court to be binding on all Courts.

49. The law declared by the Supreme Court shall, so far as applicable, be recognised as binding on, and shall be followed by, all Courts in the Hindusthan Free State, and so far as respects the application and interpretation of this Act or any Order in Council made thereunder or any matter with respect to which the Federal Legislature has power to make laws in relation to the State, in the Provinces.

Rule-making power of Supreme Court.

50. (1) The Supreme Court may from time to time, with the approval of the President in his discretion, make rules of Court for regulating generally the practice and procedure of the Court, including rules as to the persons practising before the Court, as to the time within which appeals to the Court are to be entered, as to the costs of and incidental to any proceedings in the Court, and as to the fees to be charged in respect of proceedings therein, and in particular may make rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay.

- (2) Rules made under this section may fix the minimum number of Judges who are to sit for any purpose, so however that no case shall be decided by less than three Judges.
- (3) Subject to the provisions of any rules of Court, the Chief Justice shall determine what Judges are to constitute any division of the Court and what judges are to sit for any purpose.
- (4) No judgment shall be delivered by the Supreme Court save in open Court and with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this sub-section shall be deemed to prevent

a Judge who does not concur from delivering a dissenting judgment.

51. The Federal Legislature may make provision by Act for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Act as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Act. Ancillary powers of Supreme Court.

52. All Judges shall be independent in the exercise of their functions and subject only to the constitution and the law. A Judge shall not be eligible to sit in any Chamber and shall not hold any other office or position of emolument. Independence of Supreme Court.

[**Note:**—A perusal of sections 9 to 52 will make it clear that even though the three powers of the State, namely, the legislative, executive and judicial, are not completely separated one from the other, yet each has its distinct sphere of action, and all of them are safeguarded by a system of mutual checks and balances. The legislature, and the executive act as a check upon each other, and the judiciary upon both. These checks and balances are, in truth, the corner-stones of the Constitution; with them the Constitution is worth its name; without them it degenerates into its negation.

The Constitution creates a Supreme Court for the Hindustan Free State and confers upon its Judges complete independence, so that they may be able to discharge their duties truly and efficiently, but subject to the Constitution and to the law of the land, that is to say, not capriciously or frivolously. Further, the Supreme Court is granted such original and appellate jurisdiction as its very name and nature require. The matters in respect of which it is given the original jurisdiction deserve special notice, for instance, in dispute between the Federal Government and the Provincial Government, or between Provinces, or which arises under the constitution or involves its interpretation, the Supreme Court shall sit in judgment and pass a decree or order which shall be binding on the parties concerned. And it is further provided that all authorities, civil and judicial, throughout the Hindustan Free State are bound to act in aid of the Supreme Court and to enforce its decree or order without let or hindrance.]

CHAPTER VI.
Attorney-General

Attorney-General.

53. (1) The President shall, in consultation with the Council of Ministers, appoint an Attorney-General for the Federal Government on such remuneration and for such period as the President may, in his discretion, determine.
- (2) The Attorney-General shall exercise such powers and discharge such duties as may be determined by law in that behalf.

CHAPTER VII.

Legislative Powers of President.

Powers of President to promulgate or ordinances.

54. (1) If at any time the President is satisfied that circumstances exist which render it necessary for him to take immediate action for maintaining the peace, order and good government of the State, or for enabling him satisfactorily to discharge his functions under this Act, he may, in consultation with the Council of Ministers, 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 Legislature assented to by the President, but every such ordinance shall be laid before the Federal Legislature and shall cease to operate if resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions.
- (3) An ordinance not disapproved by both Chambers shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months. An ordinance not so disapproved or so continued shall have the same force and effect as an Act of the Federal Legislature assented to by the President.
- (4) If and so far as an ordinance under this section makes any provision which the Federal

Legislature would not under this Act be competent to enact, it shall be void.

CHAPTER VIII.

The Initiative, Referendum, & Recall.

55. (1) The Federal Legislature may provide for the Initiation by the people of proposals for laws or constitutional amendments. Should the Federal Legislature fail to make such provision within two years, it shall, on the petition of not less than—voters on the Register, of whom not more than —shall be voters in any one province, either make such provisions or submit the question to the people for decision in accordance with the ordinary regulations governing Referendum. **Initiative.**
- (2) Any legislation passed by the Federal Legislature providing for such initiation by the people, shall provide, (1) that such proposals may be initiated on a petition of —voters on the register; (2) that if the Federal Legislature rejects a proposal so initiated it shall be submitted to the people for decision in accordance with the ordinary regulations governing the Referendum; and (3) that if the Federal Legislature enacts the proposal so initiated, such enactment shall be subject to the provisions respecting ordinary legislation or amendments of the Constitution as the case may be.
56. (1) Any bill passed or deemed to have been passed by both the Chambers may be suspended for a period of ninety days on the written demand of two-fifths of the members of the House of Representatives or of a majority of the members of the Senate presented to the President not later than—days from the day on which such bill shall have been so passed or deemed to have been so passed. **Referendum.**
- (2) Such a bill shall in accordance with rules to be made by the Federal Legislature be submitted by Referendum to the decision of the people if demanded before the expiration

of the ninety days either by the resolution assented to by three-fifths of the members of the Senate or of the House of Representatives, or by a petition signed by not less than one-tenth of the voters then on the register of voters, and the decision of the people by majority of the votes recorded on such referendum shall be conclusive.

- (3) These provisions shall not apply to money bills or to such bills as shall be declared by both Chambers to be necessary for the immediate preservation of the public peace, health or safety.

Recall.

57. A petition made to the President by not less than one-tenth of the voters then on the register of voters of a constituency to recall its representative shall, in accordance with rules to be made by the Federal Legislature in that behalf, be submitted by referendum to the decision of the voters of the said constituency, and the decision of the voters by a majority of the votes recorded on such referendum shall be conclusive, and the representative shall cease to be the representative of such constituency from the date of the proclamation of the decision.

