

The Committee Appointed by  
The All Parties' Conference  
1928

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The Nehru Report  
*An Anti-Separatist Manifesto*



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To

DR. M. A. ANSARI  
PRESIDENT, ALL PARTIES CONFERENCE

DEAR MR. PRESIDENT,

I have the honour to present to you the report of the Committee appointed by the All Parties Conference in Bombay on May 19th, 1928 to consider and determine the principles of the Constitution for India. I regret the delay in presenting this report. You have already been informed of the reasons for this delay and you were good enough to extend the presentation of this report.

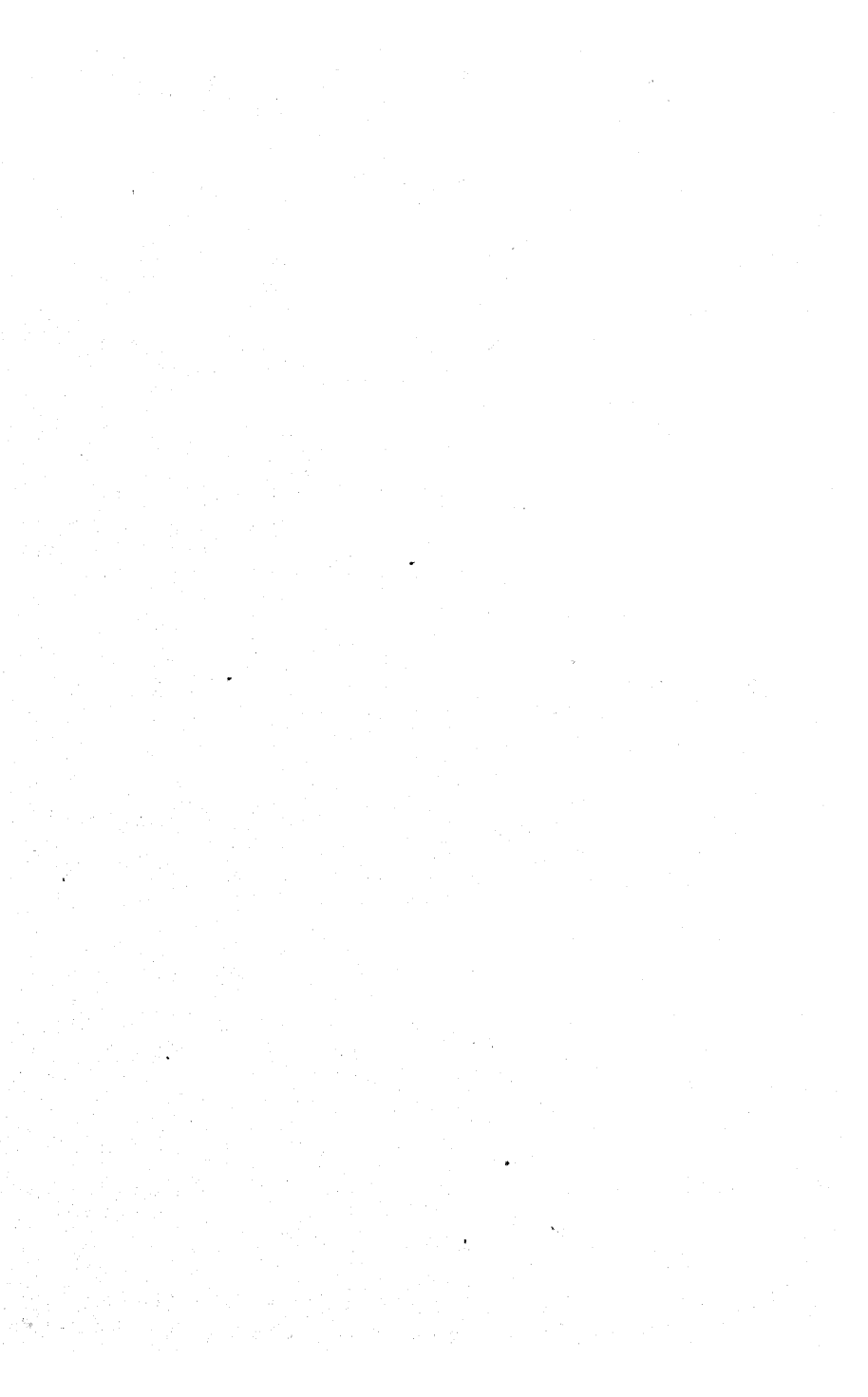
Yours Sincerely  
MOTILAL NEHRU  
*Chairman*

