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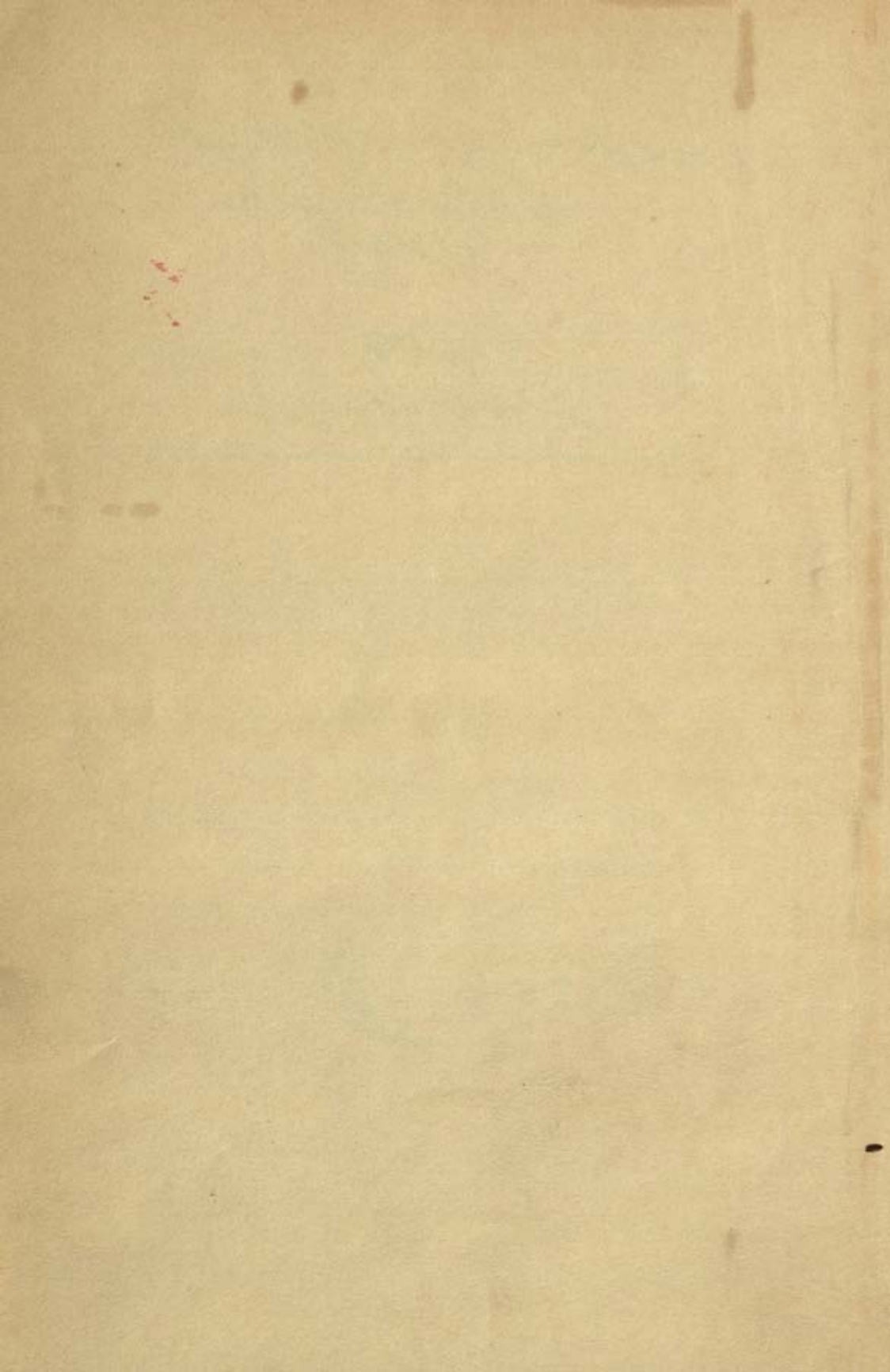
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Indian Round Table Conference

(SECOND SESSION)

7th September, 1931—1st December, 1931

SUB-COMMITTEES' REPORTS;

AND

PRIME MINISTER'S STATEMENT

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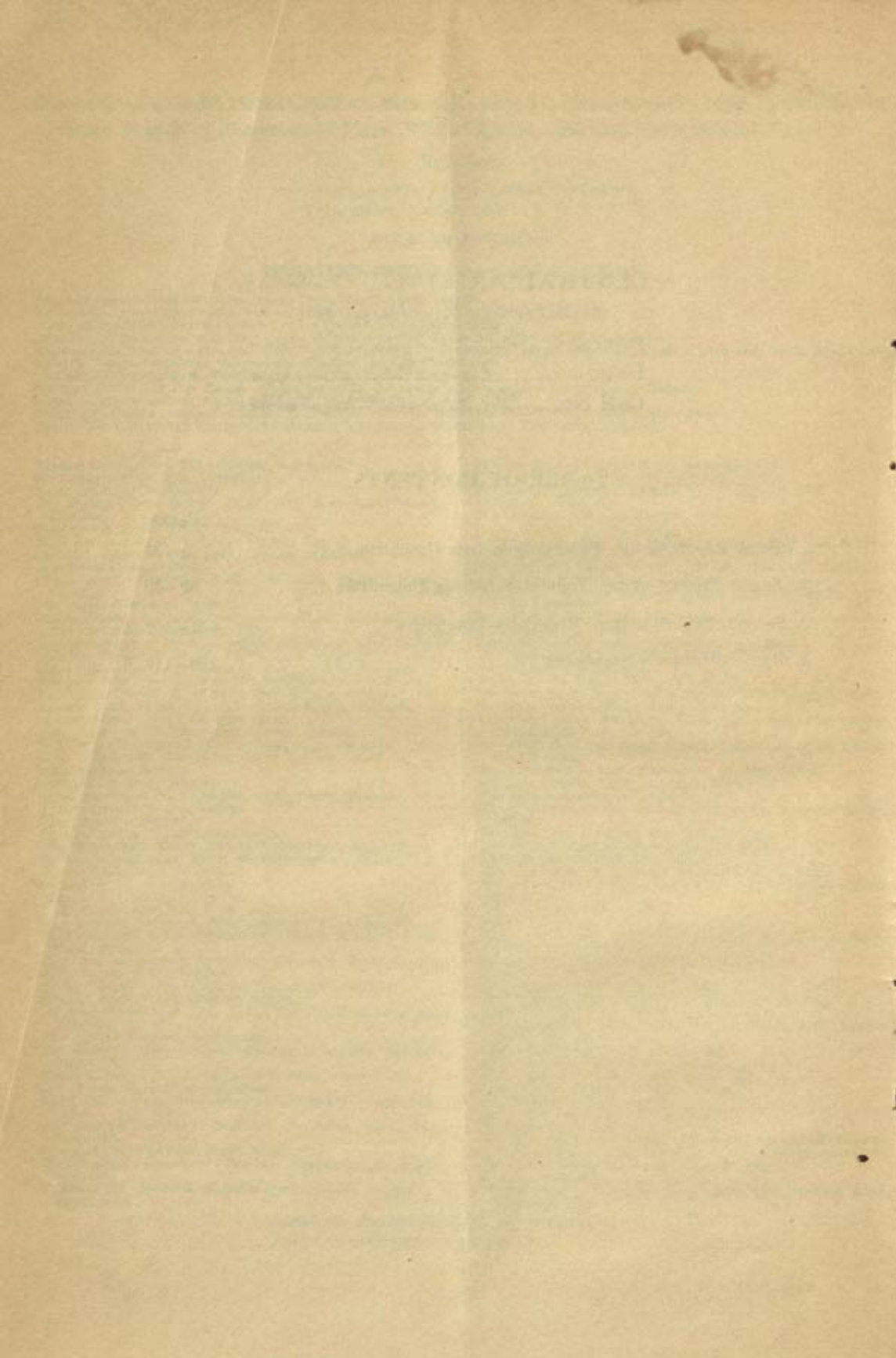
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Indian Round Table Conference

(SECOND SESSION)

Third Report
of the
Federal Structure Committee

Indian Round Table
Conference

(second session)

Third Report
of the
Federal Structure Committee

FEDERAL STRUCTURE COMMITTEE.

(Second Session.)

COMPOSITION:

| | |
|----------------------------------|------------------------------|
| Lord Sankey (<i>Chairman</i>). | *Dr. B. R. Ambedkar. |
| *Mr. Wedgwood Benn. | *Sir Maneckjee B. Dadabhoy. |
| *Major W. E. Elliot. | *Mr. M. K. Gandhi. |
| *Viscount Hailsham. | *Mr. A. R. Iyengar. |
| Sir Samuel Hoare. | Mr. M. R. Jayakar. |
| Mr. H. B. Lees-Smith. | Mr. M. A. Jinnah. |
| The Marquess of Lothian. | Mr. T. F. Gavin Jones. |
| The Earl Peel. | *Mr. N. M. Joshi. |
| *Mr. F. W. Pethick-Lawrence. | *Pandit Madan Mohan Mala- |
| The Marquess of Reading. | viya. |
| *H.H. The Maharaja of Gaek- | *Sir Provash Chunder Mitter. |
| war of Baroda. | Diwan Bahadur Ramaswami |
| H.H. The Nawab of Bhopal. | Mudaliyar. |
| H.H. The Maharaja of Bika- | Sir Sayed Sultan Ahmed. |
| ner. | Sir Tej Bahadur Sapru. |
| *H.H. The Maharaj Rana of | Mr. Srinivasa Sastri. |
| Dholpur. | *Dr. Shafa'at Ahmad Khan. |
| *H.H. The Maharaja of Rewa. | Sir Muhammad Shafi. |
| H.H. The Chief Sahib of | *Mrs. Subbarayan. |
| Sangli. | *Sir Purshotamdas Thakurdas. |
| Sir Akbar Hydari. | Sardar Ujjal Singh. |
| Sir Mirza Ismail. | *Mr. Zafrullah Khan. |
| Colonel K. N. Haksar. | |

Sir Manubhai Mehta acted as substitute in the absence of H.H. The Maharaja of Bikaner.

Lord Snell acted as substitute in the absence of Mr. Wedgwood Benn, Mr. Lees-Smith and Mr. Pethick-Lawrence.

Rao Bahadur Krishnama Chari acted as substitute in the absence of H.H. The Maharaja Gaekwar of Baroda.

Mr. E. C. Benthall acted as substitute in the absence of Mr. Gavin Jones.

* Denotes new members.

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INTRODUCTORY.

1. The Committee's task at the Second Session of the Conference was to continue their discussions at the point at which they were left by their Report of the 13th January, 1931, and by the Prime Minister's Declaration of the 19th January, and to endeavour, so far as possible, to fill in the outlines of the Federal Constitution for Greater India which was sketched in those documents.

2. In approaching this task, the Committee have been assisted by colleagues who did not share in their earlier deliberations. In this connexion it will be remembered that, in virtue of an agreement recorded in March last, the Indian National Congress decided to participate in their labours.

3. Since January last, there has been much public discussion of the constitutional proposals which emerged from the last Session of the Conference. The Committee resumed their deliberations with the knowledge of this public discussion, and with the conviction that it is in a Federation of Provinces and States that the solution of the problem of India's constitutional future is to be found.

4. A further examination of the problem has confirmed them in the belief that by no other line of development can the ideal in view be fully realised. For this purpose it is essential that the "India" of the future should include, along with British India, that "Indian India" which, if Burma is excluded, embraces nearly half of the area and nearly one-fourth of the population of the country—an area and population, moreover, which are not self-contained and apart geographically or racially, but are part and parcel of the country's fabric; and its constitution must be drawn on lines which will provide a satisfactory solution for the problem of the existence, side by side, of future self-governing Provinces and of States with widely varying polities and different degrees of internal sovereignty, whose fortunes are, and must continue to be, closely interwoven.

5. The Committee rejoice to think that the Princes, while naturally determined to maintain their internal sovereignty, are prepared, and indeed anxious, to share with the British Indian Provinces in directing the common affairs of India.

6. It will be easy for the constitutional purist, citing federal systems in widely different countries, to point out alleged anomalies in the plans which the Committee have to propose to this great end; but the Committee, as they stated in their First Report, are not dismayed by this reflexion. Their proposals are the outcome of an anxious attempt to understand, to give full weight to, and to reconcile, different interests.

7. The Committee have taken into account:—

(a) The widespread desire in India for constitutional advance;

(b) the natural desire of the Indian States to conserve their integrity;

(c) the indisputable claims of minorities to fair treatment;
 (d) the obligations and responsibilities of His Majesty's Government; and

(e) the necessity, paramount at all times, but above all at a transitional period like the present, when the economic foundations of the modern world seem weakened, of ensuring the financial credit and the stability of Government itself.

8. Without a spirit of compromise, such diverging interests cannot be reconciled; but compromise inevitably produces solutions which to some, if not to all, of the parties, may involve the sacrifice of principle.

9. It follows that, in many cases, many members of the Committee would have preferred some solution other than that which appears as their joint recommendation. But recognising that the basic aim of this Conference is, by the pooling of ideas and by the willingness to forego for the common good individual desires, to attain the greatest measure of agreement; above all, recognising that the time has come for definite conclusions, the Committee are prepared to endorse the conclusions set out in this Report.

THE STRUCTURE, SIZE, AND COMPOSITION OF THE FEDERAL LEGISLATURE.

10. The Committee expressed the view in their previous Reports that the legislative organ of the Indian Federation should consist of two Chambers, which will be empowered to deal with the whole range of the activities of the Federation, both those which affect British India only, and those which affect all federal territory. In the course of their discussions, preferences were expressed in some quarters for a unicameral Legislature, on considerations alike of simplicity, efficiency and economy; while some members urged that, having regard to the nature of the matters to be dealt with by the Federation, a single small Federal Chamber, which would adequately reflect the views of the governments of the constituent Units, would be the right solution of the problem.

11. At a later stage, again, the Committee were placed in possession of proposals which they have not been able fully to discuss, but which clearly demand further consideration, though the Committee fully realise that the adoption of either of these plans would involve material modification of the framework hitherto contemplated.

12. One of these plans would substitute for the Upper Chamber a small body consisting of nominated delegates of the governments of the federating Units, which would have the right of initiating legislation and would be empowered to exercise a suspensory veto over the measures passed by the elected Chamber. This body would also have the right to express its opinion upon all measures of the Federal Government before they were laid before the elected Chamber. The authors of this plan also contemplate the possession

by this body of certain advisory functions in the administrative sphere.

13. The second of these plans contemplates the confederation of the States into a single collective body for the purpose of federating with the British Indian Provinces. Its supporters would prefer a single Federal Chamber in which the representation of the Indian States collectively should be 50 per cent., the representatives being selected by an electoral college consisting of the federated States as a whole. In the event of a decision in favour of a bicameral Legislature, 50 per cent. of the seats in the Upper Chamber would be reserved for the States, their representation in the Lower Chamber being on population basis.

14. Upon the assumption, however, that the Legislature is to be bicameral, a variety of factors must be taken into account in determining the size of the Chambers. Cogent theoretical arguments can be adduced (and were in fact advanced by some Delegates) in support of the view that, for a country of the size and population of India, a Legislature consisting of from 600 to 700 members for the Lower Chamber, and from 400 to 500 for the Upper, could not be regarded as excessive in size, and that smaller numbers would fail to give adequate representation to the many interests which might reasonably claim a place in it. On the other hand, arguments no less forcible were adduced in favour of the view that Chambers exceeding 100 and 250 respectively might prove ineffective organs of business. We have given these divergent views the best consideration of which we are capable, and recommend as the result that the Chambers should consist, as near as may be, of 200 and 300 members respectively, in which the allotment of seats to the States should be in the proportion of 40 per cent. (or approximately 80 seats) in the Upper Chamber, and $33\frac{1}{3}$ per cent. (or approximately 100 seats) in the Lower.

The Muslim delegation and some others are unable to subscribe to the whole of this paragraph, as they are opposed to the principle of giving weightage to the representation, in the Legislature, of the States in excess of their population proportion.

15. This latter recommendation is, of course, based on the assumption that the whole body of the States will eventually adhere to the Federation. The view was strongly expressed that, in the case of States not adhering at the outset, seats allotted to them as the result of the procedure contemplated in paragraph 26 should remain unfilled pending their adherence. But it was also urged that this might lead to a situation under which States adhering at the outset would find their total voting strength in the Legislature so small as to be inconsistent with their position as representing one of the main constituent elements in the Federation. Some members of the Committee have stated it as their opinion that, in the event of the original adherents not forming a substantial proportion of "Indian India," some method should be devised by which their voting strength would be temporarily augmented pending the

accession of other States. But the whole Committee hope that the contingency which might necessitate such an augmentation will not arise.

16. In any event, difficulty might arise in regard to States which are grouped for the purpose of deputing a representative; but it would be premature to attempt to suggest the best solution for such problems until the measure of adherence by "grouped" States can be fairly accurately ascertained or foreseen. The Committee accordingly content themselves with expressing the hope that the measure of adherence in each group will be sufficiently great to justify the filling of the seat allotted thereto by the nominations of the adhering States. Should the system of grouping be such as to admit of the allotment of two or more seats to one group, difficulties of this order would be more easy of solution.

17. The Committee recommend that the 200 members of the Upper House should be chosen in the main to represent the component Units—the Provinces of British India and the States—and that the representatives of the British Indian Provinces should be elected by the Provincial Legislatures by the single transferable vote. Candidature for the Federal Legislature should not, of course, be restricted to members of a Provincial Legislature, though such persons should be eligible if otherwise qualified. But no person should be a member of both a Provincial and the Federal Legislature.

18. In the case of those States which secure individual representation, their representatives will be nominated by the Governments of the States. In the case of those States, however, (and there will necessarily be many such) to which separate individual representation cannot be accorded, the privilege of nomination will have to be shared in some manner which it will be easier to determine when the various groups have been constituted—a process which will, of course, entail a detailed survey of local and regional circumstances.

19. For the Lower Chamber, the Committee consider that the selection of the British Indian representatives should be by election otherwise than through the agency either of the Provincial Legislature or of any existing local self-government bodies.* Most members consider that election should be by territorial constituencies, consisting of qualified voters who will cast their votes directly for the candidate of their choice. Others have advocated some method whereby some of the obvious difficulties which must confront a candidate, in canvassing and maintaining contact with so large an area as the average constituency will involve, may be obviated.

20. The actual framing of the constituencies must necessarily depend largely upon the detailed arrangements to be made for the revision of the existing franchise—a task which is to be undertaken by a special Franchise Committee. The Committee therefore recom-

* This expression is not intended to exclude such bodies as Village Boards or Village Panchayats.

mend that this body should be charged also with the duty of making proposals for the constituencies to return the British Indian members of the Lower Chamber of the Federal Legislature, and that it should explore fully the alternatives of direct and indirect election, indicated in the preceding paragraph, in the light of the practical conditions which will be presented by the size of constituencies, their populations and the proportion of this population to be enfranchised. The area and population of British India, excluding Burma, being, in round figures, 800,000 square miles and 255 millions respectively, and the seats in the Lower Chamber available for representatives of that area, on the Committee's proposals, being approximately 200, it follows that the average area of a constituency would be approximately 4,000 square miles, and the average population per seat some $1\frac{1}{4}$ millions. And while, in many cases, the former of these figures would obviously be reduced by the natural grouping of the population in urban areas, the difficulties presented by electoral areas and populations of this size would, of course, be accentuated by the existence of separate communal electorates. It may well be that, while no difficulty will be experienced in providing for direct election in urban areas, some method of indirect election may prove desirable for rural areas.

21. As regards the apportionment of the British Indian seats in both Chambers to the Provinces *inter se*, the Committee recognise that the population ratio, which they were disposed to recommend in their previous Report as the guiding principle, would not produce a satisfactory result unless it were tempered by other considerations. To take only one instance, it would immediately reduce the Bombay Presidency—a Province of great historical and commercial importance, which has for many years enjoyed approximately equal representation in the Central Legislature with the other two Presidencies and the United Provinces—to less than half the representation these latter will secure.

22. For the Upper Chamber, which will represent in the main the Units as such, the Committee think that the guiding principle should be a reasonable approximation to equality of representation for each Unit. Absolute equality, having regard to the great variations in size and population between the Provinces, would obviously be inequitable. The problem is a difficult and complicated one, involving the careful assessment of local factors, which is beyond the competence of this Committee. But the suggestion has been made that a possible solution might, for example, be to assign to each of the Provinces which exceeds 20 millions in population—namely, Bengal, Madras, Bombay, the United Provinces, the Punjab and Bihar and Orissa—an equal number of seats, say, 17; to the Central Provinces (if it included Berar) and Assam, say, 7 and 5 seats respectively; to the North-West Frontier Province, 2 seats; and to Delhi, Ajmer, Coorg and British Baluchistan, 1 seat each.

23. In the Lower Chamber, representing as it will primarily the population of the federated area, we consider that the distribution

should tally as closely as possible with the population ratio, but that some adjustment will be required in recognition of the commercial importance of the Bombay Presidency and of the general importance in the body politic of the Punjab, which it will be generally conceded is not strictly commensurate with its population as compared with that of other Provinces. We suggest that this adjustment might be secured in the case of Bombay, to some extent at all events, by adequate weightage of the special representation which we have recommended for Indian and European Commerce and, in the case of the Punjab, by some arbitrary addition to the 18 seats which it would secure on the basis of its population. Here again, the Committee are not in a position to make a definite recommendation, but they take note of a suggestion which has been made for the allotment to the Punjab and Bombay, and also to Bihar and Orissa, of 26 seats each; to Madras, Bengal and the United Provinces, of 32 seats each; to the Central Provinces, of 12; to Assam, of 7; to the North-West Frontier Province, of 3; and to the four minor Provinces, of 1 each—by this measure securing a distribution of the 200 seats which might be held to satisfy reasonable claims without doing undue violence to the population basis. But these figures, and those suggested in paragraph 22, would obviously require further consideration.

APPORTIONMENT BETWEEN THE STATES OF THEIR QUOTA.

24. The Committee recognise that this is primarily a matter for settlement among the Princes themselves; but the representatives of other interests can hardly regard it as a matter of indifference since, until a satisfactory solution is found, the idea of federation necessarily remains inchoate, and an important factor in determining the decision of individual States as to adherence to the Federation will be lacking. In view of the admitted difficulties of the question, the Committee are anxious to assist by friendly suggestions towards the consummation of an acceptable and generally accepted conclusion. The Committee are fully aware that the effective establishment of federation postulates the adherence of the major States and that the absence of even a few of the most important States, however many of the smallest might be included, would place the Federation under grave disadvantages. At the same time, they think that it is essential that the States as a whole should secure representation which will commend itself to public opinion as generally reasonable, and that it is hardly less important to satisfy, so far as may prove possible, the claims of the small States, than to provide adequate representation for those which cover large areas.

25. Two suggestions have been advanced, in the course of the Committee's discussions, for the solution of this problem. The first was that the matter should be entrusted to the Chamber of Princes, with such arrangements as would secure an adequate voice in its deliberations to the small States, and to such States as are not repre-

sented in the Chamber at all. The second, based on the belief that the inherent difficulties of the problem would prove such that the Princes—acting through whatever agency—would be unable to evolve a plan which would meet with general acceptance and satisfy all claims, and consequently that a procedure based upon the first suggestion would merely involve infructuous delay, was that the task of apportionment should be remitted to an impartial Committee or tribunal on which the States themselves should not be given any representation, but before which they would all be invited to urge their claims.

26. The Committee are not in a position, for reasons already stated, to make any definite recommendation as to the acceptance of either of these suggestions; but they consider that the best course would be to allow a period of time, which should not, they think, extend beyond the end of March, 1932, within which the Princes should be invited to arrive at a settlement, on the understanding that, if within that period a settlement were not in fact secured, an impartial tribunal would be set up by His Majesty's Government to advise as to the determination of the matter.

METHOD OF SELECTION OF STATES' REPRESENTATIVES IN THE LOWER CHAMBER.

27. While the Committee remain of opinion that this question must be left to the decision of the States, it cannot be contended that it is one of no concern to the Federation as a whole. They note the assurances of certain individual members of the States Delegation that, in those States which possess representative institutions and for which these members were in a position to speak, arrangements will be made which will give these bodies a voice in the Ruler's selection. The Committee as a whole are prepared to leave this matter to the judgment of the States.

REPRESENTATION OF SPECIAL INTERESTS IN THE FEDERAL LEGISLATURE.

28. In paragraph 34 of their Second Report, the Committee recommended that special provision should be made in the Federal Legislature for the representation of the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce and Labour. We make no recommendation here relating to the first four of these interests, regarding the extent and method of their representation, nor for the representation of Women in the Legislature, since the decisions on these points are for the Minorities Committee.

29. But we affirm our previous recommendation that provision should be made for the special representation of the Landlord interest, of Commerce (European and Indian) and of Labour. The number of seats to be assigned to each of these four interests and their apportionment amongst the various Provinces are questions which should be considered by the Franchise Committee, as also

is the question of their method of election. Wherever possible, the method should be election rather than nomination.

NOMINATED MEMBERS.

30. In paragraph 34 of the Committee's Second Report, the suggestion was also made that the Governor-General should be empowered to nominate to each Chamber a specified number of persons, not exceeding perhaps ten, to represent the Crown. After further consideration, the Committee see no advantage to be gained from pursuing this suggestion. The persons appointed by the Governor-General to assist him in the administration of the Reserved portfolios will, of course, play their part in the business of the Legislature; but it is not apparent how their task would be facilitated by the presence of a small body of nominated members who, if they were non-officials, would rarely possess any special or effective knowledge of questions connected with the administration of the reserved Departments, and whose votes would be too few to influence decisions.

31. If, on the other hand, these members were officials chosen for their knowledge of the subjects in the Governor-General's charge, the same difficulty would be experienced as under the present régime of sparing from their departmental duties, for attendance in the Legislature, so considerable a number of officials as the suggestion contemplates. Moreover, the voting power which such officials would exercise would either be negligible or else would tend to maintain an "official bloc" which, in the opinion of the majority of the Committee, would be out of place in the conditions of the new constitution.

32. On the other hand, while the Committee, for the reasons given, are not prepared to advocate the nomination of members in either Chamber to represent the Crown or Crown interests, they are impressed with the desirability of securing to the Federation the services in the Upper Chamber of persons of the elder statesman type with an experience of public affairs, both in the political sphere and outside it. It may well be that persons of this type, whom India would delight to honour, may be unwilling, through the absence of provincial influence or connexions, to solicit the suffrages of Provincial Legislatures, or to promote their candidatures by identifying themselves with particular political parties; and the small chances of success at the polls, when party feeling runs high, likely to be attained by persons possessing, in the English phrase, the "cross-bench" mind, need not be emphasised. Yet it would be a grave loss to India if such persons were excluded from her counsels. The Committee are, therefore, of opinion that a small proportion of seats should be reserved, in the Upper Chamber only, for persons to be appointed by the Governor-General. The Governor-General would, in making these appointments, act as a general rule upon the advice of his Ministers, though we are disposed to think that, possibly by a constitutional convention, possibly by

provision in the Constitution Act, two or three of the appointments might be made on the Governor-General's personal responsibility. In order to avoid any suggestion, however, of an official bloc, the Committee are of opinion that no serving official should be qualified to sit in the Upper Chamber as a nominated member.

QUALIFICATIONS AND DISQUALIFICATIONS FOR MEMBERSHIP.

33. For the Lower Chamber in British India the qualification for membership should be identical with that for a voter; that is to say, any person who is qualified as an elector for a constituency of a particular class should be qualified also to stand for election by any constituency of that class in the Province.

34. But, for candidates for the State, certain additional qualifications should be laid down. Without attempting to prescribe these in detail—a task which would better be undertaken by the Franchise Committee—we consider that the existing rules regulating the qualifications of voters (and consequently of candidates) for the Council of State should be adopted as a model for candidates for the Upper Chamber, except that the minimum age limit should be 35 years, and subject to such modifications as may be necessary to prevent the virtual exclusion of women, the Depressed Classes and Labour.

35. It will be necessary also to prescribe the qualifications of voters in the special constituencies we have recommended to secure the representation in the Upper Chamber of Landlords, Commerce (European and Indian) and Labour; and—subject to the age limit just suggested—a person qualified as a voter in any of the special constituencies should be qualified also as a candidate. Whether, in the case of all or any of these special constituencies, the present qualifications for voters for the Council of State could be adopted as they stand, appears doubtful; but this we would leave for the consideration of the Franchise Committee.

36. The existing disqualifications for membership for the Indian Legislature appear to us generally suitable for retention, though there was some difference of opinion as to those arising out of convictions for criminal offences, and suggestions were made—which we regard as impracticable—that a distinction should be drawn for this purpose between “political” and other offences, or between offences involving moral turpitude and those which do not. On the whole, we regard a restriction of this nature on the free choice of the elector as of little value as a means of ensuring probity of character in candidates, and we recommend that they should be abandoned. At the same time, some members of the Committee consider that the rules should be so framed as to disqualify from candidature any person who, at the time of an election, is actually undergoing a sentence of imprisonment and who would consequently be unable, if returned, to fulfil his duties to the Legislature and to his constituents. On the other hand, a section of the Committee is opposed

to this view, being of opinion that a sentence of imprisonment should not, in any circumstances, constitute a disqualification.

37. Although it will clearly be impossible to secure uniformity of qualification in British India and the States, we think it of great importance that there should be absolute uniformity in the matter of disqualifications. These should, therefore, be embodied in the constitution and should apply to all candidates alike.

OATH OF ALLEGIANCE.

38. The Committee consider that, following common practice in the Empire, the Indian Constitution should provide for an Oath of Allegiance to be taken by members of the Federal Legislature on assumption of their seats. They do not suggest a definite formula at this stage, but its terms will require careful consideration.

RELATIONS BETWEEN THE TWO CHAMBERS.

39. As will appear from paragraphs 26 and 35 of the Committee's Second Report, this important question was discussed for the first time in the Committee's present Session. The careful consideration we have now given to the matter has led us to the view that nothing should be done in the new constitution which would have the effect of placing either Chamber of the Federal Legislature in a position of legal subordination to the other. It would be a misconception of the aims which we have in view to regard either Chamber as a drag or impediment on the activities of the other. In our view, the two Chambers will be complementary to each other, each representing somewhat different, but, we hope, not antagonistic, aspects of the Federation as a whole. Absolute equality between the two Chambers of a bicameral Legislature is no doubt unattainable, and, if it were attainable, might well result in perpetual deadlock; and there is no less doubt that, the provisions of the constitution notwithstanding, the evolution of political development will inevitably result, in the course of time, in placing the centre of gravity in one Chamber.

40. But so far as the letter of the constitution is concerned, we consider that, subject to the consideration shortly to be mentioned, there would be no justification for endowing one Chamber at the outset with legislative powers which are denied to the other. We accordingly recommend that, while the constitution should provide that, subject to the special provisions to be referred to later, no Bill should become law until it is assented to by both Chambers, it should contain no provisions which would disable either Chamber from initiating, amending or rejecting any Bill, whatever its character. This principle should, however, in the opinion of almost all the British Indian Delegates, be subject to the exception that the right of initiating Money Bills should vest in the Lower Chamber alone, though the States Delegation were almost unanimously opposed to the drawing of this distinction. Subject, of

course, to the decision on the point just mentioned, the principle of equality also appears to us to demand that the Government should be entitled to test the opinion of the other Chamber if one Chamber has seen fit to reject a Government Bill, and that, in the event of its passage by the Second Chamber it should be treated as a Bill initiated in that Chamber and taken again to the first.

41. In the event of rejection by one Chamber of a Bill which has been passed by the other, or of its acceptance by either in a form to which the other will not agree, we recommend that, subject to certain conditions which should be set out in the constitution, the Governor General should have power, either after the lapse of a specified period or, in cases of urgency, at once, to secure the adjustment of the difference of opinion by summoning a Joint Session.

42. As regards the voting of Supply, the opinion of British Indian Delegates was almost unanimously in favour of confining this function to the Lower Chamber. Their view was based on the precedent afforded in this respect, not merely by almost every other constitution, but by the actual powers which have been enjoyed by the Indian Legislative Assembly during the past ten years. The States Delegates, however, were almost unanimously of opinion that the principle of equality of powers should apply also to the voting of Supply. In their view, since the Supply required by the Federal Government will be required for the common purposes of the Federation (or for the common purposes of British India), there is no logical reason which could be adduced in favour of depriving the representatives of the Federal Units in the Senate of a voice in the appropriation of the revenues, the responsibility of raising which they would share equally with the members of the other Chamber.