[**Note** :—These three sections give to the voting mass of the people three direct checks on, and direct control of, their representatives and their actions or in-actions. They are but the logical outcome of the doctrine of popular sovereignty. “ *Initiative* ” is the power of the people to initiate or propose legislation which must be taken up by the legislature. “ *Referendum* ” is the power of the people to review the acts of the legislature before they pass into law. In other words, while the Initiative offers the people a remedy for the legislature’s sins of omission, Referendum protects the people against the legislature’s sins of commission. “ *Recall* ” is the power of the people to remove an unsatisfactory representative before the expiration of his term of office. Democracy has now reached a stage in its development when it is not only desirable but also essential to grant the people, by these devices, a direct voice in respect of their social and economic well-being and political destiny.]

CHAPTER IX.

Amendment of Constitution.

58. Amendments of this Constitution may be made by the Federal Legislature, but no such amendment, passed by both Chambers thereof, after the expiration of a period of—years from the date of the coming into operation of this Constitution shall become law, unless the same shall after it has been passed or deemed to have been passed by the said two Chambers have been submitted to a Referendum of the people, and unless a majority of the voters on the register shall have recorded their votes on such Referendum and either the votes of a majority of the voters on the register, or two-thirds of the votes recorded, shall have been cast in favour of such amendment. Any such amendment may be made within the said period of—years by way of ordinary legislation and as such shall be subject to the provisions in that behalf.

Amendment of
Constitution.

CHAPTER X.

Property, Revenue and Finance.

59. All property vested in, or arising or accruing from property or rights vested in, His Majesty the King of England or the Secretary of State for India in Council under the Government of India Acts, 1858, 1915, 1919 and 1935 shall vest in the Hindusthan Free State.

Property.

60. (1) The revenues of Hindusthan shall vest in the Hindusthan Free State and shall, subject to the provisions of this Act, be applied for the purposes of the Hindusthan Free State alone.

Revenues.

(2) The expression "revenues of Hindusthan" in this Act shall include (a) all the territorial and other revenues of or arising in Hindusthan, and in particular, (b) all fines and penalties incurred by the sentence or order of any court of justice in Hindusthan, and all forfeitures for crimes of any movable or immovable property in Hindusthan and (c) all movable or immovable property in Hindusthan escheating or lapsing for want of an heir or successor and all property in Hindusthan devolving as *bona vacantia* for want of a rightful owner,

Finance.

61. As soon as may be after the establishment of the Federation, the Council of Ministers with the approval of the two Chambers of the Federal Legislature shall appoint a Commission consisting of one representative from each of the first fifteen Provinces mentioned in section 4 of this Act and not less than one-third of the total number of the members of the Commission as representing the Indian States and presided over by an officer of the Federal Government to enquire into, in conformity with the principles of this Constitution and with the assistance of a committee or committees as it may consider desirable to appoint,—

- (1) (a) the sources of revenue which may be assigned to the Federal Government and to the Provincial Governments with due regard to the efficient administration and development of the services of subjects under their control,
 - (b) the financial relations which should exist between the Federal and the Provincial Governments, and
 - (c) means to be adopted for giving effect to such relations.
- (2) The Commission shall report to the Council of Ministers, who shall place the report with their recommendations before the Federal Legislature for such legislation or other action as it shall deem fit.

CHAPTER XI.

The Civil and Army Services.**Civil services.**

- 62.** (1) As soon as may be after the establishment of the Federation, the Council of Ministers shall appoint a Public Service Commission to recommend such reorganisation and re-adjustment of the departments of the public services as may be necessary.
- (2) The Federal Legislature may make laws for regulating the classification of the Civil Services, the sources and methods of their recruitment, the conditions of service, pay and allowances, and discipline and conduct. The said Legislature may, to such extent and in respect of such matters as it may

prescribe, delegate the power of making rules to Provincial Governments.

- (3) The Council of Ministers shall appoint a Permanent Public Service Commission with such powers and duties relating to the recruitment, appointment, discipline, retentive, retirement and super-annuation of public officers as the Federal Legislature shall determine.
- (4) Members of such Commission shall hold office for five years from the date of appointment.

The Army Services.

All officers, British and Hindusthani, serving in the army, navy, marine, or air force at the commencement of this constitution, shall retain all their existing rights as to salaries, allowances or pensions provided they take oath to be loyal to the Federation, or shall receive such compensation for the loss of any of them as the Council of Ministers may consider just and equitable, or as they would have received in like circumstances if the Federation had not been established.

Army Services.

CHAPTER XII.

Defence.

63. (1) The Federal Legislature shall appoint a Committee of Defence consisting of (1) the Prime Minister, (2) the Minister for Defence, (3) the Minister for Foreign affairs, (4) the Commander-in-Chief, (5) the Commander of the Air Forces, (6) the Commander of the Naval Forces, (7) the Chief of the General Staff, and two other experts.
- (2) The Prime Minister shall be the Chairman of this Committee.
- (3) Such Committee shall advise the Federal Legislature as to the sources and methods of recruitment, the conditions of service, pay, allowances, and discipline, conduct, such other matters as appertain to the Army, Navy and Air Force. It shall also advise the said Legislature in matters of the prevention of aggression on Hindusthan by land, air

Committee of Defence.

or sea, and the maintenance of peace and order within.

- (4) In so far as it is practicable, and consistently with the effective defence of Hindusthan the said Committee shall take steps to select, appoint and train recruits from all parts of Hindusthan in order to give them adequate representation in the command and rank and file of the Army, Navy, and Air force.
- (5) The Committee shall also advise as to the establishment of the requisite number of schools and colleges for military instruction and training of officers for the land, naval and air forces of the Hindusthan Free State.

[**Note:**—The Hindusthan Free State will not be worth even a moment's purchase if it does not take immediate steps to make itself strong enough to hold its own against the aggression of any nation. It will have to establish and organise its army, navy and air force on sound lines. The vicious principle of martial and non-martial races must be wiped away, and honest endeavours must be made to recruit persons to the different branches of the army from all the provinces of Hindusthan.]

**Committee of
Military
Equipment.**

64. As soon as may be after the establishment of the Federation the Council of Ministers shall appoint a committee called the Committee of Military Equipment consisting of (1) the Prime Minister, (2) the Minister for Defence, (3) the Commander-in-chief, (4) the Commander of Air forces, (5) the Commander of the Naval forces, and four industrial experts to advise the Federal Government in the matter of the establishment by the Federal Government itself of industries necessary for the manufacture of the requisite implements of war and war material.