ALLAHABAD  
*August 10th, 1928*



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## INTRODUCTORY.

In submitting this report to the All Parties Conference which appointed this Committee, we consider it necessary at the very outset to draw attention to the fact that our instructions were to frame a constitution providing for the establishment of full responsible government. The reasons which have led us to interpret these instructions as a direction to follow the model of self-governing dominions are explained in Chapter I. It will be observed that in the body of the report we have made no distinction between "responsible government" and the "dominion form of government" and have throughout presumed that they mean one and the same thing. Our terms of reference do not call upon us to make out a case for responsible government for the obvious reason that so far as the conference was concerned there was no necessity for doing so. There certainly are those among the parties represented in the Conference who put their case on the higher plane of complete independence but we are not aware of any who would be satisfied with anything lower than full dominion status. On the assumption that India is to have the status of a member of the British Commonwealth of Nations there is scarcely any difference of opinion between one section or another of political India. It may be safely premised that the greatest common factor of agreement among the well recognised political parties in India is that the status and position of India should in no case be lower than that of the self-governing dominions such as Canada, Australia, South Africa or the Irish Free State. In one word the attainment of dominion status is not viewed as a remote stage of our evolution but as the next immediate step. That being so it would in ordinary circumstances be unnecessary for us to justify the basis of our recommendations.

But certain false issues have recently been raised in official circles with a view to defeat or delay the establishment of any form of responsible government in India. It is quite

**False Issues**

likely that the arguments of these critics will be repeated in different forms from different quarters. We have therefore considered it desirable to dispel the clouds that have gathered round the main issue in this introduction to our report. These arguments may be summarised as follows :—

1. That responsible government does not necessarily mean dominion status and may fall short of it.

2. That Parliament does not stand pledged to dominion status.

3. That the problem of minorities and the absence of the necessary social conditions are obstacles in the working of a system of full responsible government.

4. That we are incapable of defending ourselves.

5. That the problem of Indian States has not been solved.

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

'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.

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, excepting 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.

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 or 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; nay it may 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 re-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. Sir 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.

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

No distinction between dominion status and responsible government

Hailey used that expression, that is to say, a system of government in which the powers of the legislature are limited or restricted.

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, are 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, until it is over, must on the one hand be 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 end 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 acquiesce in an interpretation, put by a member of the Government of India which virtually negatives the solemn declaration of Parliament.

We have therefore made our recommendations on the basis (1) that we are 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.

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?' Some fanciful theories have

been suggested. It has, for instance, been said that India may be parcelled 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, im-

Objections to dominion status

Ballot-box

Fanciful theories

partial, 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 those 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 reputed organ of Tory opinion in England that the government should rescue from oblivion some surviving descendant of the great Moghal and install him as King at Delhi. We can scarcely believe this to be serious politics.

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 equipoise 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 legislative 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

Indo-British Partner-  
ship

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.

The fact is that whatever difficulties may be said to exist in the way of establishing full responsible government in India, that is to say, in giving India the status of a dominion, there is no half-way house between the present hybrid system and genuine responsible government. As we visualise the problem, it is not to our mind, so much a question of the colour of the administrative and governmental machinery, as of the basic principle on which the future government shall be based. If all the members of the Governor-General's executive council were Indians and if all the members of the bureaucracy in the provinces were Indians, it would only mean the substitution of a brown for a white bureaucracy. We use these expressions in no offensive sense. The real problem, to our mind, consists in the transference of political power and responsibility *from the people of England to the people of 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 perforce 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 coterie, which in recent years has been found, in several respects, to be disastrous to the best interests of India and opposed to the freedom

No half-way house

Secretary of State for  
India

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 transference of political power to the people of India can meet the situation.

