

# A CONSTITUTION FOR INDIA

## DOMINION MODELS ADOPTED

### ALL-PARTIES' CONFERENCE REPORT

#### RESERVATION OF SEATS FOR MUSLIM MINORITIES

The report of the Committee appointed by the All-Parties' Conference was issued to the Press yesterday for publication to-day. The report contains an elaborate survey of the several problems referred to the Committee and makes recommendations with regard to each of them. It is signed by Pandit Motilal Nehru, Sir Ali Imam, Sir Tej Bahadur Sapru and Messrs. M. S. Aney, Mangal Singh, Shuaib Qureshi, Subhas Chandra Bose and G. R. Pradhan. The recommendations are unanimous save for a detail in regard to reservation of Muslim seats on which Mr. Shuaib Qureshi disagrees with the majority.

The constitution recommended by the Committee is modelled on the Dominions' constitutions modified in the light of the draft constitutions published by well-known leaders in the country. It vests in the Government of India and India's Parliament full control over defence and such control over foreign affairs as the Dominions enjoy in regard to their territory.

The Indian legislature will consist of two houses—a house of representatives based on adult suffrage and a senate returned by the provincial legislatures. Women are granted equality with men in regard to franchise.

There are to be no communal electorates, but Muslim minorities' fears are sought to be allayed by reservation of seats in proportion to population with the right to contest other seats for ten years. There is to be no special treatment to other minorities except in Baluchistan and the Frontier Province.

The Committee discuss at length the relations of India with the States. They recommend that in regard to justiciable issues, they are to be submitted to a supreme court which is to be established and settled by mutual understanding by conferences, mutual discussions and so on in regard to others.

Provinces are to be redistributed according to (1) the linguistic principle, (2) the wishes of the people, and (3) administrative convenience.

The full text of the report is printed below:

#### INTRODUCTION

#### TERMS OF REFERENCE

(6) That there is a feeling of uneasiness prevailing in European commercial circles and the services.

#### Dominion STATUS

Dominion status' is a well understood phrase in constitutional law and though the task of defining it with precision may be difficult, yet every one acquainted with the history and growth of the political institutions prevailing in the dominions understands what is meant by it. At the Imperial Conference of 1926 the position of the group of self-governing communities composed of Great Britain and the dominions was defined as follows:

"They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations" (Keith, Responsible Government, Volume II, page 1224). The learned author from whom we have quoted says that "the definition may be admired for its intention rather than for its accuracy as a description of fact as opposed to ideal." We are content to look to its intention, and we feel that such difficulties as may arise in the actual working of a constitution, the basis of which is dominion status, in relation to the other members of the British Commonwealth of Nations may well be left to be solved in the case of the Dominion of India as in that of any other "dominion" by those wholesome moral and political influences which regulate and must regulate the relations of a composite commonwealth of nations.

#### RESPONSIBLE GOVERNMENT

The common characteristic of the constitutions of all the dominions is that they all have the responsible form of government everywhere, in other words a form of government in which the executive is responsible to the popularly elected legislature. That is how the autonomy and the political power of each dominion has found expression and we are not aware of the phrase "responsible government" having received any other interpretation anywhere, nor, except where the form of government is professedly autocratic, do we find that the legislature has been assigned a position of subordination, or that fetters or restrictions have been imposed upon its powers.

**PRONOUNCEMENT OF AUGUST, 1917**  
Our critics, however, urge that the pronouncement of August, 1917 spoke of "gradual development of self governing institutions with a view to the progressive realisation of responsible government in India," and that, that is the phrase used in the preamble to the Government of India Act. Now in the first place it is scarcely necessary to point out that those of us who are members of the Indian National Congress never acquiesced in the said phraseology, and in the second those of us who accepted the preamble cannot believe that in 1917-1919 Parliament of British statesmen deliberately spoke with mental reservation, and chose language which might be used to repel the claim of

India to dominion status. In his speech delivered in the Legislative Assembly on February 8, 1924, Sir Malcolm Hailey the then home member of the government, observed, "If you analyse the term 'full dominion self-government' you will see that it is of somewhat wider extent, conveying that not only will the executive be responsible to the legislature, but the legislature will in itself have the full powers which are typical of the modern dominion. I say there is some difference of substance because responsible government is not necessarily incompatible with a legislature with limited or restricted powers. It may be that full dominion self-government is the logical outcome of responsible government; may it be the inevitable and historical development of responsible government, but it is a further and a final step." This speech may be taken to be the beginning of a new current of thought in official circles in India and we find that it has ever since been echoed in the speeches of some British statesmen and the writings of publicists in the British press, or the books that have been brought out by retired English members of the bureaucracy in India. Sri Malcolm Hailey's arguments and the implications of his arguments were at once repudiated by the members of the Legislative Assembly and by Indian public opinion outside the Assembly.

#### NO DISTINCTION BETWEEN DOMINION STATUS AND RESPONSIBLE GOVERNMENT

Now we desire to point out that the distinction drawn between 'dominion status' and 'responsible government' is a distinction which was never sought to be made in 1917, or 1919, nor was India invited to accept the declaration of August 20, 1917, in the sense that what His Majesty's Government intended to promise to India was something less than the dominion status, viz., a responsible government comprising a legislature with limited or restricted powers. To hold that this is what British statesmen really meant would be to attribute to them a deliberate equivocation which if true, must tend to shatter the faith of even those Indian political parties in the plighted word of British Parliament, which have hitherto acted upon the assumption that dominion status was India's allotted goal. Sir Malcolm Hailey knew well enough that in the instrument of instructions, issued by the King to the Governor-General, reference is made "to the end that British India may attain its due place among our dominions" and he referred to it assuming, but not proving, that it would reinforce his argument. We think that the quotation we have made from the instrument of instructions so far from supporting the view he was urging, supports our view that neither Parliament nor any British statesmen made the subtle distinction between 'responsible government' and 'dominion status' in 1917 or 1919 which it was left to Sir Malcolm Hailey to make in 1924. It is entirely out of question that India can agree to have responsible government in the sense in which Sir Malcolm Hailey used that expression, that is to say, a system of government in which the powers of the legislature are limited or restricted.

#### TRUE POSITION OF INDIA

We should have thought that statesmanship required that the promise of responsible government would be interpreted in a broad-minded spirit and that there would be no room for an interpretation which, if true, cannot but react on the honour of those who made it, and is bound to be repudiated in India. If the atmosphere in which the declaration was made by Parliament, and the demand in response to which it was made, were borne in mind, if, further, it is borne in mind that India was just like the dominions a signatory to the peace treaties, and is and has been an original member of the League of Nations, there should be no room for doubt that England is pledged to India that her place in the British Commonwealth of Nations is to be exactly the same as that of any other self-governing 'dominion.'

The claim of India cannot in our opinion be disposed of by such distinctions as were made in 1924 by the Home Member of the Government of India. If Sir Malcolm Hailey is right in saying that in a system of responsible government, the legislature may be one with limited or restricted powers, then full dominion self-government cannot for obvious reasons be the logical outcome of responsible government, it can only come as a further and a final step, when restrictions or limitations placed on the power of the legislature have been removed. This is merely trifling with India and perpetuating that sense of struggle which it is over, most on the one hand as an ever-widening source of friction between England and India, and on the other prevent the application of our energies to the practical task of self-government and social and economic reconstruction. As against Sir Malcolm Hailey's interpretation, we refer to the royal proclamation of December 23, 1919, in which his majesty spoke of the Act of 1919 as pointing the way to "full responsible government hereafter," and "the right of her (India's) people to direct her affairs and safeguard her interests."

Professor Keith speaking of the elections to Indian legislative bodies at the call of 1920, said "they... herald the time when India will possess full autonomy and will rank as an equal with the dominions and the United Kingdom itself as a member of the British Commonwealth." Our interpretation is no other than this, and we cannot agree in an interpretation put by a member of the Government of India which virtually negates the solemn declaration of Parliament.

We have therefore made our recommendations on the basis (1) that we agreed that nothing short of dominion status will satisfy India and (2) that the form of government to be established in India will be the same and not lower than that of the other self-governing dominions.

(4) That we are incapable of defending ourselves.  
(5) That the problem of Indian State does not need to be repudiated.

#### OBJECTIONS TO DOMINION STATUS: BALLOT-BOX

We are aware of the various objections that have been taken to the suitability of that form of government to India. For instance it has been said that the ballot-box is not suited to the genius of India and that India may have self-government without necessarily having responsible government. Indeed our critics go to the length of maintaining that parliamentary institutions have failed in Europe in practically every country other than England. It is somewhat remarkable that notwithstanding this sort of criticism, every country in Europe, which has turned its back on autocracy, has adopted some form or other of parliamentary institutions, Italy or Russia, which represent extreme types of political experiment, can scarcely be held out to us by our critics as examples to follow. Not only is this true of Europe, but even oriental nations like Japan, Turkey and Persia have adopted constitutions of a parliamentary character. But assuming that the ballot-box is not suited to the genius of India, we ask, 'what is the alternative?'

#### FANCIFUL THEORIES

Some fanciful theories have been suggested. It has, for instance, been said that India may be paralleled out into compact states upon the model of the indigenous system prevailing in the Indian States. The ardent builders of the new Jerusalem," says Sir Walter Lawrence, "must come down to some safe and sound foundation. Surely it would be better to adopt and improve the indigenous institution of Indian States, than to travesty and emasculate a system which is only tolerable in the vigorous hands of British officials, detached, impartial, and, to the Indians, inscrutable as the Sphinx" ("The India That We Served", page 289). What exactly can be the meaning of this sort of confused suggestion, it is difficult to understand.

Surely, it is not intended to suggest that the provinces of India, or parts of these provinces, should be handed over to Indian Princes or that a new order of Princes is to be created from among the favoured classes in British India. That will be, not evolving a constitution for India, in accordance with the wishes of the people of India and the plighted word of Parliament, but writing an epitaph on British rule in India from which the future historian will draw his own moral. A yet more grotesque suggestion was made a few months ago in a reputable organ of Tory opinion in England that the government should rescue from oblivion some surviving descendant of the great Moghals and install him as King at Delhi. We can scarcely believe this to be serious politics.

#### INDO-BRITISH PARTNERSHIP

Again the idea of Indo-British partnership has been seriously mooted in England by some retired governors who believe that the entire problem of India will be solved if Indians can agree to a perpetual maintenance, of a certain number—not less than fifty per cent it may well be more—of British officials to man the services of India. We have reasons to believe that in some high quarters the belief is seriously maintained that all that need be done at present is (1) to establish a modified form of government which shall consist of ministers appointed from among the elected members of the legislature and officials appointed by the crown and owing responsibility not to the legislature but to the crown, (2) to establish second chambers in the provinces so as to stimulate the conservative element and thus to provide an equivoque against the hasty, ill-conceived activities of an irresponsible lower house, (3) to leave the structure and composition of the central government absolutely untouched and (4) if possible to make the Legislative Assembly less harmful than it is supposed to be by restricting the legal activities of the All-India politicians who are imagined to be less "representative" than their more compromising brethren in the provincial councils. Now all that may pass with a certain class of people, both in England and in India, as a constitutional advance. In our opinion it will be very far removed from the problem of responsible government or dominion status.

#### SOCIAL AND POLITICAL CONDITIONS

Another question, which was put by Sir Malcolm Hailey, and which is also usually put by others, is, whether we have satisfied ourselves that "there exist those social and political foundations on which alone such constitutional structure can safely exist." Sir Malcolm has in a way answered this question himself in his speech. "Now I do not wish," said he, "to exaggerate this point: I do not claim that a country must wait for constitutional advance until it has a huge preponderance of educated voters. We did not wait for this in England. Again, I do not wish to deny that the intelligentsia of this country has a great—perhaps a preponderating—influence over the mass of public opinion, certainly an influence out of proportion to its numerical strength. But I do claim that for the moment political advance in India has already outrun social advance." We would like to point out that a national government based on democratic lines could not have more grievously neglected the claims of social advance than has the bureaucratic government, partly because of its foreign character, partly because of its natural reluctance to count upon popularity and partly because a socially strong India would also be a much stronger political India. We do not deny that there is much need for social advance. Indeed, the need seems to us to be urgent and imperative. We feel, however, that that is an argument for, rather than against the establishment of responsible government; for we believe that without real political power coming into our hands, a real programme of social reconstruction is out of the question. At the same time we desire to point out that there are a number of agencies in the country, manned, supported and financed by the intelligentsia of this country, which have been for years past, working in the field of social reform, with appreciable results, which are ignored by our foreign critics, who rather lay stress upon the darker side of our life than upon the brighter. We cannot believe that a future responsible government can ignore the claims of mass education, or the uplift of the submerged classes, or the social or economic reconstruction of village life in India. At any rate, the record of even the present councils, with their limited financial resources and limited power, shows that primary education has in several provinces received far greater attention and support from the people of England to the people of India.

#### SECRETARY OF STATE FOR INDIA

How do the people of England discharge their responsibility towards India at present? The average British voter knows little of India and has no time for India. He sends a certain number of representatives to Parliament, who are divided into parties or groups. Most of them are supremely ignorant about India, and they have an abiding faith that the Secretary of State for India on whom they have by statute conferred certain powers is there to look after the interests of India. The Secretary of State in his turn is generally a politician who has no first hand knowledge of India and who must perform derive his knowledge of Indian affairs either from the Government of India, or from the members of his permanent staff, or from the members of the India Council. In other words, in actual practice, the sovereignty of Parliament is translated into the rule

of the India Office. The first need, therefore, of India is the abolition of the rule of this office, which in recent years has been found, in several respects to be disastrous to the best interests of India and opposed to the freedom of the Government of India itself. The freedom of the Government of India, however, from the leading strings of the Secretary of State necessarily postulates the transfer of the political power from the British voter to the Indian voter. Never before in the history of India has India been ruled by a distant sovereign body which cannot exercise its powers directly, and which must therefore, delegate its authority and power to its agents. Unnatural as the system would be in the case of any country, it cannot be endured indefinitely in a country like India, with its varied problems, social and economic, and more particularly when a new consciousness of its capacity, a new self-respect and a new spirit of patriotism have given her a new motive power. Constitutionally, and as a matter of principle, therefore, we think that nothing short of full responsible government based on a transfer of political power to the people of India can meet the situation.

#### INDIAN STATES

The practical objections to our demand for dominion self-government were formulated by Sir Malcolm Hailey, in the form of certain questions in the speech to which we have already referred. They may be taken as typical of the criticism that is usually made by our critics. "Is dominion self-government asks Sir Malcolm Hailey, 'to be confined to British India only, or is to be extended to the Indian States?' We have attempted to answer this question in a separate chapter to which we invite attention.