43. Whatever may be the decision between these conflicting views, the Committee assume that the Demands for Grants, whether voted upon by both Chambers or only by the Lower Chamber, would be so arranged as to separate expenditure required for Federal purposes from that required for "Central" purposes, so that the latter might stand referred to a Standing Committee of the British Indian members of both Chambers.

FEDERAL FINANCE.

44. The Committee did not find time during the first Session of the Conference to consider the subject of "Federal Finance," which may be summarily described as the question of the apportionment of financial resources and obligations between the Federation and the Units. On taking up this subject, the Committee found it desirable to remit it for examination by a sub-Committee, over which Lord Peel presided.

45. The Report of this sub-Committee, which was in effect unanimous, is appended to this Report. Little criticism was directed to its main features, and the Committee accept the prin-

ciples contained in it as a suitable basis on which to draft this part of the constitution.

46. The Committee were, however, not satisfied with the proposals in Lord Peel's Report for a review of the problem by Expert Committees. Fear was widely expressed that these might, by recommending principles at variance with those upon which the Conference was agreed, tend to undo work already accomplished; and further, that the procedure suggested might cause unnecessary, and perhaps dangerous, delay in settling various points which had an important bearing on the character of the new Federation. The Committee accordingly consider that the suggested procedure should be revised in the manner described below.

47. No change need be made as regards the second of the two Committees (concerned with paragraphs 17-20 of Lord Peel's Report), except that it should have no connection with the other Committee. It should be noted that, of the matters within the purview of this "States" Committee, it is only in respect of those dealt with in paragraph 18 of Lord Peel's Report that it is essential to reach a settlement before the Act setting up the Federation comes into operation.

48. In place of the first Committee recommended in Lord Peel's Report, there should, as early as possible, be appointed in India a "fact-finding" Committee, consisting of officials familiar with questions of finance, including States' finance. Without elaborating terms of reference, the functions of this Committee may be sketched as follows:—

(a) To investigate the division of pension charges (paragraph 5 of Lord Peel's Report).

(b) To investigate the classification of pre-Federation debt, as contemplated at the end of paragraph 6 of Lord Peel's Report.

(c) To calculate the effect on the Provinces of various possible methods (of which there are only a few to be considered) of allocating the proceeds of Income-tax to the Provinces.

(d) To give an estimate of the probable financial position of the Federation in its early years under the scheme proposed in Lord Peel's Report, indicating, *inter alia*, the probable results of federalising Corporation tax, Commercial Stamps, Tobacco excise, or other possible national Excises.

Of these, (d) is the most important.

It was pointed out that (b) had no reference to the investigation of any claim as had been raised by the Congress, that liability for a portion of the Public Debt of India ought to be undertaken by the United Kingdom.

49. The facts and estimates required from the Committee described in the preceding paragraph should not take long to produce.

There will remain to be decided, in the light of them, certain questions, as, for example—

(i) The exact detailed form of the list of Federal taxes (within the general frame-work laid down by Lord Peel's Report); in particular, a final decision will have to be taken about Corporation tax and specific Federal Excises.

(ii) The initial amount of the Contributions from the Provinces.

(iii) The precise period to be laid down for the extinction of the Provincial Contributions referred to in (ii), and of the contributions from certain States which are to be reviewed under the procedure mentioned in paragraph 47 above.

(iv) The exact method according to which Income-tax is to be returned to the Provinces.

50. There will also be one or two other points, left doubtful by Lord Peel's sub-Committee, which will fall for decision. It will be necessary to devise a procedure for discussion and settlement of the outstanding matters.

51. It may be that, in other fields, points of substance directly affecting federation will also remain for settlement after this Session of the Conference. It might thus prove convenient to use a common machinery for their disposal. It is accordingly agreed that this question of procedure should be postponed to a later stage.

THE FEDERAL COURT.

52. The necessity for the establishment of a Federal Court was common ground among all members of the Committee, and such differences of opinion as manifested themselves were concerned, for the most part, with matters of detail rather than of principle. It was recognised by all that a Federal Court was required both to interpret the constitution and to safeguard it, to prevent encroachment by one federal organ upon the sphere of another, and to guarantee the integrity of the compact between the various federating Units out of which the Federation itself has sprung.

53. The first question which the Committee considered was the nature of the Court's jurisdiction, and it was generally agreed that this jurisdiction must be both original and appellate.

54. The Court ought, in the opinion of the Committee, to have an exclusive original jurisdiction in the case of disputes arising between the Federation and a State or a Province, or between two States, two Provinces, or a State and a Province. The Committee are of opinion that disputes between Units of the Federation could not appropriately be brought before the High Court of any one of them, and that a jurisdiction of this kind ought rather to be entrusted to a tribunal which is an organ of the Federation as a whole. It would seem to follow that the Court should have seisin of justiciable disputes of every kind between the Federation and a

Province or between two Provinces, and not only disputes of a strictly constitutional nature; but that in the case of disputes between the Federal Government and a State, between a State and a Province, or between two States, the dispute must necessarily be one arising in the federal sphere, that is to say, one in which a question of the interpretation of the constitution (using that expression in its broadest sense) is involved, since otherwise the jurisdiction would extend beyond the limits of the Treaties of cession which the States will have made with the Crown before entering the Federation. The Committee are disposed to think that decisions by the Court, given in the exercise of this original jurisdiction, should ordinarily be appealable to a Full Bench of the Court.

55. In the case of disputes arising between a private person and the Federation or one of the federal Units, the Committee see no reason why these should not come, in the first instance, before the appropriate Provincial or State Court, with an ultimate right of appeal, if the matter arises within the federal sphere, to the Federal Court, since it would obviously be oppressive to compel a private citizen who had a grievance, however small, against (say) his Provincial Government, to resort exclusively to Delhi, or wherever the seat of the Federal Court may be, for the purpose of obtaining justice. But even in the federal sphere the right of suit against a State in its own Courts accorded to a citizen of that State must be regulated by the laws of that State, though the citizen who is given a right of suit by the State law could not be deprived of his right of access to the Federal Court by way of appeal, whatever form that appeal may take. In this connection, the Committee draw attention to the need of investing both Provinces and States with a juristic personality, for the purpose of enabling them to become parties to litigation in their own right. The Committee understand that, at the present time, no action lies against a Province of British India as such, and that no action can be brought against an Indian Prince in a British Indian Court save under very special conditions. On the other hand, the Committee are informed that, in some of the States, provision has already been made whereby proceedings can be taken against the State in its corporate capacity as distinguished from the Ruler of the State himself. This subject will require to be further examined.

56. The Federal Court ought also, in the practically unanimous opinion of the Committee, to have an exclusive appellate jurisdiction from every High Court, and from the final Court in every State, in all matters arising in the federal sphere, as defined above. A certain difference of opinion on questions of method has, however, to be recorded. The suggestion was made that some plan might be devised whereby anyone desiring to challenge the constitutional validity of a law passed by the Federal or a Provincial Legislature could obtain a legal decision on the matter at an early date after the passing of the Act, and that this might be done by means of a declaratory suit to which some public officer would, for obvious reasons, be a necessary party. The advantages of some such

procedure are manifest, and the subject deserves further examination. Assuming, however, that legal proceedings of this kind are found possible, the Committee think it right that they should be confined to the Federal Court alone, at any rate where the validity of a Federal law is in issue, though there was a difference of opinion upon the question whether, in the case of a Provincial or State law, the proceedings might not be permitted in the first instance in the appropriate High Court or State Court. Where, however, a constitutional issue emerges in the course of any ordinary litigation, the tribunal which may have seisin of the case should have jurisdiction to decide it, subject always to an ultimate right of appeal from the State Court or High Court (if the case gets so far) to the Federal Court.

57. The form which the appeal should take might be left to be dealt with by Rules of Court; but, whatever form or forms are adopted, the Committee are clearly of opinion that there must be an ultimate appeal as of right to the Federal Court on any constitutional issue. Their attention was drawn to a very convenient procedure at present existing in British India whereby, when a question of title is raised in a Revenue Court, a Case can be stated on that point only for the opinion of the Civil Court, proceedings in the Revenue Court being suspended until the decision of the Civil Court is given; and they think that the possibility of adopting a procedure of this kind might well be explored. They understand, in particular, that a procedure on these lines would be the procedure most acceptable to the States. The Committee are, however, impressed with the need for discouraging excessive litigation, and recommend therefore that no appeal should lie to the Federal Court, unless the constitutional point in issue has been clearly raised in the Court below.

58. The suggestion that the Federal Court should, for federal purposes, be invested with some kind of advisory jurisdiction, such as that conferred on the Privy Council by Section 4 of the Judicial Committee Act, 1833, met with general approval, and the Committee adopt the suggestion subject to certain conditions. In the first place, they are clear that the right to refer matters to the Court for an advisory opinion must be vested in the Governor-General; and secondly, they think that no question relating to a State ought to be referred without the consent of that State.

59. The Committee are of opinion that an appeal should not lie from the Federal Court to the Privy Council, except by leave of the Court itself, though the right of any person to petition the Crown for special leave to appeal, and the right of the Crown to grant such leave would, of course, be preserved; some delegates were, however, of opinion that the Federal Court should be a final Court of Appeal. There would therefore be no right of appeal to the Privy Council direct from a High Court in any case where an appeal lay to the Federal Court. The Committee desire to emphasise here, in order to prevent any misunderstanding, that any right of appeal from the State Courts to the Federal Court

and thence to the Privy Council in constitutional matters will be founded upon the consent of the Princes themselves, as expressed in the Treaties of cession into which they will enter with the Crown as a condition precedent to their entry into the Federation. There can be no question of any assumption by Parliament or by the Crown of a right to subject the States to an appellate jurisdiction otherwise than with their full consent and approval.

60. It will be necessary to provide that Federal, State and Provincial authorities shall accept judgments of the Court as binding upon themselves when they are parties to a dispute before it, and will also enforce the judgments of the Court within their respective territories. It will also be necessary to provide that every Provincial and State Court shall recognise as binding upon it all judgments of the Federal Court.

61. The Committee think that the Court should be created, and its composition and jurisdiction defined, by the Constitution Act itself. They are of opinion that it should consist of a Chief Justice and a fixed maximum number of Puisne Judges, who would be appointed by the Crown, would hold office during good behaviour, would retire at the age of 65, and would be removable before that age only on an Address passed by both Houses of the Legislature, and moved with the fiat of the Federal Advocate General. The question of the salaries and pensions of the Judges is a delicate one. The Committee are clear that the salaries, at whatever figure they may be fixed, should be non-votable and incapable of reduction during a Judge's term of office; and it would be a convenience if the salaries could be fixed by the Constitution Act, or in accordance with some machinery provided by that Act. The Committee have no desire to suggest any extravagant figure, but they are bound to face facts; and they realise that, in the absence of adequate salaries, it is in the highest degree unlikely that the Federation will ever secure the services of Judges of the standing and quality required. They suggest that the matter might be referred to a small committee for investigation and report at a reasonably early date. With regard to the qualifications of the Federal Court Judges, the Committee suggest that the following should be eligible for appointment:—any barrister or advocate of fifteen years' standing and any person who has been, for not less than five years, a Judge of a High Court or of a State Court, the qualifications for appointment to which are similar to those for a High Court.

62. The seat of the Court should be at Delhi, but power should be given to the Chief Justice, with the consent of the Governor General, to appoint other places for the sittings of the Court as occasion may require. The Court must also have power to make Rules of Court regulating its procedure; these Rules should, after approval by the Governor General, have statutory force. The power to regulate the procedure of the Court should include a power to make Rules enabling the Court to sit in more than one Division, if necessary. The appointment of the staff of the Court should be vested in the Chief Justice, acting on the advice of the Public

Service Commission; but the number and salaries of the staff must, of course, be subject to the prior approval of the Governor General.

63. A strong opinion was expressed in the Committee that the time had come for the creation of a Supreme Court for British India to which an appeal should lie from all Provincial High Courts in substitution for a direct appeal to the Privy Council. Appeals from the Court would lie to the Privy Council only with the leave of the Court or by special leave. The creation of such a Court is in the natural course of evolution, and the Committee adopt the suggestion in principle. A difference of opinion, however, manifested itself on the method whereby such a Court should be brought into existence. There was a strong body of opinion amongst the British Indian Delegates to the effect that the Federal Court should be invested with this further jurisdiction, the proposal being that the Court should sit in two Divisions—one dealing with Federal matters and the other with appeals on all other matters from the Provincial High Courts. Other members of the Committee and, generally speaking, the States representatives, dissented from this view, and were of the opinion that there should be a separate Supreme Court for British India on the ground that the Federal Court would be an all-India Court, while the Supreme Court's jurisdiction would be confined to British India; the mass of work with which it would have to cope would obscure its true functions as a Federal Court, and to that extent detract from its position and dignity as a Federal organ. It is no doubt the case that many more appeals would be taken to a Supreme Court situate in India than are at present taken to the Privy Council, and the Committee appreciate the force of this objection. But there would be no difficulty in reducing the appeals to a reasonable number by imposing more stringent restrictions upon the right of appeal. The Committee would deprecate the imposition on the finances of India of the cost of two separate Courts if this can possibly be avoided, and cannot disregard the possibility of conflicts between them. There is, lastly, at no time in any country a superfluity of the highest judicial talent, and the truer policy appears to them to be to concentrate rather than to dissipate judicial strength.

64. A question of very real difficulty upon which there is a divergence of view, remains to be considered, *viz.*, whether the Constitution Act itself should at once establish a Supreme Court or whether power should be given to the Federal Legislature to establish it either as a separate institution, or by conferring general appellate jurisdiction on the Federal Court as and when it may think proper so to do. The majority of the Committee is impressed with the need for proceeding cautiously in this matter, though recognising that the opportunity should not be lost of settling once and for all the general outlines of a Supreme Court scheme. The establishment of a Supreme Court, and the definition of its appellate jurisdiction are, they think, essentially matters for the Constitution Act, and it appears to them that, in the circumstances, it may be advisable to take a middle course. They recommend, therefore,

that the Constitution Act should prescribe the jurisdiction and functions of the Supreme Court, and that the Federal Legislature should be given the power to adopt these provisions of the Constitution Act in the future, if it should think fit to do so. The majority of the Committee recommends this method on several grounds. In the first place, the establishment of the Court would in any event require a large increase in the judiciary, and, in their view it should be left to the Federal Legislature of the future to decide whether the additional expense should be incurred or not. Secondly, the whole subject is one which requires much expert examination, and it may be desirable that experience should first be gained in the working of the Federal Court in its more restricted jurisdiction. Thirdly, the functions of the Federal Court will be of such great importance, especially in the early days of the Federation, that, in the opinion of the majority, it would be unwise to run the risk of either overburdening it prematurely with work, or of weakening its position by setting up in another sphere a Court which might be regarded as a rival.

A substantial minority of the Committee is strongly of the opinion that the establishment of a Supreme Court for British India is a matter of urgent necessity, and that such a Court should be set up by the Constitution Act itself without necessarily waiting until the time when the Federation comes into being.

65. A proposal to invest the Supreme Court above described with jurisdiction to act as a Court of Criminal Appeal for the whole of British India also found a certain measure of support. It is clear that, even if a right of appeal to this Court only in the graver criminal cases were given, the work of the Court, and therefore the number of Judges, would be enormously increased. The Committee had not the time at their disposal to enter into a close examination of the question whether, in principle, a Court of Criminal Appeal for the whole of British India is desirable; and they do not feel themselves able to express any opinion upon the matter, though they recognise its great importance. For the same reason that they hesitate to recommend the immediate establishment by the constitution itself of a Supreme Court for appeals in civil matters from the High Courts of British India, the majority is unable to recommend the immediate establishment of a Court of Criminal Appeal. This matter is one which, in their opinion, must be left to the future Federal Legislature to consider; and if that Legislature should be of opinion that such a Court is required, there will be no difficulty, if it should be thought desirable, in investing the Federal Court, or the separate Supreme Court, as the case may be, with the necessary additional jurisdiction. Some members drew attention to the fact that a Court invested with the various jurisdictions which were suggested in the course of the Committee's discussions would have to consist of probably as many as twenty or thirty Judges, and in all likelihood of many more.

66. The subject of the Provincial High Courts in British India was also touched upon in the course of the Committee's discussions,

and they think it right to record their views on one or two points of importance connected with this subject. In the first place, the Committee are of opinion that High Court Judges should continue to be appointed by the Crown. Secondly, they think that the existing law which requires certain proportions of each High Court Bench to be barristers or members of the Indian Civil Service should cease to have effect, though they would maintain the existing qualifications for appointment to the Bench; and they recommend that the office of Chief Justice should be thrown open to any Puisne Judge or any person qualified to be appointed a Puisne Judge. The practice of appointing temporary additional Judges ought, in the opinion of the Committee, to be discontinued.

Signed, on behalf of the Committee,

SANKEY.

ST. JAMES'S PALACE, LONDON,

9th November, 1931.

NOTE.—One member of the Committee raised the important question of empowering the Federal Legislature to deal with certain aspects of Labour questions and of empowering the Federal Government and Legislature to deal with questions connected with the ratification of International Labour Conventions.

A solution of the difficulties to which he has drawn attention will have to be found when the precise relationship between the Legislative powers of the Federal and Provincial Legislatures is finally determined. In this particular matter there has not been opportunity this session to advance further than the general conclusions reached at the last session, and the Committee are unable to report in detail upon it. Further consideration will have to be given to it.

APPENDIX.

Report of the Federal Finance sub-Committee.

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1. The terms of reference of the sub-Committee were as follows:—

“To examine and report upon the general principles upon which the financial resources and obligations of India should be apportioned between the Federation, the British Indian Units jointly and severally, and the States Units.”

2. The following Delegates were selected to serve on the sub-Committee:—

Lord Peel (Chairman),
 Major Elliot, M.P.,
 Mr. Pethick-Lawrence, M.P.,
 *Major the Hon. Oliver Stanley, M.P.,
 Sir Akbar Hydari,
 Sir Mirza Ismail,
 Colonel Haksar,
 Rao Bahadur Krishnama Chari,
 *Mr. Benthall,
 Sir Maneckjee Dadabhoy,
 Mr. Iyengar,
 Sir Sayed Sultan Ahmed, and
 Dr. Shafa'at Ahmad Khan.

3. The sub-Committee met on the 28th, 29th and 30th September, and the 1st, 2nd, 6th, 7th, 8th and 9th October, and has authorised me to present this Report.

4. *Conditions of the Problem.*—In considering the principles upon which the general financial scheme for the new Federation should be framed, we are necessarily at a disadvantage because it

* Sir Robert Hamilton, M.P., subsequently took the place of Major Stanley, and Sir C. E. Wood that of Mr. Benthall.

is impossible for us, with the time at our disposal, to make even tentative estimates of the probable revenue and expenditure of the Federation and its constituent Units. Any theoretical scheme for the division of resources and obligations should, before being embodied in the constitution, be put to the test of a careful examination of its probable results by some body which is fully equipped for the task. We accordingly recommend that, with the least possible delay after the conclusion of the present Session of this Conference, an Expert Committee should be constituted for the purpose of working out in detail a financial scheme for the Federation,* taking as its starting-point the general proposals contained in our Report (subject, of course, to their acceptance by the Federal Structure Committee and the Conference). The Expert Committee must have for its guidance some general principles of the kind set out below; but it should be free to make alternative suggestions if, on closer examination of the facts, a probability is disclosed that any general principle laid down by us would, in practice, prove unworkable. In addition to the Committee's duty of framing a general scheme, there are also many specific points, some of which we mention below, on which its advice should be sought.

Such a body will necessarily be in a better position than we are to examine estimates of future revenue and expenditure and to take these into account in arriving at its recommendations. Even this Committee, however, will be unable to foresee the future so accurately that its judgment regarding immediate financial prospects can safely be made the basis of a rigid constitutional scheme. The difficulty is particularly acute in the adverse economic circumstances which now prevail, and which seem likely to continue for some time to come. It will therefore be necessary to aim at a considerable degree of elasticity in the financial framework. Whatever success in attaining this object can be achieved, we still consider it important that the Conference, when considering the question of constituent powers, should be specially careful to ensure that amendment of the constitution in this respect is not so hedged with difficulties as to be almost impracticable. Changing industrial and economic conditions, for example, may, at a date earlier than might now be anticipated, make it imperative to modify the financial scheme adopted at the outset.

While we are thus unable to frame a Budget for the Federation or its Units, it is impossible to enunciate even general principles without making an assumption, however rough, as to the financial obligations of the new governments. The provisional classification of subjects suggested by the Federal Structure Committee at the last Session of the Conference involves no change of importance, from a financial point of view, in the functions of the Provinces (or States) and of the government at the Centre (whether in its "Federal" or "Central" aspect). Federation may bring with it certain fresh charges (*e.g.*, expenses of the Federal Court), or possibly, on the other hand, certain administrative economies; but

* See also paragraph 26.

these variations do not appear likely to reach such magnitude as would bring about any fundamental change in the relative positions of the Units and the Centre in regard to financial requirements. Provincial expenditure, more particularly on "nation-building" services, may expand into fresh channels, whereas the range of Federal expenditure is more confined. It is essential, however, that all the governments should exercise the strictest economy and that their scale of expenditure should be reviewed and reduced to a minimum. But although there may be a natural and a proper tendency for Provincial and States' expenditure to increase, despite economies, and for Federal expenditure perhaps to decrease, it is important to remember that the Federation will have to bear, in the main, the financial burden of any grave crisis, and that it is especially on the credit of the Federal Government that the whole financial stability of India—its constituent parts no less than the Federation—must, in the end, depend. We are therefore bound to point out that there is danger in assuming that in no circumstances will additional burdens fall on the Federal Government.

Bearing the above in mind, we have started from the standpoint—

(1) that it is undesirable to disturb the existing distribution of resources between the various governments in India unless, as we have found in some cases, there are imperative reasons for making a change;

(2) that at all events to begin with, the Federation and its constituent Units are likely to require all their present resources (and, indeed, to need fresh sources of revenue); so that, on the whole, it is improbable that any considerable head of revenue could be surrendered initially by any of the governments without the acquisition of alternative resources.

With these preliminary observations we now proceed to set forth what we conceive are the principles to be followed.

5. "*Central*" Charges.—It was generally accepted in the Federal Structure sub-Committee at the last Session that the aim of the new constitution should be to eliminate, as far as possible, any "*Central*" subjects; but, so far as could be foreseen, it seemed likely that a residue of such subjects (notably certain civil and criminal legislation) would remain indefinitely. It appears probable, however, that the ideal will be more easily attained on the financial side. "*Central*" expenditure, broadly speaking, will consist of three categories:—

(1) Expenditure on "*Central*" Departments.

(2) A share in pre-Federation obligations in respect of civil pensions.

(3) Possibly a share of the service of the pre-Federation debt.

(2) and (3) are, of course, items which will ultimately vanish.

Expenditure under (1) will be simply for those few departments and institutions (*e.g.*, Archaeological Department and Zoological Survey) which were not included at the last Session within the category of Federal subjects. It may well be that an agreement could be reached to federalise these items; but, in any case, the expenditure on them is relatively insignificant. In strict theory there should be included among "Central" charges a proportion of the cost of the Federal General Administration expenditure in respect of such "Central" business as "Central" legislation. The amount, however, would probably be so trifling as to make this a needless complication.

As regards (2), the allocation of "Central" civil pension charges (not debited to the Provinces) between Federal and "Central" is a point which should be investigated by the Expert Committee. There seems no reason why the Federation should not be charged in respect of the pensions of officers who were previously employed on duties which, in future, will fall within the scope of Federal activities; but there may be a case for making the balance a "Central" charge.

6. *Pre-Federation Debt*.—The third possible item in the "Central" charges—a share in the service of the pre-Federation debt—raises more important issues than the other two. The Public Debt of India has been incurred through loans which have not, at the time of their issue, been allocated for expenditure on specific heads. It is certain that, in any case, from the point of view of the investor, the security must remain, as before, the "revenues of India"—that is to say, the future revenues of the Federation and of the Provinces but not of the individual States. No classification of pre-Federation debt as Federal and "Central" for constitutional purposes could be contemplated of such a kind as to affect the position of the lender.

The Departmental Memorandum of the Government of India has attempted to classify the greater part of the total Public Debt as debt covered by commercial or liquid assets together with a few miscellaneous items of a similar character, leaving a residue of Rs. 172 crores which, it is suggested, should be classed as "Central." We think that this classification may be misleading for the following reasons.

The borrowings of governments are, in the nature of things, not restricted to what is required for investment in commercial or productive undertakings, and it is probable that no important country, even at the time of its fullest prosperity, has been in a position to show the whole of its debt as covered by assets of this nature. It would be absurd to suggest that every country has therefore been continuously insolvent, as would be the case of a commercial company which showed a deficiency of assets in comparison with liabilities. A country's borrowing is conducted on the security of its credit and of its revenues, actual and potential.

The Government of India, like most other governments, has at times had to increase its debt owing to revenue deficits. Such debt,

legitimately incurred in tiding over periods of difficulty or emergency, forms a reasonable charge on the whole undertaking of government, even when not represented by specific tangible assets. On the other hand, large allocations have consistently been made from revenue for the reduction of debt and for capital expenditure. It is doubtful whether any other country could make so favourable a comparison as India between the total volume of its debt and the value of its productive assets.

Even as regards the productive assets included in the Memorandum, it will be observed that the figure against Railways, for instance, is not an estimate of their actual commercial value as a going concern, but represents merely the capital invested. The Railway proceeds in a normal year are sufficient for the payment of a contribution to general revenues of over Rs. 5 crores, in addition to meeting the whole of the interest charges on the Railway debt. The capitalised value of this additional profit though it cannot be estimated with exactitude, might well amount to as much as Rs. 100 crores.

Again, the valuable assets of the Government of India are not limited to those which actually earn profits. The Federal Authority will presumably succeed to the whole of the buildings and public works of all kinds which at present are the property of the Central Government. The replacement value of these is, of course, an enormous sum, though there are no exact data at hand for evaluating it. Further, while such assets do not directly produce revenue, they represent a saving of annual expenditure.

Moreover, although the loans and other obligations are shown as partially offset by certain assets, it will be understood that loans are normally raised for general purposes and not earmarked for specific objects; their proceeds go into a general pool. The particular items of debt cannot, therefore, be set off against individual assets; and it would clearly be impossible to relate the "balance" of Rs. 172 crores, mentioned above, to any particular loan or other obligation.

It therefore seems to us that, if it were found, after investigation by the Expert Committee, that all the obligations were covered by assets, the whole of the pre-Federation debt should be taken over by the Federation. While, however, this seems to us to be the probable result of a close investigation, we do not rule out the possibility of a finding by that Committee that a certain proportion of the pre-Federation debt should equitably be classified in the first instance as "Central"; that is to say, that its service (including a due proportion of sinking fund charges) should be taken to be a "Central" and not a Federal charge.

The question of post-Federation debt is considered in paragraph 22 below.

7. *Service of "Central" Charges.*—The only important existing source of the Government of India's revenue which is derived solely from British India is Income-tax. The problem of how

Income-tax should be treated is discussed more fully in paragraph 15 below; but it is clear that, whatever may be the amount of the "Central" charges discussed in the preceding paragraphs, it should be deducted as a first charge against the Income-tax collected solely from the British Indian Provinces, and against any other revenue collected by the Federal Government but derived solely from British India.

8. *Allocation of Resources between the Federation and its Constituent Units.*—It is obvious that, if there is to be an equitable apportionment of burdens and smooth working of the constitutional machine, the Federal resources should, as far as possible, be confined to revenues derived alike from the inhabitants of the Provinces and of the States, and which can be raised either without any action on the part of the individual States or by an agreement with them of simple character, readily enforceable. This principle implies, very roughly, that the Federal sources of revenue should be confined to "indirect" taxes. If, however, a "direct" tax could be found which complied with the above conditions, it would be highly desirable to include this among the Federal resources, for the following reasons.

The revenue from Customs will inevitably decline if there is an intensification of protective policy, and the profits of indigenous companies (and also, of course, the yield of the Income-tax on these profits) will presumably increase. Moreover, "indirect" taxes tend to impose a relatively heavy burden on the poorer classes, and a Federal system of purely "indirect" taxation might unduly expose the Federal Government to criticism on this ground. We have been informed that federations which began with only "indirect" taxation as a Federal resource have been compelled by force of circumstances to levy a tax on incomes or profits of companies in some form or other; and that, in at least two cases (United States of America and Switzerland), a formal Amendment of the Constitution was necessary for this purpose.

9. *Corporation Tax.*—The most obvious "direct" Federal tax is Income-tax. We think that it would be desirable, if it were possible, that some of the Income-tax receipts in all the Units of the Federation should, in case of necessity, be available as a Federal resource; but we recognise that this is, in general, a development which must be left to the future and depend on free negotiation between the Federal Government and the federating States subsequent to federation.

As regards the Corporation tax (now called the Super-tax on Companies), however, we suggest that, if the necessity of such a reinforcement of Federal revenues is established, this tax should be included in the list of Federal taxes; and we hope that the States will agree to this principle.

If federalisation of the Corporation tax were not accepted by the States, it would continue to be treated as a British Indian source of revenue.

10. *Classification of Revenues.*—In view of the difficulty of classifying taxes in general terms which permit of precise legal interpretation, and of the necessity, in a federation, of leaving no doubt as to where the constitutional power of imposing a certain tax lies, we think the most satisfactory solution would be that the Federal taxes and the Provincial taxes should be fully scheduled. We would suggest the following initial classification (apart from Income-tax, which is discussed separately in paragraph 15 below):—

Federal.

External Customs, including Export duties.

Salt.

Export Opium.

Excises on articles on which Customs duties are imposed (with the exception of Excises on Alcohol, Narcotics* and Drugs).

Receipts from Federal Railways, Federal Posts and Telegraphs, and other Federal commercial undertakings (see further under paragraph 25 below).

Profits of Federal Currency.

Corporation tax (see paragraph 9 above).

Contributions from Provinces (see paragraph 16 below).

Contributions from States (see paragraph 17 below).

Provincial.

Land revenue.

Excises on Alcohol, Narcotics* and Drugs.

Stamps, with the possible exception of Commercial Stamps (see paragraph 13 below).

Forests.

Provincial commercial undertakings.

Succession duties, if any.

Terminal taxes, if any (see paragraph 13 below).

The first seven taxes in the present First Schedule to the Scheduled Taxes Rules.

We think that these lists should be examined by the Expert Committee, not only in order to review them generally, but also to expand and particularise them, and to include in them all sources of taxation at present used in British India or under contemplation.

* It is open to doubt whether "Narcotics" should, for this purpose, include Tobacco.

11. *Relations of Federal and State Taxation.*—It is necessary, at this stage, to refer to certain forms of taxation now in force in the States, apart from the special cases discussed in paragraph 20, which may conflict with taxes assigned to the Federation, or which may be economically undesirable from the point of view of the Federation as a whole. The first and most important of these is the internal Customs tariff which many States levy at their frontiers. One aim of the Federation, in our opinion, should be the gradual disappearance of any tax, now in force in a State, which is similar in character to a Federal tax and so may impinge on Federal receipts. At the same time we recognise that it may be impossible for the States in question to surrender, either immediately or in the near future, large sources of existing revenue, without the acquisition of fresh resources; nor would it seem to be in general an equitable plan for the Federation to attempt to buy up, so to speak, the existing rights of the States in such a matter. This would simply mean that, in the general interests of economic unity and to facilitate trade, a tax would be imposed on the Federation as a whole in order to relieve the inhabitants of the States. The abolition of these taxes must therefore be left to the discretion of the States, to be effected in course of time as alternative sources of revenue become available. Subject to examination by the Expert Committee, it seems likely that one possible such source is the Terminal tax referred to in paragraph 13.

There may be some instances, *e.g.*, Corporation tax and Tobacco excise, in which States already levy taxes which, under the general scheme, it is suggested, might be federalised. Special adjustments will be necessary to bring these States into line with the Federation.