CHAPTER XIII.

Distribution, Redistribution and Separation of Provinces.

**Distribution of
territories of
States into Pro-
vinces & separa-
tion or redistri-
bution of existing
Provinces.**

- 65. (1)** As soon as may be after the establishment of the Federation the Council of Ministers with the approval of the two Chambers of the Federal Legislature shall appoint a Commission consisting of one representative from each of the first fifteen Provinces mentioned in

section 4 of this Act and not less than one-third of the total number of the members of the Commission as representing the Indian States and presided over by an officer of the Federal Government to enquire into, in conformity with the principles of this Constitution and with the assistance of a committee or committees as it may consider desirable to appoint, and subject to financial and administrative considerations—

- (a) the number of provinces into which the territories at present under the rule of the Indian Princes shall be distributed;
 - (b) the separation of an existing province into two or more;
 - (c) the amalgamation of two or more provinces into one;
 - (d) the re-settlement of the boundaries of the existing provinces;
 - (e) the re-distribution of the existing provinces on a linguistic basis on the demand of the majority of the population of the area concerned.
- (2) The said Commission shall report to the Council of Ministers, who shall place the report of the Commission together with their recommendations.

PART IV.

CHAPTER I.

The Provincial Legislature.

General.

66. (1) The legislative power of a Province shall be vested in the Governor and two Chambers to be known as the Legislative Council and the Legislative Assembly. Vesting of legislative power.
- (2) The Provincial Legislature shall have power to make laws for the peace, order and good government of its province in relation to matters coming in the class of subjects by Schedule—to this act assigned to the Provincial Legislatures.
- (3) The Provincial Legislature may repeal or

alter as to that Province any law relating to a provincial subject after this Act comes into operation.

- (4) No court shall have jurisdiction in cases where the Provincial Legislature has acted in the exercise of the powers under the preceding sub-sections.

Election of Governor.

67. There shall be a Governor for each Province who shall be elected by all the voters of the Legislative Assembly and his term of office shall be six years from the date he takes office.

Constitution of Provincial Legislatures.

68. (1) There shall be one member of the Legislative Assembly for every one lac of the population of a Province, provided that in Provinces with a population of less than ten millions there may be a maximum of hundred members.

(2) There shall, for every Province, be a Legislative Council consisting of not more than one-half of the total membership of the Legislative Assembly of the said Province.

Franchise.

69. (1) Every person of either sex who has attained the age of twenty-one and not disqualified by law shall be entitled to vote at the elections of the Legislative Assembly.

(2) The election of the Legislative Council shall be on the vocational basis representing agriculture, labour, industry, trade and commerce, education, law, medicine, science and engineering by constituencies as determined by law. The election shall be by the method of proportional representation with single transferable vote.

Qualifications for membership.

70. (1) No one can be a member of the Legislative Council and Legislative Assembly unless he has completed the age of thirty and twenty-five respectively at the date of his candidature.

(2) The provisions of sections 10 and 11 in respect of a person being disqualified for being chosen as, and for being a member of, Federal Legislatures and for penalty for sitting or voting shall apply *mutatis*

mutandis to a candidate for membership of a Provincial Legislative Assembly or Legislative Council.

71. No constituency in a Province shall be a single member constituency. Constituency.

[**Note:**—From Schedule——it will be apparent that almost all the nation-building departments are proposed to be transferred to the Provinces. In fact, the provincial administration will be mainly concerned in building up the provinces in such a manner as to make them useful units of the nation. It is a truism to say that a strong and powerful centre requires its component parts to be equally so. The measure of the strength of a chain lies more in its links and most in its weakest link. It is with a view to make the province a strong unit in all its departments that the Legislative Council has been so constituted as to make the expert advice and action in every important walk of life available to the Province. Circumstanced as the Provinces are at present, it is only a Legislative Council constituted on a vocational basis that can achieve this end. Further, proportional representation has been introduced in order to give adequate representation to minority vote.

The system of single-member constituency, under which a country or its province is divided into a number of electoral areas, urban and rural, each returning a single member, is rapidly growing out-of-date and is being fast supplanted by the system of multi-member constituency in almost all the democratic nations except Great Britain and the United States, for the simple reasons—(1) that it does not adequately reflect the opinion of the electorate, and (2) worse than this, this system may exclude whole areas from representation in spite of a strong minority vote. It is with the object of avoiding the evils and anomalies of single-member constituency that this Constitution has enjoined that in the elections to the Provincial Legislature all the constituencies shall be multi-member and not single-member.

It must be borne in mind that the *raison d'être* of a Provincial Legislature is not only to reflect the opinion of the Province, but to maintain good government and to make the province strong enough to take its rightful place in the development and expansion of national activities. In the provinces where democracy is bound to

be in its infancy for some time to come, it will be inadvisable to pin one's faith solely and wholly on adult franchise. Vocational representation has several beneficial features to commend themselves to public approval, and which can be safely utilized for the furtherance of provincial interests. It is with this view that the structure of the Legislative Council has been reared on the basis of vocational franchise.]

**Life of Provincial
Legislature.**

- 72.** (1) Every Legislative Assembly of every Province unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.
- (2) Every Legislative Council 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 third year as determined by law, in that behalf.

Provisions as to Members of Legislature.

**Oath of
members.**

73. Every member of a Provincial Legislative Assembly and Legislative Council shall, before taking his seat, make and subscribe before the Governor or someone appointed by him, an oath according to that one of the forms set out in the——Schedule to this Act which the member accepts as appropriate in his case.

**Vacation of
seats.**

- 74.** (1) No person shall be a member of both Chambers of a Provincial Legislature, and a person who has been elected as a member of both Chambers shall be deemed to have vacated the seat to which he was first elected.
- (2) No person shall be a member both of the Federal Legislature and of a Provincial Legislature and if a person is chosen a member of both such Legislatures, then, at the expiration of such period as may be prescribed by rules made in that behalf, that person's seat in the Provincial Legislature shall become vacant, unless he has previously resigned his seat in the Federal Legislature.
- (3) If a member of either Chamber —
(a) becomes subject to any of the disquali-

fications mentioned in sub-section (1) of section 10, or

- (b) by writing under his hand addressed to the Governor resigns his seat, or
- (c) if for sixty days a member of either Chamber absents himself from the meetings of His Chamber without the Speaker's or in his absence the Deputy Speaker's permission, his seat shall, thereupon, become vacant.