#### MINORITY COMMUNITIES

The second question which was put by Sir Malcolm Hailey, and which is usually put by our critics is as to the position of minority communities. Like Sir Malcolm Hailey, we do not desire to "exaggerate it," and like him we feel that "it has to be fixed." We have attempted to fix this problem in our report. We have provided for the protection of the rights of the minorities, not only in the declaration of rights, which in the peculiar circumstances of India we consider to be necessary, but we have dealt with the question at length in relation to the problem of the representation of the minorities in the legislatures. We would, however, point out that the problem of minorities is not peculiar to India. The existence of that problem in other countries has had to be faced in the framing of their constitutions after the war, but has never been treated as an argument or reason for withholding from them self-government in the future.

We would earnestly recommend to the Conference that, in addition to, or in substitution for, our recommendations, the settlement of the problem of minorities is possible by agreement on any other basis, such basis should be accepted in the larger and more abiding interests of the country. We have attempted to fix this problem in our report. We have provided for the protection of the rights of the minorities, not only in the declaration of rights, which in the peculiar circumstances of India we consider to be necessary, but we have dealt with the question at length in relation to the problem of the representation of the minorities in the legislatures. We would, however, point out that the problem of minorities is not peculiar to India. The existence of that problem in other countries has had to be faced in the framing of their constitutions after the war, but has never been treated as an argument or reason for withholding from them self-government in the future. We would earnestly recommend to the Conference that, in addition to, or in substitution for, our recommendations, the settlement of the problem of minorities is possible by agreement on any other basis, such basis should be accepted in the larger and more abiding interests of the country.

#### CONTROL OF THE ARMY

The last question to which we would refer is the question of defence. "Full dominion status," said Sir Malcolm Hailey, "means a dominion army under full control of the dominion government, and I have not yet seen any serious thinker who has pretended that India is yet in a position or will, in the immediate future, be in a position to create a dominion army in the proper sense of the word." Professor Keith, writing on the subject says "that the Indian Army could be officered by the Indians, and brought up to the standard of securing internal order, and even perhaps frontier defence, but it is not clear whether this has been so far extremely slow. It is probably true, that the Indianisation of the Army has not been popular in British Army circles, but there has been a disappointing lack of readiness of the necessary candidates for the commissions available no doubt for the reason that men who desire to secure careers for their sons, find more remunerative opportunities for them in the Indian Civil Service," which, moreover, an Indian has not to face the prejudice against him which he may find in the British Army. But the fact remains, that self-government without an effective Indian Army is an impossibility and no amount of protests or demonstrations, or denunciations of the Imperial Government can avail to alter that fact.

This is true but we do not accept the constitutional position that without an Indian or dominion army India cannot attain dominion status. In the first place, the Indian army has not to be created; it exists there already. In the next place, historically the position taken by our critics is not correct.

We venture to quote on this subject from the speech of Sir Sivaswami Aiyar in the Legislative Assembly, delivered on February 18, 1924. Sir Sivaswami Aiyar is a gentleman who has made a special study of the problem of the army in India and we have no hesitation in quoting him. "But with regard to the problem of the army, I have only to observe this, that so far as my reading of the Imperial Government can avail to alter that fact."

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In compliance with these directions the Working Committee and the Congress President for the year held several informal conferences with Hindu and Muslim leaders and members of the central legislature.

#### THE MUSLIM PROPOSALS

On the 20th March, 1927 some prominent Muslim leaders met together in Delhi and put forward certain proposals on the Hindu-Muslim problem for the acceptance of the Hindus and the country. These proposals which have come to be known as the "Muslim proposals", laid down that Musalmans were prepared to agree to joint electorates in all provinces and in the central legislature.

(i) Sind was made into a separate province. (ii) The N. W. F. Province and Baluchistan were treated on the same footing as the other provinces. (iii) In the Punjab and Bengal the proportion of representation was in accordance with the population. (iv) In the central legislature Muslim representation was not to be less than one third.

These proposals were communicated to the Congress and the Congress Working Committee the very next day passed a resolution appreciating the decision of the Muslim Conference to accept joint electorates and trusting that a satisfactory settlement would be arrived at on the basis of these proposals. A sub-committee was appointed to confer with Hindu and Muslim leaders.

#### WORKING COMMITTEE

The Congress Working Committee met again in Bombay from the 15th to the 16th May, 1927 and passed a lengthy resolution on the Hindu-Muslim question. This resolution proceeded on the basis of the Muslim proposals but was more detailed and dealt with some other matters also.

A. I. C. C.

The All-India Congress Committee which met in Bombay on the same date, unanimously adopted the same resolution with minor alterations. The prin-

proposal change, without on behalf of the Hindu leaders present who that Sind should not be separated from communal grounds, but on general grounds applicable to all provinces. A change in the wording of the resolution removed this objection and it was passed unanimously.

#### SWARAJ CONSTITUTION

This meeting of the All-India Congress Committee also passed a resolution calling upon "The Working Committee to frame a Swaraj Constitution based on a Declaration of Rights, for India in consultation with the elected members of the central and provincial legislatures and other leaders of political parties."

In October, 1927 the A. I. C. C. again passed a resolution on Hindu-Muslim unity but this dealt with the religious and social aspects of the question.

#### MADRAS CONGRESS

The Madras Congress considered the Hindu-Muslim question in its entirety and passed a lengthy resolution dealing with both political and religious and other rights, on the general lines laid down earlier in the year by the A. I. C. C.

#### SWARAJ CONSTITUTION

The Congress further passed the following resolution on the Swaraj constitution:-

"Having regard to the general desire of all political parties in the country to unite together in settling a Swaraj Constitution, and having considered the various drafts submitted to it and the various suggestions received in reply to the Working Committee's circular this Congress authorizes the Working Committee which shall power to co-opt to confer with similar committees to be appointed by other organisations—noble, labour, commercial and communal—in the country and to draft a Swaraj constitution for India on the basis of a Declaration of Rights, and to place the same for consideration and approval before a special convention to be convened in Delhi not later than March next, consisting of the All-India Congress Committee and the leaders and representatives of the other organisations above-mentioned and the elected members of the central and provincial legislatures."

Immediately after this the annual session of the Lahore Federation held in Lahore passed resolutions "cordially appreciating the earnestness of the distinguished Muslim members who have put forward the scheme for the settlement of outstanding differences between Hindu and Muslim communities" and suggesting that "the various items of the proposed settlement should be discussed at an early date by the duly elected representatives of the communities in a spirit of genuine co-operation as will lead to complete agreement."

A few days later the Muslim League met at Calcutta and passed a resolution authorising the Council of the League to appoint a sub-committee "to confer with the Working Committee of the Indian National Congress and such other organisations as the Council may think proper for the purpose of drafting a constitution for India in which the interest of the Muslim community will be safeguarded" in the manner set out in the Delhi proposals of 1927 referred to above.

#### ORGANISATIONS INVITED

In compliance with the directions contained in this resolution the Working Committee of the Congress issued invitations to a large number of organisations. Among these we might mention:

National Liberal Federation  
Hindu Maha Sabha  
All-India Muslim League  
Central Khilafat Committee  
Central Sikh League  
South India Liberal Federation  
All-India Trade Union Congress  
General Council of All-Burmese Associations

Home Rule League  
Republican League  
Independent Party in the Assembly  
Nationalist Party in the Assembly  
India States Subjects Association  
India States Subjects Conference  
Indian States Peoples' Conference  
Anglo-Indian Association  
India Association of Calcutta  
Parsi Central Association  
Zoroastrian Association  
Parsi Rajkes Sabah  
Parsi Panchayat

All-India Conference of Indian Christians  
Southern India Chamber of Commerce  
Dravidia Mahajana Sabha and the Landholders' Association of Ootacamund, Agra, Bengal and Madras

Subsequently at Bombay invitations were also issued to the Bombay Non-Brahmin Party, the Nationalist Non-Brahmin Party, the Communist Party of Bombay and the Bombay Workers' and Peasants' Party.

**ALL-PARTIES CONFERENCE, DELHI**

Many of these organisations sent representatives to the Conference which held its first meeting on February 12th 1928 at Delhi. The Conference continued its meetings from day to day till the 2nd February.

The first question discussed by the Conference was the objective to be aimed at in the constitution. It was proposed that the Constitution should aim at establishing what is called a dominion form of government in India. Objection was taken by some members to this on the ground that the Congress had decided in favour of independence as the goal and no lesser goal should be aimed at. It was evident however that all the parties represented in the Conference were not prepared to go so far. Thereupon it was suggested that a formula might be agreed to which would include both the view points. "Dominion Status" was to mean something indistinguishable from independence, except for the link with the Crown. The real difference between the two is a difference in the executive. It was possible to lay down general principles governing the entire constitution without deciding at that stage the question of the executive. The proposal to adopt the formula of "full responsible government" was therefore accepted, with the clear understanding that those who believed in independence would have the fullest liberty to carry on propaganda and otherwise work for it. The first resolution of the Conference ran thus:

#### MAXIMUM AGREEMENT

The Committee although a joint one consists of members belonging to different political schools and to different communal groups. Under the terms of its appointment it was called upon to give the fullest consideration to the number of resolutions passed by various organisations, none of them being opposed to each other. There were two formidable difficulties in the way of complete or even substantial unanimity. The first arose from the difference in the general outlook of the Congress and that of the other organisations, the former having at its last session adopted a resolution declaring independence as its goal and the latter aiming at dominion status; the second from the widely differing angles of vision from which the various communal organisations viewed their political rights.

#### INDEPENDENCE AND DOMINION STATUS

The Committee had to face the first difficulty right at the beginning. At Delhi a phrase capable of a double interpretation—"full responsible government"—was used to avoid a decision on the question of dominion status or independence. The Committee felt however that it would be difficult to draw up over the principles of the constitution unless this question was decided at least so far as the draft constitution was concerned. Some members of the Committee desired to adhere to the position taken up at Delhi but a majority was of opinion that a choice had to be made. This choice, in view of the circumstances mentioned above with so many different parties co-operating, could only be on dominion status. On any higher ground a general agreement was not obtainable. "The majority of the Committee" were therefore "of opinion that the terms of reference to them require the Committee to consider and determine the principles of a constitution for full responsible government" on the model of the constitutions of the self-governing dominions. The principle of

the Constitution which we have suggested are therefore meant for a dominion constitution but most of them of course can be applied in their entirety to a constitution of independence. Our decision as a Committee in favour of such a constitution simply means that the maximum degree of agreement was only obtainable on this basis. It does not mean less any individual Congressman, much less the Congress itself, has given up or toned down the goal of complete independence. There was believe in this goal retain the highest right to work for it. But the maximum agreement thus reached will, we trust, serve as a satisfactory basis for a constitution in which all parties can unite.

#### COMMUNAL ASPECT

As to the second difficulty, from the constitutional point of view the communal controversies are of very great importance. But, whatever their relative importance might be, they occupy men's minds much more than matters of greater import and cast their shadow over all political work. We thus find ourselves face to face with a number of conflicting resolutions and recommendations all of which are equally entitled to our respect. But when we find that the view of the Madras Congress and the Muslim League is diametrically opposite to that of the Hindu Maha Sabha and the Sikh League, we must respectfully express our inability to accept either in its entirety. Indeed the very fact that we are called upon to determine the principles of the constitution after considering these divergent views shows that we are expected to exercise our own judgment in the matter and make such recommendations as are in our opinion most conducive to the political advancement of the country. We realise that our recent negotiations, however sound and judicious they may be, can have weight and effect only to the extent that they are acceptable to all the principal parties concerned. The only hope for an agreed constitution lies in finding the basis for a just and equitable compromise between all the parties after a full and fair consideration of all the circumstances. The Committee has spent a great deal of time and labour in the endeavour to find out such a basis, and has had the benefit of the advice of many of prominent Hindu and Muslim leaders who, on the invitation of the chairman, attended some meetings of the Committee and rendered most valuable assistance. The result of that endeavour is presented in the following pages in the hope that it will be received by all the parties concerned in a generous spirit and with the single view of helping each other to lift up the nation from the depths to which it has sunk by mutual distrust and disunity.

#### BOMBAY MEETING

Thus when the All-Parties Conference met again on the 19th May, 1928 in Bombay the situation was not a promising one. The communal organisations had drifted further apart and each of them had hardened its attitude and was not prepared to change or modify it. The two sub-committees appointed at Delhi on Sind and Proportional Representation had presented no report.

There being no likelihood of an agreed and satisfactory solution at that stage, it was thought a small committee, viewing the communal problem as a whole and its relation to the constitution might succeed in finding a way out. The two sub-committees appointed at Delhi on Sind and Proportional Representation had presented no report.

Early in April the Hindu Maha Sabha met in Conference in Jubbulpore and adopted resolutions of strong disagreement with some of the Muslim proposals.

**THE PRESENT COMMITTEE**

The Committee had to be a small one if it was to work properly. It was not possible to represent all interests on it, but an endeavour was made to have spokesmen of some important view-points. Sir Ali Imam and Mr. Shaukat Qureshi were to express the Muslim point of view; Mr. M. S. Aney and Mr. M. R. Jayakar, the Hindu Maha Sabha's attitude; Mr. G. R. Pradhan the Non-Brahmin view; Sardar Mangal Singh represented the Sikh League; Sir Tej Bahadur Sapru the Liberal view-point and Mr. N. M. Joshi the interest of labour.

**ACKNOWLEDGMENTS**

Among those who responded to the chairman's invitation were Dr. Ansari, Pandit Madan Mohan Malaviya, Maulana Abdul Karim Azad, Mr. G. V. Chittenden, Mutyab Shahri Dehlvi, Dr. S. D. Kitchlu, Mr. S. B. Ishwari Singh, Munshi Iswar Saran, Dr. S. M. Mahomed, Chaudhuri Khan Qazmi, and Mr. T. A. K. Sherwani. We are beholden to them for their valuable help and co-operation. We feel specially grateful to the President of the Congress, Dr. Ansari, who came to us three times and was ever generous with his help whenever we were in difficulties. Our thanks are particularly due to Pandit Jawaharlal Nehru, the general secretary of the Congress, who, but for a certain unavoidable absence, was in constant attendance at the meetings of the Committee. Besides undertaking the arduous task of compiling the figures printed in the appendices to this report he rendered most valuable assistance at every stage of the Committee's work.

#### CHAPTER II

#### THE COMMUNAL ASPECT

##### THE PROBLEM

The communal problem of India is principally the Hindu-Muslim problem. Other communities have however lately taken up an aggressive attitude and have demanded special rights and privileges. The Sikhs in the Punjab are an important and well knit minority which cannot be ignored. Amongst the Hindus themselves there is occasional friction, especially in the south, between Non-Brahmins and Brahmins. But es-

pecially in the south, between the Hindus and Muslims.