12. *Unspecified Taxes.*—Under the scheme outlined in paragraph 10 above, the problem of “residuary powers” of taxation, in its ordinary sense, would seem to disappear; and we are left simply with the question, who should have the power of raising taxes hitherto un contemplated in India. It is obvious that in dealing with taxes of a nature which is at present unforeseen, the correct solution cannot be to allocate them in advance either finally to the Federation or finally to the constituent Units. A proper decision could only be taken when the nature of the tax was known. There would be great advantages in vesting the Federation with the right to levy such taxes, while empowering it to assign the right to the Units in particular cases, since such a process would be far easier than that of vesting the right in the Units and asking them, when necessary, to surrender it to the Federation. There are, however, constitutional objections to the proposal that the Federation should have power to impose unscheduled taxes on all Units of the Federation; and many of us feel that it is not possible to do more than to provide that the constitutional right to levy any unscheduled tax should rest with the Provinces or States, subject to the condition that the levy of the tax does not conflict with the Federal scheme of taxation.

13. *Taxation—Miscellaneous.*—Sir Walter Layton recommended the use of Terminal taxes as an additional resource for the Provinces. The Government of India, on the other hand, have pointed out the difficulties which beset this proposal. Once again, such complicated issues are raised that expert scrutiny is essential. We agree that, if such taxes were levied, the proceeds should go to the Provinces and the States. In any case we think that both the rates and the general conditions under which such taxes would be imposed should be subject to the control of the Federal Government and Legislature.

Transit duties, whether in the Provinces or in the federating States, should be specifically forbidden.

The Provinces should be debarred from levying internal Customs. (The position as regards the States is examined in paragraph 11 above.)

There is much to be said for federalising Commercial Stamps on the lines of various proposals made in the past; but we have not examined the question sufficiently to justify us in reaching a definite conclusion.

It will be understood that the powers of taxation enjoyed by Provincial Governments or States should be subject to the overriding consideration that they should not be exercised in such a manner as to conflict with the international obligations of the Federal Government under any Commercial Treaty or International Convention.

No form of taxation should, we think, be levied by any Unit of the Federation on the property of the Federal Government. The precise form in which this principle should be expressed should be examined by the Expert Committee.

14. *Grants to Constituent Units.*—It seems important that the constitution should, in one respect, be less rigid than the existing one, under which it has been authoritatively held that there is no power to devote Central resources to the Provinces or Provincial resources to the Centre. It should, we think, be open to the Federal Government, with the assent of the Federal Legislature, not only to make grants to Provinces or States for specified purposes, but also, in the event of its ultimately finding that Federal revenues yield an apparently permanent surplus, to be free, as a possible alternative to reduction of taxation, to allocate the surplus proceeds to the constituent Units of the Federation, both States and British Indian Provinces. It appears desirable that the constitution itself should lay down the proportions in which funds thus available should be divided among the Units, whether according to their respective revenues, or to population, or to some other criterion—a point on which the Expert Committee will presumably advise.

Whatever the automatic basis for distribution, we consider that it should be subject to an exception in the case of States which impose taxes of a character similar to Federal taxes (*e.g.*, internal Customs); and it should be open to the Federal Government to distribute to such a State its share of the surplus funds only if that

State agreed to reduce equivalently the tax at the abolition of which the Federation was aiming.

The reverse process should also be possible. Any Province, with the assent of its Legislature, should be free to make a grant for any purpose to the Federal Government.

15. *Taxes on Income*.—We now take up the question of the treatment of taxes on Income other than Corporation tax, which, we have suggested in paragraph 9 above, should be Federal. As stated in paragraph 7, something may have to be deducted from the proceeds of these taxes, in the first instance, on account of "Central" charges, if any.

We are agreed that such taxes should still be collected from the whole of British India by one centralised administrative service. Most of us are also of the opinion that uniformity of rate should be maintained, since variations of rate may lead to unfortunate economic consequences, such as discrimination between industries in different Provinces. Some of us take the opposite view, both because of the constitutional difficulty mentioned below and because of the difficulty of securing uniformity in all Units. The subject is clearly one to which the Expert Committee should devote much attention.

In any case, we are all of the opinion that the net proceeds should, subject to the special provisions mentioned below, be re-distributed to the Provinces. On any other basis it will be impossible to secure, even ultimately, a uniformity of Federal burdens as between the Provinces and the federating States, or to avoid a clash of conflicting interests in the Federal Legislature when there is a question of raising or lowering the level of taxation. The distribution of the proceeds of Income-tax among the Provinces (even though there may initially be countervailing Contributions to the Federal Government, as proposed in the next paragraph) may also form a very convenient means of alleviating the burden of two or three of the Provinces which, under the present system, are universally admitted to be poorer than the others. With this in view, the Expert Committee should recommend by what criteria the proceeds of Income-tax should be allocated among the Provinces—whether, for example, on the basis of collection or origin, or according to population, or by some other method or combination of methods.

Those of us who recommend that Income-tax should be collected by one agency at a uniform rate to be fixed by the Federal Legislature, though the proceeds are distributed to the Units, recognise that we are, of course, departing from the principle—to which we generally attach considerable importance—that the right to impose and administer a tax should be vested in the authority which receives the proceeds. This seems to us inevitable; but the difficulty might be met, at all events partially, if the Federal Finance Minister, before introducing any proposal to vary the Income-tax rate, were required to consult Provincial Finance Ministers. The procedure in the Federal Legislature, when dealing with an Income-tax Bill,

should follow the procedure to be laid down for other "Central" legislation affecting directly only British India.

A further point arising in connection with Income-tax, of such complicated nature that we are unable to make a definite recommendation regarding it, is the possibility of empowering individual Provinces, if they so desire, to raise, or appropriate the proceeds of, a tax on agricultural incomes. We suggest that this point might be referred to the Expert Committee for investigation.

16. *Provincial Contributions*.—We have, subject to certain reservations, proposed the allocation to the Provinces of the proceeds of taxes on Income, without, so far, any corresponding reinforcement for the Federal Government. If the Expert Committee unexpectedly found that Federal resources were such as to give a secure prospect of recurring revenues sufficient to meet this loss immediately (and also a loss in respect of the heads dealt with in paragraph 17 below), many difficulties would, of course, be removed. But, on the provisional basis set out in paragraph 4, we are bound to assume that there may be a substantial Federal deficit, due to the allocation of Income-tax to the Provinces. The deficit, in so far as it arises from the above cause, should, we suggest, be met by Contributions from the Provinces, to be divided between them either on the basis of their respective revenues or of population, or according to some other defined method. The Expert Committee should consider what is the most appropriate basis. This basis need not necessarily be the same as that on which the Income-tax proceeds are distributed. Differentiation between the two methods might be used as a means of partially adjusting the burden on Provinces which are specially hard hit by the existing distribution of resources between them.

We further propose that, not merely should it be the declared object of the Federal Government, as its position improves, to reduce and ultimately extinguish these Contributions, but the constitution should specifically provide for their extinction by the Federal Government by annual stages over a definite period, say, ten or fifteen years.

17. *States' Contributions*.—In the scheme proposed above, the Federal burdens will be spread over all the Units of the Federation in a precisely similar manner except for:—

(a) The above-mentioned Contributions from the Provinces, until such time as they are finally abolished;

(b) such direct or indirect contributions as are, or have been, made by certain States, of a kind which have no counterpart in British India; and

(c) varying measures of immunity in respect of Customs and Salt enjoyed by certain States.

We now turn to consider what the States' contributions are, or may be; but, at the outset, we would lay down the general principle that, subject to certain exceptions specified below, the direct or

indirect contributions from the States referred to at (b) should be wiped out *pari passu* with the Provincial Contributions mentioned in the preceding paragraph.

18. *Cash Contributions from States and Ceded Territories.*—The direct or indirect contributions from the States just referred to may arise, or are alleged to arise, under the following heads:—

- (i) cash contributions;
- (ii) value of ceded territories;* and
- (iii) contributions in kind for Defence by the maintenance of State Forces.

(i) Cash contributions from States (till recently known as tributes) have arisen in many different ways, and it has been impossible for us to examine the cases of individual States. Nevertheless, we think that there is, generally speaking, no place for contributions of a feudal nature under the new Federal Constitution; and only the probability of a lack of Federal resources at the outset prevents our recommending their immediate abolition. We definitely propose that they should be wiped out *pari passu* with the Provincial Contributions discussed in paragraph 15 above. Meanwhile, there seem to us to be certain cases in which real hardship is inflicted by the relative magnitude of the burden of the cash contributions; and we suggest that it might be possible, without excessive loss being thrown on the Federal Government, to remit at once that part of any contribution which is in excess of 5 per cent. of the total revenues of a State. Apart from this, the circumstances under which the contributions have been levied vary so much that it is necessary for the Expert Committee to undertake (what it has been impossible for us to execute) a detailed examination of each individual case, and, with the above general principles in mind, to express an opinion as to what would be equitable treatment for each of the States in question.

(ii) Without the necessary statistics, we are unable to investigate in detail the claim of the States that, through having ceded territory, some of them will be liquidating a liability in respect of Federal burdens. Here again we propose that the Expert Committee should examine the whole question, and pronounce an opinion as to the equities in each individual case.

19. *State Forces.*—(iii) Any attempt to assess the financial value to the Federation of the State Forces would raise many intricate problems into which it has been impossible for us to enter. Close consultation with the Military Authorities and with individual States would be necessary before any solution of this problem could be found. The maintenance and availability of these Forces is at present optional for the States concerned; and we think it likely that, before any credit was given to a State on account of the Force

* This term does not include the leased territory of Berar.

which it maintains, the Federal Authorities would, at all events, wish to prescribe:—

(a) That the Forces should be efficient according to a standard of which the Military Authorities should be the judge, and should also be required for purposes connected with the general Defence scheme of India; and

(b) that these Forces should, by some permanent arrangement, be made available for services to be determined by the competent Military Authorities.

In any case, we regard this as a separate question which should be taken up between the Military and Financial Authorities of the Federal Government on the one hand, and the individual States on the other. We further think that any financial adjustment should be a matter of bargaining between the parties concerned, and should be treated as a separate matter—not on the lines of (a) and (b) of paragraph 17.

20. *Maritime States and Kashmir.*—These States, being on the frontiers of India, are in a special position as regards the question of external Customs duties. Here again, we feel that it is impossible to deprive States of revenue of which they are already in possession. One principle which we would lay down is that, in all cases, the Import tariff at the States' Ports should be not less than that at Ports in the rest of India. The question whether Maritime States should agree to the administration of Customs at their Ports being taken over by the Federal Department is obviously one of great importance, but hardly comes within the sphere of our enquiry.

Our general conception of the problem is that the Treaties or agreements, which vary widely in the different cases, must be taken as they stand, and that any decision as to what are the existing rights of a State, in those instances in which they are now in dispute, should be determined separately, with the least possible delay, and not by the Expert Committee. We think, however, that the latter should investigate the position in each State on its ascertained existing rights, and should express an opinion as to what commutation it would be worth while for the Federal Government to offer to the State for the extinction of any special privilege which it now enjoys. In doing so, the Committee might allow for any contributions of special value which a State may be making to the Federal resources. With this opinion before them, we think it should be left to the Federal Authorities, if they think fit, to negotiate with each State for the surrender of existing rights. The Expert Committee should also attempt to determine what, in the absence of any such surrender, would be the amount which Federal revenues lost owing to the existence of the special right of the State; and this valuation should be taken into account by the Federal Government whenever any question arose, as suggested in paragraph 14 above, of the Federation's distributing surplus revenue over the Federal Units.

21. *Emergency Powers of the Federal Government.*—In order to ensure that the Federation is not left resourceless in a grave emergency, and also to secure the object referred to in the next paragraph, we regard it as important that there should be an emergency power in the Federal Government, with the approval of the Federal Legislature, to call for contributions from all the Units of the Federation on some principle of allocation to be based on examination by the Expert Committee.

22. *Borrowing Powers of the Units and the Security of Post-Federation Debt.*—In view of the degree of autonomy with which, we understand, it is likely that Provinces will be clothed, it seems to us that it will probably be inappropriate, at all events as regards internal borrowing, that there should be any power in the Federal Government to exercise complete control over borrowing by a Province. There must apparently be a constitutional right in a Province to raise loans in India upon the security of its own revenues, leaving it, if need be, to learn by experience that a Province with unsatisfactory finances will only be able to borrow, if at all, at extreme rates. We would, however, give the Federal Government a suitably restricted power of control over the time at which Provinces should issue their loans, so as to prevent any interference with other issues, whether Federal or Provincial. But, although this should be the constitutional position, we think it highly undesirable that, in practice, Provincial borrowings and Federal borrowings should be co-ordinated only to this limited extent; and we feel little doubt that, as hitherto, Provinces will find it desirable to obtain the greater part of their capital requirements through the Government at the Centre.

It has been suggested that loans, both for the Federation itself and for the Units, should be raised by a Federal Loans Board or Council, consisting of representatives of the Federal Government and of the Governments of the Units and of the Reserve Bank. On the other hand, it is argued that an authority of this kind could not raise a loan, since it could not pledge the revenues of the country, though it might be useful in an advisory capacity when the Federal Government was dealing with applications made by Provinces for loans. We are of opinion that these suggestions should be examined by the Expert Committee, which should be asked to make definite recommendations as to the machinery to be set up for arranging loans. In doing so, they will no doubt take into account the experience of Australia and other countries.

In order to secure that loans are raised at the cheapest rates, it is desirable that the security should be as wide as possible; and we therefore suggest that, in the interests both of the Federation and of the Units, all loans raised by the Federal Authority should, in the future, like those of the Government of India in the past, be secured not only on the revenues of the Federation but also on the revenues of the Provinces of British India. To ensure that this is not an unreality, it is necessary to have some such provision as is proposed in the preceding paragraph, under which there is an

ultimate right in the Federation to call for contributions from the Units.

There would be no objection to federating Indian States, if they so desired, obtaining funds from the Federal Government on conditions similar to those applying to the Provinces, and being eligible for representation on the Advisory Board, provided that those participating were prepared specifically to recognise this right of the Federation to call for contributions from themselves as well as from other Units.

We are of the opinion that there should be no power in the Units to borrow externally without the consent of the Federal Government.

23. *Provincial Balances.*—We consider that, until a Reserve Bank has been established, the Federal Government should act as banker for the Provincial Governments on a commercial basis. On the establishment of a Reserve Bank, Provincial Balances should be kept with that institution.

24. *Chief Commissioners' Provinces.*—It is suggested that the revenue and expenditure of these areas, though shown in the accounts under separate heads for each area, should fall within the scope of the Federal Budget. Generally speaking, we think that the States have as great an interest in these areas as has British India, and we believe that those areas which are likely to be in deficit will probably be found to be so for Federal reasons, such as special connection with Defence, or, in the case of Delhi, its containing the Federal Capital.

It is, of course, proposed that the North-West Frontier Province, which is now a Chief Commissioner's Province, should become a Governor's Province. There must, however, be a considerable gap between the revenue derived from the ordinary Provincial sources and the normal expenditure of the Province; and it is proposed that this should be filled by a subvention. We contemplate that this subvention should be found from the Federal Budget, as the causes of the Provincial deficit are intimately linked with matters of Federal concern, *viz.*, Defence and Foreign Policy.

25. *Commercial Departments.*—Some of us are of the opinion that the Railways (and possibly other departments, such as Posts and Telegraphs) should be conducted on such a basis as to secure a more complete separation from Federal revenues than is at present the case, and that, after paying interest and meeting the charge at present incurred by the Government of India in respect of reduction of Railway debt, they should keep their own profits and should work on a basis which, in the long run, would yield neither profit nor loss. From our standpoint it is to be noticed that such a plan would involve an important change in the basis of the security for the existing debt; but the proposal is closely connected with that made at the last Session of the Conference, that a Statutory Railway Authority should be established. It thus raises very important constitutional issues which are beyond the province of this sub-Committee and must be fully examined elsewhere.

26. *Proposals regarding Expert Committees.*—The Expert Committee, the appointment of which we have recommended in paragraph 4 above, will, in our view, have a most important rôle to play. We anticipate that it might be difficult to commit to one small body the examination of all the matters in regard to which we have judged that detailed scrutiny will be required.

We therefore advocate a division of the field of enquiry into two parts. The principal object of the first enquiry would be a general survey of the problem and an examination of the questions dealt with in paragraphs 5 to 17 and 21 to 25 of our Report. The second enquiry should relate mainly to the States, and would require considerable historical research in addition to the compilation and scrutiny of statistics. Under this head it will be necessary to review in detail the questions dealt with in paragraphs 17 to 20 of our Report.

We consider that efficiency and promptitude would best be served by allotting these two fields of enquiry to two separate Committees, the work of which might perhaps be co-ordinated by a common Chairman. A precedent for a somewhat similar device can be found in the arrangements made for the work of the Franchise Committee and Functions Committee of 1918-19.

Signed, on behalf of the sub-Committee,

PEEL.

ST. JAMES'S PALACE, LONDON,

9th October, 1931.

Indian Round Table Conference

(SECOND SESSION)

Fourth Report

of the

Federal Structure Committee

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FEDERAL STRUCTURE COMMITTEE.

(Second Session.)

FOURTH REPORT.

(For Composition of the Committee, see page 1 of the Third Report.)

1. The Committee, when discussing the subjects covered by this Report, *viz.*, Defence, External Relations, Financial Safeguards and Commercial Discrimination, did not have the advantage of hearing the views of the Muslim members of the British Indian Delegation who reserved their opinion on such questions until such time as a satisfactory solution had been found of the problems which confronted the Minorities Committee. Some other representatives of minorities similarly reserved their opinion.

DEFENCE.

2. Our consideration of the question of Defence in its constitutional aspect is based on the principle enunciated in the Defence sub-Committee at the last Session that "The Defence of India must, to an increasing extent, be the concern of the Indian people, and not of the British Government alone."

3. The view was strongly put forward by some members that no true responsibility for its own government will be conferred on India unless the subject of Defence (involving, of course, the control of the Army in India, including that of the British troops) is immediately placed in the hands of an Indian Ministry responsible to an Indian Legislature, with any safeguards that can be shown to be necessary.

4. The majority of the Committee are unable to share this view. They consider that it is impossible to vest in an Indian Legislature during the period of transition the constitutional responsibility for controlling Defence, so long as the burden of actual responsibility cannot be simultaneously transferred.

5. The majority of the Committee therefore reaffirm the conclusion reached in the Committee at the last Session that "the assumption by India of all the powers and responsibility which have hitherto rested on Parliament cannot be made at one step and that, during a period of transition, the Governor-General shall be responsible for Defence,"* being assisted by a "Minister" of his own choice responsible to him and not to the Legislature.

6. At the same time there is no disagreement with the view that the Indian Legislature must be deeply concerned with many aspects of Defence. It is undeniable that there can be no diminution of

* See paragraph 11 of the Second Report of the Federal Structure sub-Committee.

such opportunities as the present Legislature possesses of discussing and through discussion of influencing Defence administration. While the size, composition and cost of the Army are matters essentially for those on whom the responsibility rests and their expert advisers, yet they are not questions on which there can be no voicing of public opinion through constitutional channels. The Legislature would thus continue to be brought into the counsels of the Administration in the discussion of such outstanding problems as the carrying out of the policy of Indianisation. Further, there must be correlation of military and civil administration where the two spheres, as must sometimes inevitably be the case, are found to overlap. In the latter connection the suggestion was made that a body should be set up in India analogous to the Committee of Imperial Defence in Great Britain. Some members of the Committee considered that even though responsibility for the administration of the Army might remain, during a period of transition, with the Governor General, the final voice on such questions as the size, composition and cost of the Army should rest with the Legislature.

7. To secure the measure of participation contemplated under paragraph 6 by the majority of the Committee, various suggestions were made, the cardinal feature of which, in almost all instances, was the precise position to be assigned to the "Minister" appointed by the Governor-General to take charge of the Defence portfolio. It was assumed that his functions would roughly correspond to those of the Secretary of State for War in the United Kingdom. Among the more important proposals made were the following:—

(i) The "Minister," while primarily responsible to the Governor-General, should, as regards certain aspects only of Defence, be responsible to the Legislature.

(ii) The "Minister," though responsible to the Governor-General, should be an Indian; and he might be chosen from among the Members of the Legislature.

(iii) The "Minister," of the character contemplated in (ii), should be considered to be a Member of the "responsible" Ministry, participating in all their discussions, enjoying joint responsibility with them, and in the event of a defeat in Legislature over a question not relating to the Army should resign with them though, of course, remaining eligible for immediate re-appointment by the Governor-General.

8. While some of these suggestions contain the germs of possible lines of development, it is impossible to escape from the conclusion (a) that, so long as the Governor-General is responsible for Defence, the constitution must provide that the Defence "Minister" should be appointed at the unfettered discretion of the Governor-General and should be responsible to him alone, and (b) that this "Minister's" relations with the rest of the Ministry and with the Legislature must be left to the evolution of political usage within the framework of the constitution.

9. The view was put forward that, while supply for the defence services should not be subject to the annual vote of the Legislature, agreement should be sought at the outset on a basic figure for such expenditure for a period of, say, five years, subject to joint review by the Legislature and representatives of the Crown at the end of such period, with special powers in the Governor-General to incur expenditure in cases of emergencies. The details of any such plan should receive further careful examination.

EXTERNAL RELATIONS.

10. Very similar considerations to those governing the constitutional treatment of Defence apply in the case of the subject of External Relations, and in general the views expressed by members of the Committee on this subject followed closely their opinions regarding the constitutional provisions in relation to Defence. In particular the majority of the Committee reaffirm the view taken in the Second Report of the sub-Committee (paragraph 11) that the Governor-General should be responsible for External Relations.

11. There is, however, a difficulty in connection with External Relations which hardly arises in the case of Defence, *viz.*, that of defining the content of the subject. The reserved subject of External Relations would be confined primarily to the subject of political relations with countries external to India and relations with the frontier tracts. Commercial, economic and other relations would fall primarily within the purview of the Legislature and of Ministers responsible thereto; in so far, however, as questions of the latter character might react on political questions, a special responsibility will devolve upon the Governor-General to secure that they are so handled as not to conflict with his responsibility for the control of external relations. There will accordingly be need for close co-operation, by whatever means may prove through experience most suitable for securing it, between the Minister holding the portfolio of "External Relations" and his colleagues the "responsible" Ministers.

12. Some misunderstanding may have been caused by the description, in paragraph 11 (ii) of the sub-Committee's second Report, of External Relations as including "Relations with the Indian States outside the Federal sphere". As set out in the Prime Minister's declaration at the close of the last Session, "The connection of the States with the Federation will remain subject to the basic principle that in regard to all matters not ceded by them to the Federation their relations will be with the Crown acting through the agency of the Viceroy".

FINANCIAL SAFEGUARDS.

13. In paragraph 11 of their Second Report the sub-Committee in recording the general agreement, to which reference has been made in an earlier paragraph of this Report, that the assumption by India of all the powers and responsibility which have hitherto

rested on Parliament cannot be made at one step, recorded the consequential opinion that, during a period of transition in certain situations which may arise outside the sphere of the Reserved Subjects, the Governor-General must be at liberty to act on his own responsibility, and must be given the powers necessary to implement his decision. And in paragraphs 14 and 18 to 20 of the same Report, they then proceeded to indicate in some detail their view of those situations in the financial sphere for which such special provision would be necessary. The proposals in this connection were, in the view of some members of the Committee, based upon the following fundamental propositions:—

(1) that it is essential that the financial stability and credit of India should be maintained;

(2) that the financial credit of any country rests in the last resort upon the confidence of the investor, actual and potential;

(3) that one result of the connection which has subsisted between India and the United Kingdom has been that her credit in the money markets of the world has hitherto been in practice closely bound up with British credit; and

(4) that a change in her constitutional relations with the United Kingdom which involved a sudden severance of the financial link between the United Kingdom and India would disturb confidence and so place the new Indian Government and Legislature at a grave disadvantage.

14. The proposals designed to avert such a situation have been further discussed at the Committee's present Session. While some members consider that in present circumstances the proposals in paragraphs 18 to 20 of the Second Report may not prove sufficient, others have advanced the view that they erred on the side of caution, and that since there was no ground for postulating imprudence on the part of the responsible Executive and Legislature of the future, nothing further was required in order to ensure financial stability, in addition to the normal powers of veto which would vest in the Governor-General, than the establishment, pending the creation by the Indian Legislature of a Reserve Bank, of a statutory advisory Council, so constituted as to reflect the best financial opinion of both India and London, which would be charged with the duty of examining and advising upon monetary policy. (Some of those who took this view were of opinion that it might not be necessary for the Statutory Advisory Council to remain in existence after the Reserve Bank has been established.) It was, however, suggested by those who held such views that it might be advisable to provide that in the event of the rejection by the Legislature of the Government's proposals for the raising of revenue in any given year, the provision made for the last financial year should continue automatically to be operative.

Some members again, who had not participated in the Committee's earlier discussions, went further in their objection to

the financial safeguards, and expressed themselves as unwilling to contemplate any limitations upon the powers of an Indian Finance Minister to administer his charge in full responsibility to the Legislature, on the ground that a constitution which did not concede complete control of finance to the Legislature could not be described as responsible government, and that derogation from complete control would hamper the Finance Minister in the discharge of his duties.

15. The majority of the Committee adhere to the principles enunciated in their previous Report. They feel strongly that if the attitude of caution with which they approached this question last January was justified—as they are convinced by the considerations stated in paragraph 13 of this Report that it was—the financial crisis which has since overwhelmed both the United Kingdom and India in common with so many other countries has still further reinforced its necessity. They feel further that in the conditions of complete uncertainty and instability now so widely prevailing, it would serve no useful practical purpose here and now meticulously to examine or to attempt to decide upon the precise means to adopt to ensure and command confidence in the stability of the new order, and a safe transition to it from the old. The majority of the Committee therefore record it as their view that the conclusions reached in the Committee's Second Report form an appropriate basis for approach to the task of framing the constitutional definitions of the powers and interplay in the sphere of finance of the various elements which will compose the Federal Authority which they envisage, and that it would be premature at this stage to attempt to elaborate the application of these conclusions. While they are prepared to explore more fully the suggestion of an Advisory Finance Council, they cannot on the basis of the discussion that has taken place commit themselves to the view that such a Council would adequately secure the effective maintenance of confidence in the credit of India, which must be the essential test of the measures necessary in the sphere of finance.

COMMERCIAL DISCRIMINATION.

16. On this subject the Committee are glad to be able to record a substantial measure of agreement. They recall that in paragraph 22 of their Report at the last Conference it was stated that there was general agreement that in matters of trade and commerce the principle of equality of treatment ought to be established, and that the Committee of the whole Conference at their meeting on January 19th, 1931, adopted the following paragraph as part of the Report of the Minorities sub-Committee:—

“At the instance of the British commercial community the principle was generally agreed that there should be no discrimination between the rights of the British mercantile community, firms and companies trading in India, and the rights of Indian born subjects, and that an appropriate Con-

vention based on reciprocity should be entered into for the purpose of regulating these rights."

More than one member in the course of the discussion also reminded the Committee that the All-Parties Conference in 1928 stated in their Report that "it is inconceivable that there can be any discriminating legislation against any community doing business lawfully in India".

17. The Committee accept and re-affirm the principle that equal rights and equal opportunities should be afforded to those lawfully engaged in commerce and industry within the territory of the Federation, and such differences as have manifested themselves are mainly (though not entirely) concerned with the limits within which the principle should operate and the best method of giving effect to it.

Some, however, contend that the future Government should not be burdened with any restriction save that no discrimination should be made merely on the ground of race, colour or creed.

18. The Committee are of opinion that no subject of the Crown who may be ordinarily resident or carrying on trade or business in British India, should be subjected to any disability or discrimination, legislative or administrative, by reason of his race, descent, religion, or place of birth, in respect of taxation, the holding of property, the carrying on of any profession, trade or business, or in respect of residence or travel. The expression "subject" must here be understood as indicating firms, companies and corporations carrying on business within the area of the Federation, as well as private individuals.* The Committee are also of opinion that, *mutatis mutandis*, the principle should be made applicable in respect of the same matters so far as they fall within the federal sphere, in the case of Indian States which become members of the Federation and the subjects of those States.

The States representatives expressed themselves willing to accept this principle provided that those who claim equal rights under it do not ask for discrimination in their favour in the matter of jurisdiction and will submit themselves to the jurisdiction of the States.

19. It will be observed that the suggestion contained in the preceding paragraph is not restricted to matters of Commercial Discrimination only, nor to the European community as such. It appears to the Committee that the question of Commercial Discrimination is only one aspect, though a most important one, of a much wider question, which affects the interests of all communities alike, if due effect is to be given to the principle of equal rights and opportunities for all.

20. More than one member of the Committee expressed anxiety lest a provision in the constitution on the above lines should hamper

* As regards interpretation of this sentence see remarks by Sir Purshotamdas Thakurdas and Lord Sankey in the plenary session of November 28th on the presentation of the report.

the freedom of action of the future Indian Legislature in promoting what it might regard as the legitimate economic interests of India. The Committee do not think that these fears are well-founded. Key industries can be protected and unfair competition penalised without the use of discriminatory measures. The Committee are, however, of opinion that it should be made clear that where the Legislature has determined upon some system of bounties or subsidies for the purpose of encouraging local industries, the right to attach reasonable conditions to any such grant from public funds is fully recognised, as it was recognised in 1925 by the External Capital Committee, and is recognised to-day by the practice of the Government of India itself.

21. It should however also be made clear that bounties or subsidies, if offered, would be available to all who were willing to comply with such conditions as may be prescribed. The principle should be a fair field and no favour. Thus a good deal was said in the course of the discussion of the need for enabling Indian concerns to compete more effectively with larger and longer-established businesses, usually under British management and financed with British capital. Where the larger business makes use of unfair methods of competition, the general law should be sufficient to deal with it; but many members of the Committee were impressed with the danger of admitting a claim to legislate, not for the purpose of regulating unfair competition generally, but of destroying in a particular case the competitive power of a large industry in order to promote the interests of a smaller one.

A view was expressed by some members, with reference to this and the preceding paragraph, that so far as the grant of bounties and subsidies is concerned it must be within the competence of the Legislature to confine them to Indians or companies with Indian capital.

The position of others was that set out at the end of paragraph 17.

22. With regard to method, it appears to the Committee that the constitution should contain a clause prohibiting legislative or administrative* discrimination in the matters set out above and defining those persons and bodies to whom the clause is to apply. A completely satisfactory clause would no doubt be difficult to frame, and the Committee have not attempted the task themselves. They content themselves with saying that (despite the contrary view expressed by the Statutory Commission in paragraph 156 of their Report) they see no reason to doubt that an experienced Parliamentary draftsman would be able to devise an adequate and workable formula, which it would not be beyond the competence of a Court of Law to interpret and make effective. With regard to the persons and bodies to whom the clause will apply, it was suggested by some that the constitution should define those persons

* Two members would not include administrative discrimination within the scope of the clause.

who are to be regarded as "citizens" of the Federation, and that the clause should apply to the "citizens" as so defined; this indeed was a suggestion which had been made by the All-Parties Conference. There are however disadvantages in attempting to define the ambit of economic rights in terms of a political definition, and a definition which included a corporation or limited company in the expression "citizen" would be in any event highly artificial. The Committee are of opinion, therefore, that the clause should itself describe those persons and bodies to whom it is to be applicable on the lines of paragraph 18, and that the question should not be complicated by definitions of citizenship.

23. If the above proposals are adopted, discriminatory legislation would be a matter for review by the Federal Court. To some extent this would also be true of administrative discrimination; but the real safeguard against the latter must be looked for rather in the good faith and common sense of the different branches of the executive government, reinforced, where necessary, by the special powers vested in the Governor-General and the Provincial Governors. It is also plain that where the Governor-General or a Provincial Governor is satisfied that proposed legislation, though possibly not on the face of it discriminatory, nevertheless will be discriminatory in fact, he will be called upon, in virtue of his special obligations in relation to minorities, to consider whether it is not his duty to refuse his assent to the Bill or to reserve it for the signification of His Majesty's pleasure.

24. The question of persons and bodies in the United Kingdom trading with India, but neither resident nor possessing establishments there, requires rather different treatment. Such persons and bodies clearly do not stand on the same footing as those with whom this Report has hitherto been dealing. Nevertheless, the Committee were generally of opinion that, subject to certain reservations, they ought to be freely accorded, upon a basis of reciprocity, the right to enter and trade with India. It will be for the future Indian Legislature to decide whether and to what extent such rights should be accorded to others than individuals ordinarily resident in the United Kingdom or companies registered there, subject of course to similar rights being accorded to residents in India and to Indian companies. It is scarcely necessary to say that nothing in this paragraph is intended to limit in any way the power to impose duties upon imports into India, or otherwise to regulate its foreign trade.