Provided that in computing the said period of sixty days, no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

- (4) The vacancy created for any of the foregoing reasons shall be filled by election in a manner to be determined by law.

75. A Chamber of a Provincial Legislature shall have power to act notwithstanding any vacancy in the membership thereof and any proceedings in a Provincial Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.

Chambers to act notwithstanding vacancies.

76. If at any time during a meeting of a Provincial Legislature less than one-sixth of the total number of members of the Chamber are present, it shall be the duty of the Speaker or person acting as such of the said Chamber either to adjourn the Chamber, or to suspend the meeting until at least one-sixth of the members are present.

Quorum.

77. Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Provincial Legislatures—section 14 of this Act shall apply *mutatis mutandis* to the members of the Provincial Legislature in respect of privileges etc. of members.

Privileges &c. of members.

78. Members of both the Chambers shall be entitled to receive such salaries and allowances as may from time to time be determined by an Act of the Provincial Legislative Assembly.

Salaries & allowances of members.

Sessions of Provincial Legislatures.

- 79.** (1) The Chambers shall be summoned by the Governor to meet for their first session on such day as he may specify in that behalf,

Sessions of the Legislature, Prorogation & Dissolution,

but such day shall not be later than—
days after his election.

- (2) The Chambers of the Provincial Legislature shall be summoned to meet once at least in every year; and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.
- (3) Subject to the provisions of this section, the Governor may in his discretion from time to time,
 - (a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit;
 - (b) prorogue the Chambers;
 - (c) dissolve the Legislative Assembly.
- (4) After the dissolution of the Legislative Assembly the Governor shall appoint a date not more than six months after the date of the dissolution for the next session of the Assembly.
- (5) The sittings of each Chamber shall be public. In cases of emergency either Chamber may hold a private sitting with the assent of its presiding member.

**Governor's right
to address &
send messages
to the Chambers.**

- 80.** (1) The Governor may in his discretion address either Chamber of the Provincial Legislature or both Chambers assembled together, and may for that purpose require the attendance of members.
- (2) The Governor may, in his discretion, send messages to the Chamber or Chambers of the Provincial Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and a Chamber or Chambers to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration.

**Officers of
Chambers.**

- 81.** (1) Each Chamber shall as soon as may elect two of its members to be respectively the Speaker and Deputy Speaker thereof, and so often as the office of the Speaker or Deputy Speaker becomes vacant, the Chamber

concerned shall elect another member to be the Speaker or Deputy Speaker, as the case may be.

(2) A member holding office as the Speaker or Deputy Speaker of his Chamber shall vacate his office—

(a) if he ceases to be a member of his Chamber; or

(b) if he resigns his office by writing under his hand addressed to the Governor; or

(c) if he is removed from his office by a resolution passed by a majority of all the then members of his Chamber; but no resolution for this purpose shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

(3) The Speaker shall preside over the sittings of his Chamber and perform all other duties of his office and in his absence the Deputy Speaker shall do so; in the absence of both, the Chamber shall elect its own Speaker for the time being from among its members.

(4) The Speaker and the Deputy Speaker of each Chamber shall be paid such salaries as may be respectively fixed by an Act of the Provincial Legislative Assembly.

82. (1) All matters at any sitting or joint sitting of the Chambers shall, save as otherwise provided by this Act, be determined by a majority of votes of the members present and voting.

Voting.

(2) The Speaker or the Deputy Speaker or any other person performing the duties of the Speaker shall not vote in the first instance but shall have and exercise a casting vote in case of an equality of votes.

83. Every Minister and the Advocate General shall have the right to speak in, and otherwise to take part in the proceedings of, either Chamber, any joint sitting of the Chambers, and any Committee of the Legislature of which he may be named a member, but shall not by virtue of this section be entitled to vote.

Right of audience.

Language.

84. (1) All proceedings in a Provincial Legislature shall be conducted in the principal language or languages of that Province or in the Hindi or in the English Language.
- (2) The principal language or languages of a Province shall be the official language or languages of that province.

Annual Financial Statement.**Annual financial statement.**

85. (1) The Governor shall in respect of every financial year cause to be laid before both Chambers of the Provincial Legislature a statement of the estimated receipts and expenditure of that year called the "annual financial statement."
- (2) Such statement shall be so placed by a member of the Council of Ministers.
- (3) The estimates of expenditure embodied in the annual financial statement shall be submitted in the form of demands for grants to the Legislative Assembly, and thereafter to the Legislative Council; and either Chamber shall have power to assent or refuse to assent to any demand, or to assent to any demand subject to a reduction of the amounts specified therein.
- (4) If the Chambers differ with respect to any demand, the Governor shall summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree, and the decision of the majority of the members of both Chambers present and voting shall be deemed to be the decision of the two Chambers.

Supplementary grant.

86. If in respect of any financial year further expenditure from the revenues of the Province becomes necessary over and above the expenditure theretofore authorised for that year, the Governor shall cause to be laid before both Chambers of the Provincial Legislature a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sub-sections, (2), (3) and (4) of section 85 shall have effect in relation to that statement

and that expenditure as they have effect in relation to the annual financial statement and the expenditure.

87. (1) The Governor shall authenticate by his signature a Schedule specifying the grants authorised by the two Chambers of the Provincial Legislature under sections 85 and 86.

Authentication
of authorised
grants.

(2) No expenditure from the revenues of the Province shall be deemed to be duly authorised unless it is specified in the Schedule so authenticated.

Legislative Procedure.

88. A money bill shall mean and include all that is defined in section 25 of the Act.

Money Bill.

89. The Speaker or in his absence the Deputy Speaker of the Legislative Assembly shall certify a bill which in his opinion is a money bill to be a money bill, and such certificate shall be final and conclusive.

The Speaker's
Certificate.