**SEPARATE ELECTORATES**

It is admitted by most people now that separate electorates are thoroughly bad and must be done away with. We find however that there has been a tendency amongst the Muslims to consider them as a "valued privilege," although a considerable section are prepared to give them up in consideration for some other things. Everybody knows that separate electorates are bad for the growth of a national spirit, but everybody perhaps does not realise equally well that separate electorates are still worse for a minority community. They make the majority wholly independent of the minority and its votes and wholly hostile to it. Under separate electorates therefore the chances are that the minority will always have to face a hostile majority, which can always, by sheer force of numbers, override the wishes of the minority. This effect of having separate electorates has already become obvious, although the presence of the third party confuses the issues. Separate electorates thus benefit the majority community. Extreme communalists flourish therewith and the majority community, far from suffering, actually benefits by them. Separate electorates must therefore be discarded completely as a condition precedent to any rational system of representation. We can only do justice to the minority.

**DELAY IN REPORT**

The Committee was called upon to report before the 1st July but in spite of every effort to complete the work in time the Committee was unable to adhere to the time-table laid down. From June 5th onwards the Committee met almost for several hours at a time. It held 25 sittings besides informal conferences.

**MAXIMUM AGREEMENT**

The Committee although a joint one consists of members belonging to different political schools and to different communal groups. Under the terms of its appointment it was called upon to give the fullest consideration to the number of resolutions passed by various organisations, none of them being opposed to each other. There were two formidable difficulties in the way of complete or even substantial unanimity. The first arose

from the difference in the general

outlook of the Congress and that of the other organisations, the former having at its last session adopted a resolution declar-

ing independence as its goal and the latter aiming at dominion status;

the second from the widely differing angles of vision from which the various communal organisations viewed their political rights.

**INDEPENDENCE AND DOMINION STATUS**

The Committee had to face the first difficulty right at the beginning. At Delhi a phrase capable of a double interpretation—"full responsible government"—was used to avoid a decision on the question of dominion status or independence. The Committee felt however that it would be difficult to draw up over the principles of the constitution unless this question was decided at least so far as the draft constitution was concerned. Some members of the Committee desired to adhere to the position taken up at Delhi but a majority was of opinion that a choice had to be made. This choice, in view of the circumstances mentioned above with so many different parties co-operating, could only be on dominion status. On any higher ground a general agreement was not obtainable. "The majority of the Committee" were therefore "of opinion that the terms of reference to them require the Committee to consider and determine the principles of a constitution for full responsible government" on the model of the constitutions of the self-governing dominions. The principle of

the Constitution which we have suggested are therefore meant for a dominion

constitution but most of them of course

can be applied in their entirety to a constitution of independence. Our decision as a Committee in favour of such a constitution simply means that the maximum degree of

agreement was only obtainable on this basis. It does not mean less any individual Congressman, much less the Congress itself, has given up or toned down the goal of complete independence. There was belief in this goal retain the highest right to work for it. But the maximum agreement thus reached will, we trust, serve as a satisfactory basis for a constitution in which all parties can unite.

#### LIVE AND LET LIVE

But logic or sense have little to do with communal feeling and to-day the whole problem resides itself in the removal from the minds of each of a baseless fear of the other and of giving a feeling of security to all communities. In looking for this security each party wants to make for itself or, to retain, a dominating position. We note with regret that the spirit animating some of the communal spokesmen is not one of live and let live. The only methods of giving a feeling of security are safeguards and guarantees and the grant, as far as possible, of cultural autonomy. The clumsy and objectionable methods of separate electorates and reservation of seats do not give this security. They only keep us in armed truce.

The Muslim being in a minority in India has a whole fear that the majority may harass them, and to meet this difficulty they have made a novel suggestion—that they should at least dominate in some parts of India. We do not here criticise their demand. It may have some justification in the present communal atmosphere but we do feel that it has little to do with the premises we started from, unless indeed the best safeguard that one can have is to occupy a position of domination oneself. The Hindus on the other hand although in a great majority all over India are in a minority in Bengal and the Punjab and in Sind, Baluchistan and the N. W. F. Province. In spite of their all-India majority they are afraid of the Muslims in these provinces.

We cannot have one community dominating over another. We may not be able to prevent this entirely but to the object we should aim at is not to give dominance to one over another but to prevent the harassment and exploitation of any individual or group by another. If the falliest religions liberty is antagonised that majority population.

No Indian desiring a free India, progressing peacefully and harmoniously, can view this result with equanimity. To say from the larger view point of nationalism that no "communal" provinces should be created is in a way, equivalent to saying from the still wider international view point that there should be no separate nations. Both these statements have a measure of truth in them. But the staunch internationalist recognises that without the fullest national autonomy it is extraordinarily difficult to create the international state. So also without the fullest cultural autonomy, and communism in its letter aspect is culture, it will be difficult to create a harmonious nation.

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declare to be elected the Non-Brahman candidate or candidates, as the case may be, to whom the largest number of votes has been given."

To illustrate this rule take the case of Madras City where out of six seats in a mixed electorate two are reserved for Non-Brahmins. Assume that no Non-Brahmin candidate has secured enough votes and that the only Non-Brahman candidates who have polled the largest number of votes are to be found somewhere near the bottom of the list. Under the rule just quoted two of these Non-Brahmins would be at once declared to be duly elected and the 5th and 6th candidates on the list who are not Non-Brahmins would have to give place to them. Thus in the case of Non-Brahmins the choice of the electorate is wholly set aside even though a majority of their own community voted against them. The question is whom would these two Non-Brahmins represent. It is clear that they do not represent the majority of the electorate nor possibly even a majority of Non-Brahmins. They have come in by an artificial rule based on no principle whatever. Happily the fears of the Non-Brahmins in Madras turned out to be unfounded and we are informed that there never was a single case of putting the rule into practice.

It is not enough to have 28 members of this kind in a representative house of 98 members, but when the majority of members are elected in this manner and the ministry is formed from out of them, representative government becomes a farce.

#### SIND PACT METEOR

Another method of reservation of seats both for the majority and the minority has been suggested by the promoters of what is called the "Sind Pact." This method is thus described in clause 6 of the "Pact":—

"In order to make the system of joint electorates truly effective, there shall be one common electoral roll for each constituency and the election of Moslem and non-Moslem representatives should be held separately but on the same day, so that the whole electorate, Moslem and non-Moslem, shall have the right and opportunity to vote at both these elections separately, whereby the members so elected shall have been returned by the entire constituency and not only by the voters of their own communities."

The only merit claimed for this method is that the "members so elected shall have been returned by the entire constituency and not only by the voters of their own communities." For this purpose it would not be necessary to hold the elections separately as in a single election also the whole electorate—Moslem and non-Moslem—would have the right and opportunity to vote. The real object of the clause seems to be to avoid competition between the Hindu and Moslem candidates and thus secure to them reservation of seats according to their numbers. Apart from the fact that such competition is essential for the exercise by the elector of his free choice, the method proposed entirely slants out all opportunity for a Hindu elector to vote for a Moslem candidate in preference to a candidate of his own community and vice versa.

It is obvious that the result of two separate ballots for each group of candidates can never be the same as that of a single one for both, but that there will always be much greater chance at separate elections for the majority community to secure the return of their mandatories from among the minority community by concentrating their votes on them.

#### BOTH METHODS UNSATISFACTORY

It will thus be seen that neither of the two methods discussed above is likely to give satisfactory results. The third and the only remaining method of which we are aware is that of separate communal electorates which we have already discussed. The doing away of communal electorates is intended to promote communal unity by making each community more or less dependent on the other at the time of the elections. But reservation for the majority community in a mixed electorate will take away much of the incentive for communal unity, as the majority community as a whole would under all circumstances be assured of its full quota without the help of the other communities. There is no doubt some advantage to be gained by individual candidates of either community having to canvass the other community as against their rivals of the same community but this small advantage will probably not be availed of in times of acute communal tension.

It is absurd to insist on reservation of seats for the majority and claim full responsible government at the same time. Responsible government is understood to mean a government in which the executive is responsible to the legislature and the legislature to the electorate. If the members of the executive with the majority behind them have all got by reservation and not by the free choice of the electorate there is neither representation of the electorate nor any foundation for responsible government. Reservation of seats for a majority community gives to that community the statutory right to govern the country independently of the wishes of the electorate and is foreign to all conceptions of popular government. It will confine minorities within a ring-fence and leave them no scope for expansion.

#### DEFECTS OF ELECTIONS

We have based the foregoing observations on the principles generally applied to representative government. We are aware that those principles have in practice been found far from perfect and that serious objections have been raised in certain quarters against democratic government itself. We can hardly enter into these considerations in this Committee and must at this stage of our evolution accept the principles governing elections in most of the advanced countries of the world.

We are also aware that the system of election we have recommended has sometimes failed to establish the rule of the majority, as in the case of the last British elections, which resulted in the return of an overwhelming majority of members who had only the support of a minority of electors. This we believe was mainly due to inequalities in voting strength and the wastage of votes on candidates who did not need them. The only remedy is

proportional representation which for the reasons already mentioned we have refrained from recommending at present.

#### FACTS AND FIGURES

We have so far considered the question of the reservation for majorities on principle but the strongest argument against such reservation is furnished by the facts as they are. We are indebted to Pandit Jawaharlal Nehru for the figures given in appendices A & B, which he has compiled with great industry from the reports of the last census relating to Bengal and the Punjab—the only two provinces in which the Moslems are in a majority. These figures conclusively show that there is no foundation in fact for the fears entertained by the Moslems in these two provinces, and indeed no occasion for any adventitious aid to secure to them the full benefit of their natural majority. The argument is that Moslems will not obtain adequate representation and the slight majority they have will be more than counterbalanced by their educational and economic backwardness in these provinces. The whole force of this argument, which is based on the total population of the two provinces, disappears when we examine in detail the figures relating to the administrative divisions and the districts composing them.

It appears from an analysis of the population figures of the Punjab and Bengal that Moslems can certainly have nothing to fear from a free electorate without any reservation of seats, in these two provinces. It will be clear from the figures given in the appendices that in both the Punjab and Bengal the distribution of population is such that the Moslem majority in most of the geographical and administrative areas comprising these provinces is much greater than it appears when the whole province is taken as a unit. We find that there are natural areas of reservation for the different communities which ensure the representation of each community far more effectively than any artificial reservation can do.

#### THE PUNJAB

Thus in the Punjab, we have a Moslem zone in the north and north-west of the province, where the Moslems are overwhelmingly strong and where no other community can encroach on their preserve. We find also a smaller area in the south, the Hindu zone, where the Hindus and Sikhs are equally strong. Between the two there is a third area where the Moslems are predominant, but not overwhelmingly so. This analysis leads us to the conclusions that Moslems are bound to capture over 47 per cent of the total seats in the Punjab from their special zone alone, whilst the Hindus and Sikhs will jointly capture nearly 30 per cent. The remaining 23 per cent of seats will lie in either a predominantly Moslem area or in districts where the Moslems are the strongest single community. Allowing for every contingency we can not conceive of Moslems not capturing enough seats in this area to give them a clear majority in the provincial legislature.

We have discussed these population figures for each Punjab district in detail in our note attached (Appendix A). We may here however refer to some of these figures.

The population of the Punjab (British territory) at the last 1921 census was as follows:

Muslims	.. 11,441,321	.. 55.3%
Hindus	.. 6,579,280	.. 31.8
Sikhs	.. 2,294,207	.. 11.1%
Others (mainly Christians)	.. 307,236	.. 1.8%
Total Punjab population	.. 20,685,024	.. 100%

There are 29 districts in all. We have divided these into four zones:—

Others (chiefly tribal religious and Christians) .. 1,284,207 .. 5.7%

Total Bengal population (British territory) .. 46,595,536 .. 100.0%

Here also we find definite zones as in the Punjab.

I. Overwhelmingly Muslim zone. There are 13 districts with 282 members of the legislature or over 60 per cent of the total.

II. Predominately Muslim zone—two districts with 23 members or 5 per cent of the total.

III. Neutral or predominantly Hindu zone. Four districts with 42 members or 9 per cent of the total.

IV. Overwhelmingly Hindu zone. Nijne districts with 118 members or 25 per cent of the total.

Thus in Bengal from the overwhelming Muslim zone alone, not taking into consideration the predominantly Muslim zone, Muslims are assured of over 60 per cent seats in the legislature. The Hindu minority, although it is a very big minority, is highly likely to suffer in numbers in an open general election without reservation.

#### BENGAL DISTRICT BOARD ELECTIONS

This has recently been demonstrated in a remarkable manner by the figures of the last district board elections in Bengal, printed in Appendix C. The electorates for these boards are mixed Hindu and Muslim but the electoral roll being based on a property or tax paying franchise does not maintain the population proportions of the two communities.

We expect that the voting strength of the Muslims, who are economiciv weaker than Hindus is much less than it would be with adult suffrage and yet we find that they made a clean sweep of the Hindu minority in three districts—Nymensingh, Chittagong and Jorebagan.

In the first two of these not a single Hindu was elected though the Hindus are about 24 per cent of the population and in the third only one Hindu managed to get in though the community forms 38.2 per cent of the population.

As against this we find that Muslims, where they are in insignificant minorities of 3 and 4 per cent, have managed to send one to three representatives to the district board. We have also very interesting examples of what happens when the two communities are found in about equal strength. The cases of Khulna and Dinajpur are in point. In the former the non-Muslims being 50 per cent of the population carried 11 seats as against 5 taken by Muslims who were 48.4 per cent. In the latter the Muslim being 49 per cent of the population carried 14 seats as against 4 of the Hindus who were over 44 per cent. Actual population is not a safe guide in the absence of exact figures showing the voting strength of the two communities, but we think it can safely be inferred that the Muslim in Bengal need no protection from all the non-Muslims put together. The case of Jorebagan is particularly interesting. As long as the Muslim majority did not take much interest in the local affairs of the district the Hindu minority had it all its own way. Once roused to action the Muslims not only swept the polls but for the first time in the history of the district board gave it a Muslim chairman and a Muslim vice-chairman, both members of the Bengal Council. We are informed that the last elections for the district boards in Bengal have opened the eyes of both communities and that Muslim opinion is now veering round to mixed electorates. It is one of the tragedies of communal hostility that men shut their eyes to facts and fight against their own best interests. We commend a careful study of the figures we have given in Appendices A, B and C to those who are flooding the country with elaborate manifestos and memoranda in support of communal electorates for the Punjab and Bengal.