25. It had been suggested at the last Conference, and the suggestion was made again in the course of the discussion in the Committee, that the above matters might be conveniently dealt with by means of a Convention to be made between the two countries, setting out in greater detail than it was thought would be possible in a clause in an Act the various topics on which agreement can be secured. The idea is an attractive one, but appears to present certain practical difficulties. The Committee understand that the intention of those who suggested it is that

the Convention, if made, should be scheduled to and become part of the Constitution Act. It was, however, pointed out that such a detailed Convention would be more appropriately made between the United Kingdom and the future Indian Government when the latter was constituted, and that, in any event, it seemed scarcely appropriate in a Constitution Act. On the other hand, the Committee are of opinion that an appropriately drafted clause might be included in the Constitution itself, recognising the rights of persons and bodies in the United Kingdom to enter and trade with India on terms no less favourable than those on which persons and bodies in India enter and trade with the United Kingdom.

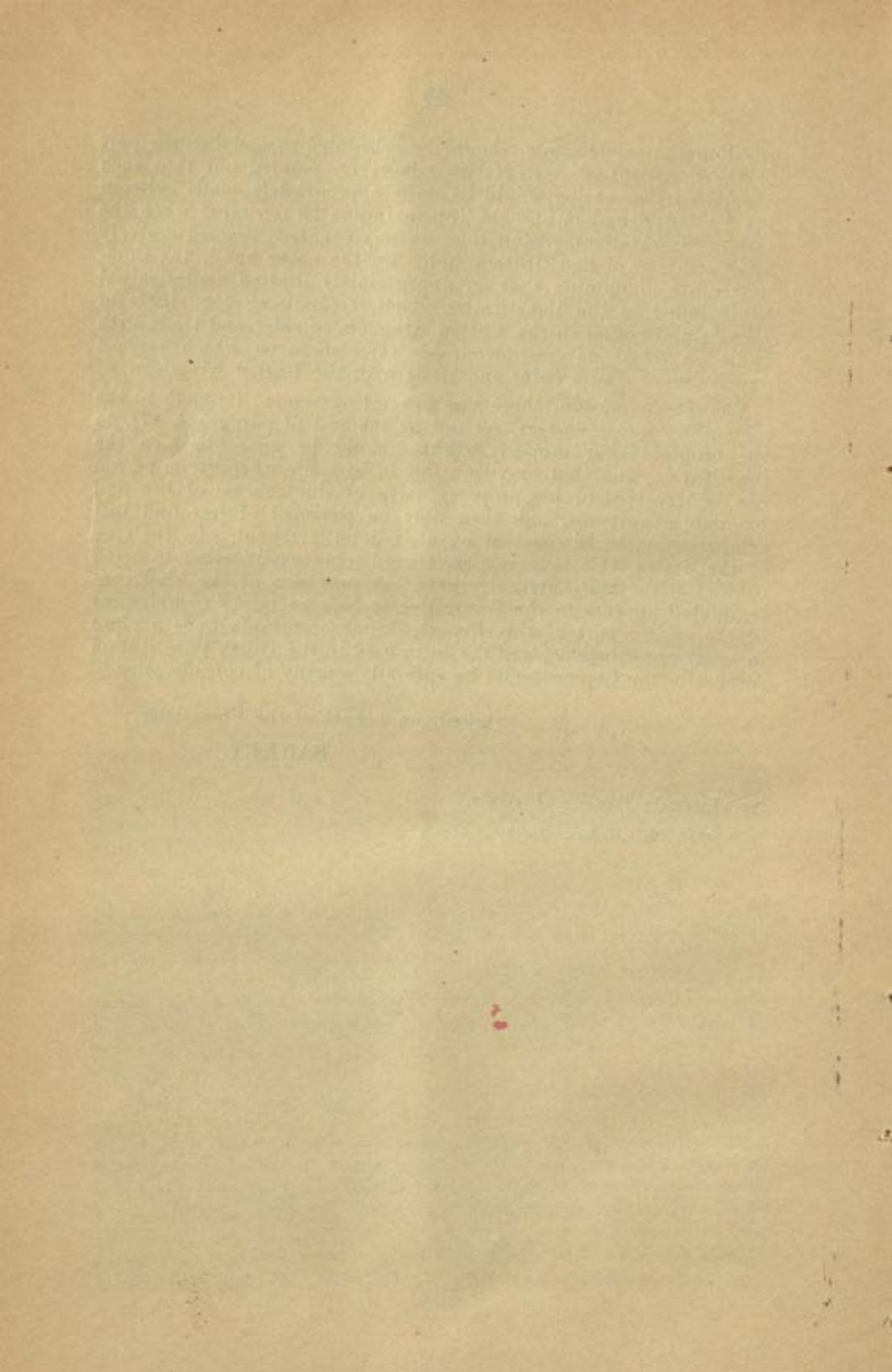
26. In conclusion, there was general agreement (subject to the view of certain members, set out at the end of paragraph 17), to the proposal that property rights should be guaranteed in the constitution, and that provision should be made whereby no person can be deprived of his property, save by due process of law and for public purposes, and then only on payment of fair and just compensation to be assessed by a Judicial Tribunal. In the case of the States, this principle may need some modification to avoid conflict with their internal rights. A provision of the kind contemplated appears to the Committee to be a necessary complement of the earlier part of this Report. Such a formula finds a place in many constitutions, and the form used in the Polish Constitution seemed to the Committee to be specially worthy of consideration.

Signed, on behalf of the Committee,

SANKEY.

ST. JAMES'S PALACE, LONDON.

27th November, 1931.



Indian Round Table Conference

(SECOND SESSION)

Second Report
of the
Minorities Committee

39469



Indian Round Table
Conference

SECOND SESSION

Second Report
of the
Minorities Committee



MINORITIES COMMITTEE

(Second Session)

COMPOSITION.

| | |
|-------------------------------------|--------------------------------------|
| Mr. Ramsay MacDonald (Chairman). | Khan Bahadur H. Hidayat Hussain. |
| *Mr. Wedgwood Benn. | *Sir M. Iqbal. |
| Mr. Isaac Foot. | Mr. N. M. Joshi. |
| *Mr. A. Henderson. | *Pandit M. M. Malaviya. |
| *Sir Samuel Hoare. | Sir P. C. Mitter. |
| Sir William Jowitt. | Dr. B. S. Moonje. |
| Lord Peel. | *Mrs. Sarojini Naidu. |
| Lord Reading. | Diwan Bahadur Raja Narendra Nath. |
| *Lord Snell. | Rao Bahadur A. T. Pannir Selvam. |
| Major Stanley. | Sir A. P. Patro. |
| *Lord Zetland. | Diwan Bahadur Ramachandra Rao. |
| H. H. The Aga Khan. | Mr. B. Shiva Rao. |
| *Sir Saiyed Ali Imam. | Sir Sultan Ahmed. |
| *Maulana Shaukat Ali. | Sir M. Shafi. |
| Dr. B. R. Ambedkar. | Sardar Sampuran Singh. |
| *Mr. E. C. Benthall. | Mr. Srinivasa Sastri. |
| *Mr. G. D. Birla. | Sir Chimanlal Setalvad. |
| Sir H. Carr. | Sir P. Sethna. |
| †Mr. C. Y. Chintamani. | Dr. Shafa'at Ahmad Khan. |
| The Nawab of Chhitari. | Begum Shah Nawaz. |
| *Maulvi M. Shafi Daoodi. | Rao Bahadur Srinivasan. |
| *Dr. S. K. Datta. | Mrs. Subbarayan. |
| Mr. Fazl-ul-Huq. | Sardar Ujjal Singh. |
| *Mr. M. K. Gandhi. | Mr. Zafrullah Khan. |
| Mr. A. H. Ghuznavi. | |
| Sir Henry Sidney. | |
| *Sir P. Ginwala. | |

* Denotes new members.

† Did not attend the Second Session.

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REPORT.

The Report of sub-Committee No. III (Minorities) approved by the Committee of the whole Conference on 19th January, 1931, recorded that opinion was unanimous "that in order to secure the co-operation of all communities which is essential to the successful working of responsible government in India, it was necessary that the new constitution should contain provisions designed to assure the communities that their interests would not be prejudiced, and that it was particularly desirable that some agreement should be come to between the major communities in order to facilitate the consideration of the whole question." In these circumstances, it recommended that "the Conference should register an opinion that it was desirable that an agreement upon the claims made to it should be reached and that the negotiations should be continued between the representatives concerned, with the request that the result of their efforts should be reported to those engaged in the next stage of these negotiations."

2. The Committee resumed its deliberations on 28th September, and met subsequently on 1st October, 8th October and 13th November. It had the assistance in its discussions of the representative of the Congress Party.

3. At the first meeting of the resumed Committee on 28th September it was reported that informal negotiations were proceeding between certain of the communities concerned, and after discussion it was unanimously agreed that, in order to give these negotiations an opportunity to reach a conclusion, the Committee should adjourn until 1st October. On its meeting on that day a further motion of adjournment until Thursday, 8th October, to enable the continuance of the negotiations, was moved by Mr. Gandhi and unanimously accepted. It was agreed that the problem of the Depressed Classes and other smaller minorities would form part of the communal problem which was to be the subject matter of the conversations.

4. At the third meeting of the Committee on Thursday, 8th October, Mr. Gandhi reported that the negotiations which had taken place had unfortunately proved entirely abortive, despite the utmost anxiety on the part of all concerned to reach a satisfactory outcome. After considerable discussion it was agreed that the Committee should be adjourned for a further period to enable fresh efforts to be made to reach agreement between the various interests affected. It was decided in this connection that two schemes designed to overcome the communal difficulties in connection with the position in the Punjab which had been prepared by Sardar Ujjal Singh and Sir Geoffrey Corbett should be circulated for the consideration of the Delegates. These schemes are printed as Appendices XVII and XVI to our Report. A scheme for the solution of the communal problem prepared by the Indian National Congress, to which reference was made by Mr. Gandhi at the meet-

ing of the Committee on 8th October, and which was subsequently circulated at his request, is printed as Appendix I.

5. No further meeting took place until 13th November. The intervening period was devoted to private negotiation. At the meeting on 13th November it appeared, however, that despite every effort on the part of the negotiators, it had unfortunately proved impossible to devise any scheme of such a character as to satisfy all parties. The representatives of the Muslims, Depressed Classes, Anglo-Indians, a section of the Indian Christians* and the European commercial community intimated that they had reached an agreement *inter se*, which they formally presented for the consideration of the Committee, and which is printed as Appendix III to this Report. But the course of the discussion on 13th November made it clear that the agreement in question was not regarded as acceptable by the Hindu or Sikh representatives, and that there seemed no prospect of a solution of the communal question as the result of negotiation between the parties concerned.

6. The Committee has, in these circumstances, to record with deep regret that it has been unable to reach any agreed conclusion on the difficult and controversial question which has been the subject of its deliberations.

7. It was agreed at the meeting of 13th November that statements or proposals which had been submitted by the representatives of various interests with the object of finding a satisfactory solution of the problem before the Committee or of inviting attention to aspects of that problem of special importance to the community they represented, should be appended to the Report of the Committee. The documents in question are accordingly printed as Appendices.

8. During the various discussions suggestions were made that the British Government should settle the dispute on its own authority. These suggestions, however, were accompanied by such important reservations that they afforded little prospect of any such decision securing the necessary harmony in working, but the Prime Minister, as Chairman of the Committee, offered to act, and give a decision of temporary validity, if he were requested to do so by every member of the Committee signing an agreement to pledge himself to support his decision so as to enable the constitution to be put into operation, further efforts for an all-Indian settlement being pursued in the meantime.

Signed, on behalf of the Committee,

J. RAMSAY MACDONALD.

St. James's Palace, London.

18TH NOVEMBER, 1931.

* Rao Bahadur A. T. Pannir Selvam subscribed to the Agreement, from which, however, Dr. S. K. Datta expressed dissent in the Minorities Committee.

APPENDIX I.

THE CONGRESS SCHEME FOR A COMMUNAL SETTLEMENT.

(Circulated at the request of Mr. M. K. Gandhi.)

However much it may have failed in the realisation, the Congress has, from its very inception, set up pure nationalism as its ideal. It has endeavoured to break down communal barriers. The following Lahore resolution was the culminating point in its advance towards nationalism:—

"In view of the lapse of the Nehru Report it is unnecessary to declare the policy of the Congress regarding communal questions, the Congress believing that in an independent India communal questions can only be solved on strictly national lines. But as the Sikhs in particular, and the Muslims and the other minorities in general, have expressed dissatisfaction over the solution of communal questions proposed in the Nehru Report, this Congress assured the Sikhs, the Muslims and other minorities that no solution thereof in any future constitution will be acceptable to the Congress that does not give full satisfaction to the parties concerned."

Hence, the Congress is precluded from setting forth any communal solution of the communal problem. But at this critical juncture in the history of the Nation, it is felt that the Working Committee should suggest for adoption by the country a solution though communal in appearance, yet as nearly national as possible and generally acceptable to the communities concerned. The Working Committee, therefore, after full and free discussion, unanimously passed the following scheme:—

1. (a) The article in the constitution relating to Fundamental Rights shall include a guarantee to the communities concerned of the protection of their cultures, languages, scripts, education, profession and practice of religion and religious endowments.

(b) Personal laws shall be protected by specific provisions to be embodied in the constitution.

(c) Protection of political and other rights of minority communities in the various Provinces shall be the concern and be within the jurisdiction of the Federal Government.

2. The franchise shall be extended to all adult men and women.

(Note A.—The Working Committee is committed to adult franchise by the Karachi resolution of the Congress and cannot entertain any alternative franchise. In view, however, of misapprehensions in some quarters, the Committee wishes to make it clear that in any event the franchise shall be uniform and so extensive as to reflect in the electoral roll the proportion in the population of every community.)

3. (a) Joint electorates shall form the basis of representation in the future constitution of India.

(Note B.—Wherever possible the electoral circles shall be so determined as to enable every community, if it so desires, to secure its proportionate share in the Legislature.)

(b) That for the Hindus in Sind, the Muslims in Assam and the Sikhs in the Punjab and N. W. F. P. and for Hindus and Muslims in any Province where they are less than 25 per cent. of the population, seats shall be reserved in the Federal and Provincial Legislatures on the basis of population with the right to contest additional seats.

4. Appointments shall be made by non-party Public Service Commissions which shall prescribe the minimum qualifications, and which shall have due regard to the efficiency of the Public Service as well as to the principle of

* Note B is not part of the scheme but has been added by me as not being inconsistent with the scheme.
(Intld.) M.K.G.

equal opportunity to all communities for a fair share in the Public Services of the country.

5. In the formation of Federal and Provincial Cabinets interests of minority communities should be recognised by convention.

6. The N. W. F. Province and Baluchistan shall have the same form of government and administration as other Provinces.

7. Sind shall be constituted into a separate Province, provided that the people of Sind are prepared to bear the financial burden of the separated Province.

8. The future constitution of the country shall be federal. The residuary powers shall vest in the federating Units, unless, on further examination, it is found to be against the best interest of India.

The Working Committee has adopted the foregoing scheme as a compromise between the proposals based on undiluted communalism and undiluted nationalism. Whilst on the one hand the Working Committee hopes that the whole Nation will endorse the scheme, on the other, it assures those who take extreme views and cannot adopt it, that the Committee will gladly, as it is bound to by the Lahore resolution, accept without reservation any other scheme, if it commands the acceptance of all the parties concerned.

October 28th, 1931.

APPENDIX II.

MEMORANDUM ON THE CONGRESS FORMULA OF COMMUNAL SETTLEMENT.

By Dr. B. S. Moonje.

On behalf of the Hindu Mahasabha, I, as its working president, hereby express my whole-hearted approval to the assurance given by the Congress, that "no solution thereof (i.e., of communal question) in any future constitution will be acceptable to the Congress that does not give full satisfaction to the parties concerned."

As for the details of the scheme, of the communal solution, I have to suggest amendments as follows:—

(1) In clause 1 (a) and (b) regarding the fundamental rights, the following should be added as (c):—

"None shall be prejudiced by reason of his caste or creed in acquiring or enjoying civil and economic rights including the right of owning, purchasing or disposing of landed estates in the open market, and of freedom of choice of any profession or calling, and all laws existing at present, and acting prejudicially to the enjoyment of these rights should automatically lapse."

(2) In clause 2, note (a), the words "if possible" be added after the words "so extensive as to reflect." The object is to remove the ambiguity of the meaning of the note as it stands. It should clearly mean that in any event the franchise should be uniform, irrespective of the fact whether it reflects or does not reflect in the electoral roll the proportion in population of every community.

(3) The clause 3 (b) should be modified as follows:—

That in any scheme of minority protection by reservation of seats, no minority community in any Province should have reservation below its population strength and it must have the right to contest additional seats.

(4) The clause 4 be modified as follows:—

(a) That no person shall be under any disability for admission to any branch of Public Service merely by reason of his religion or caste.

(b) That in any Province and in connection with the Central Government, a Public Service Commission be appointed and recruitment to Public Services be made by such a Commission on considerations of highest efficiency and qualification available for any particular Service, thereby securing the two-fold object of maintaining the Services on a high level of efficiency, and leaving open a fair field for competition to all communities to secure fair representation.

Minimum qualification will not make for efficiency. Public Services constitute the soul of Swarajya. We cannot afford to put up with less efficiency in our Swarajya than at least what prevails at present under British responsibility. But if we aspire, as we should, to have our Swarajya prospering in competition with that of Nations of Europe and America, we ought not to think lightly of efficiency even with the object of placating this or that so-called backward community. Considerations, therefore, of maintaining efficiency in administration at the highest possible standard makes it obligatory to demand the highest necessary qualification from those who offer themselves for recruitment to Public Services irrespective of considerations of caste or creed.

(c) That membership of any Community caste or creed should not prejudice any person for purposes of recruitment, or be a ground for promotion or supersession in any Public Service.

(5) The clause 5 be modified as follows:—

That as regards formation of Federal and Provincial Cabinets, political exigencies will inevitably lead to proper conventions, suitable to the conditions then existing in the different Legislatures. Therefore without interfering with the constitutional freedom of party leaders who have to form Cabinets, in the choice of their Ministers, representatives of minorities of considerable numbers should, as far as possible, be included in the formation of Central and Provincial Cabinets.

(6) The clause 7 be modified as follows:—

As is freely and unreservedly admitted by no less a person than Sir Shah Nawaz Bhutto, a most influential representative of the Sind Muslims in the Round Table Conference, in his interview published in the Times of India, August 1st, 1931, "question of separation of Sind is not the creation of outside politicians, nor is it a part of communal politics." Therefore the question should have no bearing whatsoever on what is known as the problem of communal settlement. It should be considered purely on merit, and it cannot be so considered unless the problem is entrusted for consideration to a Boundaries Commission of experts. If, however, the Government were to accept the separation of Sind, ignoring the opposition of the Hindus of Sind, who have not been given any representation on this Round Table Conference, and the Hindu Mahasabha, to placate the Muslims, it will then be impossible to resist the claim of Sikhs for accepting their scheme of the partition of the Punjab to satisfy the Sikhs.

(7) The clause 8 dealing with the question of residuary powers should be modified as follows:—

That the question of vesting the residuary powers in the federating Units or in the Central Government is in essence a purely constitutional problem, and thus the opinion of the constitutional experts should prevail. But broadly speaking, it shall be in the best interest of the country as a whole that they should be vested in the Central Government rather than in the federating Units. A strong Central Government is the only sure protective agent of the constitutional rights and liberties of the federating Units.

(8) As for the general question of joint versus separate electorates it should be noted that the scheme of separate electorates was devised for the protection of the minority community. A community which is in majority in any Province is not therefore legitimately entitled to demand separate electorates. But the Hindu Mahasabha has a fundamental objection to the system of

separate electorates, and thus we cannot agree to it for reasons which have been so eloquently expressed by Sir Austen Chamberlain in the League of Nations in the following words:—

“It was certainly not the intention of those who have devised the system of minority protection, to establish in the midst of a Nation a community which would remain permanently estranged from national life. The object of minorities treaties was to secure that measure of protection and justice for the minorities which would gradually prepare them to be merged in the national community to which they belong.”

It is well worth to quote here also what the Greek representative, Mr. Dendramis, in the Council of the League of Nations said:—“The authors of the treaties (Minorities Treaties) had not intended to create a group of citizens who would collectively enjoy special rights and privileges; they had intended to establish equality of treatment between all nationals of a State. If privileges were granted to the minority in any country, inequality would be created between this minority and the majority. The latter would be oppressed by the minority, and it would then be the majority which would have to engage the attention of the League of Nations.”

It is perhaps not generally known that the total number of the Muslims (about 20 millions) living in the Provinces with the Hindu majority is very much smaller than that of the Hindus (about 30 millions) who live in the Provinces with Muslim majority. But the Hindus have always felt the confidence of being able to hold their own in competition with their Muslim majorities without the adventitious aids of protection such as separate electorates, etc.

But if the Government were still to maintain separate electorates for the majority community in any Province, it should confer on the minorities of that Province the privilege of demanding joint electorates with the majority. If a minority community in any Province were thus to elect for joint electorates, the constitution should provide for the establishment of joint electorates in that case irrespective of the fact whether the majority community does, or does not, consent.

APPENDIX III.

PROVISIONS FOR A SETTLEMENT OF THE COMMUNAL PROBLEM, PUT FORWARD JOINTLY BY MUSLIMS, DEPRESSED CLASSES, INDIAN CHRISTIANS,* ANGLO-INDIANS AND EUROPEANS.

CLAIMS OF MINORITY COMMUNITIES.

1. No person shall by reason of his origin, religion, caste or creed, be prejudiced in any way in regard to public employment, office of power or honour, or with regard to enjoyment of his civic rights and the exercise of any trade or calling.

2. Statutory safeguards shall be incorporated in the constitution with a view to protect against enactments of the Legislature of discriminatory laws affecting any community.

3. Full religious liberty, that is, full liberty of belief, worship observances, propaganda, associations and education, shall be guaranteed to all communities subject to the maintenance of public order and morality.

No person shall merely by change of faith lose any civic right or privilege, or be subject to any penalty.

4. The right to establish, manage and control, at their own expense, charitable, religious and social institutions, schools and other educational establishments with the right to exercise their religion therein.

* See also note by Dr. S. K. Datta, Appendix XVIII, page 103.

5. The constitution shall embody adequate safeguards for the protection of religion, culture and personal law, and the promotion of education, language, charitable institutions of the minority communities and for their due share in grants-in-aid given by the State and by the self-governing bodies.

6. Enjoyment of civic rights by all citizens shall be guaranteed by making any act or omission calculated to prevent full enjoyment an offence punishable by law.

7. In the formation of Cabinets in the Central Government and Provincial Governments, so far as possible, members belonging to the Mussulman community and other minorities of considerable number shall be included by convention.

8. There shall be Statutory Departments under the Central and Provincial Governments to protect minority communities and to promote their welfare.

9. All communities at present enjoying representation in any Legislature through nomination or election shall have representation in all Legislatures through separate electorates and the minorities shall have not less than the proportion set forth in the Annexure but no majority shall be reduced to a minority or even an equality. Provided that after a lapse of ten years it will be open to Muslims in Punjab and Bengal and any minority communities in any other Provinces to accept joint electorates, or joint electorates with reservation of seats, by the consent of the community concerned. Similarly after the lapse of ten years it will be open to any minority in the Central Legislature to accept joint electorates with or without reservation of seats with the consent of the community concerned.

With regard to the Depressed Classes no change to joint electorates and reserved seats shall be made until after 20 years' experience of separate electorates and until direct adult suffrage for the community has been established.

10. In every Province and in connection with the Central Government a Public Services Commission shall be appointed, and the recruitment to the Public Services, except the proportion, if any reserved to be filled by nomination by the Governor-General and the Governors, shall be made through such Commission in such a way as to secure a fair representation to the various communities consistently with the considerations of efficiency and the possession of the necessary qualifications. Instructions to the Governor-General and the Governors in the Instrument of Instructions with regard to recruitment shall be embodied to give effect to this principle, and for that purpose—to review periodically the composition of the Services.

11. If a Bill is passed which, in the opinion of two-thirds of the members of any Legislature representing a particular community affects their religion or social practice based on religion, or in the case of fundamental rights of the subjects if one-third of the members object, it shall be open to such members to lodge their objection thereto, within a period of one month of the Bill being passed by the House, with the President of the House who shall forward the same to the Governor-General or the Governor, as the case may be, and he shall thereupon suspend the operation of that Bill for one year, upon the expiry of which period he shall remit the said Bill for further consideration by the Legislature. When such Bill has been further considered by the Legislature and the Legislature concerned has refused to revise or modify the Bill so as to meet the objection thereto, the Governor-General or the Governor, as the case may be, may give or withhold his assent to it in the exercise of his discretion, provided, further, that the validity of such Bill may be challenged in the Supreme Court by any two members of the denomination affected thereby on the grounds that it contravenes one of their fundamental rights.

SPECIAL CLAIMS OF MUSSULMANS.

A. The North-West Frontier Province shall be constituted a Governor's Province on the same footing as other Provinces with due regard to the necessary requirements for the security of the Frontier.

In the formation of the Provincial Legislature the nominations shall not exceed more than 10 per cent. of the whole.

B. Sind shall be separated from the Bombay Presidency and made a Governor's Province similar to and on the same footing as other Provinces in British India.

C. Mussulman representation in the Central Legislature shall be one-third of the total number of the House, and their representation in the Central Legislature shall not be less than the proportion set forth in the Annexure.

SPECIAL CLAIMS OF THE DEPRESSED CLASSES.

A. The constitution shall declare invalid any custom or usage by which any penalty or disadvantage or disability is imposed upon or any discrimination is made against any subject of the State in regard to the enjoyment of civic rights on account of Untouchability.

B. Generous treatment in the matter of recruitment to Public Service and the opening of enlistment in the Police and Military Service.

C. The Depressed Classes in the Punjab shall have the benefit of the Punjab Land Alienation Act extended to them.

D. Right of Appeal shall lie to the Governor or Governor-General for redress of prejudicial action or neglect of interest by any Executive Authority.

E. The Depressed Classes shall have representation not less than set forth in the Annexure.

SPECIAL CLAIMS OF THE ANGLO-INDIAN COMMUNITY.

A. Generous interpretation of the claims admitted by sub-Committee No. VIII (Services) to the effect that in recognition of the peculiar position of the community special consideration should be given to the claim for public employment, having regard to the maintenance of an adequate standard of living.

B. The right to administer and control its own educational institutions, i.e., European education, subject to the control of the Minister.

Provisions for generous and adequate grants-in-aid and scholarships on the basis of present grants.

C. Jury rights equal to those enjoyed by other communities in India unconditionally of proof of legitimacy and descent and the right of accused persons to claim trial by either a European or an Indian jury.

SPECIAL CLAIMS OF THE EUROPEAN COMMUNITY.

A. Equal rights and privileges to those enjoyed by Indian-born subjects in all industrial and commercial activities.

B. The maintenance of existing rights in regard to procedure of criminal trials, and any measure or bill to amend, alter, or modify such a procedure cannot be introduced except with the previous consent of the Governor-General.

Agreed by:—

HIS HIGHNESS THE AGA KHAN (Muslims),

DR. AMBEDKAR (Depressed Classes),

RAO BAHADUR PANNIR SELVAM (Indian Christians),

SIR HENRY GIDNEY (Anglo-Indians),

SIR HUBERT CARR (Europeans).

ANNEXURE.

REPRESENTATION IN LEGISLATURES.

Figures in brackets—Population basis 1931 figures and depressed percentages as per Simon Report.

| | Strength of Chamber. | Hindu. | | | Muslims. | Christians. | Sikhs. | Anglo-Indians. | Tribal, etc. | Europeans. | |
|----------------------------|----------------------|--------|------------|--------|----------|-------------|--------|----------------|--------------|------------|--|
| | | Caste. | Depressed. | Total. | | | | | | | |
| <i>Centre.</i> | | | | | | | | | | | |
| All India (1931) | | | | | | | | | | | |
| Upper | 200 | (47.5) | (19)* | (66.5) | (21.5) | 1 | 6 | 1 | — | 4 | * Represents percentage in Governor's Provinces of B. I. |
| Lower | 300 | 123 | 45 | 168 | 100 | 7 | 10 | 3 | — | 12 | |
| Assam | 100 | (48.9) | (13.4) | (62.3) | (34.8) | 3 | — | 1 | — | 10 | * Pop figures exclude Tribal Areas. |
| Bengal | 200 | (18.3) | (24.7) | (43) | (54.9) | 2 | — | 3 | — | 20 | |
| Bihar and Orissa | 100 | (67.8) | (14.5) | (82.3) | (11.3) | 1 | — | 1 | 3 | 5 | |
| Bombay | 200 | (68) | (8) | (76) | (20) | 2 | — | 3 | — | 13 | On Sind being separated weightage Muslims in Bombay to be on the same footing as to the Hindus in the N.W.F.P. |
| C. P. | 100 | (63.1) | (23.7) | (86.8) | (44) | 1 | — | 2 | 2 | (2.7) | |
| Madras | 200 | (71.3) | (15.4) | (86.7) | (7.1) | (3.7) | — | 4 | 2 | (3.75) | |
| Punjab | 100 | (15.1) | (13.5) | (28.6) | (56.5) | 1.5 | (13) | 1.5 | — | (2.1) | |
| U. P. | 100 | (53.1) | (26.4) | (79.5) | (14.8) | 1 | — | 2 | — | (2.4) | |
| Sind and N.W.F.P. | | | | | | | | | | | Weightage similar to that enjoyed by the Muslims in the Provinces in which they constitute a minority of the population, shall be given to the Hindu minority in Sind and to the Hindu and Sikh minorities in the N.W.F.P. |

EXPLANATORY MEMORANDUM TO APPENDIX III.

1. The suggested details for community representation have not been agreed by the Hindus or the Sikhs, but the full representation claimed by the latter in the Central Legislature is provided for.
2. The proposed distribution of seats for the different minorities constitutes a whole scheme and the detailed proposals cannot be separated one from another.
3. This distribution of seats follows the principle that in no case is the majority community to be reduced to the position of a minority or even equality.
4. No representation is provided for Commerce, Landlords, Industry, Labour, etc., it being assumed that these seats are ultimately communal and that communities desiring special representation for these interests may do so out of the communal quota.
5. The allowance of 33½ per cent. representation to Muslims in the Central Legislature is based on the assumption that 26 per cent. shall be from British India and at least 7 per cent. by convention out of the quota assigned to the Indian States.
6. In the Punjab the suggested common sacrifice by the Muslims, Caste Hindus and the Depressed Classes, would permit of a weightage of 54 per cent. being given to the Sikhs, giving them representation of 20 per cent. in the Legislature.
7. The proposals may be taken as being acceptable to well over 115 millions of people, or about 46 per cent. of the population of India.

APPENDIX IV.*

SIKHS AND THE NEW CONSTITUTION FOR INDIA.

Memorandum by Sardar Ujjal Singh and Sardar Sampuran Singh.

The Sikhs are an important and distinct community, mainly concentrated in the Punjab, of which they were the rulers until 1849. Sikhism recognises no caste and strictly enjoins upon those who profess it to treat all human beings as equal. In religious ideals and social practices they are as different from the Hindus as the Muslims are.

The Simon Commission states: "Sikhism remained a pacific cult until the political tyranny of the Mussulmans and the social tyranny of the Hindus converted it into a military creed. It is a striking circumstance that this small community contributed no less than eighty thousand men" (actually, 89,000 combatant recruits, in addition to 30,000 already serving when war broke out) "to serve in the Great War—a larger proportion than any other community in India."

The Sikhs play a great part in the economic and civic life of the country. In the Punjab, with three million population (13 per cent. of the whole), the Sikhs pay 25 per cent. of the land revenue and 40 per cent. of the land revenue and water rates combined, the main source of the Provincial Exchequer. They maintain at their own expense over 400 schools and 3 colleges, open to all communities and classes without distinction. They have got a large number of holy shrines, which are the centres of Sikh culture and tradition.