Provided that, if before the expiration of—
days from the day on which a bill so certified is sent by the Legislative Assembly to the Legislative Council for its consideration, two-fifths of the members of either Chamber by a notice in writing addressed to the Speaker or in his absence to the Deputy Speaker of the Chamber of which they are members so require, or a majority of the members of the Legislative Council present and voting at a sitting of the Council at which not less than—members are present so resolve, the question whether a bill is a money bill or is not so shall be forthwith referred to the Chief Justice of the Supreme Court and his decision shall be final and conclusive.

90. (1) A money bill shall be introduced only by a member of the Council of Ministers and shall only originate in the Legislative Assembly.

Originating
Chamber.

(2) Any other bill may be initiated in either Chamber of the Provincial Legislature, and if passed by the originating Chamber, shall be introduced in the other Chamber for being passed.

91. A money bill passed by the Legislative Assembly shall be transmitted to the Legislative Council for its recommendations and it shall be returned not later than—days therefrom to the Legislative Assembly, which

Passing of
Money Bill.

may pass it, accepting or rejecting all or any of the recommendations of the Legislative Council; and the bill so passed shall be deemed to have been passed by both Chambers.

Passing of
other Bills.

92. (1) A bill other than a money bill shall not be deemed to have been passed by the Provincial Legislature unless it has been agreed to by both Chambers, either without amendments or with such amendments only as may be agreed to by both Chambers.
- (2) If any bill which has been passed by one Chamber is not, within six months after the passage of the bill by that Chamber, passed by the other Chamber, either without amendments or with such amendments as may be agreed to by both Chambers, the Governor shall, on resolution passed by either Chamber to that effect, refer the bill for decision to a joint sitting of both Chambers. The members present at such joint sitting shall vote together upon the bill and amendments, if any, as last proposed by the Legislative Assembly; and the bill and such amendments as are affirmed by a majority of the total number of members of the two Chambers present at such joint sitting shall be taken to have been duly passed by both Chambers of the Provincial Legislature.

Governor's
assent to bills
otherwise.

93. (1) So soon as any bill shall have been passed by both Chambers it shall be presented to the Governor for the signification of his assent, and he may signify such assent or withhold the same.
- (2) A bill passed by both Chambers shall become an Act if the Governor signifies his assent thereto, and that assent has been published by him.
- (3) In case where the Governor withholds his assent to a bill passed by both Chambers, he shall return the bill for reconsideration with his own recommendations thereto.
- (4) A bill so returned shall be further considered by both Chambers together with the recom-

mendations made by the Governor, and if it is reaffirmed with or without amendments by both Chambers, it shall be deemed to have been assented to by the Governor, but it shall not become an Act unless and until the President of the Hindusthan Free State has assented thereto and that assent has been signified by the President to and published by the Governor.

[**Note** :—There is a slight change made in the procedure to be followed by the Provincial Legislature in the case where the Governor withholds his assent to a Bill, passed by both the Chambers. In the case where the Governor assents to a Bill, it shall become an Act, since the publication of such assent. But where he dissents from a Bill, even though he will statutorily be deemed to have assented to it if it is, reaffirmed by both Chambers, as a safeguard it is provided that the Bill shall not become an Act unless and until the President of the Hindusthan Free State assents thereto and such assent is published by the Governor. This safeguard has been provided with a view to prevent the passing of hasty or ill-considered legislation by Provincial Legislatures.]

CHAPTER II.

The Provincial Executive.

94. The executive authority of a Province shall be vested in the Governor and shall be exercisable by him in accordance with law, practice and constitutional usage.

Governor—Executive authority.

95. (1) There shall be a Council of Ministers to aid and advise the Governor in the government of the Province. The Council of Ministers shall be responsible to the Legislative Assembly and shall consist of not less than six ministers of whom one to be called the Prime Minister shall be appointed by the Governor on the advice of the leader of the majority party, in the Legislative Assembly. The Prime Minister shall nominate and appoint other ministers, who along with himself shall be members either of the Legislative Assembly or of the Legislative Council.

Council of Ministers.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly for

all matters concerning the departments of the Province administered by them and generally for all advice tendered to the Governor.

- (3) The Ministers shall receive such remuneration as may from time to time be prescribed by law, but the remuneration of any Minister shall not be diminished during his term of office.

Governor's powers.

96. (1) The Governor shall take care that the laws are faithfully executed. He shall commission all officers of the Province. He may at any time require information in writing or otherwise, from the officers of the executive department, upon any subject relating to their respective offices.
- (2) He shall have power to grant reprieves, commutations and pardons after conviction for all offences, subject to such regulations as may be provided by law relative to the manner of applying therefor.
- (3) He and all civil officers except such inferior officers as may by law be exempted, shall, before entering on the duties of their respective offices, take and subscribe the following oath or affirmation:—

I do solemnly swear/affirm that I will support and defend the Constitution of the Hindusthan Free State and that I will faithfully discharge the duties of the office of _____to the best of my ability.

Governor's resignation etc.

97. In case of resignation, death, impeachment, or other disability of the Governor, the powers and duties of the office shall devolve upon the presiding officer of the Legislative Assembly until the disability be removed, or until a new Governor is elected.

Salary, official residence & establishment of Governor.

98. The salary of the Governor shall be fixed by the Legislative Assembly in keeping with the dignity, position and status of his office and shall be charged on the revenues of the Province. Suitable provision shall also be made out of those revenues for the maintenance of his official residence and establishment.

99. The Legislative Assembly and the Legislative Council may upon due notice and opportunity for defence given, remove or retire the Governor from office upon a resolution passed by three-fourths of all the members elected to the two Chambers in a joint sitting and voting.

Removal &
retirement of
Governor.

CHAPTER III.

Provincial Audit and Accounts.

100. (1) The Governor, in consultation with the Council of Ministers, shall appoint a Provincial Auditor to act on behalf of the Province. He shall control all disbursements and shall audit all accounts of moneys administered by or under the authority of the Governor and The Council of Ministers, and shall report to both Chambers of the Provincial Legislature at stated periods and shall perform other duties as determined by law.
- (2) The Provincial Auditor shall be removed from office in like manner and on the like grounds as a Judge of the High Court, subject to this provision, that the terms and conditions of his tenure of office shall be fixed by law. He shall not be a member of the Provincial Legislature nor shall he hold any other office or position of emolument.
- (3) The salary, allowances and pension payable to the Auditor-General and the members of his staff shall be charged on the revenues of the Province.