#### ECONOMIC AND EDUCATIONAL STANDARDS

We find therefore from an analysis of the actual figures that Muslim fears in the Punjab and Bengal are largely imaginary. These fears are based on the superior economic and educational standards of Hindus and Sikhs.

We have seen that the Hindus and Sikhs have not helped the Hindus of Bengal at the district board elections and we are sure that the result of council elections will be even more strikingly in favour of Muslims. But there is no doubt that Muslims are backward both in education and in wealth, specially in Bengal, as compared to the other communities. There is also no doubt that the power of wealth is great in the modern state. It is so great indeed that it seldom troubles to contest seats in the legislature as it can pull the strings from behind the scenes. Reservation of seats or separate electorates or any other device of this kind can not materially reduce this power. So long as people think and act in terms of communalism, so long will they not face the real problem. And if they will not face it they will not solve it.

We are not here called upon to advise on a new structure of society where the economic power is not concentrated in the hands of a few. We take it that the communal organisations which aggressively demand special rights and privileges for their respective communities are not desirous of attacking the basis of the existing structure. If this is admitted then all we can do is to provide safeguards and guarantees for education and economic advancement, especially for all backward groups and communities.

III. There are three districts where no community is predominant but even here the Muslims are the strongest single community. The number of members of the legislature for these districts is 27% that is 13.8 per cent of the total.

IV. There are nine districts which might be called the overwhelmingly Hindu-Sikh zone. The number of members for this zone is 61% or 29.7 per cent.

We thus see that Muslims are certain of 47.3 per cent seats have a good chance of capturing the majority at least 9.4 seats; and a fair chance of some seats out of the 13.3 per cent of group III. They are thus, humanly speaking, assured of a clear majority in the legislature.

#### PARTIES IN FREE INDIA

We are certain that as soon as India is free and can face her problems unhampered by alien authority and intervention, the minds of her people will turn to the vital problems of the day. How many questions that are likely to be considered by our future legislatures can be of a communal nature? There may possibly be a few now and then but there can be no doubt that the vast majority of the questions before us will not be communal in the narrow sense.

The result will be that parties will be formed in the country and in the legislature on entirely other grounds, chiefly economic we presume. We shall then find Hindus and Muslims and Sikhs in one party acting together and opposing another party which also consists of Hindus and Muslims and Sikhs. This is bound to happen if we once get going.

#### HINDU AND SIKH MINORITIES

Looking at it purely from the Hindu point of view, however, we can well imagine that a reservation of seats for the Muslim minorities in the Punjab and Bengal, may be mainly due to inequalities in voting strength and the wastage of votes on candidates who did not need them. The only remedy is

Bengal, may actually benefit the Hindus and may be Sikhs also, more than no reservation. The facts and figures we have stated demonstrate that the Muslim position in the Punjab and Bengal is so strong that in all likelihood they will gain in a joint electorate with no reservation more seats than their population warrants. Thus the Hindu and Sikh minorities may find their representation even reduced, below their population ratio. This is a possible and indeed a likely contingency. But it is impossible to provide for such contingencies. The safest and most obvious course is to have an open election with such safeguards as we can devise.

#### INFORMAL CONFERENCE

The considerations set out above were fully discussed at the informal conference to which reference has already been made and the following resolution was unanimously adopted, subject to a note by our colleague Sardar Mangal Singh on the second part of the resolution:

"We are unanimously opposed to the reservation of seats in the legislatures either for majorities or minorities and we recommend that no such reservation should be provided for in the constitution. But if this recommendation is not accepted and an agreement can be arrived at only on a reservation of seats on the population basis we recommend that such reservation be made for minorities or minorities without any weightage and with a clear provision that it shall automatically cease at the expiry of ten years or earlier by the consent of the parties concerned."

The note of Sardar Mangal Singh runs as follows:—

"I agree with the first part of the above proposition, namely that there shall be no reservation of seats either for majorities or minorities in the legislatures of the country. But I am very strongly opposed to the creation of statutory communal majorities by reservation of seats for minorities on population basis under all circumstances and for any time whatsoever short it may be. If the agreement can only be reached by reservation of seats I will recommend that the case of the Sikhs be considered as that of an important minority and adequate and effective representation, far in excess of their numerical strength, be given to them in the Punjab on the basis adopted for Muslim minorities under the Lucknow Pact in Bihar and other provinces. And I further suggest that special weightage be given to Sikhs for representation in the central legislature."

It will be seen that the first part of the resolution contains the actual recommendation of the informal conference and the second part deals with the question for them to consider is which of the two is likely to be of greater advantage to them. We have no doubt that when they carefully weigh the pros and cons of the reservation of a larger number of seats than they are entitled to on the population basis without the right to exceed that number, against the pros and cons of reservation in proportion to their population with the right to contest as many more seats as they like, they will find that the latter is by far the better choice. As we have already pointed out, reservation to the fullest extent deprives mixed electorates in a considerable measure of their utility in promoting national unity. Whatever inducement a Muslim candidate may have to approach the non-Muslim voter to defeat his Muslim rival, so far as his community as a whole is concerned, it will have its full quota assured to it with or without the reservation of seats for non-Muslim voters, and at times of extreme communal tension it will be easy both for Muslims and non-Muslims to run their elections quite independently of each other without either losing a single seat. It is only by maintaining the interdependence of the two communities that we can hope to minimise their differences.

#### MUSLIMS IN U. P.

Having regard to the actual conditions prevailing in the U. P. where the Muslim minority is the largest we are convinced that the Muslims stand to gain more seats under our scheme than the non-Muslim voters, and at times of extreme communal tension it will be easy both for Muslims and non-Muslims to run their elections quite independently of each other without either losing a single seat. It is only by maintaining the interdependence of the two communities that we can hope to minimise their differences.

#### RESERVATION FOR MUSLIMS IN THE CENTRAL LEGISLATURE

So far as the Muslim demand is concerned it only remains for us to deal with that part of it which relates to reservation of one third of the total number of seats in the central legislature for Muslims. This point was not directly raised or discussed at the informal conference, but we think that it may be considered by the general recommendations we have made in regard to reservation of seats. The principle we have adopted is that wherever such reservation has to be made for the Muslim minority it must be in strict proportion to its population. The Muslims are not given effect to for more than ten years. We cannot be taken to have recommended what we have expressly opposed. But we recognise the value of a compromise between parties and communities however wrong it may be in principle, and if such a compromise is arrived at in spite of ourselves, we can do no more than try to limit its operation. This is exactly what we have done. As regards the special claim of the Muslims and Sikhs for greater representation than their population would justify, it is enough to say that in the view we have expressed above, no such claim is admissible on the part of any community however important it may consider itself to be.

We shall have to revert to the resolution of the informal conference in considering the question of reservation for minorities to which we now address ourselves.

#### RESERVATION FOR MINORITIES

Muslims in provinces other than the Punjab and Bengal are in small minorities and in some parts of India almost negligible, though in the total population of India the proportion is over 24 per cent.

#### RESERVATION FOR MUSLIM MINORITIES IN PROPORTION TO POPULATION

After the resolution of the informal conference referred to above was passed it was pointed out to us that it would work great hardship on the Muslim minority who in all probability will be unable to elect no more than 30 or 40 Muslims from the Punjab and Bengal, and perhaps one or two from the U. P. and Bihar to the central legislature of 500 members and that there was little chance of any of the other provinces with less than 7 per cent of the population returning a single Muslim. The result, it was argued, would be that Muslims, who form nearly one-fourth of the total population of British India, would have no more than one-tenth of representation in the central legislature. It must be remembered that they have the right to contest additional seats both for the central and provincial legislatures in provinces other than the Punjab and Bengal and that in the two last mentioned provinces their right is unfettered to contest any number of seats they like for both legislatures.

In the case of provincial legislatures we have substituted this right for the present weightage they enjoy. In the central legislature the Muslims do not present enjoy any definite weightage and their numbers to be returned by the provinces are fixed on a more or less arbitrary basis. The actual number of the Muslim members falls short of one-third of the total strength of the Assembly. There is thus no foundation for the demand even in existing conditions. A little reflection will show that it is far better to have a free hand than to be tied down to the difference between 1/3 and 1/4. But as we have already observed we cannot depart from the principle we have accepted for the Muslim minorities in the provincial legislature. Besides the question of principle there are practical difficulties in the way. How are we to secure this one-third reservation in the central legislature without restricting the Punjab and Bengal majorities to definite numbers of members and allowing weightage in the other provinces all round? And on what principle is the excess in the numbers of members in the provinces to be allotted to each province? We have given our best consideration to the matter but we regret we are unable to recommend reservation of one third of the total number of seats for Muslims in the central legislature.

#### RECOMMENDATION

For these reasons we recommend reservation of seats, when demanded, for Muslim minorities both in the Central and Provincial legislatures in strict proportion to their population, with the right to contest additional seats for a fixed period of ten years. We would add, however, that our colleague Mr. Shaukat Qureshi does not agree with some of the arguments and conclusions given above. He is of opinion that the resolution of the informal conference, referred to above, should be adopted in its entirety. He further desires that one third of the seats in the Central legislature should be reserved for Sikhs.

#### WEIGHTAGE NOT PERMISSIBLE

Representation in excess of their proportion in the population fixed for Muslims in a number of provinces under the Lucknow pact, as well as the Montagnac-Chelmsford reforms, will disappear under

\*A list of those who signed the resolution is given in a note at the end of the report.

the wishes of the people and the linguistic unity of the area concerned. It is well recognised that rapid progress in education as well as in general culture and in most departments of life depends on language. If a foreign language is the medium of instruction, business and affairs and the life of the country must necessarily be situated so that a democracy can exist where a foreign language is used for these purposes. A democracy must be well informed and able to understand and follow public affairs in order to take an effective part in them. It is inconceivable that a democracy can do this if a foreign language is largely used. It becomes essential therefore to conduct the business and politics of a country in a language which is understood by the masses. So far as the provinces are concerned this must be the provincial language.

#### LANGUAGE

We are certainly not against the use of English. Indeed from the necessities of the situation we feel that English must, as at present, continue for some time to come to be the most convenient medium for debate in the central legislature. We also believe that a foreign language, and this is likely to be English, is essential for us to develop contacts with the thought and science and life of other countries. We are however strongly of opinion that every effort should be made to make Hindustani the common language of the whole of India, as it is to-day of half of it. But, granting all this, provincial languages will have to be encouraged and, if we wish the province to make rapid progress, we shall have to get it to do its work in its own language.

If a province has to educate itself and do its daily work through the medium of its own language, it must necessarily be a linguistic area. If it happens to be a polyglot area difficulties will continually arise and the media of instruction and work will be two or even more languages. Hence it becomes most desirable for provinces to be reorganized on a linguistic basis. Language as a rule corresponds with a special variety of culture, of traditions and literature. In a linguistic area all these factors will help in the general progress of the province.

The National Congress recognised this linguistic principle 8 years ago and since then, so far as the Congress machinery is concerned, India has been divided into linguistic provinces.

#### WISHES OF PEOPLE

Another principle which must govern a redistribution of provinces is the wishes of the people concerned. We who talk of self-determination on a larger scale cannot in reason deny it to a smaller area, provided of course that this does not conflict with any other important principle or vital question.

The mere fact that the people living in a particular area feel that they are a unit and desire to develop their culture in an important consideration even though there may be no sufficient historical or cultural justification for their demand. Sentiment in such matters is often more important than fact.

Thus we see that the two most important considerations in rearranging provinces are the linguistic principle and the wishes of the majority of the people. A third consideration, though not of the same importance, is administrative convenience, which would include the geographical position, the economic resources and the financial stability of the area concerned. But administrative convenience is often a matter of arrangement and must as a rule bow to the wishes of the people.

#### LINGUISTIC AREAS

In looking at the map of India to-day we see definite linguistic areas. There is the huge Hindustani block all over Northern India, with its slight variation into Punjabi in the Punjab. Then there is the Bengal area, the Assam, the Orissa, the Telugu, Tamil, Malayalam, Canarese, Marathi, Gujarati and Sindhi. Across the Bay of Bengal there is the Burmese area. Demands have been made from time to time for the separation of Andhra, the Telugu areas, of Utkal (Orissa), of Karnataka (Canarese), Kerala (Malayalam), Sind (Sindhi), Central Provinces (Hindi-speaking area) and other parts, and all these will have to be enquired into and carefully considered when a general redistribution is taken in hand. We have no material before us to give any opinion about most of these areas. We have received no representations except in regard to the Karnataka and Sind.

#### UTKAL

We have also received a small book giving the case for Utkal but we regret we have been unable to consider it in the absence of any special memorandum or representation. Our colleague, Mr Sankha Chandra Bose, is however satisfied that the Oriya-speaking areas should be amalgamated and constituted into a separate province, if this is financially possible. He is further of opinion that the demand for the amalgamation of the Bengali-speaking tracts in Assam and Bihar and Orissa is a reasonable and legitimate one.

#### KERALA

As regards Kerala we have received a resolution of their Provincial Conference urging unification and separation. Indian Tamil Nadu offers a great many difficulties as a great part of it consists of the States of Travancore and Cochin. Leaving out these States as we must under present circumstances, we have a small area. We are at present not prepared to make any recommendation in the absence of any material in regard to Kerala.

#### KARNATAKA

The case for the Karnataka was placed before us by a representative of the Karnataka Unification League and the Karnataka Provincial Congress Committee. It had been ably prepared with a wealth of information, historical, cultural and statistical. All our questions were answered satisfactorily and in our opinion a strong *prima facie* case for unification and the formation of Karnataka as an separate province was made.

Parts of the Karnataka lie in Indian States, notably Mysore, and there are obvious practical difficulties in the way of uniting them with the rest. It might not be convenient to unite the smaller parts of the Karnataka on the other side of Mysore territory as these would be cut off from the Karnataka proper by Mysore. But even so a sufficiently large area remains.

We were informed that the demand for unification came from the vast majority of the population, if not practically all. There was no Hindu-Muslim problem but there was a Brahman Non-Brahmin problem although this did not affect

the question of unification much. There was no organised opposition, although a small number of Brahmins were opposed. On behalf of the Maharsahitans in some of the border districts a fear was expressed that their language might suffer, but safeguards for this might be provided for.