The Sikhs claim that their interests should be adequately and effectively protected in the future constitution. On account of their unrivalled position in the Punjab—historical, political and economic—they claim 30 per cent. representation in the Provincial Legislature. This demand is not un-

* See also Appendix XIX.

reasonable when it is remembered that the Muslim minority in the United Provinces, with a corresponding population, are enjoying 31 per cent. At the last Round Table Conference, in a spirit of accommodation, we came down to 24 per cent. The Muslims, wherever they are a minority, claim weightage. In the Punjab they claim to have their majority ensured by Statute. The Simon Report observes: "It would be unfair that Muhammadans should retain the very considerable weightage they now enjoy in the six Provinces, and that there should at the same time be imposed, in face of Hindu and Sikh opposition a definite Muslim majority in the Punjab and in Bengal unalterable by any appeal to the electorate." Moreover, the Muslims' demand for this majority is made on a basis of separate electorates, which means that the other two communities could not even influence the permanent majority, chosen as it would be by constituents swayed by none but communal motives and aims. It is a denial of the fundamental rights of a community that it should be put in a position which allowed of no peaceful method of appeal against a government that proved itself incompetent or patisan, especially if that government was so constituted as to stereotype and perpetrate religious differences which go back to bitter memories. In view of the claim of the President of the last All-India Muslim Conference, we believe that to write the garrison Province of India into the constitution as an unalterably Muslim Province would be to make the dismemberment of India inevitable. That claim, it will be remembered, was that there should be a "consolidated North-West State, within or without the British Empire," consisting of the Punjab, North-West Frontier Province, Baluchistan and Sind. We cannot accept a constitution which relegates us for all time to the position of an ineffective opposition.

If the Muslims refuse to accept in this Province, where they are in a slight majority in population (56 per cent.), anything but their present demand of a reserved majority, we ask for a territorial re-arrangement which would take from the Punjab, the Rawalpindi and Multan divisions (excluding Lyallpur and Montgomery districts). These divisions are overwhelmingly Muslim, as well as racially akin to the North-West Frontier Province; their inclusion in the Punjab is a recent thing, due to conquest by Ranjit Singh. These overwhelmingly Muslim districts, with a population of seven millions can either form a separate Province, which will give the Muslims another majority Province, or be amalgamated with North-West Frontier. This re-arrangement would leave a Punjab of about sixteen millions in which no single community would have an absolute majority and each community would be obliged to conciliate the others. If this solution also is unacceptable to our Muslim brethren we should prefer no change from the present constitution in the Punjab.

A counter proposal of partition of the Punjab has emanated from Sir Geoffrey Corbett, which is open to serious economic and racial objections and which is based upon an absolute misunderstanding of the Sikh position. The main object of any scheme of territorial redistribution should be to satisfy the conflicting claims of the Muslims and the Sikhs in the Punjab. But this scheme seeks to increase still further the Muslim majority by the separation of Ambala division from the Punjab and thereby places the Sikhs in a far worse position than any in which they would find themselves in the existing Punjab. It is therefore entirely unacceptable to the Sikhs.

We summarise below the unanimous demands of the Sikh community for which any scheme of new constitution should make provision before it can be accepted by the Sikhs.

Punjab.

1. The Sikhs are anxious to secure a National Government and are therefore opposed to any communal majority by Statute or any reservation of seats by law for a majority community.

2. The Sikhs occupy an unrivalled position in the Punjab as is reflected by their sacrifices in the defence of India, and in national movements and

their stake in the Province, and therefore demand 30 per cent. representation in the Punjab Legislature and Administration.

3. In the Punjab Cabinet and the Public Service Commission the Sikh community should have a one-third share.

4. If no agreement is reached on the above basis, the boundaries of the Punjab may be so altered by transferring predominantly Muhammadan areas to the Frontier Province so as to produce a communal balance. In this reconstituted Punjab there should be joint electorates, with no reservation of seats.

5. If neither of the above alternatives is acceptable, the Punjab may be administered by the newly constituted responsible Central Government till mutual agreement on the communal question is arrived at.

6. Punjabi should be the official language of the Province. It should be optional with the Sikhs and others to use Gurmukhi script if they so desire.

Central.

7. The Sikhs should be given 5 per cent. of the total number of seats reserved for British India in each of the Upper and Lower Houses.

8. There should always be at least one Sikh in the Central Cabinet.

9. In case an Army Council is constituted the Sikhs should be adequately represented on it.

10. The Sikhs have always had a special connection with the Army and therefore the same proportion of Sikhs should be maintained in the Army as before the War.

11. The Sikhs should have effective representation in the all-India Services and should be represented on Central Public Service Commission.

12. All residuary powers should vest in the Central Government.

13. The Central Government should have special specified powers to protect minorities.

Other Provinces.

14. The Sikhs should have the same weightage in other Provinces as is accorded to other minorities.

General.

15. The Provincial and Central Government should declare religious neutrality and while maintaining existing religious endowments should not create new ones.

16. The State should provide for teaching of Gurmukhi script where a certain fixed number of scholars is forthcoming.

17. Any safeguards guaranteed in the constitution for the Sikhs should not be rescinded or modified without their express consent.

November 12th, 1931.

APPENDIX V.

CLAIMS OF THE HINDU MINORITY OF THE PUNJAB.

Memorandum by Raja Narendra Nath.

I enclose a Memorandum which sets forth the claims of the Hindu minority of the Punjab; but I believe that my views are shared by the Hindus of all Provinces in which they are in a minority. I may here mention that the number of Hindus in Provinces in which they are in a minority (assuming that Sind is separated) comes up to nearly 29 millions, and the number of Muslims in which they are in a minority (proceeding on the assumption of the separation of Sind) comes to only about 20 millions. In a Federal system of government in which the Provinces are autonomous, the question of

Minorities in Provinces assumes very great importance. The Hindu minority point of view deserves as much, if not greater, consideration than the point of view of the Muslim minority. A disregard of Hindu interests will create resentment and discontent among a larger number of human beings than a disregard of the interests of the Muslim minorities so far as Provincial Governments are concerned. The political leaders of different Parties in England have declared more than once that the future of the constitution of India must create a feeling of security among the minorities. No such feeling of security will be produced among the Hindus if the claims put forward in the enclosed Memorandum are disregarded.

The Memorandum is brief, and therefore does not deal with reasons on which the claims are based.

1. The Hindus look upon separate electorates as prejudicial to the interests of a minority community. But if the constitution must begin with separate electorates, and it is not provided that they cease after five years, then the Hindus want the following clause to be inserted in the constitution:—

For election to all elected bodies—

(i) The voters of a minority community shall be brought on the same register with the voters of another minority community if the members of the elected body representing the two minority communities pass a resolution or make a requisition to the Head of Government supported by a majority of two-thirds of each community severally that the change be made.

(ii) The voters of a minority community shall be brought on the same register with the voters of a majority community when the members belonging to the minority community in that body pass a resolution or make a requisition to the Head of the Government supported by a majority of two-thirds that the change be made.

(iii) In either case the change shall be made in the election next following.

Although the Hindu minority is better educated than most of the other minorities, they object to any plan of referendum on this point to the Hindu minority. The proposing of the resolution or the making of the requisition referred to in the above clause must be left to the discretion of the representatives of the electorates in the elected bodies.

I may here mention that the fear of the Punjab Muslims that even in tracts in which Muslims are in a majority, the Hindu minority, on account of their intelligence and wealth, will swamp the elections, is unfounded and is not borne out by the result of elections to the District Board. In districts in which Muslims predominate, Hindus fail in elections to the Board.

The Hindus of the Punjab have no objection to separate electorates for the Europeans and Anglo-Indians or for Christians and Depressed Classes. I doubt, however, if all these classes in the Punjab want separate electorates. In July last a Conference of Hindus, Sikhs and Christians was held at Lahore, which I attended, and resolutions in support of joint electorates were passed. On the 11th September last, whilst passing through Delhi, an Address was presented to me by the Depressed Classes in which they protested against their being separated from the Hindus. However, if there has been a change in their attitude and they want separate electorates in the Punjab, I have no objection.

2. The Hindus of the Punjab want reservation of seats, both in the Provincial Council and the Federal Assembly, in proportion to their population. If special constituencies are retained, as I presume they will be, only such constituencies should be reckoned in making up this proportion as have a majority of Hindu voters.

I may here remark, with regard to the population figures of the Depressed Classes and their proportion in the population of each Province, given at page 40 of Vol. I of the Report of the Statutory Commission, that the figures no longer hold good for the Punjab. Enormous increase has taken place in the

Sikh and Muslim population of the Punjab, the number of Sikhs having gone up from 2,294,207 in 1921 to 3,064,144 in 1931, and the number of Muslims from 11,444,321 to 13,332,460, which means an annual increase during the last ten years of nearly 76,000 in the case of the Sikhs, and of 188,000 in the case of the Muslims. This extraordinary increase in the case of both these communities has presumably taken place by the absorption of Depressed Classes within their ranks. On the other hand, a new religious community designated "Adi-Dharmis" is shown in the census figures for the first time in the Punjab. This presumably represents the number of Depressed Classes or at least those who want to be separated from other religious communities. Their number is 399,307 or 1·7 per cent. of the total population of the Province. The proportions given in the Simon Report, therefore, cannot be taken as a guide so far as the Punjab is concerned.

3. I understand that a claim about the services has been put forward by other minorities. They want that a minimum standard of education should be fixed with due regard to efficiency, and that each community should have a fair and adequate share. The Hindu minority think that a vague provision like this will be prejudicial to their interests. A minimum standard of education "with due regard to efficiency" alludes to two incompatible factors. If efficiency has to be borne in mind, why should the requisite standard of education be low? The Hindus want that the constitution should contain a direction indicated in para. 105 of Despatch No. 44 of the Court of Directors, dated 10th December, 1834—"But the meaning of the enactment we take to be that there shall be no governing caste in India and that whatever tests of qualifications may be adopted *distinction of race and religion shall not be of the number.*"

No one, on account of his caste or creed, should be prejudiced in any way for recruitment to Public Services or for promotion to any office, but a proportion, the maximum of which may now be found, may be reserved for a certain number of years to redress communal inequalities and to suit backward classes. There is no need for lowering the general standard of efficiency for all recruits. The Government of India have reserved 33 per cent. of the appointments to the Imperial Services for this purpose. The same rule should be adopted with regard to the Provincial and Subordinate Services. The fixation of proportions should not be left to the discretion of the Head of the Executive or of the Public Services Commission to be appointed by him.

4. The Prime Minister in his speech dated 19th July, 1931, said as follows:—

"In framing the constitution, His Majesty's Government considers it will be its duty to insert provisions guaranteeing to the various minorities, in addition to political representation, that differences of religion, race, sect or caste, shall not themselves constitute civic disabilities."

The clause defining fundamental rights is all right, but I suggest the addition of the following words:—

"and shall not prejudice anyone in the exercise and enjoyment of civic and economic rights."

(See para. 3 of the last Report of the Minorities sub-Committee.)

November 15th, 1931.

APPENDIX VI.

MEMORANDUM.

By Dr. B. S. Moonje.*

The Hindu Mahasabha's opinion on the Muslim demands is as follows:—

1. The Hindu Mahasabha holds strongly the view that communal representation is fundamentally opposed to nationalism and gradually creates an

* This Memorandum was first submitted during the First Session of the Conference.

increasing desire for the assertion of communal difference in various departments of public administration. The Sabha also thinks that this principle is unsuited to responsible Government in which preferences based on communal distinctions are out of place. In the working of responsible Government full freedom should be given for the growth of healthy adjustments satisfactory to the desire of minorities to take their proper place in the public life of the country. These adjustments, however, are born of experience and are the result of goodwill and understanding, which must have some time given to them to assert themselves. The Sabha, therefore, is of opinion that the future *Swaraj* in India should be laid on sound lines and no arrangements should be made here which will have the result, as experience shows, of increasing the communal tension, or of keeping the minorities in isolated compartments from one another or from the majority community. The Sabha, therefore, wishes to state that the following principles should be kept in view in framing any constitution for India:—

(a) That there shall be uniformity of franchise for all communities in each Province.

(b) That elections to all the elective bodies shall be by mixed electorates.

(c) That there shall be no reservations of seats on communal considerations on any of the elective bodies and educational institutions. But to start with, if a minority community in any Province were to demand a reservation of seats, such reservation may be granted only in the Legislatures for a short period.

(d) That the basis of representation of different communities shall be uniform, such as voting strength, taxation or adult population.

(e) That in no circumstances shall there be any reservation of seats in favour of any majority community in any Province.

(f) That the redistribution of Provinces in India, if and when necessary, shall be made on merits in the light of principles capable of a general application with due regard to administrative, financial and other similar considerations.

(g) That no new Provinces shall be created with the object of giving a majority therein to any particular community so that India may be evolved as one united nation, instead of being subdivided into Muslim India, Sikh India, Christian India and Hindu India.

2. Regarding the Muslim demand for separation of Sind, the Hindu Mahasabha, while agreeing to the principle of redistribution of Provinces as stated above in Section 1, sub-section 2, is opposed to it for the following reasons:—

(a) The creation of any new Provinces primarily or solely with a view to increase the number of Provinces in which a particular community shall be in majority is fraught with danger to the growth of sound patriotism in the country and will contribute to the growth of a sentiment favouring the division of India into different groups according to differences of religion.

(b) Redistribution of any Province without the consent and agreement of the two communities, Hindu and Muslim, is likely to increase the area of communal conflict and endanger the relations between the two communities not only in that Province, but throughout India. The Hindu community in Sind is against such separation.

(c) Separation of Sind will not only be financially a costly proposition, but would also arrest its economic development and its educational advancement. Besides, it will deprive the people of Sind of the many undeniable benefits of their association with the more advanced people of the Bombay Presidency in their economic as well as their political development.

(d) Sind, if separated, may not be able to bear the financial burden of carrying on a separate administration without help either from the Central or the Bombay Government.

(e) Bombay has invested large amounts of money, particularly in the Sukkur Barrage, and that alone will be a great impediment to separation, at any rate for some years to come.

3. Regarding the introduction of reforms in the North-Western Frontier Provinces and Baluchistan on the same footing as the other Provinces, the Hindu Mahasabha has in principle no objection, but it considers it an impracticable proposition for the immediate future. The Hindu Mahasabha, therefore, proposes that immediate steps be taken to secure to the Province with as little delay as possible the benefits of a regular system of administration, both judicial and executive, so that the Province may be prepared for the reformed constitution.

4. As regards the demand for provision giving the Muslims an adequate share in the Public Services of the State, the Hindu Mahasabha holds that there shall be no communal representation in the Public Service, which must be open to all communities on the basis of merit and competency, ascertained through open competitive tests.

5. As regards the Muslim demand that no Cabinet, either Central or Provincial, shall be formed without there being a proportion of Muslim Ministers, the Hindu Mahasabha cannot approve of the proposal, as it is a negation of the wholesome principle of joint responsibility of the Cabinet. In the future responsible Government the Cabinet will be formed by the Chief Minister selecting his own men, as in other self-governing countries. The Hindu Mahasabha, therefore, is of opinion that nothing shall be done to fetter his freedom to make his own selection of his colleagues on the Cabinet. He will naturally select such colleagues irrespective of their communities as will ensure strength and stability to the Cabinet.

6. As regards representation of minorities in the Legislatures, Central or Provincial, the Hindu Mahasabha stands for joint electorates, and a temporary provision for, say, the lifetime of the next two Legislatures, for reservation of seats for the minorities on the basis of their adult population or their voting strength, whichever shall be favourable to them. The system of reservation shall automatically disappear after the lapse of the period fixed.

7. Regarding the demand for vesting residuary powers in the Provincial Governments, the Hindu Mahasabha cannot agree to it, and stands for strong Central Government.

8. The Hindu Mahasabha stands for full religious liberty, i.e., liberty of belief, worship, observance, propaganda, association and education to be guaranteed to all communities alike, provided these rights are not exercised in such a way as to be provocative, offensive or obstructive to others.

9. The Hindu Mahasabha believes in the potency of joint electorates to further the cause of evolution of India as one united nation, but if the Muslims believe that they cannot do without separate electorates the Hindu Mahasabha will be reluctantly obliged to agree to it provided that the Muslims adhere to the Lucknow Pact, and its provisions are not contravened or exceeded. The Hindu Mahasabha is of the opinion that it would be unfair to allow the Muslims to take all the benefits given to them under that arrangement for separate electorates, and also to claim other concessions.

10. The above statement is without prejudice to the Hindu Mahasabha's contention that the Muslims in India, having regard to their numerical strength and other circumstances, are not a minority of such a nature as the League of Nations has in view when it considers the claims of minorities. The Muslims in India are a numerically strong, well organised, vigorous and potent body with great facilities for self-development. There are other minorities like the Depressed Classes, Christians, Parsees, etc., who are infinitely weaker than the Muslims in all material respects, and the Sabha thinks it would be difficult to resist the claims of these minorities to concessions similar to those demanded by the Muslims if these are granted to the Muslims. The Sabha is anxious that India should not be split up on the

very threshold of a new constitution, besides the Sabha is and always has been willing that all minorities, including the Muslims, which require special protection in the matter of religion, education and culture, should have the fullest opportunities for self-development, self-expression and self-protection. On a perusal of the arrangements made by the League of Nations in the case of many minorities in new provinces formed in Europe after the War, it will be clear that in no case have any claims been allowed like those the Muslims are putting forward in India.

11. The Sabha is willing that the whole of the Hindu-Muslim problem should be referred to individuals, or to a body like the League of Nations, who have dealt with such questions in the past, and have experience of them in other countries. It is necessary that the Hindu-Muslim problem should be examined by impartial men, who have experience of such questions, and who will have the courage to solve them with impartiality.

12. The Hindu Mahasabha here feels the need of emphasising the point that the League of Nations, while providing for full legitimate protection to the minorities in matters concerning their religion, culture and social customs, has scrupulously refrained from discriminating the nationals of a State on the basis of their religions, cultures or languages, as is demanded by the Muslims of India in the public administration of the country, where, according to the League of Nations, principles of freedom and equality in the political, economic and legal spheres should prevail.

The Sabha concludes this statement by saying that in the solution of this communal question the caution must ever be borne in mind which was voiced by an expert of the League of Nations who was called upon to examine the minorities question, in his report as follows:—

“It seems to me obvious that those who conceived this system of protection (of minorities) did not dream of creating within certain States a group of inhabitants who would regard themselves as permanently foreign to the general organisation of the country. . . . We must avoid creating a State within a State, we must prevent the minority from transforming itself into a privileged class, and taking definite form as a foreign group instead of becoming fused in the society in which it lives. If we take the exaggerated conception of the autonomy of minorities to the last extreme, these minorities will become a disruptive element in the State and a source of national disorganisation.”

SUPPLEMENTARY STATEMENT BY DR. B. S. MOONJI.

This is a statement supplementary to the statement that was presented to the Conference during the last session.

FUNDAMENTAL RIGHTS.

1. The Hindu Mahasabha stands for making provision in the constitution for full protection of the different cultures, religions, languages, script and personal laws of the different minorities.

2. As for civic and economic rights none shall be prejudiced by reason of his caste or creed in acquiring or enjoying those rights which should expressly include the rights of owning, purchasing or disposing of landed properties in the open market without any restrictions of any kind whatsoever and of freedom of choice of any profession or calling. All laws existing at present in India based on caste discriminations similar to those existing in Kenya based on colour prejudices, and are acting prejudicially to the enjoyment of these rights, should automatically lapse.

That no person shall be under any disability for admission to any branch of public service merely by reason of his religion or caste.

Membership of any community or caste or creed should not prejudice any person for purposes of recruitment to public services or be a ground for non-admission, promotion or supersession in any public service.

RECRUITMENT TO PUBLIC SERVICES.

3. As for the method of recruitment to public services, there should be appointed a Public Services Commission in every province and in connection with the Central Government. The recruitment to public services should be made by such a commission on considerations of highest efficiency and qualifications necessary and available for any particular service, by open competition, thereby securing the two-fold object of maintaining the services on high level of efficiency and leaving open a fair field of competition to all communities to secure fair representation.

Minimum qualifications will not make for efficiency. The public services constitute the soul of Self-Government. It will not be safe to have less efficiency in administration than at least what prevails at present under British responsibility; but if the aspiration be, as it should be, to have our self-government in India prospering in competition with that of the nations of Europe and America it will not do to think lightly of efficiency even with the object of placating this or that so-called backward community. Considerations therefore of maintaining efficiency in administration at the highest possible standard make it obligatory to demand the highest necessary qualifications from those who offer themselves for recruitment to public services, irrespective of caste or creed.

FRANCHISE.

4. As for Franchise it may be made as extensive as possible but it should be uniform for all communities in each province irrespective of the fact whether it does or does not reflect in the electoral roll the proportion in population of every community in the province.

ELECTORATES, JOINT OR SEPARATE.

5. As for the general question of joint *versus* separate electorates it should be noted that the scheme of separate electorates was devised for the protection of a minority community. A community which is in majority in any province is not therefore legitimately entitled to demand separate electorates. But the Hindu Mahasabha has a fundamental objection to the system of separate electorates and thus cannot agree to it for reasons which have been so eloquently given expression to by Sir Austen Chamberlain in the League of Nations in the following words:—

“It was certainly not the intention of those who have devised the system of the Minorities protection to establish in the midst of a nation a community which would remain permanently estranged from national life. The object of the Minorities treaty was to secure that measure of protection and justice for the Minorities which would gradually prepare them to be merged in the national community to which they belong.”

In this connection it is well worth quoting what the Greek representative, Mr. Dendramis, in the Council of the League of Nations has said:—

“The authors of the treaties (Minorities Treaties) had not intended to create a group of citizens who would collectively enjoy special rights and privileges. They had intended equality of treatment between all the nationals of a state. If privileges were granted to minorities in any country, inequality would be created between this Minority and the Majority. The latter would be oppressed by the Minority and it would then be the Majority which would have to engage the attention of the League of Nations.”

This description will very appropriately apply to the situation in India that will arise if the Moslem demands are conceded. It is perhaps not generally known that the total number of Moslems (about twenty millions) living in the provinces with Hindu Majority is very much smaller than that of the Hindus (about 30 millions) who live in provinces with Moslem Majority. But the Hindus have always felt the confidence of being able to hold their own in competition with their Moslem majorities, without the adventitious aids of protection, such as separate electorates, reservation in services, etc.

The Constitutional difficulty that is created by the Moslem demand for separate electorates cannot be brought to light more vividly than in the following words of the Prime Minister in his speech in the House of Commons in January last:—

“If every constituency is to be ear-marked, as to community or interest, there will be no room left for the growth of what we consider to be purely political organisations which would comprehend all the communities, all creeds, all conditions of faith. If India is going to develop a robust political life, there must be room for national political parties based upon conceptions of India's interests and not upon the conceptions regarding the well-being of any field that is smaller or less comprehensive than the whole of India.”

But if the Government were still to maintain separate electorates for the majority community in any province, it should at least confer on the minorities of that province the privilege of demanding joint electorates with the majority. If a minority community in any province were thus to elect for joint electorates the constitution should provide for the establishment of joint electorates in that case irrespective of the consent thereto of the majority community.

PROTECTION OF MINORITIES.

6. The Hindu Mahasabha being fundamentally opposed to separate electorates, and to provision of protection by reservation of seats for a majority community in any province, if any scheme of minority protection be devised by reservation of seats in the joint electorates, then no minority community in any province should have reservation below its population strength and it must also have the right to contest additional seats on equal terms with all others.

WEIGHTAGE IN REPRESENTATION.

7. As for the demand for weightage in representation, it is impossible to entertain the proposal in view of the entirely separatist mentality which has inspired the demands. The impracticability of the demand cannot be emphasised in better words than in those of no less a person than the Prime Minister himself who says in his speech in the House of Commons:—

“It is very difficult again to convince these very dear delightful people that if you give one community weightage, you cannot create weightage out of nothing. You have to take it from somebody else. When they discover that they become confused indeed and find that they are up against a brick wall.”

But if the principle of weightage be still maintained it would be only proper and just that uniformity be observed in fixing the proportion of weightage.

FORMATION OF CABINETS.

8. As regards formation of Central, Federal and Provincial Cabinets, political exigencies will inevitably lead to proper conventions suitable to the conditions then existing in the different legislatures. Therefore, without interfering with the constitutional freedom of the party leaders who are

to form the Cabinets, in the choice of their ministers, representatives of the minorities of considerable numbers should as far as possible be included in the formation of Central and Provincial Cabinets.

RESIDUARY POWERS.

9. As regards the question as to whether the residuary powers should be vested in the Federating units or in the Central Government, it is in essence a purely constitutional problem, where opinions of constitutional experts should prevail. But broadly speaking it will be in the best interests of the country as a whole that they should be vested in the Central Government rather than in the Federating units. A strong Central Government is the only sure protecting agent of the constitutional rights and liberties of the Federating units and also of the Minorities in the provinces.

SEPARATION OF SIND.

10. As for the question of separation of Sind, it is freely and unreservedly admitted by no less a person than Sir Shah Nawaz Bhooto, a most influential representative of the Sind Moslems on the Round Table Conference, in his interview published in the *Times of India* of August 1st, 1931, that "the question of the separation of Sind is not the creation of the outside politicians nor is it a part of the Communal politics". Therefore the question should have no bearing whatsoever on what is known as the problem of Communal settlement. It should be considered purely on merit and it cannot be so considered unless the problem is entrusted to a Boundaries Commission of experts.

In this connection it ought to be noted that there was no representative of the Sind Hindus on the Round Table Conference and its Sind sub-Committee. The decision of the Committee therefore is regarded by the Hindus of Sind as *ex parte*, and is repudiated by them and the Hindu Mahasabha as such. If, however, the Government were still to accept the separation of Sind, ignoring the protests of the Sind Hindus and the Hindu Mahasabha, simply to placate the Moslems, it would then be impossible to resist the claim of Sikhs for accepting their scheme of partition of the Punjab to satisfy the Sikhs.

OUTLOOK ON PROBLEM OF MINORITIES.

11 In fact the whole question of minorities is being looked at from a most unnatural point of view under the plausible excuse of protection for minorities. As Edmund Burke has said:—

"Parliament is not a congress of Ambassadors from different and hostile interests, which interests each must maintain as an agent and advocate against other agents and advocates, but Parliament is a deliberative Assembly of one nation with one interest, that of the whole people; where not local purposes, not local prejudices ought to guide, but the general good resulting from the general reason of the whole."

16th November 1931.

APPENDIX VII.

*SUPPLEMENTARY MEMORANDUM ON THE CLAIMS OF THE DEPRESSED CLASSES FOR SPECIAL REPRESENTATION.

By Dr. Bhimrao R. Ambedkar and Rao Bahadur R. Srinivasan.

In the memorandum that was submitted by us last year dealing with the question of political safeguards for the protection of the Depressed Classes

* For previous memorandum see Appendix III to Proceedings of the Minorities sub-Committee of the First Session of the Conference.

in the constitution for a self-governing India, and which forms Appendix III to the printed volume of Proceedings of the Minorities sub-Committee, we had demanded that special representation of the Depressed Classes must form one of such safeguards. But we did not then define the details of the special representation we claimed as being necessary for them. The reason was that the proceedings of the Minorities sub-Committee came to an end before the question was reached. We now propose to make good the omission by this supplementary memorandum so that the Minorities sub-Committee, if it comes to consider the question this year, should have the requisite details before it.

I.—EXTENT OF SPECIAL REPRESENTATION.

A. *Special Representation in Provincial Legislatures.*

(i) In Bengal, Central Provinces, Assam, Bihar and Orissa, Punjab and the United Provinces, the Depressed Classes shall have representation in proportion to their population as estimated by the Simon Commission and the Indian Central Committee.

(ii) In Madras the Depressed Classes shall have twenty-two per cent. representation.

(iii) In Bombay:—

(a) In the event of Sind continuing to be a part of the Bombay Presidency the Depressed Classes shall have sixteen per cent. representation.

(b) In the event of Sind being separated from the Bombay Presidency the Depressed Classes shall enjoy the same degree of representation as the Presidency Muslims, both being equal in population.

B. *Special Representation in the Federal Legislature.*

In both Houses of the Federal Legislature the Depressed Classes shall have representation in proportion of their population in India.

Reservations.

We have fixed this proportion of representation in the Legislatures on the following assumptions:—

(1) We have assumed that the figures for the population of the Depressed Classes given by the Simon Commission (Vol. I, p. 40) and the Indian Central Committee (Report, p. 44) will be acceptable as sufficiently correct to form a basis for distributing seats.

(2) We have assumed that the Federal Legislature will comprise the whole of India, in which case the population of the Depressed Classes in Indian States, in Centrally Administered Areas, and in Excluded Territories, besides their population in Governor's Provinces, will form very properly an additional item in calculating the extent of representation of the Depressed Classes in the Federal Legislature.

(3) We have assumed that the administrative area of the Provinces of British India will continue to be what they are at present.

But if these assumptions regarding figures of population are challenged, as some interested parties threaten to do, and if under a new census over which the Depressed Classes can have no control the population of the Depressed Classes shows a lower proportion, or if administrative areas of the Provinces are altered, resulting in disturbing the existing balance of population, the Depressed Classes reserve their right to revise their proportion of representation and even to claim weightage. In the same way, if the all-India Federation does not come into being, they will be willing to submit to readjustment in their proportion of representation calculated on that basis in the Federal Legislature.

II.—METHOD OF REPRESENTATION.

1. The Depressed Classes shall have the right to elect their representatives to the Provincial and Central Legislature through separate electorates of their voters.

For their representation in the Upper House of the Federal or Central Legislature, if it is decided to have indirect election by members of the Provincial Legislatures, the Depressed Classes will agree to abandon their right to separate electorates so far as representation to the Upper House is concerned subject to this: that in any system of proportional representation arrangement shall be made to guarantee to them their quota of seats.

2. Separate electorates for the Depressed Classes shall not be liable to be replaced by a system of joint electorates and reserved seats, except when the following conditions are fulfilled:—

(a) A referendum of the voters held at the demand of a majority of their representatives in the Legislatures concerned and resulting in an absolute majority of the members of the Depressed Classes having the franchise.

(b) No such referendum shall be resorted to until after twenty years and until universal adult suffrage has been established.

III.—NECESSITY OF DEFINING THE DEPRESSED CLASSES.

The representation of the Depressed Classes has been grossly abused in the past inasmuch as persons other than the Depressed Classes were nominated to represent them in the Provincial Legislatures, and cases are not wanting in which persons not belonging to the Depressed Classes got themselves nominated as representative of the Depressed Classes. This abuse was due to the fact that while the Governor was given the power to nominate persons to represent the Depressed Classes, he was not required to confine his nomination to persons belonging to the Depressed Classes. Since nomination is to be substituted by election under the new constitution, there will be no room for this abuse. But in order to leave no loophole for defeating the purpose of their special representation we claim—

(i) That the Depressed Classes shall not only have the right to their own separate electorates, but they shall also have the right to be represented by their own men.

(ii) That in each Province the Depressed Classes shall be strictly defined as meaning persons belonging to communities which are subjected to the system of untouchability of the sort prevalent therein and which are enumerated by name in a schedule prepared for electoral purposes.

IV.—NOMENCLATURE.

In dealing with this part of the question we would like to point out that the existing nomenclature of Depressed Classes is objected to by members of the Depressed Classes who have given thought to it and also by outsiders who take interest in them. It is degrading and contemptuous, and advantage may be taken of this occasion for drafting the new constitution to alter for official purposes the existing nomenclature. We think that they should be called "Non-caste Hindus," "Protestant Hindus," or "Nonconformist Hindus," or some such designation, instead of "Depressed Classes." We have no authority to press for any particular nomenclature. We can only suggest them, and we believe that if properly explained the Depressed Classes will not hesitate to accept the one most suitable for them.

We have received a large number of telegrams from the Depressed Classes all over India supporting the demands contained in this Memorandum.

November 4th, 1931.

APPENDIX VIII.

MEMORANDUM ON THE CLAIMS OF INDIAN CHRISTIANS.

By Rao Bahadur A. T. Pannir Selvam.

Some of the statements made by the Congress representative and the attitude of the Indian National Congress towards the vital needs of the minority interests make it imperative that I should re-state my case on behalf of the Indian Christians.

Mr. Gandhi was reported to have said in last March as follows: "If instead of confining themselves to purely humanitarian work and material service to the poor, they (the foreign missionaries) limit their activities, as they do at present, to proselytising by means of medical aid, education, etc., then I would certainly ask them to withdraw. Every nation's religion is as good as any other. Certainly India's religions are adequate for her own people. We need no converting spiritually." This provoked criticisms and aroused fears and suspicions all round.