Provincial
Auditor.

CHAPTER IV.

Provincial Judiciary.

101. (1) The Highest Judicial power of a Province shall be exercised by a High Court which shall be a Court of record and shall consist of a Chief Justice and such other Judges as the Governor may deem necessary to appoint.
- (2) Every Judge of the High Court whether permanent or temporary, shall be appointed by the Governor in consultation with the

Establishment &
Constitution of
High Courts.

Council of Ministers and the Provincial Bar Association, if any, and shall hold office until he attains the age of sixty years.

Provided that—

- (a) A Judge may by resignation under his hand addressed to the Governor resign his office ; or
 - (b) A Judge may be removed from his office by the Governor on the ground of misbehaviour or of infirmity of mind or body.
- (3) A person shall not be qualified for appointment as a Judge of the High Court unless he
- (a) has been for at least five years a Judge of a High Court, or
 - (b) is a barrister, an advocate or a pleader of at least ten years' standing actively working as such in any High Court or District Court.

Provided that a person shall not be qualified for appointment as Chief Justice unless he is, or when first appointed to a judicial office was, a Barrister or an Advocate or a Pleader of at least ten years' standing.

In computing for the purposes of this sub-section the standing of a barrister, or an advocate or a pleader, any period during which a person has held judicial office after he became a barrister, an advocate or a pleader, as the case may be, shall be included.

- (4) Every person appointed to be a Judge of the High Court, shall, before he enters upon his office make and subscribe before the Governor or some person appointed by him an oath according to the form set in section 36, sub-section (3) of the Act.
- (5) The Judges of the High Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pension as may from time to time be fixed by an Act of the Provincial Legislature.
- (6) If the office of the Chief Justice becomes

vacant or if the Chief Justice is, by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person appointed by the Governor to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other judges of the High Court as the Governor may in his discretion appoint for the purpose.

- (7) The High Court shall sit in the capital city of the Province or at such other place or places, if any, as the Chief Justice may with the approval of the Governor from time to time appoint.

102. Subject to the provisions of this Act and of any standing order made under this or any other Act, **Jurisdiction of High Court.**

- (1) A High Court shall have all the jurisdiction and powers of an existing High Court in the Province concerned ;
- (2) it shall have power of superintendence and administrative control over all the Courts in the Province for the time being subject to its appellate jurisdiction ; and
- (3) it shall have, on the application of the Advocate-General for the Province, the power to transfer to itself for trial a case pending in an inferior Court, which involves or is likely to involve the question of the validity or interpretation of any Provincial Act.

103. All Judges shall be independent in the exercise of their functions and subject only to the constitution and the law. A judge shall not be eligible to sit in any Chamber and shall not hold any other office or position of emolument.

Independence of High Court.

CHAPTER V.

Legislative Powers of Govern...

- 104.** (1) If at any time the Governor is satisfied that circumstances exist which render it necessary for him to take immediate

Power of Governor to promulgate Ordinances.

action for maintaining the peace, order and good government of the Province, or for enabling him satisfactorily to discharge his functions under this Act, he may, in consultation with the Council of Ministers, promulgate such ordinances as the circumstances require.

- (2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance shall be laid before the Provincial Legislature and shall cease to operate if resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions.
- (3) An ordinance not disapproved by both Chambers shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months. An ordinance not so disapproved or so continued shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor.
- (4) If and so far as an ordinance under this section makes any provision which the Provincial Legislature would not under this Act be competent to enact, it shall be void.

CHAPTER VI.

The Initiative, Referendum and Recall

Initiative,
Referendum &
Recall.

105. The provisions of sections 55, 56, and 57, of this Act shall apply *mutatis mutandis* to all the Provinces.

CHAPTER VII.

Advocate-General.

Advocate-
General.

106. (1) The Governor shall, in consultation with the Council of Ministers, appoint an Advocate-General for the Provincial Government on such remuneration and for such period as the Governor may, in his discretion determine,

- (2) The Advocate-General shall exercise such powers and discharge such duties as may be determined by law in that behalf.

PART V.

Transitional Provisions.

107. Subject to this Constitution and to the extent to which they are not inconsistent therewith, the laws in force in the Hindusthan Free State at the date of the coming into operation of this Constitution shall continue to be of full force and effect, until the same or any of them shall have been repealed or amended by enactments of the Federal or Provincial Legislatures.

Continuance
of laws.

108. Nothing in this Constitution shall affect any liability to pay any tax or duty payable in respect of the financial year current at the date of the coming into operation of this Constitution, or any preceding financial year, or in respect of any period ending on or before the last day of the said current financial year, or payable on any occasion happening within that or any preceding year, or the amount of such liability; and during the said current financial year, all taxes and duties and arrears thereof shall continue to be assessed, levied and collected in like manner, in all respects as immediately before this Constitution came into operation subject to the like adjustments of the proceeds collected as were theretofore applicable; and for that purpose the Provisional Government shall have all the powers necessary and ancillary. The Provisional Government shall be elected by the Constituent Assembly.

Provision of
liability to pay
taxes & duties.

109. Until Courts have been established for the Hindusthan Free State in accordance with this Constitution, all the Courts in Hindusthan, as at present existing, shall for the time being continue to exercise the same jurisdiction as heretofore and the same provision shall apply to all the judges and the judiciary in general.

Continuance o
existing Courts

110. Every existing officer of the Provisional Government at the date of the coming into operation of this Constitution shall on that date be transferred to and become an officer of the Hindusthan Free State and

Existing
officers to
continue.

shall hold office by a tenure corresponding to his previous tenure.

**Hindusthan Free
State to be
successor of
Provisional
Government.**

111. As regards departmental property, assets, rights and liabilities the Government of the Hindusthan Free State shall be regarded as the successor of the Provisional Government.

FEDERAL LEGISLATIVE LIST.

1. External affairs ; the implementing of treaties and agreements with other countries ; extradition, including surrender of criminals and accused persons to parts outside the province of the Hindusthan Free State.