Financially the position of the Karnatakas was very strong and even at present there was a considerable surplus in the British part of the Karnataka. Our colleague, Mr. M. S. Nayak, does not wholly agree with our view point regarding the financial position. We are unable to give a definite opinion on it. But it is unlikely, to say the least, of it that financial considerations will be such as to override all the other important factors which we have discussed. We would say therefore that unless some insurmountable difficulties supervene, and they may not have approached us as they did not know that we were considering the question. This is hardly like as the press of the Karnataka has been full of this question and considerable publicity has been given to the arguments we have advanced. They agree that Sind is a linguistic area and that there is a strong demand from the majority of the population for separation. But before giving a final opinion they wish that an enquiry be made into the financial and administrative aspects. We ourselves are of opinion that some investigation into the financial aspect will be necessary before separation can be effected.

We might add that the separation of an area and the formation of a new province does not necessarily imply a separate economic life. Nor does it mean a duplication of all the organs of government. For instance it is quite possible for one High Court to serve more than one province.

#### SIND

It is unfortunate that although the separation of Sind has given rise to a great deal of heated argument, we are yet not in possession of all the relevant facts such as were placed before us by the representative from the Karnataka. We would commend the way the Karnataka case was prepared, with patient thoroughness and maps and statistics to those who have demanded the separation of Sind. As we have already pointed out, the All Parties Conference appointed a sub-committee in Delhi to investigate the financial aspect of the question but unfortunately no facilities were placed before this Committee by the supporters of separation, and it has not yet reported. We do not know if it is likely to submit any report in the near future. For the present, however, we have to proceed on general principles and without the help which actual authenticated figures might have given us.

We laid down two important general considerations in regard to the distribution of provinces—linguistic and the wishes of the majority. Sind certainly satisfies both these tests. It is a definite linguistic area and the great majority of its people may be taken to demand separation. We have already noticed the clause relating to the reservation of seats and expressed our inability to agree to it. As regards the desirability of the separation of Sind from Bombay we are at one with them, but we regret we cannot take their declaration to "ent their coat according to their cloth" as a final solution of the financial problem. This matter must for the present rest where we have left it. It is not necessary to notice the other clause of "pact."

progress of Sind. All the energy that should go to building up the life and work of the province would be spent in profitless agitation. If however this right is granted, subject to the people of Sind shouldering their own financial burden, a strong impetus will be given to the new province to work hard and compete with the more advanced provinces.

We feel therefore that the argument for the separation of Sind is very strong. In the absence of sufficient data regarding the financial position we are unable to give a definite opinion on it. But it is unlikely, to say the least, of it that financial considerations will be such as to override all the other important factors which we have discussed. We would say therefore that unless some insurmountable difficulties supervene, and they may not have approached us as they did not know that we were considering the question. This is hardly like as the press of the Karnataka has been full of this question and considerable publicity has been given to the arguments we have advanced. They agree that Sind is a linguistic area and that there is a strong demand from the majority of the population for separation. But before giving a final opinion they wish that an enquiry be made into the financial and administrative aspects. We ourselves are of opinion that some investigation into the financial aspect will be necessary before separation can be effected.

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#### CHAPTER V

#### INDIAN STATES AND FOREIGN POLICY

##### ATTITUDE OF PUBLIC MEN AND ORGANISATIONS TOWARDS INDIAN STATES

We now come to the all important problems of the Indian States. At the commencement of our treatment of the subject we desire to enter a caveat against the general criticism (which it has become the fashion in certain quarters at present to make against public men in British India) that they ignore in their discussions or their schemes the very existence of the Indian States and the problem of their relations to the Government of India of the present or of the future. It is not, we maintain, emphatically, the fact that the Indian States or their problems, or the readjustment of their relations to the Government of India, have been ignored in the past on public platforms, or in political conferences, or in the utterances of our public men. If the grievance is that the affairs of the Indian States, or the nature and character of their relations with the Government of India, have not been discussed on the floor of the Legislative Assembly, the answer is plain and it is that such discussion is barred by the standing orders and in practice is never allowed. It is obvious that for this the responsibility cannot be fixed on Indian public men. On the other hand, there is scarcely a political organisation of influence in the country which has not had in recent years to say something on other than the problem of the Indian States. The Congress and the Liberal League and the Hindoo Sabha and lastly the All-Parties Conference, to which this Committee owes its existence, have so far from ignoring the problem, laid considerable stress on it. The subjects of the Indian States also have been showing a lively interest in the internal affairs of their respective States and urging for a definite recognition of popular rights and liberties. They have held two representative conferences and a committee appointed by the second held at Madras has approved and recommended to us a scheme of Swaraj embracing British India and the Indian States. We shall deal with this scheme later on. We are aware that the consciousness of some Indian princes has in recent years been touched by what they consider to be a somewhat obtuse interest taken in them by public opinion in British India, which they have condemned as either lacking in knowledge or political sagacity or sympathy. We, therefore, very strongly repudiate the ill-founded charge that intelligent public opinion in British India has been too self-centred to look beyond the confines of British India or has shown any unwillingness to understand the viewpoint of the Indian princes or their subjects, or even to sympathise with it wherever and whenever it has been possible to extend sympathy. If it has at times been critical of some of the "claims" of the Indian princes, or if it has at times approached their territorial problems or tried to envisage the development of the constitutional relationship between them and the future self-governing India from a different angle of vision it is more than what is clearly entitled to do. We are afraid that the present tendency to stress the problems of Indian States as preexisting is a grave error.

Prima Facie Sind is capable of great development. Sindhi is likely to become a great harbour and there are large tracts which are either uncolonized or not sufficiently developed. It is not an unlikely presumption therefore that Sind will become in the course of time a self-sufficient and prosperous province.

A denial of the right to self-determination on purely financial grounds, and there are no other that we think valid, is bound to lead to great dissatisfaction and is bound to impede the progress of incalculable mischief for both and

instead of helping to bring the "two Indias" closer to each other is likely to give rise to serious misunderstandings.

#### AFFINITIES BETWEEN BRITISH INDIA AND THE INDIAN STATES

While the fact that there is an "Indian India" consisting of those States some almost as big as, if not bigger than, some of the countries of Europe, enjoying, in a way, internal sovereignty, autonomy and independence, dignities and status—may be and has to be freely admitted, we think it would be very poor statesmanship and short-sighted policy to ignore those obvious historical, religious, sociological and economic affinities which exist between the people of British India and the people of these States. Nor do we think that it is possible to create artificial geographical barriers between the two, ideas and opinion travel from one part of India to another much more rapidly than was the case 60 or 70 years ago, and it would be absurd to deal with the problem of Indian States on the assumption that the dynamic forces now in operation in British India can for a very long period of time be expected to spend themselves on the borders of British India. It is inconceivable that the people of the States, who are fired by the same ambitions and aspirations as the people of British India, will quietly submit to existing conditions for ever, or that the people of British India, bound by the closest ties of family, race and religion to their brethren on the other side of an imaginary line, will never make common cause with them. In dealing with the problem, therefore, we would much rather base our conclusions upon the community of interests than upon differences of form. This community of interests would clearly point to joint action by the parties concerned as the most natural course to adopt with a view to mutual protection and advancement. Indeed if there ever was a case for a round-table conference at which a perfect understanding could easily be reached it was this. With the representatives of the princes, of their people, of the British Government, and of the people of British India assembled at such a conference all difficulties could have been solved with mutual good will. But most of the princes have unfortunately chosen to ignore the two most important parties—their own people and the people of British India—and have asked for or acquiesced in the appointment of the Butler Committee which, apart from the absence of necessary parties, is precluded by its very terms of reference, as we read them, from dealing with the constitutional issue. This committee is sitting in camera but such information as is available from published statements leaves no doubt in our minds that an attempt is being made to convert the Indian States into an Indian Ulster by passing constitutional theories into service.

We have referred in our introduction to the constitutional question raised by Sir Malcolm Hailey in his speech in the Legislative Assembly in February, 1924. The same or similar questions have since been raised in other quarters and we now proceed to deal with them.

#### THE CONSTITUTIONAL POSITION

The constitutional position at the present moment, notwithstanding some vagueness that may surround it, is by no means difficult to understand. It is claimed that according to true constitutional theory the Indian States are and have been in relation with the Crown, whether their treaties were with the East India Company, or the British Crown, or whether they have been entered into since 1858 with the Government of India. Now it is obvious that the Crown under the constitution does not mean the King alone. It is a convenient constitutional phrase used to indicate the King-in-Parliament. Before 1858, the East India Company exercised sovereign rights under powers delegated by the "Crown" and since 1858 those powers have been exercised under delegated authority by the Government of India and the Secretary of State, who has had our very careful consideration. We have already noticed the clause relating to the reservation of seats and expressed our inability to agree to it. As regards the desirability of the separation of Sind from Bombay we are at one with them, but we regret we cannot take their declaration to "ent their coat according to their cloth" as a final solution of the financial problem. This matter must for the present rest where we have left it. It is not necessary to notice the other clause of "pact."

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#### SIR LESLIE SCOTT'S VIEWS

We shall now turn to the latest contribution on the subject. It comes from Sir Leslie Scott, the learned counsel engaged by the princes, who has expressed his views in a letter which has been printed in the July number of the "Law Quarterly Review".

We recognise his eminence as lawyer, but we cannot help feeling that his views as counsel for the Indian princes have yet to be tested by an independent judicial or legal authority after having both sides of the question presented to it. So far as we are concerned we venture to differ from him entirely. After laying down that the relationship between the Crown and the Indian States cannot be governed either by international or municipal law, Sir Leslie Scott asks "To what system of legal principles are the relations of an Indian State to the Crown referable?" There is no legal decision to serve as precedent, no complete analogy to guide. Resort must be had to first principles. We must think things out for ourselves. It is almost a virgin field for the lawyer. Even if it is a virgin field for the lawyer, and we venture to say this is not quite correct, we think it is more a case for the constructive statesman than for the analytical lawyer. Sir Leslie Scott has in this letter stated five definite propositions, some of which may be admitted to be correct, others of which strike us as being too broadly put. In any case the conclusion which is sought to be drawn from these propositions is of such far-reaching consequence that it may be taken as definitely certain that if the Indian princes decide to take their stand upon the position so ingeniously argued out for them, British India must substantially disown their profession of sympathy with its aspirations to dominion status, and treat their reference to the Federation of India as no more than a vision, the realisation of which must be left to a remote and uncertain future. The first proposition of Sir Leslie Scott is that the Indian princes have acquired certain powers by mere practice, usage or convention which are outside the scope of the written treaties. The Foreign Jurisdiction Act of 1890, and the Indian Foreign Jurisdiction Act XXI of 1879 have not often been referred to by the Government of India for the extension of their jurisdiction.

The second proposition formulated by him is that "those contracts are between sovereigns—The Prince and the Crown—not the Company or the Government of British India." This proposition to our mind is untenable historically and legally, and in any case, whatever may be the true legal theory, actual practice shows that the Indian princes and States have dealt with the Government of India, and submitted to its writings and decisions and intervention, and have never dealt with the crown or his Majesty's government. The fact that there may be personal relationship between His Majesty and an Indian Prince does not in our opinion alter or affect the real legal position or the interpretation of that legal position in actual practice.

The third proposition is "that the relationship is wholly legal—a nexus of mutual rights and obligations. It is in no sense arbitrary." We should have thought that one of the main grievances of the Indian princes was that the Government of India had in actual practice extended their jurisdiction over them by going beyond the legal relationship in an arbitrary manner. If they are protesting against the arbitrary extension of such jurisdiction, it is in our opinion an understandable position, but it is some what remarkable that the importance of this proposition in the setting in which it is stated lies not so much in its practical application in the present, as in relation to possible constitutional developments in British India.

The fourth proposition is that the

princes are making these contracts gave their confidence to the British Crown and peace and good order throughout India. The right of the British Government to intervene in the internal affairs of the Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown. (e) The varying degrees of internal sovereignty which the rulers enjoy are all subject to the exercise by the paramount power of this responsibility.

It is a matter of common knowledge that the exercise of these large powers or to be more accurate, the decision of the Government of India to exercise these powers in the case of some princes in recent years, has been the subject of much comment and dissatisfaction and the exposition of the constitutional position in Lord Reading's letter to his Exalted Highness the Nizam, from which we have quoted above, has led since to much searching of heart. It is not our intention or purpose to discuss the merits of the claim put forward in that letter. We simply desire to draw attention to it to show that even these large powers can only be exercised at the discretion, upon the initiative, and by the machinery of the Government of India.

By usage or convention, or as a necessary corollary to the paramountcy of British power, the Government of India has claimed and exercised the right of (a) "installing" princes or the gaddi; (b) administering the States during the minority of the ruler; (c) settling disputes between rulers and their jagirdars and (d) interfering in cases of gross misrule. With any legitimate desire on the part of the Indian prince to get their grievances in these respects remedied, it is possible, even for democratic India to sympathise; and we feel that it is by no means impossible that strategy ignores the "hard facts" of the case. There is no ground for the assumption that contracts between the princes and the Crown are on the same footing as contracts between private individuals. Sir Leslie Scott has himself pointed out in an earlier part of his letter that the princes continued to retain the attributes of sovereignty even after parting with some of its functions to the Crown. It is as such sovereigns that they must be taken to have dealt with another sovereign whether we take the latter to be the East India Company or the King in Parliament.

Again, it is not true to say that every contract between private individuals is of such a personal character as to be incapable of being performed by any one else. There is no question of one of the contracting parties having any special rights or duties in India that the Indian princes come into direct contact in regard to everything that concerns them or their States. It is well known that the political secretary of the Government of India exercises vast powers over the Indian States. Without being a member of the Government of India, he practically discharges all the functions of member, for there is no separate member in charge of the political portfolio, the political department being supposed to be in the direct charge of the Governor-General. The present position is that it is the political department gives any decision again as Indian State or an Indian ruler, the only remedy available against it is an appeal under certain conditions and subject to certain limitations, to the Secretary of State. We are aware that the political secretary of the Government of India exercises vast powers over the Indian States. Without being a member of the Government of India, he practically discharges all the functions of member, for there is no separate member in charge of the political portfolio, the political department being supposed to be in the direct charge of the Governor-General. The present position is that it is the political department gives any decision again as Indian State or an Indian ruler, the only remedy available against it is an appeal under certain conditions and subject to certain limitations, to the Secretary of State. We are aware that the political secretary of the Government of India exercises vast powers over the Indian States. Without being a member of the Government of India, he practically discharges all the functions of member, for there is no separate member in charge of the political portfolio, the political department being supposed to be in the direct charge of the Governor-General. The present position is that it is the political department gives any decision again as Indian State or an Indian ruler, the only remedy available against it is an appeal under certain conditions and subject to certain limitations, to the Secretary of State. We are aware that the political secretary of the Government of India exercises vast powers over the Indian States. Without being a member of the Government of India, he practically discharges all the functions of member, for there is no separate member in charge of the political portfolio, the political department being supposed to be in the direct charge of the Governor-General. The present position is that it is the political department gives any decision again as Indian State or an Indian ruler, the only remedy available against it is an appeal under certain conditions and subject to certain limitations, to the Secretary of State. We are aware that the political secretary of the Government of India exercises vast powers over the Indian States. Without being a member of the Government of India, he practically discharges all the functions of member, for there is no separate member in charge of the political portfolio, the political department being supposed to be in the direct charge of the Governor-General. The present position is that it is the political department gives any decision again as Indian State or an Indian ruler, the only remedy available against it is an appeal under certain conditions and subject to certain limitations, to the Secretary of State. We are aware that the political secretary of the Government of India exercises vast powers over the Indian States. Without being a member of the Government of India, he practically discharges all the functions of member, for there

power to secure to them the full enjoyment of their rights and privileges. But it must be clearly borne in mind that it would necessitate, perhaps in varying degrees, a modification of the system of government and administration prevailing within their territories. We hope and trust that in the light of experience gained the Indian States may make up their mind to join formally the federation. Meanwhile, we think that it is by no means impracticable to provide suitable machinery for the settlement of mutual differences on administrative and other matters. The practical question of the preservation of their treaty rights and such independence as they have enjoyed or as they claim, is in our opinion, far more important than the arid and academic discussion of the question, whether in theory their relations are with the Government of India or with the Crown.