Replying to "correspondents angry or curious," Mr. Gandhi characterised, in his *Young India* of April 23rd, the report as a travesty of his views, and explained: "If instead of confining themselves to purely humanitarian work such as education, medical services to the poor, and the like, they would use these activities of theirs for the purpose of proselytising, I would certainly like them to withdraw. Every nation considers its own faith to be as good as that of any other. Certainly India's religions are adequate for her people. India stands in no need of conversion from one faith to another"

The rejoinder did not, however, improve the position.

Now, Mr. Gandhi undeniably occupies the unique position of leader, even dictator, of the strongest organised political body in India, which presumably is destined to be the ruling power in the event of *Swaraj*. One might, therefore, justifiably assume Mr. Gandhi's statement to be indicative of the policy of the future governing class towards all proselytising faiths. The Christian community has been selected for the first warning, probably because of their comparative numerical helplessness. Naturally enough, Mr. Gandhi's words have been received with a stir of genuine apprehension by the great majority of Indian Christians. Subsequently he had "no doubt that in India under *Swaraj* foreign missionaries will be at liberty to do this proselytising 'in the wrong way'".

Further, the Congress resolution on the question of fundamental rights was studiously silent on the question of proselytising or preaching religion, although Mr. George Joseph, one time lieutenant of Mr. Gandhi, had specially written on the subject to the Convener of the Subjects' Committee and had a reply to the effect that there would be no difficulty.

If the fears and anxieties of a minority community, such as mine, as to their right of freedom of conscience under a *Swaraj* Government, are to be allayed, I feel that there should be some statutory provision such as the following in the future constitution of the country:—

"1. Every person of whatever race, caste, creed, or sex shall have the right to freely and openly profess, practise, and preach his religion, subject to public order and morality. He shall also have the right to convert by peaceful, legitimate, and constitutional methods, others to his faith.

2. No person shall, merely by reason of his change of faith, lose any of his civil rights or privileges or be subject to any penalty.

3. Persons belonging to any religion shall have a right to establish, manage, and control, at their own expense, charitable, religious, and social institutions, schools, and other educational establishments, with the right to exercise their religion therein; and where specific sums of money from public funds, as set out in the State Budget or in the

Budget of local or other public authorities, are to be devoted to education, religion, or philanthropy, a due share in the use and enjoyment of such sums shall be secured to these institutions as well."

Again, the attitude of the Congress spokesman to the representation of minorities in the legislative bodies has been peculiarly curious. If he had ruled out definitely all special representations, his position would have been intelligible. Having agreed to special representation of the Hindus, the Sikhs and the Muslims, how could the same privilege, in fairness, be denied to the other communities? Mr. Gandhi's "historical grounds" are hardly historical! Students of real history know that Christianity in India is at least centuries older than the Mussulman invasion of the country; and was flourishing in the land before the origin of Sikhism. Christians have played a very prominent part in the building up of the public weal, and are therefore entitled to the same consideration as the sister communities. Mr. Gandhi's "historical grounds," it would appear, have reference to the Lucknow and other Congress resolutions. The Christians as a community have never been a party to any of the pacts or resolutions of the Congress, and they should therefore not be denied with impunity their rights for adequate separate representation in the future Legislatures of their country.

The Christians are, after all, the third largest religious community in India, numerically much superior to the Sikhs. The social and economic condition of the Christians, and the fact that they are scattered about the country, make it essential that their representation should be through a separate electorate of their own. Reservation of seats in a joint electorate is impracticable in their case, and would hardly safeguard or serve their interests.

I claim, therefore, on behalf of the Indian Christian community, that, in addition to the elemental right to profess, practise, and act up to the teachings of their religion, they should be given the right of representation through a separate electorate in the various legislative bodies of the new constitution, and that they should be given such other privileges and rights as may be conceded to the other minority communities in India.

October 20th, 1931.

APPENDIX IX.

*FUNDAMENTAL RIGHTS TO BE INCORPORATED IN THE NEW CONSTITUTION FOR INDIA FOR THE ANGLO-INDIAN AND DOMICILED EUROPEAN COMMUNITY.

Memorandum by Sir Henry Gidney.

To give effect to the resolution passed in the Services sub-Committee, Clause 5 (4) of which reads:—

"The sub-Committee recognise the special position of the Anglo-Indian community in respect of public employment and recommend that special consideration should be given to their claims for employment in the Services,"

the Anglo-Indian community demands the inclusion of the following clauses in the Fundamental Rights:—

(1) *Political rights as a community with adequate representation in both Federal and Provincial Legislatures in proportion to their part in the life of the country and the right of electing their own representatives.*

(2) *Employment in Services.*—(a) It shall receive special employment on a living wage, based on their standard of living, in the Executive and Ministerial Services in every administrative department of the State.

(b) That the same number of Anglo-Indians and domiciled Europeans per centum of the total number of persons employed in such Services as are

employed on the date on which the new constitution comes into force shall continue for 30 years after the operation of the new constitution; subject only to the condition that a sufficient number of Anglo-Indians possessing the requisite qualifications is available.

(3) *Education*.—(a) Subject to the powers and control of the Executive Minister it shall be given the right to administer and control its own educational institution, i.e., European education, and, if it so desires, it shall be permitted to levy an educational cess from its own members for the support of its education.

(b) European education shall be specially protected by

(1) the retention of the present grants-in-aid and the generous grant of an adequate number of scholarships;

(2) the creation of an Education Trust Fund, the equivalent of the present total annual expenditure on European education, to which shall be added the funds of the Uncovenanted Service Family Pension Fund and of any other similar Funds created and maintained by members of the community for the moral, educational, or material benefit of Anglo-Indians whether already closed, or about to be closed, owing to the demise of the beneficiaries thereunder or for any reason whatever. The income accruing to the said Trust shall be utilised for the purpose of granting educational scholarships to the members of the community.

(4) *Jury rights*.—All racial discrimination shall be eliminated in jury trials and Anglo-Indians shall be given equal jury rights with other communities in India, by

(a) the demand of "by legitimate descent" now made of the Anglo-Indian alone being deleted from the provisions of the Criminal Procedure Code, Section 4, Clause (1), Sub-Clause (ii);

(b) the accused, whoever he be, being given the right of claiming trial by either a European or an Indian jury and the words "or European as he may desire" being added to Section 275, Clause (i), and Section 284 (a), Clause (i).

DECLARATION OF RIGHTS SUBMITTED BY COL. GIDNEY FOR ALL MINORITY COMMUNITIES TO BE INCORPORATED IN THE NEW CONSTITUTION FOR INDIA ON 19th JANUARY, 1931.

1. *Definition*.—A community shall be classified as a minority community if it shall be notified as such in the *Gazette of India*.

2. *Fundamental Right*.—All subjects of the State in India are equal before the law and possess equal civic rights [U.S.A. Constitution Amendment XIV and Government of Ireland Act, 1920, 10 & 11 Geo. V, Ch. 87, sec. 5 (2)]. Any existing enactment, regulation, order, custom or interpretation of law by which any penalty or disability is imposed upon or any discrimination is made against any subject of the State shall, as from the day on which this constitution comes into operation, cease to have any effect in India.

3. *Representation on Legislatures*.—Adequate representation on the Federal and Provincial Legislatures.

4. *Separate Electorates*.—All minority communities who so desire shall be given separate electorates which shall be retained till 75 per cent. of a community consent to forego the right, and desire otherwise.

5. *Public Service Commission*.—(a) In addition to the Public Service Commission already functioning under the Government of India, there shall be created a Public Service Commission in each Province charged with the duty of recruiting for the Public Services.

(b) Minority communities shall be collectively represented by not less than one of its members on each Provincial Commission and on the Commission already functioning under the Government of India. These representatives shall be nominated by the Governor-General or the Governor as the case may be.

(c) It shall be the duty of the Public Service Commission, subject to the test of efficiency as may be prescribed—

(1) To recruit for the Services in such a manner as shall secure due and adequate representation of all communities, and

(2) to regulate from time to time priority in employment in accordance with the existing extent of representation of the various communities in any particular service.

6. *Representation in Cabinets.*—(1) In the Federal Cabinet, one Minister and two Parliamentary Under-Secretaries shall be chosen from and be collectively representative of the minority communities.

(2) In each Provincial Cabinet one Minister and one Parliamentary Under-Secretary shall be chosen from and be collectively representative of the minority community.

(3) Such Ministers shall be nominated by the Governor-General or the Governor as the case may be and given a special portfolio with a special Statutory Department for the protection of minority interests.

N.B.—If No. 6 cannot be statutorily enacted it should be incorporated in the Instrument of Instructions to the Governor-General and Governors as a specific mandate to them, with powers to act in such matters independently of the views of their Ministry.

7. *Appeal.*—Should the Federal Government or any Provincial Governments fail to comply in any or all of the foregoing provisions an appeal shall lie in the case of an order of the Federal Government to the Secretary of State for India or any other higher tribunal, and in the case of the Provincial Government to the Federal Government in the first place, and from the order of the Federal Government to the Secretary of State for India or any other higher tribunal.

APPENDIX X.

THE MARATHAS AND ALLIED COMMUNITIES.

Memorandum by Mr. B. V. Jadhav.

When the Montagu-Chelmsford Reforms were under consideration the non-Brahmins of Madras and the Marathas of Bombay started an agitation to protect their interests from the dominant influence of the advanced communities. In the Government of India Act of 1919 their claims were recognised and some seats were reserved for them in multiple seat constituencies.

The non-Brahmin movement in Madras is co-extensive with the boundaries of that Province, and in all the four elections they have been able to secure more seats than were reserved to them, and hardly any occasion may have arisen when the concession of reserved seats came into operation. Nobody in Madras is therefore keen on preserving the right of reserved seats.

In the Bombay Presidency the conditions are different. There is, of course, the non-Brahmin movement there also, but it is confined to the Marathas and lingayets of the districts in which the Marathi and Canarese languages are spoken. In Sind and Gujerat the social conditions are vastly different, and there no Hindu community except the Depressed Classes asks for special protection. The Marathas and the allied communities, who have so far enjoyed protection under the reservation clause, are desirous that the concession should be continued for a further period.

It is to be noted that the Government of Bombay are of opinion that the concession is no longer necessary. This was probably due to the absence in the Government of anybody who knew the real condition of the people.

I urged that the concession should be continued.

Four elections were held since the passing of the Government of India Act in 1919. The first election of 1920 and the fourth of 1930 cannot be considered to be normal as the Congress in those years refused to take any part in them. In those years the elections were uncontested in many constituencies, and therefore the success of the Maratha candidates does not show that normally they are able to look after their own interests and do not require any protection. But the elections of 1923 and 1926 were hotly contested. The results of both these elections prove that in the City of Bombay no Maratha candidate would succeed if the right of a reserved seat was taken away. The same is proved by the fate of Maratha candidates in the Ahmednagar and Ratnagiri districts in 1926. Out of the six reserved seats, in three the right of reservation was claimed. The seventh reserved seat is not fixed, but is taken in turn by the districts of Sholapur, Kolaba and West Khandesh. In 1923 this seat was reserved in the Kolaba District but in the Sholapur and West Khandesh districts it was open to all communities without reservation. In this year no Maratha candidate was elected either in Sholapur or West Khandesh.

Similarly, in the following election the seat was reserved in West Khandesh but left open to all communities in Kolaba, and there again the Maratha candidate failed. This will show that the Maratha and allied communities have not yet become sufficiently organised and therefore require protection for a further period.

The principle of reservation works as a safety valve. In ordinary circumstances it does not operate at all but automatically comes into operation only when an emergency arises. It is therefore not necessary to take away the right of reservation. When no longer necessary it will remain unused.

I therefore submit that the right of reserved seats should be continued as under the present Act.

November 18th, 1931.

APPENDIX XI.

LABOUR UNDER THE NEW CONSTITUTION.

Circulated by Mr. N. M. Joshi, Mr. B. Shiva Rao and Mr. V. V. Giri.

I am making this statement on the subject of Labour in the new constitution with the consent and approval of my two colleagues.

First, let me say a word as to the number of those who would come under the category of Labour. Precision is not possible in this matter, as the details of the Census Report of 1931 are not yet fully available. We include in the category of Labour all those who are wage-earners, whether in fields, plantations or factories. A memorandum was prepared in the India Office in 1921 and submitted to the Council of the League of Nations to urge the inclusion of India among the leading industrial states of the world. According to the figures mentioned in that memorandum, there were 27·8 million agricultural workers employed as farm servants and field labourers in India in 1911. This figure includes workers in the tea, coffee, rubber and indigo plantations, but does not include the much larger class of small holders and tenants who numbered at that time over 40 million. The estimate of workers in industries, mining and transport is given as approximately 20·2 million. The total number of workers in India would, therefore, be 48 million.

This was in 1911. During the last 20 years there has been an increase in general population by about 10 per cent. Cultivation has been extended

and industries have been developed on a considerable scale. Our estimate of the total number of workers at the present moment is, therefore, between 55 and 60 million. Of these, an appreciable number is drawn from the Depressed Classes, whose representatives have put forward their special needs and claims, but what exact proportion they form is difficult to say without a proper enquiry. Nevertheless, it is safe to estimate that the rest of Labour, excluding for the moment those belonging to the Depressed Classes, would be about 35 million, or 10 per cent. of India's present population.

(1) *A Declaration of Rights.*—At a meeting of the Minorities sub-Committee last year, Mr. Shiva Rao read out the Declaration of Rights which, in our opinion, should be inserted in the constitution. It may be enlarged to suit the requirements of other minorities, but so far as Labour is concerned, these points should find mention:—

“Recognising that the well-being, physical, moral and intellectual, of the workers of India is of supreme importance in assuring the peace, progress and prosperity of the country, and recalling the solemn obligations of India as a Member of the League of Nations, and of the International Labour Organisation, to endeavour to secure and maintain fair and humane conditions of labour for men, women and children, and to collaborate in the international establishment of social justice, the Commonwealth declares the following principles to be accepted as fundamental principles of the constitution, and as regulating the exercise of the legislative, executive and judicial powers within the Commonwealth:—

(1) It is the duty of every citizen so to use his mental and bodily powers as to contribute to the welfare of the community, and correspondingly it is the duty of the community to secure, so far as lies in its power, that every citizen shall be given the training and opportunities necessary to enable him to maintain by his work a decent standard of living;

(2) The Indian Parliament shall make suitable laws for the maintenance of health and fitness of work of all citizens, the securing of a living wage for every worker, and provision against the economic consequences of old age, infirmity and unemployment;

(3) The protection of motherhood and the rearing of the rising generation to physical, mental and social efficiency are of special concern to the Commonwealth. Women, young persons and children shall, therefore, be protected against moral, spiritual or bodily injury or neglect and against exploitation and excessive or unsuitable employment;

(4) The welfare of those who labour shall be under the special protection of the Commonwealth and the conditions of Labour shall be regulated, from time to time as may be necessary, with a view to their progressive improvement;

(5) The right of workers to express their opinions freely by speech, writing or other means, and to meet in peaceful assembly and to form associations for the consideration and furtherance of their interests, shall be granted by the Commonwealth. Laws regulating the exercises of this right shall not discriminate against any individual or class of citizens on the grounds of religious faith, political opinion or social position;

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

(7) The Commonwealth shall co-operate with other nations in action to secure the realisation of the principle of social justice throughout the world;

(8) All citizens in the Commonwealth have the right to free elementary education without any distinction of caste or creed in the

matter of admission into any educational institutions maintained or aided by the State and such right shall be enforceable as soon as due arrangements shall have been made by competent authority;

(9) All citizens are equal before the law and possess equal civic rights;

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

(2) *Labour Legislation, a Federal Subject with concurrent powers to the Provincial Legislatures.*—Our next point is that labour legislation should be a federal subject, with power for the Provincial or State Legislatures also to legislate but not, as the Royal Commission on Labour observed in its Report issued a few months ago, "so as to impair or infringe the authority" of the Federal Legislature.

(3) *The Ratification of International Labour Conventions to be a concern of the Federal Government.*—We desire that the power to ratify International Labour Conventions should be vested in the Federal Government.

It is not necessary to elaborate either of these points, as they fall really within the scope of the discussions of the Federal Structure Committee, and I still hope I shall have an opportunity of raising them.

(4) *The Introduction of Adult Suffrage.*—For a similar reason I shall not do more than mention the point that the introduction of adult suffrage is vital from the workers' point of view. We found ourselves in a minority in advocating it in the Franchise sub-Committee last year; but we are glad to see that Mr. Gandhi and the Congress are also in favour of it, and we hope that with his powerful assistance we shall secure adult suffrage.

We shall have no objection, if, on detailed enquiry, it be found that universal adult suffrage would be impracticable as the next stage, to some qualification being made, such as raising the age limit to 25 years, provided that the restriction applies equally to all classes. But we do ask for immediate recognition of the principle of adult suffrage in the terms of reference of the Expert Franchise Committee that is hereafter to be appointed.

(5) *Joint Electorates.*—We are opposed to the continuance of separate electorates for communities divided according to religion or race. Our experience of the Indian Trade Union movement strengthens our conviction in the efficacy and soundness of not dividing the community on a religious or racial basis. Communal and racial feelings have had comparatively little influence on the movement and the workers are organised as an economic class, not as Hindus, Muslims or Untouchables. Our grave fear is that communal electorates, with the introduction of adult suffrage, will create a false division among the workers and break the solidarity of the working-class movement. If the workers are divided not on the basis of an economic class, but of religion or race, into Hindus and Muslims and Christians, etc., their proportion of votes in every constituency will be considerably less than if they are allowed to vote together as an economic class, and they are bound to lose the effect and influence they would possess. The vast majority of the workers are illiterate and heavily in debt. Only a small number of the industrial workers is as yet organised, and so far as those engaged in agriculture and on the plantations are concerned, they have been practically untouched by the working-class movement. Under these circumstances it would be an intolerable handicap on the workers to force on them a system of electorates based on religion or race, the demand for which proceeds, not from them, but only from a small section of the educated classes. Moreover, this wrong division will throw a powerful barrier in the way of the development of the movement and prevent the organisation of political forces on an economic basis. The communal problem we hold is a problem of the past. The real problems of the future will be economic and social and it would be wrong to build the constitution in a manner which has no relation to the realities of to-morrow.

We would prefer a division of the electorates on an occupational rather than a communal or a territorial basis, in order to bring into the Legislatures elements which, because of their lack of organisation and influence, might fail to secure adequate representation. But the least we can do now is to oppose the extension of the principle of electorates based on religion or race to the workers as being detrimental to their interests.

Our position is that if adult suffrage is introduced on a basis of joint electorates, and no other special interests are recognised, Labour will not ask for a reservation of seats or the creation of special constituencies. But in the event of even one of these conditions failing to be fulfilled, Labour must have both.

So far as the total number of Labour seats is concerned, we ask for no weightage. But representation of Labour can and must be on the population basis; that is, ten per cent. in the Federal Legislature, and if the decision ultimately be in favour of a bicameral system, then in each House of the Legislature. With regard to the Provincial Legislatures also, the numbers will have to be ascertained in each Province, and the seats allotted in their proportion to the total population of the area.

I cannot do better than quote the following passage from the Report of the Royal Commission on Labour with which we entirely agree:—

The Whitley Commission's Report observes (p. 462)—

"There are several directions in which the adequate representation of Labour should benefit both itself and the community. In the first place, the presence of representatives able to voice the desires and aspirations of Labour and to translate these into concrete proposals is essential for the proper consideration of measures specially affecting Labour. But the welfare of Labour does not depend purely on what may be called labour measures; its good depends on the whole trend of policy and legislation. More adequate representation of Labour is necessary for its protection in this respect, and, if given the opportunity, organised Labour can make a valuable contribution to the wise government of the Commonwealth. Further, the proper representation of Labour is itself educative; the recognition of its claims as a part of the body politic will bring increased responsibility and a sense of unity with the community as a whole. Conversely, exclusion of Labour from a fair share in the councils of the nation will inevitably drive it to rely unduly on other means of making itself felt with injury to itself and to the nation. What we have stated is applicable to labour generally, both agricultural and industrial, and those who have to deal with the representation of labour in detail will no doubt have regard to the whole field."

The Commission has also recommended, it is to be noted, that the principle of election should be substituted for that of nomination, and registered trade Unions should form special constituencies for the purposes of election. We accept these suggestions and trust that they will commend themselves to the Conference.

As regards agricultural and plantation labour, some other method of election will have to be devised, as there are no trade Unions among the workers of these two classes. But we do not think it will be impossible for the Expert Franchise Committee to make concrete suggestions on the point. The question is worth considering whether *Kisan Sabhas*, or organisations of agricultural workers, wherever they exist, may not be registered under a law analogous to the Trade Union Act and regarded as a special electorate. At all events, we ask the Conference to endorse, without qualification, the principle that these millions of workers are entitled to an adequate share in the government of their country.

APPENDIX XII.

MEMORANDUM FOR THE MINORITIES COMMITTEE.

By Sir Chimanlal Setalvad.

It is a thousand pities that the communal difficulties have not yet been solved by agreement of the parties concerned. It is essential for the smooth working of any self-government constitution for India that this matter should be settled by mutual goodwill and understanding and that a feeling of perfect security must be created in the minds of the minorities. But I am afraid that the present deadlock in the solution of the communal problem is being very much exaggerated and is being exploited in certain quarters for retarding the full constitutional advance which India demands.

A critical examination of the points of difference reveals that there is considerably more agreement than disagreement, and the controversial points are narrowed down to small proportions.

It is made to appear as if the Delegates belonging to the minority communities and the Delegates belonging to the majority communities are disagreed on almost every point. The fact is quite the contrary. There is really no difference of opinion on the question that proper safeguards must be provided for ensuring full religious liberty and protection of culture and personal laws of the minorities and that provision should be made against legislation affecting their religion, etc. Further, it is generally agreed that the minorities must be secured a proper share in the Services and, as far as practicable, in the Executive Government. In fact, formulas for these purposes were actually drafted and assented to by the representatives of the various communities last year and hardly anybody wants to go back upon them. The Services sub-Committee of the Conference last year in its Report recommended the text of the provisions to be made for securing to the minorities their proper share in the Services, etc.

As regards certain special demands of the Muslims, *e.g.*, the separation of Sind and the status and constitution of the North-West Frontier Province, agreement was also reached to the satisfaction of the Muslims. As regards the Muslim claim for one-third representation in the Federal Legislature, there has been a general desire to agree to the same, and the question is merely one of method for securing the desired representation. Last year a formula was agreed to that the Muslims were to have one-third of the total number of elected members of British India and also one-third of any nominations of persons other than officials or members of any very small minority. The question of securing to the Muslims further seats so as to make up one-third of the total number of members was left for consideration in connection with the representation of the States. It should not be difficult to secure this by some convention with the States.

As regards the Muslim claim to be allowed the existing weightage in Provinces where they are in a minority there is not any appreciable opposition.

It will thus be seen that on all matters which are really vital and essential there is the largest measure of general agreement.

The disagreement extends to only two matters:—

1. Whether the Muslim and other minorities' representation is to be secured by means of separate electorates or by reservation of seats for them in joint electorates.
2. The allocation of seats in the local Legislatures of the Punjab and Bengal.

As regards the first question—namely, separate *versus* joint electorates—the question has been discussed threadbare both here and in India. It is obvious that in Provinces where the Muslims are in a minority their coming into the joint electorates is more in their interests and for their protection.

Once effective safeguards are provided, as stated above, in the matter of religion, culture, personal laws, social practices, education, fair share in the public services, adequate representation in the Legislature, there is no clash or divergence of interest between the different communities, and it is really safer for the minorities to come into the joint electorates. For, unless the Muslim voters have a voice in the election of the majority community members, the former would have no hold on the latter. This has been recognised by important Muslim leaders such as H.H. The Aga Khan, Mr. Jinnah, and others, and if they are given reservation of seats they will be quite secure. But, whatever the real merits of this question may be, it is perfectly obvious that the Muslims cannot be forced against their wishes to come into the joint electorates.

If they want still to stick to separate electorates they must be allowed to have them. Keeping different communities in separate watertight compartments must inevitably prove a great obstacle in the evolution of national unity and national self-government and will render very difficult in practice the joint responsibility of the Cabinet. It is therefore urged that separate electorates should not be extended farther than where they exist, and the other minorities should be secured their proper representation by reservation in joint electorates. What is hoped is that the Muslims and the Sikhs, after some experience of the new constitution of self-government for India, will see the advantage to themselves and the country of coming into joint electorates. It should therefore be provided that if at any time at least two-thirds of the Muslims' representatives in any Legislature decide in favour of joint electorates, thereafter joint electorates should be established for that Legislature. It is not therefore right to create at this juncture further separate compartments.

As regards the Depressed Classes, my sympathies and those of all right-thinking men are wholly with them. The treatment that they have received in the past and are suffering under even now reflects great discredit on the class Hindus who are responsible for the same; but it will not be patriotic for the Depressed Classes, because of their exasperation, to insist upon separate electorates. They should certainly be made secure by reservation of seats. The percentage of representation to be given to them must depend on various considerations—*e.g.*, the number of people available for the task—and not merely on the thumb rule of numerical proportion. At present in the Central Legislature they have only one seat, and that also by nomination. This is certainly wholly inadequate and unjust, and they should be given immediately a much larger number, to be progressively increased and brought up ultimately to their numerical proportion as by education and other means men fitted for this work become available.

The real and substantial points of disagreement are thus reduced only to the allocation of representation in the local Legislatures of the Punjab and Bengal. The discussions last year as well as this year show that Muslims may be satisfied if they are secured 51 per cent. representation in the Punjab and Bengal, which is less than their numerical proportion on population basis. The Hindus and Sikhs in the Punjab, and in Bengal the Hindus and Europeans (the latter community at present enjoys representation very much in excess of its numbers), must arrive at some adjustment. A question of a couple of seats here or there must not bar a settlement. If, however, communities concerned in these two Provinces are unable to reach agreement, surely their inability to arrive at an adjustment cannot be allowed to stand in the way of the country as a whole attaining self-government, when, as I have shown above, there is practically general agreement as regards all essential safeguards for minorities and there is no difficulty of allocation of representation in the Legislatures of all other Provinces. This particular and narrow issue should be left for decision by the Prime Minister and His Majesty's Government. There is no reason why the Muslims, Hindus, Sikhs, Depressed Classes and Europeans should not, without any hesitation, agree to abide by the decision of the Prime Minister. The Congress claims to be a non-communal body and to have a purely national outlook, and therefore

it and its representative can have no objection to accepting any settlement which the communities concerned may arrive at by this method of decision by the Prime Minister. One tentative and rough-and-ready solution for allocation of seats in the Punjab and Bengal is to accept the Government of India's proposals about it with such variation as may be required in view of the latest census figures.

There is one aspect of joint and separate electorates which I earnestly wish to be considered. I believe there are among the Muslims an appreciable number who prefer joint electorates. There is no reason why those preferring to be in the joint electorates should be denied their liberty of thought and action because the majority of their community wish to have separate electorates. It should be made permissible for members of any community for whom separate electorates are provided to declare their desire to go into joint electorates and be allowed to do so. On such declaration they should be included in the joint register and should be allowed to vote and stand for election in the joint electorate; but such declaration, when made, must ever afterwards be final.

Such a provision will demonstrate the strength of the opinion of those who believe in joint electorates, and will also afford an avenue for ultimately absorbing everybody into joint electorates as the strength of opinion in favour of joint electorates progressively grows.

For the views put forward and the suggestions made by me I beg my brother Delegates' unprejudiced consideration. They are capable of further adjustment wherever necessary, and I implore all to put their heads together for a solution. I have no communal bias and I belong to no communal organisation.

November 9th, 1931.

APPENDIX XIII.

REPRESENTATION OF WOMEN IN THE INDIAN LEGISLATURE.

Memorandum by Mrs. Subbarayan.

The framing of a new constitution for India offers an opportunity for considering fully the question of the representation of women on the Indian Legislatures of the future. It is obviously desirable that the ordinary channels of election should be open to women; but the question arises as to whether there is any likelihood of their securing election through the ordinary poll. Even in Western countries, where it has long been the custom for women to take part in public affairs, very few of them even now secure election to the Legislatures. In India they have only recently begun to emerge into public life, and, moreover, they are in a peculiar position owing to the social disabilities to which they have long been subject. Consequently there is bound to be strong prejudice on the part of both men and women against their coming into the Councils. There are also almost insurmountable practical difficulties to their candidature, such as that few women have sufficient means to stand, that—in our vast electoral areas—it would be extremely difficult for them to tour, to get into touch with voters, etc. It seems obvious that, for a considerable time, until the public becomes sufficiently educated, it is extremely unlikely that women will be returned in India through the ordinary poll. And yet, especially during the first vital and formative years of the new constitution, when the foundations of our social and educational policy (which affect women so closely) and indeed of our policy in all matters, are laid, it will be most important to have women on the Legislatures. They should be there in particular to impress on the Legislatures the necessity for social legislation, which is so urgently required. But besides that contribution to public life, their presence on the Legislatures should be a means of educating the public and of cultivating in women a due

sense of responsibility and administration. Mahatma Gandhi, whose knowledge of political conditions in India is unsurpassed, during his speech at the Federal Structure Committee on September 17th, visualised the possibility of women not being elected to the Legislatures, and indicated his belief that some arrangement should be made to meet this eventuality. If some special provision for securing their presence is not made, it is possible—indeed likely—that their claims will recede further and further into the background. It will have a great effect if, from the start, it is shown in practice as well as in theory, that the co-operation of women on the Legislatures is normal and desirable.

There is considerable support in India for the view that some special provision is necessary. I have received large numbers of letters from women doing important social and educational work in many parts of India, asking me not to fail to press this view on the Conference, otherwise I should have been slow to put it forward. Delegates have no doubt also received a Memorandum opposing it from three women's organisations in India—organisations whose views I sought last year, but was not fortunate enough to secure. Their opposition is apparently based on the belief that, if equality of civic rights is granted to women in India, equality of opportunity in civic service will automatically follow, and that, owing to the part played by women in the recent political struggle, women now realise their strength and do not require special provision. These theories seem to me to be far removed from the realities of the situation. These three women's organisations are associations of importance, but I cannot admit that they speak for the entire womanhood of India. While welcoming the fact that the political struggle has brought many thousands of women out into public life, I feel it essential to acquire a true perspective of the whole picture, and to realise that there remain over a hundred and twenty million women and girls in India, who are still in a state of civic inertia, and who have not yet attained self-confidence or political consciousness. It is for the sake of this overwhelming majority of women that I believe special provision to be necessary. I am convinced that one practical step forward, which will ensure the presence of women on the Legislatures, working side by side with men as a normal feature of our political life, will do more for them than any theories of equality.

The opposition to special provision for women in this Memorandum is also based on the assumption that Adult Suffrage will come into existence. Even if Adult Suffrage is secured, I think the above arguments hold good. If, however, Adult Suffrage is not achieved, or only gradually achieved, then special provision will be all the more necessary.

I have given much anxious thought to the form which such special provision should take. Nomination is obviously unsuitable. The ordinary reservation of seats, involving separate electorates, appropriation of a share of existing seats, and a permanent claim to them, is equally undesirable. The solution which the Women's Delegation advanced last year (*see Minorities sub-Committee proceedings, page 80*)—namely, that the Legislatures themselves, after their own election, should for a temporary period elect a fixed proportion of women to the Legislatures—still seems to me the most suitable. The suggestion then also made—that the proportion of women to be elected should be five per cent. of the elected Legislature, that the temporary period should be for three elections, and that the election of women should be made by proportional representation so as to avoid the complications of the communal question—also seem to me still to be the best fitted to the circumstances. I would, however, now—in order to meet the divergence of views among Indian women on this matter—make a further suggestion, namely, that such a scheme might be *optional* on all Legislatures, Central or Provincial, to adopt or not as they think fit.

It may well be that some other proposal better than the above outlined scheme—one that would attain the same end—may be devised, and in that case I would willingly accept it. In this matter, I regard myself as a member of no party, community or class, but simply as voicing the views of an

educated and intelligent section of women's opinion in India, which believes special provision for women to be in the best interests of women in general and in those of the nation at large (which must inevitably be closely identified with women's interests). It does not seem to us that it is in the least derogatory to ask for such special provision to meet existing facts; nor can it be considered either a privilege or a favour. Indeed, membership of a Legislature, in our opinion, is a heavy responsibility and a duty rather than a privilege or a favour. If we are told that there is no analogy for such a proposal in the constitutions of other countries, I would urge that in this matter we should not be entirely guided by outside precedents. Indeed, the experience of women in other countries suggests that Indian women will be wise in taking steps to strengthen their political status from the very beginning of the new constitution. If such a special measure as has been suggested above for the initial and transitional period could be made, I feel that the position of women in the India of the future would be made secure.