The practical objections to our demand for dominion self-government, were formulated, by **Indian States** 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 it to be extended to the Indian States?' We have attempted to answer this question in a separate chapter to which we invite attention.

The second question which was put by Sir Malcolm Hailey, and which is usually put by **Minority Communities** 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 faced". We have attempted to face 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 fullest measure. We would earnestly recommend to the Conference that if, 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.

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 court unpopularity, 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 can not 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 members of the council than it used to in what are called the pre-reform days.

We are next confronted with questions relating to European commerce, and are told that "men who have put great sums of money in India and are daily increasing the sphere of their operation, have a right to know if we contemplate an early change of government". Similarly, we are told that "men entering the services, whether civil or military, whether European or Indian, have a right to know if we intend a radical change of government at an early date". As regards European commerce we cannot see why men who have put great sums of money into India should at all be nervous. It is inconceivable that there can be any discriminating legislation against any community doing business lawfully in India. European commerce like Indian commerce, has had to bear in the past, and will have to bear in the future the vicissitude inseparable from commercial undertakings on a large scale, and no government in the west or anywhere else has been able effectively to provide a permanent and stable solution for conflicts between capital and labour. If, however, there are any special interests of European commerce which require special treatment in future, it is only fair that in regard to the protection of those interests, Europeans should formulate their proposals and we have no doubt that they will receive proper consideration from those who are anxious for a peaceful solution of the political problem. As regards the services, we would draw attention to the provisions that we have suggested in our report. In respect of the emoluments, allowances and pensions

European Commerce  
and Services

they would be entitled to on the establishment of the Commonwealth we have provided a statutory guarantee. It is however our duty to point out that the Lee Commission was appointed in the teeth of Indian opposition ; that its recommendations were adopted over the head of the Indian legislature ; and we feel that the entire question of the source and method of recruitment of the services, their salaries, emoluments, allowances and pensions in the future, will require re-examination in the light of the new political conditions created under the new constitution. This however, cannot mean, that the permanent services, whether European or Indian, will under a responsible government, occupy a less important or influential or safe position than they do in the self-governing dominions.

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, may be admitted, but the process 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, in 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.