#### OUR RECOMMENDATIONS

Accordingly, we have provided (a) "all treaties made between the East India Company and the Indian States shall all such subsequent treaties, so far as they are in force at the commencement of this Act, shall be binding on the Commonwealth. (b) The Commonwealth shall exercise the same rights in relation to, and discharge the same obligations towards, the Indian States as the Government of India exercised and discharged previous to the passing of this Act". We have made these suggestions in spirit of vanity or idealism. We fully realize their implications and the obligations that such provisions will impose upon the future Government of India. We do believe that the Government of India at the future will discharge their obligations in their integrity and with every desire to promote harmonious relations and no desire to override cherished privileges, or sentiments. Similarly, in regard to matters of a justiciable character, we have suggested that "in case of difference between the Commonwealth and an Indian State on any matter arising out of treaties, engagements, awards or similar other documents, the Governor-General in Council may, with the consent of the State concerned, refer the said matter to the Supreme Court for its decision". We think that this will be a fair method of settling such matters than the present arrangement under which the Government of India is both a party and a judge in a controversy between itself and an Indian State. We need scarcely point out that we anticipate that the judges of the Supreme Court will be men of the highest legal training, character, and judicial independence.

In regard to non-justiciable matters involving financial and administrative relations, it should not be difficult to come to a settlement by mutual conferences and understandings. The position, in the future, will not be so bad as to be worse than it is. Indeed it is likely to be better, where, between different States, there are honest differences and an independent effort is made to arrive at just and equitable settlements. Practical goodwill and larger common interest are of far greater value than any meticulous considerations of ultimate sanctions. It is obvious to our mind, that the question of common defence is one which is bound to be in future the rallying centre of the Government of India and the Indian States, and if it has been possible in the past to sustain common obligations and to keep alive a common sense of duty to the country at large, we do not despair of the future.

In making these observations we feel that we have not had the advantage of discussion with the representatives of the Indian princes, and we are alive to the possibility of much greater light being thrown on some dark corners of the entire problem by such discussions. Meanwhile, we content ourselves by saying that while we recognize that an Indian federation, compatible as it will be with the maximum degree of autonomy in the local units, whether provinces or States can be the only solid foundation for responsible government we are not prepared to concede that until Indian States have made up their minds to join this federation in the most formal manner, British India must be denied full responsible government or dominion status, merely because it is supposed that the obligations which the Crown or the present Government of India owe to the Indian States, can be discharged only by a central government which is, and must for that reason continue to be undemocratic. Such an argument can only mean that the Indian States while professing their sympathy with progress in British India, must effectively defeat our aims and aspirations by an attitude based not on enlightened self-interest, but on practical hostility to our aims and aspirations.

While however the Indian princes have not given us the benefit of mutual consultations and discussions, their subjects have been represented before the All Parties' Conference and have put forward their case with ability. The recommendations made by the first committee of the Conference in regard to the Indian States have been severely criticized by Mr. Homakopura Krishna Rao, member of the Mysore Representative Assembly, who has also prepared a "Swaraj Constitution" which has been approved by a committee appointed by the All-India States Subjects' Conference, Madras. We have carefully considered these criticisms and the draft Swaraj Constitution of Mr. Krishna Rao. But we regret that in view of the constitutional position we have discussed above we are unable at present to recommend a detailed constitution which would embrace both British India and the Indian States.

It is well-known that the expression "Indian States" does not connote any particular form of government. The authors of the report on Constitutional Reforms have thus described these States:

"They are in all stages of development, patriarchal, feudal or more advanced while in a few States are found the beginnings of representative institutions. The characteristic features of all of them however including the most advanced are the personal rule of the prince and his control over legislation and the administration of justice."

So long as this characteristic feature of personal rule does not undergo a material change the expression "Indian State" must be taken to mean "the individual ruling prince of the State concerned" and has no reference to the nature of the administration. This material change cannot be effected constitutionally without the consent of the rulers of the States who alone represent their governments. Mr. Rao says that "tradition, convention, sentiment and above all an intense feeling of loyalty

to the people of their States firmly bind them (the people of the States) to the Ruling Houses. Consequently they do not hanker after unity but desire only union with British India." With all this tradition, convention, sentiment and intense loyalty to the rulers, Mr. Rao completely ignores their wishes, abolishes all treaties and arrangements between them and "His Majesty or the Parliament of the United Kingdom or the King in Council or the Secretary of State for India or the Governor-General in Council or all the said authorities" and declares by one sweep of the pen that such treaties and arrangements shall become null and void at the date of the commencement of the constitution. He thus guarantees to the States "territorial integrity, internal autonomy and stability of constitutions and the fundamental rights of their people", subject to conditions which have never been accepted by them. He provides for the withdrawal of the guarantee in case the States fail to fulfil the conditions laid down by him. We are not told what is to happen if the rulers of the States do not accept either the guarantee or the conditions attached to it and what are the "necessary measures" which Mr. Rao proposes to take against them if they fail to fulfil his conditions. As regard the form of government it is to be hereditary monarchy, i.e., a government in which the head of the State shall be the hereditary governor or administrator with a popular Assembly and an executive responsible to that Assembly". He ends with a reservation of the "right of the people of the Confederation to claim the fullest national independence (that is, an undivided divorce of her political, economic and social relationship from Great Britain and the British Commonwealth of Nations) and evolve her future constitution on a full-fledged federal republican basis, in case no settlement is agreed to by the British and the Indian Governments on the basis of this Constitution".

It is hardly necessary to point out the incompatibilities of those provisions or to criticize them on constitutional grounds beyond which we have not permitted ourselves to go for reasons already stated.

**FOREIGN POLICY**

We have hitherto dealt with the relations of the Government of India with the Indian States. We now propose briefly to advert to the relations of the Government of India with foreign states. In one sense we are aware that the position of India as compared to some of the dominions is peculiar. India has got a vast land frontier on the North-West and the North-East, and it has to come into contact with foreign powers and semi-independent tribes. The foreign department of the Government of India is practically in charge of the foreign secretary who works directly under the Governor-General. His duties are multifarious; he has to look after the North-West Frontier provinces, he is in control of the affairs of the tribes in the Agency Tracts, he has to deal with semi-independent chiefs in the North-West Province and elsewhere. His jurisdiction extends in some matters to the Persian Gulf and Aden. Some matters—not all—falling within his jurisdiction occasionally come up for discussion in the legislature. He has to defend or explain the policy of the Government of India. The bigger questions of policy, having an imperial aspect, are settled not in India, but in England, and we realize that in a well-made Commonwealth of Nations it is inevitable that, consistently with the independence of the dominions, there must be to some extent at least uniformity of foreign policy, but this is the case of the dominions achieved more by mutual discussion and understandings than by any imperial mandates. Indeed the measure of freedom in regard to questions of foreign policy which in recent years has been claimed and enjoyed by Canada, South Africa and Australia has been steadily increasing, though this has not tended to weaken the safety of the empire, or to affect the possibility of a unity of policy in larger questions of relations with foreign countries or states.

In point of fact the Government of India discharge and enforce those obligations which mutually exist between his Majesty's government and some neighbouring foreign Asiatic powers. We do not see any reason why the self-governing dominion of India should do anything less.

We are aware of the delicate nature of questions of foreign policy, and the inappropriateness of discussing them at times on the floor of the legislature. We cannot see why the legislature of the dominion of India should not observe those rules of prudence and discretion which are observed in other legislatures.

**THE LEGISLATURE**

We are of opinion that the central legislature should be bi-cameral, consisting of a Senate and a House of Representatives. The provincial legislatures should, in our opinion, be unicameral.

**NUMBER OF MEMBERS**

For the Senate we recommend 200 members; for the House of Representatives 500 members, with provision to increase the number, if necessary, on an uniform population basis. In the provinces, as a general rule there should be one member for every 100,000 population. But in a province with a population of less than 10 millions there may be a maximum of 160 members.

**FRANCHISE**

For the House of Representatives and the provincial councils we are of opinion that the largest possible franchise should be granted. Some of us were strongly in favour of adult suffrage, but others, while favouring adult suffrage, as the objective to be aimed at, were of opinion that there would be too many practical difficulties in the way at the beginning. Various proposals were considered among them being, besides adult suffrage, the following:

(i) Adult suffrage subject to registration by intending voters.

(ii) The extension of the franchise from the present six millions to about 80 millions leaving it to a committee to determine the franchise which would give this result.

(iii) Any of the following:

(a) All persons who may pay any revenue, rent or land or house rates, taxes and dues.

(b) All literates.

(c) All persons who earn their livelihood by manual or intellectual labour.

(d) All such unemployed as are on the State register of the unemployed.

(e) Members of joint families.

(f) Wives of male electors.

The third proposal given above would in practice amount to something very near adult suffrage. Some of us were inclined to favour the second proposal, which increased the votes to 80 millions. The other dominions had their rise from earlier British settlements which were supposed to have carried the law of England with them. Ireland was taken and kept under the rule of England against her own will and the acquisition of dominion status by her became a matter of treaty between the two nations. We conceive that the constitutional position in India is very much the same. That India is a dependency of Great Britain cannot be denied. That position can only be altered in one of two ways—force or mutual consent. It is the latter in furtherance of which we are called upon to recommend the principles of a constitution for India. In doing so it is obvious that our first care

should be to have our fundamental rights guaranteed in a manner which will not permit their withdrawal under any circumstances. With perhaps less reason than we have most of the more modern constitutions of Europe have specific provisions to secure such rights to the people.

Another reason why great importance attaches to a declaration of rights is the unfortunate existence of communal differences in the country. Certain safeguards and guarantees are necessary to create and establish a sense of security among those who look upon each other with distrust and suspicion. We could not better secure the full enjoyment of religious and communal rights to all communities than by including them among the basic principles of the constitution.

As referred to the various clauses of the declaration of fundamental rights as adopted by us will show that we have kept both these aspects in view.

#### FIXITY OF TENURE

The first committee of the All-Parties' Conference went into this question carefully and we have adopted most of their articles. We have added to the declaration an independent recommendation regarding the rights of labour and peasants, made by the first committee, with the exception that "Parliament shall make laws to ensure fair rent and fixity of tenure to agricultural tenants".

We have left this out not

because we do not approve of

fixity of

tenure but because we felt that if this was made a fundamental right it might become more of hindrance and obstruction in the way of the tenantry, preventing future progress, than a safeguard.

The present system of land tenure in large parts of India is anything but desirable and requires radical change.

We recognise that the present condition of the tenancy is very deplorable and even some fixity of tenure would bring great relief.

But it would be a short-sighted policy indeed if to gain some relief now we were to baulk away the future rights of the peasantry. So long as the present system endures the rights of the tenants might be safeguarded by the article in the Declaration of Rights requiring Parliament, i.e., the Parliament of India, to make suitable laws for securing a living wage for every worker.

#### RIGHT TO USE OF ROADS, ETC.

We have hitherto dealt with the relations of the Government of India with the Indian States. We now propose briefly to advert to the relations of the Government of India with foreign states. In one sense we are aware that the position of India as compared to some of the dominions is peculiar.

India has got a vast land frontier on the North-West and the North-East, and it has to come into contact with foreign powers and semi-independent tribes.

The foreign department of the Government of India is practically in charge of the foreign secretary who works directly under the Governor-General.

His duties are multifarious; he has to look after the North-West Frontier provinces, he is in control of the affairs of the tribes in the Agency Tracts, he has to deal with semi-independent chiefs in the North-West Province and elsewhere.

His jurisdiction extends in some

matters to the Persian Gulf and Aden.

Some matters—not all—falling within his jurisdiction occasionally come up for discussion in the legislature.

He has to defend or explain the policy of the Government of India.

The bigger

questions of policy, having an imperial aspect, are settled not in India, but in England, and we realize that in a well-made Commonwealth of Nations it is inevitable that, consistently with the independence of the dominions, there must be to some extent at least uniformity of foreign policy, but this is the case of the dominions achieved more by mutual discussion and understandings than by any imperial mandates.

Indeed the measure of freedom

in regard to questions of foreign policy which in recent years has been claimed and enjoyed by Canada, South Africa and Australia has been steadily increasing, though this has not tended to weaken the safety of the empire, or to affect the possibility of a unity of policy in larger questions of relations with foreign countries or states.

#### HABEAS CORPUS

To the right to a writ of habeas corpus we have added that in case the central legislature is not sitting during a war or rebellion the executive authority of the Commonwealth will be entitled to suspend the right for the time being but the central legislature must be informed at the earliest opportunity for such action as it may deem fit.

#### KRIPANS

At the request of our colleague Sarai Mangal Singh we have added a note to the Declaration acknowledging the right of the Sikhs to carry kripans on any occasion.

#### THE LEGISLATURE

We are of opinion that the central legislature should be bi-cameral, consisting of a Senate and a House of Representatives. The provincial legislatures should, in our opinion, be unicameral.

#### NUMBER OF MEMBERS

For the Senate we recommend 200

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We do not see any reason why the self-governing dominion of India should do anything less.

#### DEFINITION OF Caste IN SCHOOLS

Certain changes and additions have also been made in some other articles.

In the article dealing with the right to free elementary education we have added that there will be no "distinction of caste or creed in the matter of admissions maintained or aided by the State."

#### SENATE

In regard to the Senate we recom-

mend that the electorates should be the

legislatures of the provinces, a specific

number of seats being allotted to each

province, the basis being popula-

tion, subject to a minimum.