November 11, 1931.

APPENDIX XIV.

MEMORANDUM REPRESENTING THE VIEWS OF A NUMBER OF INDIAN WOMEN'S ORGANISATIONS.

Presented to the Conference by Mrs. Naidu and Begum Shah Nawaz.

MEMORANDUM BY MRS. NAIDU AND BEGUM SHAH NAWAZ WITH REFERENCE TO APPENDIX XIV.

We herewith beg to submit the official Memorandum jointly issued on the status of Indian women in the proposed new Constitution by the All India Women's Conference on Education and Social Reform, the Women's Indian Association and the Central Committee of the National Council of Women in India. These three premier Organisations include the great majority of progressive and influential women of all communities, creeds and ranks who are interested in social, educational, civic or political activities, and are accredited leaders of organised public opinion amongst women.

This Manifesto, signed by the principal office bearers of these important bodies, may be regarded as an authoritative statement of representative opinion, duly considered and widely endorsed, on the case and claim of Indian women.

We have been entrusted with the task of presenting to the Round Table Conference their demand for a complete and immediate recognition of their equal political status, in theory and practice, by the grant of full adult franchise, or an effective and acceptable alternative, based on the conception of adult suffrage.

We are further enjoined to resist any plea that may be advanced by small individual groups of people, either in India or in this country, for any kind of temporary concessions or adventitious methods of securing the adequate representation of women in the Legislatures in the shape of reservation of seats, nomination or co-option, whether by Statute, Convention, or at the discretion of the Provincial and Central Governments. To seek any form of preferential treatment would be to violate the integrity of the universal demand of Indian women for absolute equality of political status.

We are confident that no untoward difficulties will intervene in the way of women of the right quality, capacity, political equipment and record of public service in seeking the suffrages of the nation to be returned as its representatives in the various Legislatures of the country.

We ask that there should be no sex discrimination either against or in favour of women under the new Constitution.

Will you be so good as to treat our covering letter as part of the official document submitted to you on behalf of our Organisations.

November 16th, 1931.

MEMORANDUM ON THE STATUS OF INDIAN WOMEN IN THE PROPOSED NEW CONSTITUTION OF INDIA.

The All-India Women's Conference, The Women's Indian Association and The Central Executive Committee of the National Council of Women in India welcome and endorse the Declaration of the fundamental rights of citizenship in India under the future constitution drawn up by the accredited leaders of the Nation, namely:—

“Equal rights and obligations of all citizens, without any bar on account of sex.

No disability to attach to any citizen by reason of his or her religion, caste, creed or sex in regard to public employment, office, power or honour and in the exercise of any trade or calling.”

OBJECT OF THE PRESENT MEMORANDUM.

This Declaration of the fundamental rights of citizenship in India having been made, the recognition of women's equal citizenship in all matters relating to franchise, representation, or employment has become an accepted principle. The present Memorandum is, therefore, concerned only with the methods by which women may be enabled to exercise to the full their legitimate rights.

The women of India on the basis of their admitted and declared equality, demand that in actual practice no disqualifications or conditions shall be laid down which may hamper them in any way from the fullest exercise of the right of voting at public elections or offering themselves as candidates for seats on Legislative or Administrative institutions. Similarly, no impediments should be placed in their way in the matter of the holding of public office or employment which might, in effect, bar women from taking their full and equal share in civic rights and obligations.

FRANCHISE.

Present Conditions and the Necessity for the Demand.

The experience of women under the existing constitution makes the foregoing demand imperative. In spite of equality in theory, they suffer in practice from a grave inequality owing to the right of voting being conditioned by property-holding or other similar qualification, ordinarily inaccessible to women in India. Though the resolution of the Indian National Congress declare for an immediate acceptance of the principle of adult suffrage, it may be argued nevertheless, that the first step towards the adoption of that principle might require, for its successful practice, the conditioning of the exercise of the right by some qualification of the type above mentioned. However, we cannot but point out that, though the theoretical equality of men and women citizens might conceivably be maintained under such a practice, the position of women will inevitably be rendered wholly unequal under the existing social systems, it being generally recognized that very few women hold or own property in their own name or right.

Again, even if the property qualification for voting or candidature is made nominal, women are likely to suffer as long as our social systems remain as they are.

As compared with men, very few women would have even nominal property in their own names and right, and since a very considerable proportion of the adult women of India is either married or widowed, the voting rights of all such would, on a property basis of any kind have to follow the corresponding rights of their husbands.

There is yet another difficulty to be considered in this connection. Even if the franchise system permits a wife or widow to enjoy the same voting rights as the husband, this position will not commend itself to the educated and thinking women of India, inasmuch as it makes the citizenship of woman contingent on her relationship—past or present—to a man, for a very large proportion of women. We are strongly of opinion *that the Elementary Rights of Women as human beings should not be based on an extraneous factor like Marriage.*

If a literacy test of any kind is introduced as a condition precedent for the exercise of civic rights, women will be placed at a still greater disadvantage, for the obvious reason that there are many more literate men than women.

Moreover, if as is likely and necessary, some age limit is fixed for the exercise of such rights, the handicap on women will be still further increased, for relatively speaking there are fewer literate women above the voting age than below it.

Therefore, the conditioning of the right of franchise, either by property or literacy qualifications, would be *fundamentally inconsistent with the Declaration of Rights above quoted.*

In these circumstances, the All-India Women's Conference, the Women's Indian Association and the Central Executive Committee of the National Council of Women in India, consider the immediate, unqualified and unconditional adoption of the principle of *Adult Franchise* to be the best and most acceptable mode of assuring and securing political equality between the men and women of this country. They unhesitatingly consider all conditions or qualifications or tests for the exercise of this right, whether based on property or literacy, to be needless impediments in the way of the enjoyment by women of civic equality.

Accordingly they recommend that:—

Every man or woman of the age of 21 should be entitled to vote and to offer himself or herself as a candidate at any election to an Administrative or Legislative Institution.

REPRESENTATION.

We are confident that, if this practical equality is secured for women in the matter of Franchise, they will be able to find their way into the Legislative and Administrative Institutions of the country through the open door of ordinary election.

No special expedients for securing the presence of women on these bodies, such as reservation, nomination or co-option would then be necessary.

The Women of India have no desire to seek any specially favoured treatment for themselves, provided that their full and equal citizenship is recognized in practice as it is in theory.

PUBLIC SERVICES AND EMPLOYMENT.

It is but a corollary to this practical equality between men and women that women should be eligible, in the same way as men and on the same conditions, for all grades and branches of the Public Services, as they are entitled under the Declaration of Rights, to equality in the exercise of all trades, professions and employment.

DISQUALIFICATIONS.

As distinguished from the qualifications, etc., for voting, in which the women of India demand an absolute and effective equality, the disqualifications for the exercise of civic rights should be based on purely personal grounds.

Thus, the fact of a woman's relationship to a man or the disqualification, if any, attaching to her male relative of any degree, should in no way prevent her from exercising to the full her legitimate rights.

August, 1931.

APPENDIX XV.

COMMUNAL REPRESENTATION.

Memorandum by Sir Provash Chunder Mitter.

As the Minorities Committee will meet soon, I think that as the sole Hindu representative from Bengal on that Committee, I ought to place the position with regard to Bengal before my fellow Delegates.

The claims on behalf of the different minorities have been put forward as follows:—

In the first two cases I am ignoring decimals—

| | Per cent. |
|-----------------------------|-----------|
| Muslims | 55 |
| Backward Classes | 25 |
| European Communal | 5 |
| Indian-Christians | 3 |
| Anglo-Indians | 2 |
| TOTAL | 90 |

Since then I have seen it stated in the Press that Mahatma Gandhi offered 51 per cent., instead of 55 per cent., to the Muslims. The above claims do not take into account the claims for class seats. So far as I am aware the claims for class seats are:—

| | Per cent. |
|---|-----------|
| British (at present they have 11 in a House with 114 elected members) | 10 |
| Labour (a number of seats, but I am not aware of the actual percentage claimed) | 5 |
| Indian Trade and Commerce | 7½ |
| Landlords | 2 |
| Universities | 24½ |
| TOTAL | 24½ |

It will appear from the above that if all these claims are admitted or accepted, the total is considerably over 100 per cent., and that the Hindus (other than the Backward Classes) whose population runs into many millions, will not have any seats from the general electorate.

This position, of course, is untenable, and a mere statement of facts will show what the position is.

Although I am the sole Hindu representative from Bengal on the Minorities Committee, no offer has yet been made to me, nor even was the question discussed either with me or with any of my Hindu fellow Delegates from

Bengal who are not on this Committee, by the Muslim group. I was, however, told a few days ago by one of the Muslim representatives from Bengal that the Muslim delegation is of the opinion that the question should be settled on an all-India basis.

November 11, 1931.

SUPPLEMENTARY MEMORANDUM BY SIR PROVASH CHUNDER MITTER ON THE COMMUNAL QUESTION, WITH REFERENCE TO APPENDIX XV.

With reference to the claim of the Moslems regarding a statutory majority of the whole House on the basis of communal electorates, I desire to put on record that before I left India I consulted Hindu elected members of the Bengal Legislative Council, members of the Executive Committee of the Indian Association (an important and old-established Association founded by the late Sir Surendra Nath Banerjea and other leaders in 1875) and the Executive Committee of the British Indian Association (the oldest political association in Bengal being established in 1851). I also consulted some prominent Congressmen with whom I could get into touch. I found that Hindu public opinion was strongly against acceptance of the claim of the Moslems for a statutory majority of the whole House.

I also consulted Hindu public opinion in Bengal as regards joint electorates with reservation of seats, and I found that, generally speaking, Hindu public opinion was strongly in favour of joint electorates with such reservation. I understand, however, that the Moslem Delegation, who are organised as a party on an all-India basis under the leadership of H. H. The Aga Khan, are not prepared to deviate from the claim for communal representation, so I refrain from placing the details of Bengal Hindu opinion regarding adjustment of the communal question on the basis of joint electorates with reservation of seats. I may mention in this connection that although I am the sole Hindu representative from Bengal on the Minorities Sub-Committee I was never asked by the Moslem Delegation to discuss the Bengal communal question with them: I may add that I tried to convey the information that I was quite willing to discuss the matter.

I will next refer to the claims of the different minorities and class interests. These claims as originally put forward were as follows:—

In both these cases I am ignoring decimals—

| | Per cent. |
|-----------------------------|-----------|
| Moslems | 55 |
| Backward Classes | 25 |
| European Communal | 5 |
| Indian-Christians | 3 |
| Anglo-Indians | 2 |
| TOTAL | 90 |

In the claims so put forward the claims for class seats were not specifically discussed, but so far as I am aware the claims for class seats are:—

| | Per cent. |
|--|-----------|
| British (at present they have 11 in a House of 114 elected members, over and above 5 communal seats) | 10 |
| Labour (a number of seats, but I am not aware of the actual percentage claimed) | |
| Indian Trade and Commerce | 5 |
| Landlords | 7½ |
| Universities | 2 |
| TOTAL (excluding Labour) | 24½ |

It will appear from the above that if all these claims are admitted or accepted the total is considerably over 100 per cent., and that the Hindus (other than the Backward Classes) whose population runs into many millions will not have any seats from the general electorate. This position is, of course, untenable, and a mere statement of the facts will show what the position is.

Since these claims were put forward a joint Note has been circulated over the signatures of H. H. The Aga Khan on behalf of the Moslems, Dr. Ambedkar on behalf of the Depressed Classes, Rai Bahadur Pannir Selvam on behalf of the Indian-Christians, Sir Henry Gidney on behalf of the Anglo-Indians, and Sir Hubert Carr on behalf of the Europeans. The arrangements for division of seats put forward in this joint Note is totally unacceptable to the Hindus of Bengal. My personal opinion is, and I say this from my 37 year's experience of the public life of my Province, that if this scheme is accepted then the consequences will be disastrous. It will mean the increase of direct action, and more physical conflicts between the two communities. I have stated my views on the point in a short speech before the Federal Structure Committee on November 18th, 1931. I do not, for the sake of peace which I value so much, desire to elaborate the reasons which induced me to come to the conclusion mentioned above. I may add that I do not belong to the Hindu Mahasabha movement, and I genuinely believe that adjustment of the Hindu-Moslem question on some workable basis is a *sine qua non* of political progress in India.

As the Hindus, Moslems and Sikhs have not been able to come to an agreed decision, we have to consider and advise His Majesty's Government as to what is to be done. I still adhere to the opinion I expressed in my short speech to the Federal Structure Committee on November 18th, that the best course will be to send out a small Commission to find out the facts. That Commission should have Indians associated with it, and may well consist of three British statesmen and two Indian judges, one a Moslem judge and the other a Hindu judge. The Indian representatives should not be political people, because every politician has his own views on the matter. As, however, an objection has been taken by an eminent Indian to associate judges with Commission, I am quite willing to accept a slight modification of my original suggestion, by putting forward a further suggestion that, instead of having judges actually holding office, we may have judges who have retired from office, but without intending any disrespect to the political men of India, I do insist that the inclusion of political men will go a long way to defeat the object I have in view. I have already explained in my speech that sending out a Commission of the nature indicated should not hold up the announcement, nor the drafting of the Act, nor any other relevant work in connection with constitutional advance.

I would conclude this Memorandum by suggesting certain general considerations of an important character, which should be taken into consideration in case His Majesty's Government are disinclined to send out a Commission of the nature indicated.

So far, four important schemes were before the public, namely, the Congress scheme, the Communal Moslem scheme, the Nationalist Moslem scheme and the Hindu Mahasabha scheme. The unfortunate part is that the Hindus do not agree to the Communal Moslem scheme, and the Moslems do not agree to accept any of the other three schemes. Further, on the Hindu side there is a difference of opinion with regard to the Congress scheme and the Hindu Mahasabha scheme. The net result is that the two communities have been unable to come to an agreed decision. Further, there is to my mind a common defect in all the four schemes, namely, that if any of these schemes are accepted it will mean that in some Provinces there will be a Hindu majority, in others a Moslem majority (perhaps on account of the disposition of the population this is inevitable) but no practical suggestion has been made in any of these schemes by which the minority in any Province—to whichever community that minority may

belong—will be in a position to effectually influence the members of the Legislature who may be returned on the votes of the majority community. For that reason I submit that some new method had better be explored. One such method which, in my opinion, may well be worth considering, although I realise that unless the two communities agree to explore the method for the sake of peace it will serve no useful purpose to press this method, is as follows:—

1. In constituencies where less than 10 per cent. of the total number of voters belong to the Hindu or the Moslem community, in the counting of votes each vote of the minority community will count as two, both with regard to the election of the Hindu or of the Moslem candidate.

2. In constituencies where 10 per cent. but not more than 30 per cent. of the total number of voters belong to the Hindu or the Moslem community, in the counting of votes the votes of the minority community will be increased by 50 per cent. (that is to say, each vote will count as $1\frac{1}{2}$ votes) both with regard to the election of the Hindu or of the Moslem candidate.

Another suggestion that I venture to put forward is that this baffling problem will be easier of solution if, instead of attempting to solve it on an all-India basis, we try to solve it Province by Province. Not only will such a line be more consonance with realities, but we are likely to meet with less difficulty if we try to solve the problem Province by Province. In support of my suggestion regarding the settlement of the problem Province by Province, I would point out that the real difficulty to-day is about the Provinces. The difference between the two communities as regards the all-India Legislatures is neither so great nor so determined as that with regard to some of the Provinces.

Another objection that I have to the four schemes mentioned above is that as under those schemes in a number of Provinces one community will be in a majority, without the minority community being in a position to more effectually influence the members who are returned to the Legislature by the majority community, it is extremely likely that pressure will be brought to bear on Ministers who will depend on the support of the majority community. Such pressure may lead to the oppression of the minority community, or if not actual oppression, the minority community may work itself up to the belief that it is oppressed. If such a state of things arises in one Province where one particular community may be in a majority, it is extremely likely that we shall have the reaction of such a position in other Provinces where the other community is in a majority. If such a contingency arises, then the whole of India may be brought into the vortex of communal passion and communal conflict.

I therefore suggest that the best course will be to appoint a small Commission of the nature of the one I have indicated above. Such a Commission will not only be in a better position to ascertain materials which are lacking to-day, but they will also be in a better position to find out how the larger number of representatives who will be available in India will accept a particular kind of electoral arrangement. After all, none of us should forget that the question before us is not a question of the division of a purse or a property belonging to an individual, but the question before us is how the masses belonging to two great communities will agree to work the electoral arrangements in order to evolve a system of responsible government based on persuasion and discussion, and not on coercion or physical conflicts.

In conclusion I would make a further suggestion, namely, that whatever decision may be arrived at, it should be on the basis of the seats reserved for general constituencies, and should not be on the basis of a percentage of the whole House. The Simon Commission, as well as the Government of India, proceeded on this basis. Many of the difficulties will be avoided

if we give up the idea of a majority or a minority of the whole House. Further, what we are discussing really appertains to the general constituency seats and not to special or class seats. In this connection there is another point which should be mentioned, namely, that seats for Europeans, Anglo-Indians and Indian-Christians, should, in every Province come from the majority community and not from the minority community. As regards other class seats like Labour, Landlords, Indian Trade and Commerce (but not British Trade and Commerce) the seats may well come from both the communities, although in point of fact at a particular stage of the development of a particular Province one community may have an advantage over the other. There is no reason, however, why—given the necessary self-help without which no real political progress is possible—such an advantage should be of more than a temporary nature.

P. C. MITTER.

November 20th, 1931.

APPENDIX XVI.

THE COMMUNAL PROBLEM IN THE PUNJAB.

Memorandum by Sir Geoffrey Corbett

(circulated at the request of Mr. M. K. Gandhi).

The communal problem in the Punjab may be stated as follows:—

A. The Muslims, being a majority of the population, claim to have a majority in the Legislature. For this they consider separate electorates to be necessary, because their numerical majority is not sufficient to outweigh the greater wealth and influence of other communities, to which the Muslim ryots are stated to be heavily indebted.

B. The Sikhs would prefer joint electorates. But if the Muslims have separate electorates, the Sikhs claim—

(a) that Muslim representation by separate electorates must be less than 50 per cent. of the whole Legislature;

(b) that the Sikhs must also have separate electorates with substantial weightage, as claimed by Muslims in Provinces where they are a minority.

C. The Hindus desire joint electorates, but they are willing to accept any compromise which satisfies the following principles:—

(a) There must be no reservation of seats for a majority community which would give it a "statutory majority" in the Legislature;

(b) The reservation of seats for a minority community must not be less than its population basis, that is, weightage must not be conceded to other communities at the expense of a minority community.

2. It cannot be said that any one of these claims is unreasonable, or should properly be abandoned. The fact is that in the Punjab as now constituted the communities are so distributed that their legitimate claims are irreconcilable. There is no margin for allowances, and a solution becomes mathematically impossible. Further, a solution that is dependent on popula-

tion percentages can have no finality, but must be subject to revision at each ensuing census. The problem has indeed been substantially affected even since the last Session of the Conference by the publication of the recent census figures.

3. If then a solution is practically impossible in the Punjab as now constituted, the logical remedy would be to re-adjust the boundaries of the Punjab. It would be unwise and unjustifiable to "jerrymander" provincial boundaries for communal purposes. There is, however, a demand for a general redistribution of Provinces. To quote Chapter IV of the Nehru Committee's Report, "the present distribution of Provinces in India has no rational basis. It is merely due to accident and the circumstances attending the growth of the British power in India." The resultant Provinces, though possibly convenient for the purposes of British rule, are not necessarily suitable units for responsible self-government. Redistribution should be considered on the following grounds:—

(a) linguistic, ethnical and historical;

(b) economic, geographical and administrative.

I propose now to approach the Punjab problem from this point of view, without regard to communal considerations.

4. Historically the Ambala Division is part of Hindustan; its inclusion in the Province of the Punjab was an incident of British rule. Its language is Hindustani, not Punjabi; and its people are akin to the people of the adjoining Meerut and Agra Divisions of the United Provinces rather than to the people of the Punjab.

Economically, the most important factor in the life of an agricultural people is irrigation. It is administratively desirable that an irrigation system should be controlled by a single provincial Government. Otherwise there will inevitably be disputes about the distribution of water, involving perhaps a permanent inter-provincial Irrigation Commission or the intervention of the Federal Government. The Ambala Division is not irrigated from the Five Rivers, but from the Jumna system, on which the adjoining districts of the United Provinces also depend. But the Simla district and the north-west corner of the Ambala district, which are watered by the Sutlej, and contain the head-works of the Sirhind canal, should remain in the Punjab.

5. It is fair to assume, therefore, that in any rational scheme for the redistribution of Provinces the Ambala Division, less the Simla district and the north-west corner of the Ambala district, would be separated from the Punjab. The unwieldy United Provinces might also be divided into a western Province of Agra, which would include the Ambala Division, and an eastern Province of Oudh; but this is a matter which is beyond the scope of this memorandum. It remains to be considered how such a reconstitution of the Punjab would affect the communal problem.

6. The population of the new Punjab would compare with the population of the existing Punjab as follows:—

(Figures in thousands.)

| | <i>As now constituted.</i> | | <i>Without Ambala Division (less Simla).</i> | |
|------------------|----------------------------|-----------|--|-----------|
| | | Per cent. | | Per cent. |
| Muslims | 11,444 | 55.3 | 10,445 | 61.8 |
| Hindus | 6,579 | 31.8 | 3,997 | 23.6 |
| Sikhs | 2,294 | 11.1 | 2,137 | 12.6 |
| Others | 367 | 1.8 | 324 | 2.0 |
| | <hr/> 20,685 <hr/> | | <hr/> 16,903 <hr/> | |

The figures of the 1921 census have been taken, because the district communal figures of the 1931 census are not yet available. The figures of the 1931 census for the Province as now constituted are as follows:—

(Figures in thousands.)

| | | Per cent. |
|---------|--------------------|-----------|
| Muslims | 13,332 | 56.5 |
| Hindus | 6,728 | 28.6 |
| Sikhs | 3,064 | 13.0 |
| Others | 467 | 1.9 |
| | <hr/> 23,581 <hr/> | |

It follows that the total population of the new Punjab would be about 19 millions, and the percentages of Muslims and Sikhs would be somewhat higher than the 1921 percentages.

7. To what extent, then, would it be possible in the reconstituted Province to satisfy the claims of each community, as stated at the beginning of this memorandum?

A. The Muslims, being 62 per cent. of the total population, would be sure of a majority in the Legislature through territorial constituencies with joint electorates, without reservation of seats, provided that the qualifications for the franchise were so determined as to reflect their numerical strength in the electoral roll.

The Franchise sub-Committee and the scheme of the Congress Working Committee have already recommended that the franchise should reflect in the electoral roll the proportion in the population of every community.

The basis of territorial constituencies with joint electorates would naturally be the existing administrative districts. The western districts of the Punjab are predominantly Muslim and the eastern districts are predominantly Sikh and Hindu. Excluding Simla, which has a population of only 45,000, and may be grouped for electoral purposes with the adjoining hill district of Kangra, there are now 28 districts in the Punjab; and in 15, or 53 per cent., of them, the Muslims are more than 60 per cent. of the population. Without the Ambala Division, there would be 23 districts; and in 15, or 65 per cent., of them, the Muslims would be more than 60 per cent. of the population.

B. The Sikhs would have the joint electorates which they prefer, and through which they feel that they can best exercise their influence. They would no longer require separate electorates or weightage. Further their numerical strength would be relatively increased from 11.1 per cent. of the population in the province as now constituted to 12.6 per cent. according to the figures of 1921, and about 15 per cent. according to the figures of 1931.

C. The solution satisfies the two principles within which the Hindus are willing to compromise; there would be no "statutory majority" by reservation of seats, and no weightage at the expense of a minority community. The Hindu proportion of the population would be substantially diminished, but they would have the joint electorates which they desire, and through which, in their view, a minority community is best able to exercise its influence.

October 12th, 1931.

PUNJAB—1921 CENSUS.

(Population in thousands.)

| Districts. | Hindus. | Per cent. | Muslims. | Per cent. | Sikhs. | Per cent. | Other (Mostly Christian). | Per cent. | Total. |
|--|---------|-----------|----------|-----------|--------|-----------|---------------------------------|-----------|--------|
| <i>Rawalpindi Division.</i> | 309 | 8.9 | 2,973 | 86.1 | 153 | 4.4 | 26 | 0.7 | 3,461 |
| (1) Gujrat . . . | 63 | 7.7 | 710 | 86.3 | 49 | 5.9 | 2 | — | 824 |
| (2) Shahpur . . . | 82 | 11.4 | 596 | 82.8 | 30 | 4.2 | 12 | 1.6 | 720 |
| (3) Jhelum . . . | 35 | 7.3 | 423 | 88.7 | 19 | 4.0 | — | — | 477 |
| (4) Rawalpindi . . . | 57 | 10.0 | 470 | 82.6 | 32 | 5.6 | 10 | 1.8 | 569 |
| (5) Attock . . . | 26 | 5.1 | 466 | 91.0 | 20 | 3.9 | — | — | 512 |
| (6) Mianwali . . . | 46 | 12.8 | 309 | 86.4 | 3 | 0.8 | — | — | 358 |
| <i>Multan Division.</i> | 622 | 14.8 | 3,246 | 76.9 | 290 | 6.9 | 60 | 1.4 | 4,218 |
| (7) Montgomery . . . | 95 | 13.3 | 513 | 71.8 | 96 | 13.5 | 10 | 1.4 | 714 |
| (8) Lyallpur . . . | 181 | 18.5 | 595 | 60.7 | 161 | 16.5 | 42 | 4.3 | 979 |
| (9) Jhang . . . | 85 | 14.9 | 475 | 83.3 | 9 | 1.6 | 1 | 0.2 | 570 |
| (10) Multan . . . | 134 | 15.1 | 732 | 82.2 | 18 | 2.0 | 6 | 0.7 | 890 |
| (11) Muzaffargarh . . . | 70 | 12.3 | 493 | 86.8 | 5 | 0.9 | — | — | 568 |
| (12) Dera Ghazi Khan. . . | 57 | 12.2 | 411 | 87.6 | 1 | 0.2 | — | — | 469 |
| Biloch Trans-Frontier Tract. | — | — | 27 | — | — | — | — | — | 27 |
| <i>Lahore Division.</i> | 1,124 | 22.4 | 2,849 | 57.1 | 813 | 16.3 | 211 | 4.2 | 4,997 |
| (13) Lahore . . . | 256 | 22.6 | 348 | 57.4 | 180 | 15.9 | 47 | 4.1 | 1,131 |
| (14) Amritsar . . . | 204 | 22.0 | 424 | 45.6 | 287 | 30.9 | 14 | 1.5 | 929 |
| (15) Gurdaspur . . . | 259 | 30.4 | 423 | 49.6 | 138 | 16.2 | 32 | 3.8 | 855 |
| (16) Sialkot . . . | 218 | 23.2 | 581 | 62.0 | 75 | 8.0 | 64 | 6.8 | 238 |
| (17) Gujranwala . . . | 102 | 16.4 | 443 | 71.0 | 51 | 8.2 | 28 | 4.4 | 624 |
| (18) Sheikhupura . . . | 86 | 16.5 | 331 | 63.3 | 83 | 15.9 | 23 | 4.3 | 523 |
| <i>Jullundur Division.</i> (+ Simla.) | 1,942 | 45.9 | 1,377 | 32.7 | 881 | 20.8 | 27 | 0.6 | 4,227 |
| (19) Kangra and Simla . . . | 755 | 93.1 | 45 | 5.6 | 3 | 0.4 | 8 | 0.9 | 811 |
| (20) Hoshiarpur . . . | 500 | 54.0 | 289 | 31.2 | 133 | 14.3 | 5 | 0.5 | 927 |
| (21) Jullundur . . . | 245 | 29.8 | 367 | 44.6 | 206 | 25.0 | 5 | 0.6 | 823 |
| (22) Ludhiana . . . | 136 | 24.0 | 193 | 34.0 | 236 | 41.5 | 3 | 0.5 | 568 |
| (23) Ferozepore . . . | 306 | 27.9 | 483 | 44.0 | 303 | 27.6 | 6 | 0.5 | 1,098 |
| <i>Ambala Division.</i> (less Simla). | 2,582 | 68.3 | 999 | 26.4 | 157 | 4.2 | 44 | 1.1 | 3,782 |
| (24) Hissar . . . | 548 | 67.1 | 216 | 26.4 | 46 | 5.6 | 7 | 0.9 | 817 |
| (25) Rohtak . . . | 630 | 81.6 | 125 | 16.2 | 1 | 0.1 | 16 | 2.1 | 772 |
| (26) Gurgaon . . . | 460 | 67.5 | 217 | 31.8 | 1 | 0.1 | 4 | 0.6 | 682 |
| (27) Karnal . . . | 573 | 69.1 | 236 | 28.5 | 12 | 1.4 | 8 | 1.0 | 829 |
| (28) Ambala . . . | 370 | 54.2 | 206 | 30.2 | 98 | 14.4 | 8 | 1.2 | 682 |
| Punjab (Total) . . . | 6,579 | 31.8 | 11,444 | 55.3 | 2,294 | 11.1 | 368 | 1.8 | 20,685 |

APPENDIX XVIa.

NOTE ON THE REDISTRIBUTION OF THE PUNJAB.

By Raja Narendra Nath.

Sir Geoffrey Corbett's scheme of the separation of Ambala Division from the Province as at present constituted, is unacceptable to me for the reason for which the Sikh scheme of partition is unacceptable to the Muslims. The Sikh scheme reduces the Muslim population from 56 per cent. at present to 44 per cent. in the new Province. Sir Geoffrey's scheme reduces the Hindu population from 29 per cent. to 23 per cent.

I have not been able to ascertain the views of the Hindus in various parts of the Punjab. I do not know what the Hindus of the Western Punjab may have to say to their being joined on to N. W. F. P. But if the new Province is formed as proposed by the Sikhs, reservation of seats for the Hindu minority on the basis of population will be absolutely necessary.

I find that Sir Geoffrey Corbett's scheme which appeared to have been received with delight by the Muslims here, is unacceptable to the Muslims of U. P. On the whole I think that partition of Punjab will afford no solution of the Communal problem. All partition schemes should in my opinion be shelved.

November 13th, 1931.

APPENDIX XVII.

A SCHEME OF REDISTRIBUTION OF THE PUNJAB.

Memorandum by Sardar Ujjal Singh.

According to 1921 census, the Punjab has a total population of 20,685,024. The Muslim and Sikh population in the five divisions into which Punjab is divided for administrative purposes is as follows:—

| | <i>Muslim.</i> | | <i>Sikh.</i> | |
|---------------------------|----------------|-----------|--------------|-----------|
| | Population. | Per cent. | Population. | Per cent. |
| Ambala Division . . . | 1,006,000 | 26·3 | 158,000 | 4·2 |
| Jullundur Division . . . | 1,370,000 | 32·8 | 886,000 | 21·0 |
| Lahore Division . . . | 2,849,000 | 57·0 | 813,000 | 16·2 |
| Multan Division . . . | 3,246,000 | 76·9 | 290,000 | 6·9 |
| Rawalpindi Division . . . | 2,973,000 | 86·0 | 183,000 | 4·9 |

It is clear from the above table that Rawalpindi and Multan Divisions are overwhelmingly Muslim divisions. There are two districts, however, in Multan Division, namely, Lyallpur and Montgomery, which are colony districts. A considerable population of the central Punjab has settled down there. The Sikhs being good colonists have settled in fairly large numbers in those two districts, as they constitute 13·4 per cent. of the population in Montgomery district and 16·4 per cent. in Lyallpur District. The Muslim population in these two districts is 71 and 60 per cent. respectively. A great portion of the Muslim population in these two districts also has migrated from the Central Punjab.

A glance at the map of the Punjab and N. W. F. P. will clearly show that all the districts excepting Lyallpur and Montgomery, which are more centrally situated in the two divisions of Rawalpindi and Multan, run along the N. W.