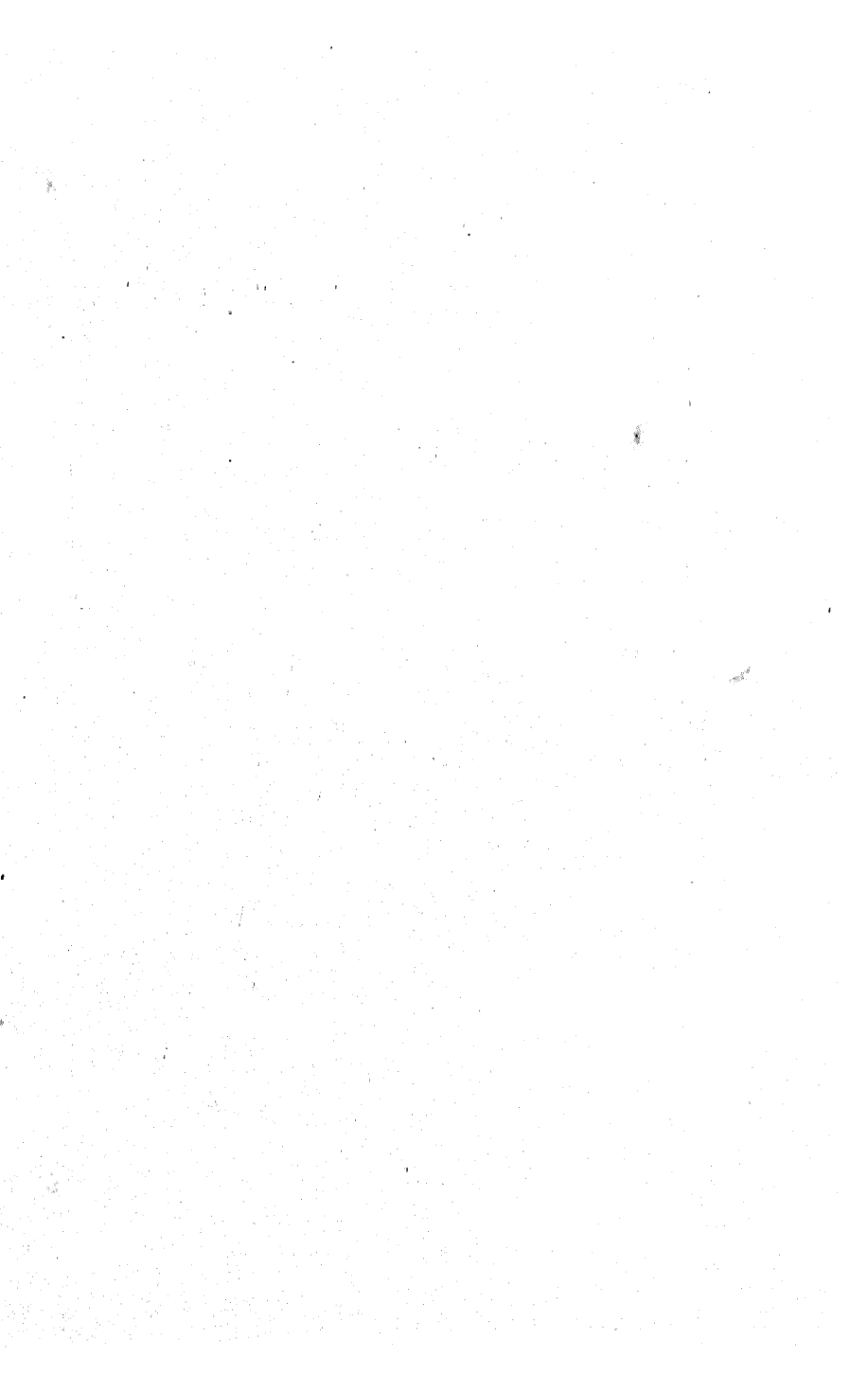
We venture to quote on this subject from the speech of Sir Sivaswamy Iyer in the Legislative Assembly, delivered on February, 18, 1924. Sir Sivaswamy Iyer is a gentleman who has made a special study of the problem of the army in India and we have no hesitation in quoting him. " But with regard to the problem of the army, I have only to observe this, that so far as my reading of colonial history goes, none of the colonies was in a position to assume its defence at the time when a self-governing status was granted to it. For many years, the colonies were not even able to pay for their defence. It was the home government that had to contribute towards the military expenditure of the colonies. We, on the other hand, have from the beginning paid for our army. We have not merely paid for our army, but we have raised our troops. We have raised and maintained our Indian troops and we have also maintained the British troops and paid for them. We have gone further than the colonies have done in the matter of undertaking our defence. No doubt, Sir Malcolm Hailey is right in saying that full dominion self-government implies the capacity to undertake the defence, not merely by paying for it but also by undertaking its officering and administration. But that was not a condition which was insisted upon in the case of any of the colonies. So far as defence against internal disturbances was concerned, that no doubt was a condition which was pointed out to the colonies as essential some years after they were granted their self-governing status. But so far as defence against external aggression was concerned, I am not aware that the duty has been laid upon them even now. As regards naval defence, the obligation has not been laid upon them."