A majority of the first All Parties Committee recommended a restricted franchise for the Senate, although a minority was in favour of our present suggestion. An upper house, if directly elected, can either be based on a narrow and restricted franchise or on as wide a franchise as applies to the lower house. In the latter case, it becomes merely a duplicate of the lower chamber and is totally unnecessary; in the former it represents only a small section of the community and there is always a tendency to create deadlocks and friction. There is no justification whatever for a second chamber consisting of obscurantists and people belonging to special classes whose chief aim is to protect their own interests and obstruct all liberal measures.

The only justification

for it is that it ensures the reconsideration of all measures emanating from the lower house in a somewhat calmer atmosphere and more dispassionately than is likely to be the case in the lower house when controversial matters are discussed.

This is specially necessary in India owing to the existence of communal feelings.

Direct election to the Se-

nate can thus only result in either a re-

action of the lower house or in produc-

ing a reactionary body representing some vested interests only. The method of indirect election we have suggested gets over this difficulty. The electorate consist- ing of people presumably of a fairly high degree of intelligence, there is some chance that the right kind of men may be chosen, men who may not care to face the shouting and the tub-thumping which a modern democratic election with a wide electorate involves. Their electorate although restricted will not be based on status or vested interests or class. It will presumably reflect the temper of the mass electorate in the country. There will be a greater chance of minority and other special interests to be represented, especially, as we recommend, if the election for the Senate takes place by the system of proportional representation.

There will be another advantage in the adoption of this proposal. Provinces as will be directly represented in the central legislature and provincial view-

points will be expressed in the Senate.

This is specially desirable to co-ordinate the provincial legislatures with the central legislature and to promote the harmonious working of the constitution.

There will be a greater chance of minority and other

special interests to be represented, especially, as we recommend, if the election for the Senate takes place by the system of proportional representation.

We have provided for the establishment of the Commonwealth a Commission to inquire into the original jurisdiction of the Supreme Court. The most important of these are matters arising out of treaties, engagements, wars, and similar other documents between the Commonwealth and Indian States which may be referred to the Supreme Court for its decision.

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gement shall deal only with such appropriations.

(ii) Bills imposing taxation shall deal only with the imposition of taxes and any provision therein dealing with any other matter shall be of no effect.

(iii) Bills affecting the public debt or for the appropriation of revenues or moneys or for imposing taxation shall be introduced only by a member of the Executive Council and can only originate in the House of Representatives.

#### THE PROVINCIAL LEGISLATURE

28. The legislative power of a province shall be vested in the King and the local legislative council.

29. There shall be a Governor of every province who shall be appointed by the King and represent his Majesty in the province.

30. There shall be payable to the King out of the revenues of the province for the salary of the Governor an annual sum of £10,000 which, until Parliament of the Commonwealth otherwise provides shall be as in schedule 11 hereto provided.

31. (i) There shall be one member of the Provincial Legislative Council for every 100,000 of the population of the said province, provided that in provinces with a population of less than ten millions there may be a maximum of 100 members.

(ii)

Every member shall be elected by a constituency determined by law.

32. (i)

Every Provincial Council shall continue for 5 years from its first sitting provided that—(a) it may be sooner dissolved by the Governor; (b) the term of 5 years may be extended by the Governor if in special circumstances so thinks fit; (c) after the dissolution of the Council the Governor shall appoint a date not more than 6 months after the date of the dissolution for the next session of the Council. (ii) The Governor may appoint such times and places for holding the sessions of the Council as he thinks fit and may also from time to time, by notification or otherwise, prorogue such sessions. (iii) Any meeting of the Council may be adjourned by the person presiding. (iv) All questions in the Council shall be determined by the majority of votes of the members present, other than the presiding member, who shall however have and exercise a casting vote in the case of an equality of votes. (v) The powers of the Council may be exercised notwithstanding any vacancy.

33. There shall be a president of every Council who shall be a member of the House and shall be elected by the House. There shall also be a deputy president who shall also be a member of the House and be similarly elected.

34. The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province. The legislative authority of every provincial council extends to all matters coming within the classes of subjects hereinafter enumerated and specified in Schedule II, attached herein.

35. A judge of a high court must be an advocate on the rolls of a high court of not less than ten years' standing provided that nothing herein contained shall affect the continuance of the tenure of office of the judges who may be holding appointments at the commencement of this Act.

36. (i) Every judge of a high court shall hold office during his good behaviour.

(ii)

Any such judge may resign his office to the local government.

37. The chief justice and other judges of the high court shall not be removed from office except by the Governor-General in Council on an address by the Provincial Legislature.

38. The revenues of India shall vest in the Governor-General in Council and shall, subject to the provisions of this Act, be applied for the purposes of the Commonwealth.

39. Any measure affecting the public revenues of a province or imposing any charge on the revenue, shall be introduced only by a member of the executive council of the Governor.

40. When a bill has been passed by a local legislative council, the Governor may declare that he assents to or withholds his assent from the bill.

41. If the Governor withholds his assent from any such bill, he shall become void.

42. When an Act has been assented to by the Governor-General it shall be lawful for him to signify such assent or with his assent or he may reserve the bill for the signature of the King's pleasure.

43. (i) A bill passed by both Houses of Parliament shall not become an Act until the Governor-General signs his assent thereto in the King's name, or in the case of a bill reserved for the signature of the King's pleasure, until he signifies his assent by speech or message to each House of Parliament, or by proclamation that it has received the assent of the King in Council.

Provided that the Governor-General may, where a bill has been passed by both Houses of Parliament and presented to him for the signature by him of the King's assent, or has been reserved by him for the signature of the King's pleasure, return the bill for reconsideration by Parliament with a recommendation that Parliament shall consider amendments thereto.

(ii) Any bill so returned shall be further considered by Parliament together with the amendments recommended by the Governor-General, and if re-affirmed with or without amendments, may be again presented to the Governor-General for the signature in the King's name of the King's assent.

44. The Governor-General withholds his assent from any such Act, he shall signify to the Governor in writing his reason for so withholding his assent.

45. When an Act has been assented to by the Governor-General it shall be lawful for his Majesty in Council to signify his disallowance of the Act.

46. Where the disallowance of an Act has been so signified, the Governor shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void according to the provisions of this Act and of the laws of the Commonwealth.

THE COMMONWEALTH EXECUTIVE

47. The executive power of the province shall be vested in the Governor acting on the advice of the provincial executive council.

48. There shall be an executive council for every province consisting of not more than five ministers appointed by the Governor.

49. In appointing the executive council the Governor shall select the Chief Minister and appoint others only on his advice.

THE JUDICIARY

50. There shall be a Supreme Court which shall exercise such jurisdiction as Parliament shall determine. The Supreme Court shall consist of a Lord President, and as many other Justices, as Parliament may fix.

51. The Lord President of the Commonwealth, and all other Judges of the Supreme Court of the Commonwealth shall be appointed after the establishment of the Commonwealth, shall be appointed by the Governor-General in Council, and shall receive such remuneration as Parliament shall prescribe, and their remuneration shall not be diminished during their continuance in office.

52. The Lord President of the Commonwealth and other judges of the Supreme Court of the Commonwealth shall not be removed from office except by the Governor-General in Council on an address from both Houses of Parliament in the same session praying for such removal on the ground of misbehaviour or incapacity.

53. The Supreme Court shall have original jurisdiction in all matters.

54. (i) To the Supreme Court by the Governor-General in Council under Section 85; (ii) in which the Commonwealth, or person suing or being sued on behalf of the Commonwealth, is a party; (iii) affecting consuls or other representatives of other countries; (iv) between provinces; (v) arising under this constitution or involving its interpretation.

55. The Supreme Court shall have jurisdiction, with such exceptions and subject to such regulations as Parliament prescribes, to hear and determine ap-

pals from all judgments, decrees, orders and sentences—

(a) of any Justice or Justices exercising the original jurisdiction vested in the Supreme Court; (b) of the high court in any province, or of any other court of any province from which at the establishment of the Commonwealth an appeal lies to the King in Council.

56. The judgment of the Supreme Court in all such cases shall be final and conclusive and shall not be reviewed, or be capable of being reviewed by any other court, tribunal or authority whatsoever.

APPEALS TO THE KING IN COUNCIL

57. (i) No appeal shall be permitted to the King in Council from a decision of the Supreme Court upon any question however arising, as to the limits of the constitutional powers of the Commonwealth and those of any province or provinces, or as to the limits of any of the constitutional powers of any two or more provinces, unless the Supreme Court shall certify that the question is one which ought to be determined by the King in Council.

(ii) The Supreme Court may be certified if satisfied that for any special reason the certificate should be granted, and thereafter an appeal shall lie to the King in Council on the question without further leave.

(iii) Parliament may make laws limiting the matters in which such leave may be asked, provided that such laws do not impair any right which the King may be pleased to exercise by virtue of his royal prerogative to grant special leave of appeal from the Supreme Court to the King in Council.

HIGH COURTS—CONSTITUTION

58. The high courts referred to in this Act are the high courts of judicature for the time being established in British India.

59. Each high court shall consist of a chief justice and as many other judges as the Governor-General in Council may think fit to appoint. Provided as follows:

(i)

The Governor-General in Council may appoint persons to act as additional judges of any high court for such periods, not exceeding two years, as may be required; and the judges so appointed shall whilst so acting, have all the powers of a judge of the high court appointed.

(ii) The Governor-General in Council may appoint persons to act as additional judges of any high court for such periods, not exceeding two years, as may be required; and the judges so appointed shall whilst so acting, have all the powers of a judge of the high court appointed.

(iii) The Governor-General in Council may appoint persons to act as additional judges of any high court for such periods, not exceeding two years, as may be required; and the judges so appointed shall whilst so acting, have all the powers of a judge of the high court appointed.

ADVOCEATE-GENERAL

60. The local government may appoint an advocate general for each of the provinces and, on the occurrence of a vacancy in the office of advocate general, or during any absence or deputation of an advocate general, appoint a person to act as advocate general; and the person so appointed may exercise the powers of an advocate general until some person has been appointed by the Governor-General in Council and has entered on the discharge of his duties or until the advocate general has returned from his absence or deputation, as the case may be, or until the local government cancels the local appointment.

PROPERTY, REVENUE AND FINANCE

61. All property vested in, or arising or accruing from property or rights vested in, his Majesty or the Secretary of State in Council under the Government of India Acts, 1858, 1915 and 1919 shall vest in the Governor-General in Council.

62. The revenues of India shall vest in the Governor-General in Council and shall, subject to the provisions of this Act, be applied for the purposes of the Commonwealth.

63. The expression "the revenues of India" in this Act shall include all the territorial and other revenues of or arising in British India, and in particular—

(i) all tributes and other payments in respect of any territories which would have been receivable by or in the name of the East India Company if the Government of India Act, 1858, had not been passed; and (ii) all fines and penalties incurred by the sentence or order of any court of justice in British India, and all forfeitures for crimes of any movable or immovable property in British India; and (iii) all movable or immovable property in British India, co-heirship or lapsing for want of an heir or successor and all property in British India devolving as bona vacantia for want of a rightful owner.

64. (i) On the occurrence of a vacancy in the office of chief justice of a high court, and during any absence or absence of such a chief justice the local government shall appoint one of the other judges of the same high court to perform the duties of chief justice of the court, until some person has been appointed by the Governor-General to the office of chief justice of the court, and has entered on the discharge of his duties of that office, or until the chief justice has returned from his absence, as the case requires.

(ii) On the occurrence of a vacancy in the office of any other judge of a high court, and during any absence or absence of such judge, or on the appointment of any such judge to act as chief justice, the local government may appoint a person with such qualifications as are required in persons to be appointed to the high court; and the person so appointed may sit and perform the duties of a judge of the court, until some person has been appointed by the Governor-General in Council to the office of judge of the court, and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the charges imposed thereby.

65. There shall be charged on the revenues of India alone—

(a) all the debts of the East India Company; and (b) all sums of money, costs, charges and expenses which, if the Government of India Act, 1858, as amended by the Government of India Act, 1919 or this Act had not been passed, would have been paid by the East India Company out of the revenues of India in respect of any treaties, covenants, contracts, grants or liabilities existing at the commencement of this Act; and (c) all expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India; and (d) all other charges and payments under this Act (except so far as is otherwise provided under this Act).

66. (i) The letters patent establishing or vesting jurisdiction, powers or authority, in a high court may be amended from time to time by a further letter patent.

67. Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction and may do any of the following things, that is to say—

(a) call for returns; (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction; (c) make and issue general rules and prescribe forms for regulating the practice and proceeding of such courts; (d) prescribe forms in which books, entries, and accounts shall be kept by the officers of any such courts; and (e) settle tables of fees to be allowed to the sheriff, attorney, and all clerks and officers of courts.

68. The Supreme Court shall have original jurisdiction in all matters.

69. (i) To the Supreme Court by the Governor-General in Council under Section 85; (ii) in which the Commonwealth, or person suing or being sued on behalf of the Commonwealth, is a party; (iii) affecting consuls or other representatives of other countries; (iv) between provinces; (v) arising under this constitution or involving its interpretation.

70. Parliament shall establish rail way and harbour fund into which shall be paid all revenues raised or received by the Governor-General in Council from the administration of railways, posts and harbours, and such fund shall be appropriated by Parliament to the purposes of railways, posts and harbours on such conditions and in such manner as it may prescribe. There shall also be formed a consolidated revenue fund into which shall be paid all other revenues raised or received by the Governor-General in Council and such fund shall be appropriated by Parliament for the purposes of the Commonwealth in the manner prescribed by this Act or by rules made in that behalf and subject to the charges imposed thereby.

71. Members of the permanent Public Service Commission shall hold office for five years from the date of appointment.

72. Any officer of the public services who desires to retire within three years of the establishment of the Commonwealth, or is not retained in the service of the Commonwealth, shall be entitled to receive such pension, gratuity or other compensation as he would have received in like circumstances if the Commonwealth had not been established.

73. As soon as may be after the establishment of the Commonwealth the Governor-General in Council shall appoint a Commission consisting of one representative from each province and representatives of the Government of the Commonwealth, and preside over by an officer of the Commonwealth, and the person so appointed may sit and perform the duties of a judge of the court, until some person has been appointed by the Governor-General in Council to the office of judge of the court, and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the charges imposed thereby.

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1. Railways, inland waterways and other means of communications except: (a) such railways, roads and inland waterways as are central subjects; (b) all other works as extend beyond the borders of the province.

(c) such works (although wholly situated within the province) as may be declared by Parliament to be of all India importance.