F. Province and Baluchistan. In some of these districts people speak language which is almost similar to the language of the adjoining Frontier district. Dera Ghazi Khan district is inhabited by people who have common language, custom and religion with the population in Baluchistan. Campbellpur, Mianwali and Muzaffargarh districts have little if any difference from the people of the adjoining Frontier district of Dera Ismail Khan. Punjab Province as we find it to-day was never one Province consisting of all these districts prior to its annexation by the British. Some of these Western districts were conquered and brought under the then Lahore Government by Maharaja Ranjit Singh.

It is suggested therefore that the two Western divisions of Rawalpindi and Multan, minus the Lyallpur and Montgomery districts, be detached from the Punjab and amalgamated with N. W. F. P.

Such a redistribution of the Punjab will serve a double purpose. It will in the first instance give the Sikhs such a proportion of population as will provide for them a protection without claiming any weightage or reservation. The population of the Province after excluding these two Western divisions will be more evenly distributed among the three communities. The Mussalmans will be 43.3 per cent., Hindus 42.3 per cent., and Sikh 14.4 per cent. In such proportions parties on other than communal lines will find ample scope for development. The Sikhs in that case will claim no weightage nor any reservation of seats, and at the same time will not grudge any weightage to be given to Muslim minorities in other Provinces. Of course an equivalent weightage will be allowed to the Hindu and Sikh minorities in the N. W. F. P. and Sind, if separated.

It will be seen that in such a redistribution the Sikhs will not be gainers so far as the amount of their representation goes. The Muslims will still be the strongest individual group. But Sikhs do not want any gain or domination. What they want is that their representation should be such as to enable them to make an effective appeal to the other community if any one of these groups tries to tyrannise over them.

The second advantage of this redistribution would be that N. W. F. P. by the addition of ten districts with a population of 6 millions, will become a fairly large province, fully entitled to the status of a Governor's Province. The total population of this enlarged Frontier Province will be over 8 millions, with Muslims forming 87 per cent. of the population. It will be able to bear its burden of expenditure which provincial self-Government will necessitate and which the existing N. W. F. P. cannot possibly meet. If, however, the amalgamation with N. W. F. P. be not acceptable, these Western districts can form a separate Province.

All sections of the Sikh community are unanimously of the opinion that they will in no case agree to the domination of a single community in the Punjab, if it is not reconstituted on the above lines. Their population has risen from 11 to 13 per cent., which corresponds approximately to the Muslim population in U. P. Whereas the Muslims of U. P. are enjoying over 31 per cent. representation, the Sikhs have had to put up with an 18 per cent. representation on the Punjab Council. The Sikhs have been rightly claiming 30 per cent. representation. Their claim has been strengthened by the rise in their population. The Mussalmans should not in justice deny to the Sikhs the same rights which they are enjoying in their minority Provinces and are trying to strengthen further in India as a whole by other proposals.

The Sikhs have suggested an alternative and give the choice to the Muslim brethren. Either weightage to an extent of 30 per cent. with no single community in majority or the redistribution of the Punjab.

If neither of the two solutions is acceptable the Sikhs will not accept any constitutional advance in the Punjab. Let the rest of India go ahead and let the Punjab be administered by the Central Government. This is the considered opinion of the entire Sikh community whether Nationalists, Moderates or Loyalists.

These sentiments were expressed to Mahatma Gandhi in Delhi and were conveyed to the Viceroy in the address presented to His Excellency by the Sikhs in July last.

1921 CENSUS FIGURES.

| | | |
|---|------------------------------|-----------------------|
| Multan Division | <i>Total Population.</i> | 4,218,360 |
| Rawalpindi | | 3,460,710 |
| Multan Division, minus Lyallpur and Montgo- mery | | 2,525,111 |
| 979 963 + 713 786 | | |
| 1693,249 | | |
| | | <hr/> 5,985,821 <hr/> |

PUNJAB WHEN RECONSTITUTED.

| | <i>Total Population.</i> | <i>Muslim.</i> | <i>Sikhs.</i> | <i>Hindus and Others.</i> |
|-------------------------------|------------------------------|-----------------------|-----------------------|-------------------------------|
| Ambala Division | 3,826,615 | 1,006,159 | 158,208 | — |
| Jullundur Division | 4,181,898 | 1,369,648 | 879,653 | — |
| Lahore Division | 4,997,441 | 2,848,800 | 813,310 | — |
| Lyallpur District | 979,463 | 594,917 | 160,821 | — |
| Montgomery District | 713,786 | 513,055 | 95,520 | — |
| | <hr/> 14,699,203 <hr/> | <hr/> 6,332,579 <hr/> | <hr/> 2,107,512 <hr/> | <hr/> — <hr/> |
| | | 43·3% | 14·4% | 42·3% |

N. W. F. PROVINCE ENLARGED.

| | <i>Total Population.</i> | <i>Muslims.</i> | <i>Sikhs.</i> | <i>Hindus and Others.</i> |
|--|------------------------------|-----------------------|-----------------------|-------------------------------|
| Existing N. W. F. P. | 2,471,527 | 2,250,389 | 47,935 | 173,203 |
| | | <hr/> TOTAL <hr/> | <hr/> 221,138 <hr/> | <hr/> 9·4% <hr/> |
| Rawalpindi Division | 3,460,710 | 2,973,371 | 152,956 | 334,383 |
| Multan Division, minus Lyallpur and Mont- gomery Districts | 2,525,111 | 2,138,371 | 33,639 | 353,101 |
| | <hr/> TOTAL <hr/> | <hr/> 7,362,131 <hr/> | <hr/> 234,530 <hr/> | <hr/> 860,687 <hr/> |
| | | <hr/> TOTAL <hr/> | <hr/> 1,095,217 <hr/> | <hr/> 13% <hr/> |

October 8th, 1931.

APPENDIX XVIII.

MEMORANDUM ON THE "PROVISION FOR THE SETTLEMENT OF THE COMMUNAL PROBLEM" (APPENDIX III).

By Dr. S. K. Datta.

This morning brought me a copy of the document entitled "Provision for a settlement of the communal problem put forward jointly by Muslims, Depressed Classes, Indian Christians, Anglo-Indians and Europeans." The signatories are five in number, and they assert that the proposals made by them may be taken as being acceptable to well over a hundred and fifteen millions of people. No claim to the support of a unanimity so wide in its scope has yet been made by any other group of persons at the Conference. As a member and a representative of one of the communities whose consent has apparently been given, I feel it incumbent upon me to make it clear why I am unable to support the provisions as a whole.

Certain of the matters on which an agreement has been arrived at would be acceptable to me, such as the provisions assuring religious liberty and the protection of Minorities against discrimination in the matter of civic rights. On such fundamental principles there can be no doubt of the support of the entire Christian community, but on the other highly controversial points brought forward, it is impossible to conceive of a unanimity of support. The Indian Christian community, which numbers nearly six millions, including those in the Indian States, is scattered throughout India, a substantial number being included in the population of the Madras Presidency. Now the vast majority of these Christians belong to the class of landless agricultural labour, and their kinsfolk are still included among the Depressed Classes of India whose interests have not been wholly overlooked at this Conference. From personal knowledge I would assert that the majority of them, because of poverty and the comparatively high franchise qualifications have little or no knowledge of the electorate and are incapable of judging the merits of communal and general electorates. Thus in the Madras Presidency, out of 1,726,000 Indian Christians, a number of 26,000 only are included on the voters' roll to-day. My duty as I see it is to accept only such proposals as I conceive to be in the best interests of all.

This document has been signed by what are termed Minorities, but it is not yet clear upon what the Minority grouping is based. It would seem to be accepted that the basis of a community is the profession of a particular religion. If this were true then it would follow that Indian Christians, Europeans and Anglo-Indians should be classed together as one community, but any attempt to unite them would immediately be resented. This would seem to indicate a second possible basis for a community, namely, race, since the Christian community is to be sub-divided again on the basis of race, each sub-division demanding special, if not specific, protection. The Depressed Classes have their own basis of classification; they profess the Hindu religion but assert that they are the victims of its social tyranny. Hence, while professing the same religion, they ask for protection against the majority of their co-religionists. As the result of these demands the fragmentation of India is proceeding apace.

But if we accept the present grouping of the Minority communities, the Memorandum has yet failed to consider fully the fundamental problem of what the minorities really desire to protect, and of how they may best protect these interests. If the signatories and their supporters had discussed these matters more fundamentally it might possibly have been shown that the interests it was desired to protect might best have been protected not by the separate electorate but by some other method. In the matter of electorates alone it might be considered whether if the minorities, say in the Madras Presidency, desired to protect themselves against Hindu domination they would not have better results by combining themselves into an electorate consisting of Muslims, Christians, Europeans, Anglo-Indians and Depressed

Classes. You would then have in the Legislature a bloc of members who could effectively deal with the Hindu majority. In the Punjab it might be otherwise, where Hindus, Sikhs, Christians and Europeans; as well as Depressed Classes, might be elected from a common register, thus effectively creating an opposition to the Muslim majority. Apart from the question of electorates, too, is it not possible that the best interests of the Depressed Classes might be best served by statutory provision making liberal financial grants for education purposes, administered by a trust incorporated by legislative measure?

At the time of the Morley-Minto Reforms special electorates were created for certain groups of Muslims. They were small in number and limited in scope. Under the Government of India Act of 1919 the special electorate was extended to the Muslims and to certain other communities, Anglo-Indians, Europeans, Indian Christians and Sikhs. The scope with regard to the Indian Christians was limited to the Madras Presidency. Under the aegis of the Muslim community it is now proposed to extend the application of the principle over a wider area, and to increase the number of candidates elected by this method.

Some of my colleagues, including one of the signatories of this document, have made it evident that they hope this regime of communal electorates is only transitory, but necessary to ensure the peace in which the great constitutional changes which are envisaged, will be carried out. I do not share their optimism. It will be remembered that the religious social law in India received by a curious mischance the support of British courts both in India and without. Thus the present religious law has been defined and given a conservative mould by the decisions of the Privy Council. It is altogether a baseless fear which conceives of the possibility of the Indian constitution stereotyping for many generations to come the conception of the communities as against the idea of the people of India as a whole?

One of the most serious failures of the Memorandum is its failure to provide for some internal means whereby by a process of evolution, the communal idea will gradually pass away, and in its place the conception of the community as a whole will emerge. The method for the relinquishment of the communal electorates which the Memorandum proposes will, I believe, prove ineffective. The present constitution provides for the representation of economic interests. Why cannot this principle be extended? Let Labour constituencies be formed on a non-communal basis and extended to the rural areas and agricultural labour.

The weightage assigned to themselves by these communities in the Memorandum are in some cases fantastic, and it cannot but strike the impartial observer that these devices are specifically designed to frustrate the will of certain other communities. As a result of these weightages the construction of the legislature on the basis of fairness to all communities becomes an impossibility.

In considering these grave objections to the Memorandum I recall the words of Sir Henry Gidney this morning, when he asserted that I had given my consent to these negotiations. I may say that Sir Henry has completely misapprehended my conversations with him and my contributions to the proceedings of the Informal Minorities Committee held in October. What I did say was that the main problem demanded a settlement of the Hindu-Muslim question and that the smaller Minorities and the real Minorities like the Christians, Europeans and Anglo-Indians could only come in after that main question had been settled. Now what does this Memorandum reveal? Simply this, that the smaller communities have united with the substantial community of the Muslims in order to make the position of the majority communities difficult. It would be disastrous for the Christian Community if it were to throw its support on the side of one or other of the great contending parties of India.

If it is true that the Christian community needs protection against the Hindu majority in Madras, it is equally true that it will need it against the

Muslim majority in Bengal and the Punjab. I had hoped that as far as my community was concerned it would need neither, but that a common Hindu-Muslim agreement would emerge in which the real minorities would find a place. The circumstances under which this agreement has been drawn up will undoubtedly be interpreted as an attempt to impose on the Hindus a regime to which their consent has not been obtained. In such coercion I trust that the community which I represent will have no share.

In conclusion, I may add that on lines such as are proposed in this Memorandum I see little chance of an agreed solution, but what is even more important, I am unconvinced that on this system of legislative representation which might have had a place as long as the executive was irresponsible can be built a government which feels itself responsible to all. The views expressed in this letter are shared by a substantial number of Indian Christians in India.

November 14th, 1931.

APPENDIX XIX.

NOTE ON APPENDIX IV.

By Maulvi Muhammad Shafi Daoodi.

In this note I only deal with the following passage appearing in the "Memorandum on the Sikhs and the new constitution for India" circulated to the Conference by Sardars Ujjal Singh and Sampuran Singh on the 12th November. The Sardars say:—

"In view of the claim of the President of the last All-India Muslim Conference, we believe that to write the garrison Province of India into the constitution as an unalterably Muslim Province would be to make the dismemberment of India inevitable. That claim, it will be remembered, was that there should be a 'consolidated North-West State, within or without the British Empire, consisting of the Punjab, North-West Frontier Province, Baluchistan and Sind.'"

The President of the last All-India Muslim League (*not All-India Muslim Conference as incorrectly stated above*) was Dr. Sir Muhammad Iqbal who wrote as follows in the "Times" of 12th October, 1931, with reference to his words as cited in the above quotation:—

"May I tell that in this passage I do not put forward a 'demand' for a Muslim State outside the British Empire, but only a guess at the possible outcome in the dim future of the mighty forces now shaping the destiny of the Indian subcontinent. No Indian Muslim with any pretence to sanity contemplates a Muslim State or series of States in North-West India *outside* the British Commonwealth of Nations as a plan of practical politics."

"Although I would oppose the creation of another cockpit of communal strife in the Central Punjab, as suggested by some enthusiasts, I am all for a redistribution of India into Provinces with effective majorities of one community or another on lines advocated both by the Nehru and the Simon Reports. Indeed, my suggestion regarding Muslim Provinces merely carries forward this idea."

Dr. Iqbal concludes his letter with a pithy statement of the Muslim position and says—

"A series of contented and well-organised Muslim Provinces on the North-West Frontier of India would be the bulwark of India and of the British Empire against the hungry generations of the Asiatic highlands."

As regards the rest of the claims advanced by the Sardars, I shall have occasion to say something later.

November 14th, 1931.

APPENDIX XX.

MEMORANDUM ON APPENDIX III.

By Raja Narendra Nath.

The pact between certain minorities, from which the Hindu minorities of the Punjab and Bengal have been excluded, and which was placed before the Minorities Sub-Committee on the 13th November, was received by me late on the previous night. I had no time to consider it before I went to the Minorities Sub-Committee.

In connection with it, and as a criticism of the proposals made therein, I send this note, which I hope will receive careful consideration and will be placed side by side with the so-called compromise.

I invite attention to Appendix "A" attached to the pact, of which it forms an essential part. Hindus are presumed to be a majority community in the Federal Legislature, and in six out of nine Provincial Legislatures; but the presumption does not stand when it is sought to separate the depressed classes from the Hindus. The figures in the Appendix will show that the Hindus are reduced to a minority in almost all legislatures, whilst not only the weightage of Muslims is maintained, but they are given absolute majority in the Punjab and Bengal.

The problem of the depressed classes is not rightly understood by British politicians. Even out of those who have been to India, few have had opportunities of thoroughly examining the question. In the first place, conditions in Northern India are quite different from those in Madras and parts of Bombay. In Northern India itself, conditions vary in different provinces. There are, however, certain general principles applicable to all. The twofold division of the Hindu population, into depressed classes and caste Hindus, is not correct. The so-called "depressed classes" are themselves divided into castes. Each is as strictly endogamous as the higher caste of Hindus. There is a very large section amongst them which is regarded as untouchable by all. If caste Hindus cannot represent the depressed classes, owing to their being untouchable, how can a member of the depressed classes, belonging to a certain caste and regarding others as untouchable, be representative of all depressed classes? Separate representation will be carried to absurd lengths if small differences justify separate electorates. Corporate civic life, already difficult under the separatist policy followed so far, will become impossible.

Untouchability is due to educational and economical backwardness, and the nature of the occupations which these classes follow. Those among them who take to the liberal professions or are appointed to Government posts, cease to be regarded as untouchable. I understand that gentlemen belonging to the depressed classes whose clan was regarded as untouchable, rose to the position of judges of the High Courts and sat on the same Bench with the most orthodox Brahmin judges. All "depressed classes" will in course of time, and by utilising opportunities for education, cease to be regarded as depressed or backward. Their separation or isolation from the Hindus is not a course which ought to be followed, in their own interest. All that is needed is that the future Constitution should provide that on account of caste and creed none should be prejudiced in the acquisition and enjoyment of civic rights and the right to public employment.

The difficulty of giving a definition of the depressed classes which shall apply to all Provinces has been adverted to in Paragraph 58 of Volume I of the Report of the Statutory Commission. In the Punjab, as pointed out in the memorandum submitted by me, the process of reclamation is going on very rapidly. Islam and Sikhism are not the only proselytising religions. The Arya Samaj, which is a Hindu body, also falls into that category. This reformed religious society conducts several educational institutions for the education of the depressed classes, who are brought up in the tenets of the

Arya Samaj. According to this advanced body of religious reform, all who come within its fold are entitled to wear the Brahminical thread and to recite the Gayatri. Members of the depressed classes who embrace the religion of the Arya Samaj are given this privilege. It is therefore not right to assume that these men would like to be dissociated from the Hindus, and would insist upon special representation and separate electorates. In this connection the remarks made in Paragraph 79 of Volume II of the Report of the Commission are pertinent, and I cannot help reproducing them in *extenso*:

"Our object, therefore, is to make a beginning which will bring the depressed classes within the circle of elected representation. How is this to be done? Most of the depressed class associations which appeared before us favoured separate electorates, with seats allocated on the basis of population, though one or two still wished to retain nomination. Separate electorates would no doubt be the safest method of securing the return of an adequate number of persons who enjoy the confidence of the depressed classes, but we are averse from stereotyping the differences between the depressed classes and the remainder of the Hindus by such a step, which we consider would introduce a new and serious bar to their ultimate political amalgamation with others. Such a course would be all the more difficult to justify in those provinces where the breaking down of barriers has advanced furthest. If separate electorates have to be maintained for certain classes which have already secured them, that is no reason for bringing other cases within this mode of treatment, if it can be avoided. A separate electorate for depressed classes means, as a preliminary, a precise definition of all who are covered by the term, and the boundary would be in some cases difficult to draw. It means stigmatising each individual voter in the list, and militates against the process which is already beginning, and which needs to be in every way encouraged—that of helping those who are depressed to rise in the social and economic scale."

The representation of these classes, even if seats are specially reserved for them, will depend on what the franchise is going to be, and how many of them will come on the electoral roll. In the Punjab, as perhaps in some other provinces, it may be impossible to frame a constituency on the franchise fixed, and to introduce any system of separate electorates for the depressed classes. (Please see the recommendations of various local Governments on this point and the remarks of the Government of India in Paragraph 35 of their despatch.)

In Bengal there are tracts in which there is a compact population of the depressed classes, and they secure election without separate electorates. In the Bengal Council more than ten members out of the forty-six Hindus returned from general constituencies belong to the depressed classes.

On the scale of representation recommended in Appendix "A", the proportion of caste Hindus in the Punjab and Bengal is reduced to fourteen and eighteen per cent. respectively. There would be a very strong case for weightage to the Hindus of these provinces if the scale recommended was to receive serious consideration. The Hindus of these two provinces would in that case claim weightage at the highest rate allowed to the Muslims in provinces in which they are in a minority.

Indian Round Table Conference

(SECOND SESSION)

Statement made by the Prime
Minister

to the

Conference at the close of its
Second Session, 1st December, 1931

STATEMENT MADE BY THE PRIME MINISTER TO THE
CONFERENCE AT THE CLOSE OF ITS SECOND
SESSION, 1ST DECEMBER, 1931.

1. We have now had two sessions of the Round Table Conference, and the time has come to survey the important work which has been done, first of all, in setting out the problems which in the task of Indian constitution-building we have to surmount, and then in trying to find how to surmount them. The reports presented to us now bring our co-operation to the end of another stage, and we must pause and study what has been done and the obstacles which we have encountered, and the best ways and means of bringing our work to a successful end as rapidly as possible. I regard our discussions and our personal contacts here as of the highest value, and make bold to say that they have raised the problem of Indian constitutional reform far above the mere technicalities of constitution-making; for we have won that confidence in, and respect for, each other which has made the task one of helpful political co-operation. That, I am confident, will continue to the end. By co-operation alone can we succeed.

2. At the beginning of the year I made a declaration of the policy of the then Government, and I am authorised by the present one to give you and India a specific assurance that it remains their policy. I shall repeat the salient sentences of that declaration:—

“The view of His Majesty’s Government is that responsibility for the Government of India should be placed upon Legislatures, Central and Provincial, with such provisions as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances, and also with such guarantees as are required by minorities to protect their political liberties and rights.

“In such statutory safeguards as may be made for meeting the needs of the transitional period, it will be a primary concern of His Majesty’s Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new constitution to full responsibility for her own Government.”

3. With regard to the Central Government, I made it plain that, subject to defined conditions, His Majesty’s late Government were prepared to recognise the principle of the responsibility of the Executive to the Legislature, if both were constituted on an all-India federal basis. The principle of responsibility was to be subject to the qualification that, in existing circumstances, Defence and External Affairs must be reserved to the Governor-General, and that, in regard to finance such conditions must apply as would ensure the fulfilment of the obligations incurred under the authority of the Secretary of State, and the maintenance unimpaired of the financial stability and credit of India.

4. Finally, it was our view that the Governor-General must be granted the necessary powers to enable him to fulfil his responsibility for securing the observance of the constitutional rights of Minorities, and for ultimately maintaining the tranquillity of the State.

5. These were, in broad outline, the features of the new constitution for India as contemplated by His Majesty's Government at the end of the last Conference.

6. As I say, my colleagues in His Majesty's present Government fully accept that statement of January last as representing their own policy. In particular, they desire to re-affirm their belief in an all-India Federation as offering the only hopeful solution of India's constitutional problem. They intend to pursue this plan unswervingly and to do their utmost to surmount the difficulties which now stand in the way of its realisation. In order to give this declaration the fullest authority, the statement which I am now making to you will be circulated to-day as a White Paper to both Houses of Parliament, and the Government will ask Parliament to approve it this week.

7. The discussions which have been proceeding during the past two months have been of value in showing us more precisely the problems we have to solve, and have advanced us towards the solution of some of them. But they have also made it plain that others still require further examination and co-operative consideration. There is still difference of opinion, for instance, as to the composition and powers of the Federal Legislature, and I regret that owing to the absence of a settlement of the key question of how to safeguard the Minorities under a responsible Central Government, the Conference has been unable to discuss effectively the nature of the Federal Executive and its relationship with the Legislature. Again, it has not yet been possible for the States to settle amongst themselves their place in the Federation and their mutual relationships within it. Our common purpose will not be advanced by ignoring these facts, nor by assuming that the difficulties they present will somehow solve themselves. Further thought, discussion and reconciliation of different interests and points of view are still required before we can translate broad general aims into the detailed machinery of a workable constitution. I am not saying this to indicate impossibility, nor to foreshadow any pause in our work. I only wish to remind you that we have put our hands to a task which demands alike from His Majesty's Government and from the leaders of Indian opinion care, courage and time, lest when the work is done it may bring confusion and disappointment, and instead of opening the way to political progress may effectively bar it. We must build like good craftsmen, well and truly; our duty to India demands that from all of us.

8. What then is the general position in which we find ourselves as regards a practical programme for the advancement of our common aims? I want no more general declarations which carry us no further in our work. The declarations already made and

repeated to-day are enough to give confidence in the purpose of the Government and to provide work for the Committees to which I shall refer. I want to keep to business. The great idea of All-India Federation still holds the field. The principle of a responsible Federal Government, subject to certain reservations and safeguards through a transition period, remains unchanged. And we are all agreed that the Governors' Provinces of the future are to be responsibly governed units, enjoying the greatest possible measure of freedom from outside interference and dictation in carrying out their own policies in their own sphere.

9. I should explain at once in connection with that last point that we contemplate as one feature of the new order that the North-West Frontier Province should be constituted a Governor's Province, of the same status as other Governors' Provinces, but with due regard to the necessary requirements of the Frontier, and that, as in all other Governors' Provinces, the powers entrusted to the Governor to safeguard the safety and tranquillity of the Province shall be real and effective.

10. His Majesty's Government also accept in principle the proposition which was endorsed at the last Conference that Sind should be constituted a separate Province, if satisfactory means of financing it can be found. We therefore intend to ask the Government of India to arrange for a Conference with representatives of Sind for the purpose of trying to overcome the difficulties disclosed by the report of the expert financial investigation which has just been completed.

11. But I have digressed from the question of a programme in the light of the accepted factors—Federation as the aim and self-governing Provinces and the Indian States as its basis. As I have said, our discussions have made it clear to all of us that Federation cannot be achieved in a month or two. There is a mass of difficult constructive work still to be done, and there are important agreements to be sought by which the structure must be shaped and cemented. It is equally plain that the framing of a scheme of responsible government for the Provinces would be a simpler task which could be more speedily accomplished. The adjustments and modifications of the powers now exercised by the Central Government which would obviously have to be made in order to give real self-government to the Provinces should raise no insuperable difficulties. It has, therefore, been pressed upon the Government that the surest and speediest route to Federation would be to get these measures in train forthwith, and not to delay the assumption of full responsibility by the Provinces a day longer than is necessary. But it is clear that a partial advance does not commend itself to you. You have indicated your desire that no change should be made in the Constitution which is not effected by one all-embracing Statute covering the whole field, and His Majesty's Government have no intention of urging a responsibility which, for whatever reasons, is considered at the moment premature or ill-advised. It may be that opinion and circumstances will

change, and it is not necessary here and now to take any irrevocable decision. We intend, and have always intended, to press on with all possible despatch with the federal plan. It would clearly be indefensible, however, to allow the present decision to stand in the way of the earliest possible constitutional advance in the North-West Frontier Province. We intend, therefore, to take the necessary steps as soon as may be to apply to the North-West Frontier Province, until the new constitutions are established, the provisions of the present Act relating to Governors' Provinces.

12. We must all, however, realise that there stands in the way of progress, whether for the Provinces or the Centre, that formidable obstacle, the communal deadlock. I have never concealed from you my conviction that this is above all others a problem for you to settle by agreement amongst yourselves. The first of the privileges and the burdens of a self-governing people is to agree how the democratic principle of representation is to be applied—or, in other words, who are to be represented and how it is to be done. This Conference has twice essayed this task: twice it has failed. I cannot believe that you will demand that we shall accept these failures as final and conclusive.

13. But time presses. We shall soon find that our endeavours to proceed with our plans are held up (indeed they have been held up already) if you cannot present us with a settlement acceptable to all parties as the foundations upon which to build. In that event His Majesty's Government would be compelled to apply a provisional scheme, for they are determined that even this disability shall not be permitted to be a bar to progress. This would mean that His Majesty's Government would have to settle for you, not only your problems of representation, but also to decide as wisely and justly as possible what checks and balances the Constitution is to contain to protect minorities from an unrestricted and tyrannical use of the democratic principle expressing itself solely through majority power. I desire to warn you that if the Government have to supply even temporarily this part of your Constitution which you are unable to supply for yourselves, and though it will be our care to provide the most ample safeguards for minorities so that none of them need feel that they have been neglected, it will not be a satisfactory way of dealing with this problem. Let me also warn you that if you cannot come to an agreement on this amongst yourselves, it will add considerably to the difficulties of any Government here which shares our views of an Indian Constitution, and it will detract from the place which that Constitution will occupy amongst those of other nations. I therefore beg of you once more to take further opportunities to meet together and present us with an agreement.

14. We intend to go ahead. We have now brought our business down to specific problems which require close and intimate consideration, first of all by bodies which are really committees and not unwieldy conferences, and we must now set up machinery to do this kind of work. As that is being done and conclusions

presented, we must be able to continue consultations with you. I propose, therefore, with your consent, to nominate in due course a small representative Committee—a working Committee—of this Conference which will remain in being in India, with which, through the Viceroy, we can keep in effective touch. I cannot here and now specify precisely how this Committee can best be employed. This is a matter which must be worked out and must to some extent depend on the reports of the Committees we propose to set up. But in the end, we shall have to meet again for a final review of the whole scheme. The plan, in a word is this—I would like you to carry it in your mind—that these two Sessions have provided now a mass of details. You have sketched out in a general way the kind of constitution; then you have said: This wing of it, that wing of it, that aspect of it, has not yet been drawn in detail by any architect; and we now have to consider the stresses and the strains that will be put upon the fabric, the best way to protect it, to safeguard it and to carry it. With that material in front of us, we appoint this Committee, that Committee and the other Committee to study the matter and to produce proposals for us for dealing with them. That is what you would call the detailed work that must be pursued; and you know perfectly well, my friends, that a Conference as large as this, or a Committee as large as some of those Committees that have been meeting under the Chairmanship of the Lord Chancellor cannot do that work. There are too many long speeches. There are too many written speeches. There is not enough intimate practical and pointed exchange of view, sharp across a table without ten minute speeches—two seconds observation met by another two seconds observation. Only in that way are you going to work it out. But whilst this is being done we have to keep in contact with what I would call the large representative political body, a body of this nature, a body which this typifies. That is the plan, the conception of His Majesty's Government, of quick, effective, scientific and certain work in the building up of the great constitution of India to which reference has been made.

15. It is our intention to set up at once the Committees whose appointment the Conference has recommended: (a) to investigate and advise on the revision of the Franchise and constituencies; (b) to put to the test of detailed budgetary facts and figures the recommendations of the Federal Finance Sub-Committees; and (c) to explore more fully the specific financial problems arising in connection with certain individual States. We intend that these Committees shall be at work in India under the chairmanship of distinguished public men from this country as early in the New Year as possible. The views expressed by you here on the other outstanding Federal problems will be taken into consideration at once, and the necessary steps taken to get better understanding and agreement upon them.

16. His Majesty's Government have also taken note of the suggestion made in para. 26 of the Federal Structure Committee's

Third Report, with the object of facilitating an early decision on the distribution among the States of whatever quota may be agreed upon for their representation in the Legislature. It follows from what I have already said that they share the general desire for an early agreement on this question among the States, and His Majesty's Government intend to afford the Princes all possible assistance by way of advice in this matter. If it appears to the Government that there is likely to be undue delay in their reaching agreement amongst themselves, the Government will take such steps as seem helpful to obtain a working settlement.

17. I have already alluded to another matter to which you have given ample evidence that you attach great importance, and to which you will expect me to refer. A decision of the communal problem which provides only for representation of the communities in the Legislatures is not enough to secure what I may call "natural rights". When such provisions have been made, minorities will still remain minorities, and the Constitution must therefore contain provisions which will give all creeds and classes a due sense of security that the principle of majority government is not to be employed to their moral or material disadvantage in the body politic. The Government cannot undertake here and now to specify in detail what those provisions should be. Their form and scope will need the most anxious and careful consideration with a view to ensuring on the one hand that they are reasonably adequate for their purpose, and on the other that they do not encroach, to an extent which amounts to stultification, upon the principles of representative responsible government. In this matter the Committee of Consultation should play an important part, for, here also, just as in regard to the method and proportions of electoral representation, it is vital to the success of the new Constitution that it should be framed on a basis of mutual agreement.

18. Now, once again we must bid each other good-bye. We shall meet individually and we shall meet, I hope, on Committees, carrying on this work to which we have set our hands—not we in the sense of His Majesty's Government, but we in the sense of you and us together. Great strides have been made, greater, I am sure you will find, than the most optimistic think. I was glad to hear in the course of these debates speaker after speaker taking that view. It is the true view. These Conferences have not been failures in any sense of the term. These Conferences had to meet; these Conferences had to come up against obstacles; these Conferences had to be the means by which diversity of opinion had to be expressed; these Conferences enabled us not only to mobilise the goodwill of India and England, but also enabled us to mobilise the great problems, the historical problems of India. These problems have enabled us all—you and we together—to come down and face hard reality, and to gather from mutual conference the spirit and the determination to overcome difficulties. We have met with obstacles, but one of those optimists to whom humanity owes most of its progress said that "obstacles were made to be overcome".

In that buoyancy of spirit and the goodwill which comes from it, let us go on with our task. My fairly wide experience of Conferences like this is that the road to agreements is very broken and littered with obstructions to begin with, and the first stages often fill one with despair. But quite suddenly, and generally unexpectedly, the way smoothes itself out and the end is happily reached. I not only pray that such may be our experience, but I assure you that the Government will strive unceasingly to secure such a successful termination to our mutual labours.



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