We have recommended in our report the transfer of the control over the Indian army with the necessary guarantees for the pay, emoluments, allowances and pensions of the officers. We believe that the representation of the army in the legislature by a responsible minister,

**Recommendations  
about the Army**

who will, in actual administration, no doubt be guided by expert advice, is bound to lead to the establishment of more intimate relations between the army and the legislature, and thus secure a continuous supply of funds for the army. As matters stand at present, the army budget is sacrosanct. Under the statute it is not open to discussion "unless the Governor-General otherwise directs", but in any case it is not subject to the vote of the legislature. The position, at the present moment is that the eight unit scheme is the only serious attempt that has hitherto been made at Indianising the army, and even if it is accelerated it should take at least a century before the army will be really Indianised. The fate of the Skeen Committee's report which condemned the eight unit scheme is well known, and the proposal to increase the number of candidates for Sandhurst is scarcely calculated to lead to the Indianisation of the army within a reasonable distance of time. We do not agree with the view that the supply of candidates for Sandhurst could not have been larger than what it has been. We feel that the method of selection hitherto followed has left much to be desired. But we do not believe that an adequate degree of efficiency in the training of officers cannot be achieved in India if measures necessary to that end are adopted. It should be the first care of the responsible government of India to make her self-contained in military as in other matters. We have, accordingly, made provision in our report for a statutory obligation on the government to establish military training schools and colleges. As a matter of further precaution, we have provided for the establishment of a Committee of Defence, based more or less on well known models.

# THE REPORT



## CHAPTER 10

### THE COMMITTEE

The Committee, whose report we have the honour to present, was appointed by the All Parties Conference at its meeting held in Bombay on May 19th, 1928 in terms of the following resolution :—

“ This meeting resolves that a Committee consisting of Pandit Motilal Nehru as Chairman, Sir Tej Bahadur Sapru, Sir Ali Imam, Syt. Pradhan, Syt. Shuaib Qureshi; Syt Subhas Chandra Bose, Syt Madhaorao Aney, Syt. M. R. Jayakar, Syt. N. M. Joshi and Sardar Mangal Singh be appointed to consider and determine the principles of the Constitution for India before 1st July next; the Committee to circulate the draft among various organisations in the country. This Committee shall give the fullest consideration to the resolution of the Madras Congress on Communal Unity in conjunction with those passed by the Hindu Mahasabha the Muslim League, the Sikh League and the other political organisations represented at the All Parties Conference at Delhi and the suggestions that may hereafter be received by it; the Committee will give due weight to the recommendations made by the various sub-committees of the All Parties Conference at Delhi.

The All Parties Conference will meet again early in August, 1928 to consider the Committee's report”.

Before dealing with the work of this Committee it may be desirable to refer to some of the events leading up to the appointment of the Committee.

#### Brief History

The Gauhati Session of the National Congress met in December, 1926 in the shadow of a great tragedy\* and when differences and conflicts between Hindus and Muslims were at their height. The Congress passed a resolution calling upon “the Working Committee to take immediate steps in consultation with Hindu and Mussalman leaders to devise

\* Swami Shradhanand was murdered in his sick bed by a Muslim fanatic.

measures for the removal of the present deplorable differences between Hindus and Mussalmans and submit their report to the All India Congress Committee not later than the 31st March, 1927".

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.

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 provided :

The Muslim Proposals

- (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.

The Congress Working Committee met again in Bombay from the 15th to the 18th 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.



The All India Congress Committee which met in Bombay on the same dates unanimously adopted the same resolution with minor alterations. The principal change suggested on behalf of the Hindu leaders present was that Sind should not be separated on 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.

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 aspect of the question.

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.

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 authorises the Working Committee, which shall have power to co-opt, to confer with similar Committees to be appointed by other organisations—political, 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 Liberal Federation held in Bombay passed resolutions "cordially appreciating the earnestness of the distinguished Muslim members who have put forward the scheme for the settlement of outstanding differences between the 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 in 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 stated in the Delhi proposals of 1927 referred to above.