10. Co-operative societies.

11. Development of mineral resources.

12. Famine relief.

13. Pilgrimages within India.

14. Local self-government including constitution and powers of municipal corporations, local boards, village panchayats, improvement trusts, town planning boards and other local authorities in the provinces, and local fund audit.

15. Medical administration including hospitals, dispensaries, asylums and provision for medical education.

16. Public health and sanitation and vital statistics.

17. Education, including universities and technical institutes, provincial institutions for professional or technical training and for promotion of technical studies.

18. Court of Wards and encumbered and attached estates.

19. Land improvement and agricultural loans.

20. Land tenures and land and tenant rent law.

21. Administrator-General and Official Trustees subject to legislation by central legislature.

22. Development of industries, including industrial research.

23. Police, including military and armed police maintained by the province and Railway Police, subject to the case of Railway Police to such rules as may be prescribed by Parliament as to limits of jurisdiction and railway contribution to cost of maintenance.

24. Adulteration of foodstuffs and other articles.

25. (a) Control of vehicles, subject in the case of motor vehicles to legislation by the central legislature, as regards licences valid throughout India. (b) Control of dramatic performances and cinematographs.

26. Prisons, prisoners and reformatory and vagrancy.

27. Backward tribes and their settlements.

28. Treasure trove.

29. Administration of justice in the province including the constitution, maintenance and organization of courts of civil and criminal jurisdiction.

30. Election for the legislature of the province.

31. Legislation imposing punishments by fine, penalty, or imprisonment for breach of any law of the province in relation to any provincial matter.

32. The borrowing of money, on the sole credit of the province, subject to sanction of central government; assets and property of the province.

33. Administration of the law relating to the registration of births, deaths and marriages.

34. Provincial law reports.

35. Minor ports.

36. Public libraries, except the Imperial Library at Calcutta; museums, except the Indian Museum, the Imperial War Museum and the Victoria Memorial in Calcutta; zoological and botanical gardens and registration of societies.

37. Pounds and prevention of cattle trespass.

38. Veterinary Department, including provisions for veterinary training, improvement of stock and prevention of animal diseases.

39. Factories, subject to legislation by central legislature.

40. Settlement of labour disputes.

41. Gas and electricity.

42. Boilers.

43. Smoke nuisances.

44. Housing of labour.

45. Coroners.

46. Provincial stores and stationery.

47. Provincial government press.

48. Provincial services and Provincial Services Commission.

49. The seat of the provincial government.

50. Control of elections, subject to regulation by central government.

51. Fees, including court fees; probate duties; succession or estate duties.

52. Control of production, supply and distribution, subject to rules made by the central legislature.

53. Development of industries, subject to rules made by the central legislature.

54. Religious and charitable endowments, subject to legislation by central legislature.

55. Regulation of betting and gambling, subject to legislation by the central legislature.

56. Prevention of cruelty to animals and protection of wild birds and animals subject to legislation by the central legislature.

57. Non-judicial stamps, subject to legislation by the central legislature; and judicial stamps, subject to legislation by the central legislature as regards amount of court-fees levied in relation to suits and proceedings in the high courts under their original jurisdiction.

58. Registration of deeds and documents subject to legislation by the central legislature.

59. Weights and measures subject to legislation by the central legislature as regards standards.

60. Control of poisons, arms and ammunition; petroleum and explosives; subject to legislation by the central legislature.

61. Control of newspapers, subject to legislation by the central legislature.

62. Regulation of medical and other professional qualifications and standards subject to legislation by the central legislature.

63. Local Fund Audit.

## APPENDIX A

### AN ANALYSIS OF THE POPULATION FIGURES OF THE PUNJAB ACCORDING TO RELIGION

Being a note on the population figures of the Punjab with special reference to the probable extent of the representation of various religious groups in the legislature.

This note is based on the following assumptions:

1. That there is ordinary territorial representation with what are called joint or mixed electorates and without any reservation of seats.

2. That there is adult franchise, or at any rate some franchise which ensures that the numbers of electors of the

various communities bear the same ratio to each other as the population figures of those communities.

The figures and calculations in these notes are based entirely on the 1921 census. It may be mentioned however that the ratio of increase of Muslims in the Punjab is slightly greater than that of Hindus. This according to the census report is not due now to conversions but to certain social causes—widow marriage and a higher marriage age amongst the Muslims. Infantile mortality is greater amongst the Hindus owing to early marriages. Hence it is probable that the Muslim population in the Punjab to-day is slightly greater proportionately than is evidenced by the 1921 census figures. The next census may show this increase. This means that the calculations in these notes are conservative figures so far as the Muslims are concerned, and the actuality is more favourable to them.

It is not possible to arrive at any accurate conclusion regarding representation in legislatures on population figures from a census report. A great deal must depend on the grouping of constituencies. It is also by no means certain, and it certainly is most undesirable, that in joint electorate a Hindu should always vote for a Hindu, and a Muslim for a Muslim. But it is not possible to make allowances for this in these calculations. As the question is being considered in its communal aspect we must presume that as a general rule votes will be cast on communal lines. The constituencies not having been formed, the only alternative is to examine the figures for the individual districts. It is likely that either a whole district or a part of it will form a single constituency.

The population of the Punjab (excluding Indian States) in 1921 was 20,885,024. This was made up as follows:

Muslims	11,444,321	55.3%
Hindus	6,579,260	31.8%
Sikhs	2,294,207	11.3%
Others (mainly Christians)	367,236	1.8%
20,885,024		100.0%

Thus the Muslims are in a clear but not a great majority over all others combined. If the distribution of population is more closely examined, it will be seen that the Muslims are in an even stronger position than the all-Punjab figures might indicate. This is due to the fact that the Hindus and Sikhs are present in large numbers in the southern part of the province—Ambala and Jullundur divisions. Muslims are in a minority in these two divisions but they make up for it by increasing their majorities elsewhere.

The Punjab can be divided roughly into three natural belts or areas: (1) the predominantly Muslim area, (2) the neutral area but with Muslim majority and (3) the Hindu-Sikh area. If we take the existing divisions as corresponding approximately to these areas we have the following three belts:—

I. Rawalpindi and Multan divisions forming the Muslim zone with Muslims in very great majorities (90.9 per cent and 76.9 per cent respectively).

II. Lahore division forming the neutral zone, but Muslims in a majority (57.0 per cent) over all others combined.

III. Ambala and Jullundur divisions forming the Hindu-Sikh zone. Muslims are in a minority (24.3 per cent and 32.8 per cent respectively).

We can form some rough idea of the representation in the legislature on the basis of these communal zones. Allowing one member for every hundred thousand of population we have:

The following figures represent population in thousands and the number of members of legislatures respectively:—

Punjab, 20,885—24.

I. Rawalpindi division, 3421—35; Multan division, 4218—42.

II. Lahore division, 4997—50.

III. Ambala division 3927—33; Jullundur division, 4182—42.

The total population and the total number of members of legislatures being respectively 20,885—207.

We may presume that the Muslims will capture all the seats in the Muslim zone and Hindu-Sikh all the seats in the Hindu-Sikh zone. In the Lahore division there may be a division of the spoils. This of course cannot and should not happen in its entirety. It is not desirable that each division should be represented by one community only. But in making a rough calculation one may presume this much—the seats gained by the Muslims in the Hindu-Sikh area will probably be counterbalanced by the seats gained by the Hindu-Sikhs in the Muslim area. As a matter of fact there is more chance of the Muslims gaining a seat in the Hindu-Sikh area than the reverse, as the Muslim majorities in Rawalpindi and Multan divisions are tremendous (86.0 per cent and 76.9 per cent).

Thus we arrive at the conclusion that the Muslims are bound to get 77 seats in their zone and the Hindu-Sikh combined, 80 seats in their zone. The third zone—Lahore division—will probably be divided between the two, but the division is likely to be very much in favour of the Muslims. They are 57.0 per cent of the population, the Hindus being 20.7 per cent and the Sikhs 16.2 per cent. Christians etc. amount to 5.1 per cent but they may be left out of consideration here as presumably they have no special affinities to the major communities and can certainly not be considered as being anti-Muslim or as belonging to the Hindu-Sikh bloc. Hindus and Sikhs together amount to 36.9 per cent as against the 57.0 per cent of the Muslims. The Muslims are thus more than one and a half times stronger than the Hindu-Sikh group. The difference is considerable and the Muslim strength must make itself felt in an election. The Muslim majority in this division should ordinarily gain more seats than it is entitled to on basis of population. But even if it got seats exactly in proportion to its population in the division, it would have 29 seats. This added to the 77 seats in the Muslim belt gives the figure 106 which gives a small but clear majority in the legislature of 207 over all other communities and groups combined. The majority will really be much greater over the Hindu-Sikh bloc as the "others" may also be in the minority.

All this proceeds on the basis that Hindu and Sikh interests are identical and the two groups hang together on all occasions. This of course is not a justifiable presumption and it is more than likely that they may not always act together. In such a contingency each community's hopeless minority in the

face of the solid Muslim majority will become even more obvious.

As the Lahore division is likely to be the critical one, it may be examined in greater detail. Out of the 6 districts in this division, three districts—Sialkot, Gujranwala and Sheikhupura—have very substantial Muslim majorities. And as "others" (Christians, etc.) are present in appreciable numbers in these districts, the Muslim majorities vis-a-vis the Hindu-Sikh bloc become even greater and are really overwhelming.

The figures are

#### SIALKOT DISTRICT

Muslims	.. 61.9%	9 1/2 seats
Hindus	.. 19.5%	
Sikhs	.. 8.0%	

The Hindu-Sikh bloc totals 27.5 per cent as against the 61.9 per cent of the Muslims. The latter thus are considerably more than double the number of the Hindus and Sikhs combined.

#### GUJARANWALA DISTRICT

Muslims	.. 71.0%	6 1/2 seats
Hindus	.. 15.8%	
Sikhs	.. 8.2%	

The Hindu-Sikh bloc totals 24.0 per cent as against the 71.0 per cent of the Muslims. The latter are thus nearly three times the number of Hindus and Sikhs combined.

#### SHIJKHUPURA DISTRICT

Muslims	.. 63.3%	5 1/2 seats
Hindus	.. 16.0%	
Sikhs	.. 15.0%	

The Hindu-Sikh bloc totals 31.9 per cent as against the 63.3 per cent of the Muslims. The latter are thus just double the number of the Hindus and Sikhs combined.

In these three districts the Muslims are in an impregnable position. Indeed they really form part of the Muslim zone and should be considered along with it. These districts will be entitled to send 21 members to the legislature. These can be added to 77 members from the Muslim zone giving the total 98.

In the other districts of Lahore division the position is as follows:

#### LAHORE DISTRICT

Muslims	.. 57.3%	11 seats
Hindus	.. 21.5%	
Sikhs	.. 15.9%	

Here the Hindu-Sikh bloc totals 37.4 per cent as against the 57.3 per cent of the Muslims. The Muslim majority is not so great as in the northern districts but it is substantial. The Muslims greatly outnumber the Hindus and Sikhs, being over one and a half times their number.

#### AMRITSAR DISTRICT

Muslims	.. 45.6%	9 seats
Hindus	.. 21.0%	
Sikhs	.. 30.9%	

In this district the Hindus and Sikhs combined amount to 52.5 per cent and are in a fair majority over the 45.6 per cent Muslims.

#### GURDASPUR DISTRICT

Muslims	.. 49.6%	8 1/2 seats
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14. Gujranwala	T	624	100	
	H	98	15.8	
	M	443	71.0	6.7
	S	51	8.2	
	O	31	5.1	

  

15. Sheikhupura	T	523	100	
	H	84	16.0	
	M	351	63.3	5.2
	S	83	15.9	
	O	25	4.8	

15 Districts. 97.0 members.

#### II.—Predominantly Muslim Districts

(Where Moslems are greater than Hindus and Sikhs combined but are not so many as in I above).

1. Lahore	T	1131	100	
	H	243	21.5	
	M	648	57.3	11.3
	S	190	15.9	
	O	60	5.3	

2. Gurdaspur	T	822	100	
	H	222	26.0	
	M	423	49.6	6.5
	S	138	16.2	
	O	70	8.2	

2 Districts. 19.8 members.

#### III.—Districts in which there is no special predominance of any community

\* but Muslim community strongest single group

1. Jullundur	T	822.5	100	
	H	242	29.4	
	M	366.5	44.5	8.2
	S	206	25.1	
	O	8	1.0	

2. Ferozepur	T	1098	100	
	H	303	27.6	
	M	482	43.9	11.0
	S	303	27.6	
	O	10	9	

3. Amritsar	T	929	100	
	H	201	21.6	
	M	424	45.6	9.3
	S	247	30.9	
	O	17	1.8	

3 Districts. 28.5 members.

#### IV.—Overwhelming or predominantly Hindu Sikh Districts

1. Hissar	T	817	100	
	H	510	61.1	
	M	216	26.4	8.2
	S	46	5.6	
	O	15	1.8	

2. Rohtak	T	772	100	
	H	602	78.0	
	M	125	16.2	7.5
	S	1	1	
	O	44	5.7	

3. Gurgaon	T	642	100	
	H	455	68.7	
	M	217	31.8	6.8
	S	1	1	
	O	9	1.3	

4. Karnal	T	820	100	
	H	560	67.5	
	M	238	28.5	8.3
	S	12	1.4	
	O	21	2.6	

5. Ambala	T	642	100	
	H	367	53.8	
	M	266	40.2	6.8
	S	98	14.4	
	O	11	1.6	

6. Sialkot	T	45	100	
	H	32	71.2	
	M	7	15.5	0.4
	S	1	2.2	
	O	5	11.1	

7. Kangra	T	786	100	
	H	722.3	94.0	
	M	38.3	5.0	7.7
	S	2.0	3	
	O	3.4	7	

8. Hoshiarpur	T	927	100	
	H	464	53.3	
	M	289	31.2	9.3
	S	133	14.3	
	O	11	1.2	

9. Ludhiana	T	538	100	
	H	734	23.6	
	M	183	34.0	5.7
	S	236	41.6	
	O	5	.9	

9 Districts. 60.9 members.

These figures demonstrate that quite apart from any artificial reservation of seats there is a natural reservation in more than three-fourths of the Punjab. In less than one-fourth there is some chance of free play. The distribution of population favours the majority community, Muslims, considerably.

#### APPENDIX B

A NOTE ON THE POPULATION FIGURES OF BENGAL BY RELIGION

The population of the British territory in Bengal at the 1921 census was 46,004,536. This was divided up by religion as follows:—

Muslims 25,210,802 54.0 per cent.

Hindus 20,203,527 43.3 per cent.