2. Admission into, and emigration and expulsion from, Hindusthan including in relation thereto the regulation of the movements in Hindusthan of persons who are not British subjects domiciled in Hindusthan.

3. Naturalisation.

4. Migration within Hindusthan from or into a Governor's Province.

5. Naval, military and air force works ; local self-government in cantonment areas, the regulation of house accommodation in such areas, and the delimitation of such areas.

6. The defence of Hindusthan and all matters connected with the naval, military and air forces of the Hindusthan Free State, including militia ; marine service and any other force raised in Hindusthan other than military and armed police wholly maintained by the Provincial Government ; naval and military works and cantonments ; schools and colleges for military, naval and air training.

7. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

8. Arms ; firearms ; ammunition.

9. Explosives.

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

11. Port quarantine ; seamen's and marine hospitals, and hospitals connected with port quarantine.

12. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities.

13. Lighthouses, including lightships, beacons and other provision for the safety of shipping and air-craft.

14. Maritime shipping and navigation, including shipping and navigation on tidal waters ; Admiralty jurisdiction.

15. Import and export across customs frontiers as defined by the Federal Government.

16. Federal railways ; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and

fares, station and service terminal charges, inter-change of traffic and the responsibility of railway administrations as carriers of goods and passengers, the regulation of minor railways in respect of safety and the responsibility of the administration of such railways as carriers of goods and passengers.

17. Air-craft and air navigation ; the provision of aerodromes ; regulation and organisation of air traffic and of aerodromes.

18. Railways and roads of all Hindusthan and military importance.

19. Carriage of passengers and goods by sea or by air.

20. The Survey of Hindusthan, the Geological, Botanical and Zoological Surveys of Hindusthan ; Federal meteorological organisations.

21. Census and statistics.

22. The Imperial Library, the Indian Museum, the Imperial War Museum, and the Victoria Memorial and any similar institution, controlled or financed by the Federation.

23. 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.

24. The Benares Hindu University and the Aligarh Muslim University.

25. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication ; Post Office Savings Bank.

26. Works, lands and buildings vested in, or in the possession of the Federation, but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides.

27. Ancient and historical monuments ; archaeological sites and remains.

28. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Province.

29. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance, and financial corporations, but not including co-operative societies.

30. The law of insurance, and the regulation of the conduct of insurance business ; Government insurance, except so far as undertaken by virtue of any entry in the Provincial Legislative List or by a Province.

31. Currency, coinage and legal tender.

32. Public debt of the Federation.

33. Federal Public Services and Federal Public Service Commission.

34. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

35. Cheques, bills of exchange, promissory notes and other like instruments.

36. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

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

38. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

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

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order made thereunder.

41. The salaries of the Federal Ministers, of the President, and of the Speaker, and Deputy Speaker; the salaries, allowances and privileges of the members of the Federal Legislature.

42. Jurisdiction and powers of all courts, except the Supreme Court with respect to any of the matters in this list and to such extent as is expressly authorised by this Act, the enlargement of the appellate jurisdiction of the Supreme Court and the conferring thereon of supplemental powers; the Supreme Court of India and Legislation relating to High Courts.

43. Civil law including laws regarding status, contract, property, civil rights and liabilities and civil procedure.

44. Opium, so far as regards cultivation and manufacture or sale for export.

45. Criminal law including criminal procedure and extradition laws.

46. Offences against laws with respect to any other matters in this list.

47. Copy-right, inventions, designs, trademarks and merchandise marks.

48. State lotteries.

49. Salt.

50. Establishment of standards of weight.

51. Inquiries and statistics for the purposes of any of the matters in this list.

52. Bankruptcy and insolvency.

53. Legislation regarding marriage, divorce and matrimonial matters, parental rights, the custody and guardianship of infants, their status and age of majority.

54. Land acquisition by or for the purposes of the Hindusthan Free State.

55. Duties of customs including export duties,

56. Duties of excise on tobacco and other goods manufactured or produced in Hindusthan except :—

- (a) Alcoholic liquors for human consumption ;
- (b) Opium, Indian Hemp, other narcotic drugs and narcotics ; non-narcotic drugs ;
- (c) Medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

57. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies ; taxes on the capital of companies.

58. Duties in respect of succession to property other than agricultural land.

59. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

60. Terminal taxes on goods or passengers carried by railway or air ; taxes on railway fares and freights.

61. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

62. Bounties on the production or export of goods and on tobacco.

63. Laws relating to registration of deeds and documents.

64. Laws relating to registration of births, deaths and marriages.

65. The audit department of the Hindusthan Free State.

66. The seat of the Government of the Hindusthan Free State.

67. Inter-Provincial matters.

68. Medical qualifications and standard.

69. Territorial changes, other than intra-provincial and declaration of laws in connection therewith.

70. Legislation regarding forest.

71. Legislation relating to non-judicial stamps.

72. Fisheries in Hindusthan Waters beyond the three miles limit.

73. Stores and stationery of the Hindusthan Free State.

74. Central Publicity and Intelligence Department.

75. All property of the Hindusthan Free State.

76. Laws regarding referendum, initiation and recall.

77. Removal of prisoners and accused persons from one unit to another unit.

78. Evidence and oaths ; recognition of laws, public acts and records and judicial proceedings.

79. Adoption,

80. Wills, intestacy, and succession, save as regards agricultural land.

81. Transfer of property other than agricultural land.

82. Trusts and trustees.

83. Contracts, including partnership, agency, contracts of carriage and other special forms of contract, but not including contracts relating to agricultural land.

84. Arbitration.

85. Administrators-general and official trustees.

86. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

87. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in Federal List and in Provincial Lists.

88. Jurisdiction and powers of all courts, except the Supreme Court with respect to any of the matters in this list

89. Legal, medical and other professions.

90. Newspapers, books and printing presses.

91. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.

92. Poisons and dangerous drugs.

93. Mechanically propelled vehicles.

94. Boilers.

95. Prevention of cruelty to animals.

96. Criminal tribes.

97. Factories.

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

99. Old age pension.

100. Unemployment insurance.

101. Trade unions; industrial and labour disputes.

102. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

103. Electricity.

104. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on inland waterways.