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 :

Organisations invited

- National Liberal Federation
- Hindū Maha Sabha
- All India Muslim League
- Central Khilafat Committee
- Central Sikh League
- South Indian 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
- Indian States Subjects Association
- Indian States Subjects Conference
- Indian States Peoples' Conference
- Anglo-Indian Association
- Indian Association of Calcutta
- Parsi Central Association
- Zororstaian Association
- Parsi Rajkeya Sabha

Parsi Panchayat

All India Conference of Indian Christians

Southern India Chamber of Commerce

Dravida Mahajana Sabha and the Landholders' Associations of Oudh, Agra, Behar, 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.

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 22nd February.

All Parties Conference-Delhi

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" has come 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:

"The Constitution to be framed providing for the establishment of full responsible government"

The Conference also passed resolutions dealing with the re-distribution of provinces, the electorates and reservation of seats.

First Committee

On the 22nd February, 1928 the Conference appointed a

Committee with instructions to report on the following subjects: whether the constitution should be bi-cameral or uni-cameral; franchise; declaration of rights; rights of labour and peasantry and Indian States. Having appointed the Committee the Conference adjourned. The Committee presented their report within the period fixed for it and the Conference met again at Delhi on March 8th, 1928. Meanwhile the Council of the Muslim League had met and expressed its disapproval of the resolutions of the All Parties Conference. The Council further laid down that its representatives "should press the representatives of various organisations to accept the proposals embodied in the resolution of the League Sessions of 1927 Calcutta and report the final result to the Council for such action as they consider proper before proceeding with the framing of the Constitution".

This resolution of the Muslim League Council placed a difficulty before the Conference. In accordance with its provisions the report of the Committee could not be considered by the representatives of the Muslim League so long as their other proposals had not been accepted in their totality or the League Council was not consulted again for directions.

The Conference met under this handicap. There was considerable discussion on the communal issues and it was found that there was no agreement between the representatives of the Muslim League and the Hindu Maha Sabha on the separation of Sind and on reservation of seats for majorities. The Sikhs were also strongly opposed to the latter claim. Thereupon on March 11th, 1928 the Conference appointed two sub-committees. One of these was to enquire into the financial aspect of the separation of Sind, and the other was to consider the feasibility of the system of proportional representation.

The report of the committee appointed on February 22nd could not be considered owing to the decision of the Muslim League representatives not to take part in the discussion. The Conference ordered the report to be published and circulated, and stood adjourned till the 19th May, 1928.

Early in April the Hindu Maha Sabha met in Con-

ference in Jubbulpore and adopted resolutions of strong disagreement with some of the Muslim proposals.

Thus when the All Parties Conference met again on the 19th May, 1928 in Bombay the **Bombay-Meeting** situation was not a promising one. The communal organisations had drifted further apart and each of them had hardened in 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 that a small committee viewing the communal problem as a whole and in its relation to the constitution might succeed in finding a way out. The resolution quoted at the beginning of this report was thereupon passed.

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. Shuaib 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.

Of the ten members of the Committee elected by the Conference, Mr. M. R. Jayakar expressed his inability to act on it. Mr. N. M. Joshi stated that he could only take part when the rights of labour were being considered. As a matter of fact he was unable to be present at any sitting of the Committee. Owing to ill-health Sir Ali Imam could only attend one sitting at great personal inconvenience and his presence at that sitting was most helpful. He has also been available to us for consultations from time to time. Mr. Pradhan attended the meetings of the Committee up to the 12th June.

The Committee was called upon to report before the 1st July but in spite of every effort to complete the work in time the **Delay in report** Committee was unable to adhere to the time table laid down. From June 5th onwards the Committee met al-

most daily for several hours at a time. It held 25 sittings besides informal conferences.

The Committee although a small 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 a number of resolutions passed by various organisations, some 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.

The Committee had to face the first difficulty right at the beginning. At Delhi a phrase capable of a double interpretation—  
**Maximum agreement** “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 even 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 one—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 principles 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 deciding, 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 that any individual Congressman, much less the Congress itself, has given up or toned down the goal of complete independence. Those who believe in this goal retain the fullest right to work for it. But the maximum agreement thus reached will, we trust, serve as a satisfactory basis for a constitution which all parties can unite to work without prejudice to the right of any party or individual to go further ahead.

As to the second difficulty, from the constitutional point of view the communal controversies are of no very great importance. Communal aspect 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 opposed 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 recommendations however sound and expedient 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 a number 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 dissension.

Among those who responded to the chairman's invitation were Dr. Ansari, Pandit Madan Mohan Malaviya, Maulana Abul Kalam Azad, Mr. C. Y. Chintamani, Moulvi Shafee Daudi, Dr. S. D. Kitchlew, Mr. Sachchidanand Sinha, Munshi Iswar Saran, Dr. S. Mahmud, Chaudhri Khaliqz Zaman, and Mr. T. A. K. Sherwani. We are beholden to them for their valued 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 brief unavoidable absence, was in constant attendance at the meetings of the Committee. Besides undertaking the arduous task of compiling the figures printed in the appendixes to this report he rendered most valuable assistance at every stage of the Committee's work.

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## CHAPTER II

### THE COMMUNAL ASPECT

The communal problem of India is primarily the Hindu-Muslim problem. Other communities have however latterly 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, specially in the south, between non-Brahmans and Brahmans. But essentially the problem is how to adjust the differences between the Hindus and Muslims.

These two communities indeed form 90 per cent. of the total population of India and Burma. The proportions at the 1921 census were :—

Hindus .. .. .	..	..	..	65·9 per cent.
Muslims.. .. .	..	..	..	24·1 "
Buddhists (chiefly in Burma)	..	..	..	4·6 "
Tribal religions (in hill tracts)	..	..	..	2·8 "
Christians	..	..	..	1·2 "
Sikhs .. .. .	..	..	..	1·0 "
Jains .. .. .	..	..	..	·2 "
Others .. .. .	..	..	..	·2 "
100·0				"

A study of the figures of previous census-reports shows that whilst Hindus and Jains have been gradually decreasing, all the others have increased their numbers from census to census. The increase in the case of Muslims has not been great but it has been continuous. The following percentages since 1881 will show the relative numbers of the Hindus and Muslims at different periods :

	1881	1891	1901	1911	1921
Hindus	72·0	70·1	68·3	66·9	65·9 = -6·1
Muslims	22·6	22·4	23·2	23·5	24·1 = +1·5

These are the percentages in relation to the whole of India. Taking the Muslims separately we find that they have increased by 3.1 per cent. during the last decade. The Hindus have slightly decreased during this period.

The distribution of the Muslim population is such that except in the frontier provinces in the north-west, and in Bengal and Punjab, they form a small minority everywhere. Their highest minority is in the United Provinces but even here it is less than 15 per cent. This 15 per cent. in the United Provinces is not spread out all over the province, but is largely concentrated in urban areas, specially in the northern part of the province.

In the Punjab, the Muslims are 55.3 per cent. and in Bengal 54.0 per cent. In Sind they are 73.4 per cent. and in Baluchistan and the N.-W. F. provinces they are overwhelmingly strong.

A new comer to India looking at these figures and at the strength of the Muslim community, would probably imagine that it was strong enough to look after itself and required no special protection or spoon feeding. If communal protection was necessary for any group in India it was not for the two major communities—the Hindus and the Muslims. It might have been necessary for the small communities which together form 10% of the total.

But logic or sense have little to do with communal feeling, and to-day the whole problem resolves 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 up an armed truce.

The Muslims being in a minority in India as 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 domineering over another. We may not be able to prevent this entirely but the object we should aim at is not to give dominion to one over another but to prevent the harassment and exploitation of any individual or group by another. If the fullest religious liberty is given, and cultural autonomy provided for, the communal problem is in effect solved, although people may not realise it.