105. The sanctioning of cinematograph films for exhibition.

106. Persons subjected to preventive detention under Federal Authority.

107. The punishment of persons who refuse to give evidence or produce documents before the President.

108. Corporation tax.

109. All matters mentioned in the constitution of the Hindusthan Free State which have not been specifically mentioned herein.

110. All matters that have not been specifically mentioned in the Provincial List.

PROVINCIAL LEGISLATIVE LIST.

(1) Public Order, but not including the use of the naval, military; or air forces of the Hindusthan Free State in aid of the civil power; the administration of justice; constitution and organization of all courts, except the Supreme Court and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.

(2) Police, including military and armed police maintained by the Province, Railway-police, subject in the case of Railway-police to such rules as may be prescribed by the Legislature as to limits of jurisdiction and railway contribution to cost of maintenance; village police.

(3) Prisons: Prisoners, Reformatories, Borstal institutions and other institutions of a like nature; vagrancy.

(4) Provincial Public Services and Provincial Public Service Commission.

(5) Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

(6) Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order made thereunder.

(7) The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and of the Legislative Council; the salaries, allowances and privileges of the members of the Provincial Legislature.

(8) Local Government, that is to say, the constitution and powers of Municipal Corporations, Improvement Trusts, District Boards, Mining Settlement Authority and other Local authorities for the purpose of local self-government or village administration, Town-planning Boards and Local Fund audit.

(9) Public debt of the Province; the borrowing of money on the sole credit of the Province subject to sanction of Federal Government; assets and property of the Province.

(10) Land revenue, including the assessment and collection of revenue, the maintenance of land-record, survey for revenue purposes and records of rights and alienation of revenue.

(11) Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in Hindusthan.

(a) Alcoholic liquors for human consumption.

(b) Opium, hemp and other narcotic drugs and narcotics ; non-narcotic drugs ;

(c) Medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

(12) Taxes on agricultural income.

(13) Taxes on lands and buildings, hearths and windows.

(14) Duties in respect of succession to agricultural lands.

(15) Taxes on mineral rights, subject to any limitation imposed by any act of the Federal Legislature relating to mineral development.

(16) Capitation taxes.

(17) Taxes on professions, trades, callings and employments.

(18) Taxes on animals and boats.

(19) Taxes on the sale of goods and on advertisements.

(20) Cess on the entry of goods into a local area for consumption, use or sale therein.

(21) Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

(22) The rates of stamp duty in respect of documents other than those specified in the provisions of the Federal List with regard to rates of stamp-duty.

(23) Dues on passengers and goods, carried on inland waterways.

(24) Tolls.

(25) Fees in respect of any of the matters in this list but not including fees taken in any court; medical administration including hospitals, dispensaries, asylums and provisions for medical education.

(26) Public health and sanitation and vital statistics.

(27) Education including universities and technical institutes, Provincial institutions for professional or technical training and for promotion of technical studies.

(28) Communications, that is to say, roads, bridges, ferries and other means of communication not specified in the Federal List ; minor railways, subject to the provisions of Federal List with respect to such railways ; municipal tramways ; ropeways ; inland waterways and traffic thereon subject to the provisions of the Federal Legislature with regard to such waterways ; ports, subject to the provisions in the Federal Legislature with regard to major ports ; vehicles other than mechanically propelled vehicles.

(29) Water, that is to say, water-supplies, irrigation, and canals.

drainage and embankments, water-storage and water-power, except where they involve a matter of interprovincial concern or any other territory.

(30) Agriculture, including agricultural education and research; protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and prevention of cattle trespass.

(31) Land, that is to say, right in or over land, land-tenures including the relation of land-lord and tenant, and the collection of rents, transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonisation; Courts of wards; encumbered and attached estates; treasure-trove.

(32) Compulsory acquisition of land.

(33) Forests; protection of wild birds and wild animals.

(34) Fishries, excluding federal fisheries.

(35) Regulation of mines and oilfields and mineral development subject to the provisions of the Federal List with respect to regulation and development under federal control.

(36) Gas and gas works.

(37) Inns and innkeepers.

(38) Adulteration of foodstuffs and other goods; weights and measures.

(39) Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotics and narcotic drugs, but subject, to the provisions of the Federal List.

(40) Relief of the poor; unemployment.

(41) Charities and charitable institutions; charitable and religious endowments.

(42) Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

(43) Trade and commerce within the Province; markets and fairs; money-lending and money-lenders.

(44) Production, supply and distribution of goods; development of industries, including industrial research subject to the provisions in the Federal List.

(45) The incorporation, regulation and winding-up of corporations other than corporations specified in the Federal List. Unincorporated trading, literary, scientific, religious and other societies and associations; cooperative societies.

(46) Betting and gambling.

(47) Offences against laws with respect to any of the matters in this list.

(48) Inquiries and statistics for the purpose of any of the matters in this list.

(49) Pilgrimage.

(50) Burnings and burning grounds, burials and burial-ground.

(51) Famine relief.

(52) Administrator-General and Official Trustees subject to legislation by the Federal Legislature.

(53) Backward tribes and their settlements.

(54) Provincial Law Reports.

(55) Minor Ports.

(56) Public libraries except the Imperial Library at Calcutta ; museums except the Indian Museum, the Imperial War Museum and the Victoria Memorial in Calcutta ; Zoological and Botanical gardens and registration of societies.

(57) Factories, subject to Legislation by the Federal Legislature.

(58) Settlement of labour-disputes.

(59) Coroners.

(60) Provincial Stores and stationery.

(61) Provincial Government Press.

(62) The seat of Provincial Government.

(63) Fees, including court-fees ; probate-duties ; succession or estate duties.

(64) Registration of deeds and documents, subject to Legislation by the Federal Legislature.

(65) Weights and measures subject to legislation by the Federal Legislature as regards standards.

(66) Control of poisons, arms and ammunition ; petroleum and explosives, subject to Legislation by the Federal Legislature.

(67) Control of news-papers subject to legislation by the Federal Legislature.

(68) Regulation of medical and other professional qualification and standards, subject to legislation by the Federal Legislature.

(69) Local Fund Account.

(70) Punishment of persons who refuse to give evidence or produce documents before the Governor.