With this view point before us we have provided several articles in the Declaration of Communal Councils Rights giving the fullest liberty of conscience and religion to each individual. We considered also a proposal to create communal councils to protect the cultural interests of each considerable community. This proposal was that any community being ten lakhs or more in number in any province shall have the right to have a council representing the members of the community for certain purposes which were mentioned. The manner of election of the members of these councils by their respective communities was to be determined by the Provincial Council. Each council was to consist of not more than 25 members. The functions of the communal council were laid down as :

- (1) Supervision of primary education, schools, orphanages, dharamshalas, sarais, widows homes, and rescue homes.
- (2) Encouragement of scripts and languages.

The communal council could recommend that grants be given to institutions or for scholarships, such grants being made either by the provincial or central government after being submitted to the vote of the House.

These were the main provisions in regards to the communal councils. The idea appealed to us as affording some kind of a substitute for other and worse forms of communalism. But some of our colleagues and several friends whom we consulted were strongly opposed to the creation of these councils, both on communal and administrative grounds. They felt that these councils would help to keep communalism alive. We have therefore rejected the proposal.

The communal problem, so far as its political aspect is concerned, resolves itself now into the question of electorates, the reservation of seats, the separation of Sind, and the form of government in the N.-W. F. Province and Baluchistan.

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 usually 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 thereunder 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 have joint or mixed electorates.

We find that the Ceylon Reform Enquiry Committee, who have recently made their report, have recommended the abolition of communal electorates throughout the island.

Regarding the form of government in the N.-W. F. province and in Baluchistan, we are of opinion that the status of these areas must be made the same as that of other provinces. We cannot in justice or in logic deny the right of any part of India to participate in responsible government. The All Parties Conference has already agreed to this and we gather that no considerable group oppose this reasonable demand.

The questions that remain are the separation of Sind from the Bombay presidency and the reservation of seats in the legislatures. These are mixed questions of communal and general importance. We have reserved the question of reservation of seats to be considered both in its communal and general aspects in a subsequent chapter. The communal aspect of the question of the separation of Sind may conveniently be dealt with here and we proceed to consider it.

Sind has, by a strange succession of events, become a major problem in our politics. It is strange that those who were in favour of its separation from Bombay only a few years ago are now opposed to it, and those who were against separation then now vehemently desire it. All India is exercised about this comparatively trivial matter. This sudden and somewhat inexplicable change of opinion demonstrates how communal considerations warp and twist our better judgment. For the last eight years, since the National Congress made Sind into a separate province, no voice was raised in protest. We feel that in the conflict of communal allegations and counter allegations the only safe course is to try to ignore them and consider the problem as dispassionately as possible. But unhappily it has become a part of the sentiment of the people and sentiment cannot be ignored.

It is stated on behalf of the Hindus in Sind and elsewhere that they are strongly opposed to the creation of "communal" provinces. We agree that the Muslim demand for the separation of Sind was not put forward in the happiest way. It was based on communalism and it was tacked on irrelevantly to certain other matters with which it had no concern whatever. We can understand

the Hindu reaction to this. But the manner of putting it forward does not necessarily weaken the merits of a proposal. There is no question of creating a "communal" province. We have merely to recognise facts as they are. A long succession of events in history is responsible for the distribution of the population of India as it is to-day. Sind happens to contain a large majority of Muslims. Whether a new province is created or not Sind must remain a predominantly Muslim area. And if the wishes of this large majority are not acceded to, it would not only be doing violence to the principle of self-determination, but would necessarily result in antagonising 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 staunchest 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 communalism in its better aspect is culture, it will be difficult to create a harmonious nation.

We suspect that the real opposition to separation is not due to any high national considerations but to grosser economic considerations ; to the fear of the Hindus that their economic position might suffer if Muslims had the charge of affairs in a separated area. We are sure that this fear is baseless. Among all the people of India the Hindus of Sind are perhaps the most enterprising and adventurous. The traveller meets them in the four quarters of the world, carrying on prosperous businesses and enriching their people at home by their earnings abroad. No one can take away this spirit of adventure and enterprise from the Hindus of Sind and so long as they have it their future is assured. It must be remembered also that the powers of a provincial government are limited and there is the central government which has power in all important departments. If however there is still some ground for fear that is a matter for

safeguards, not of opposing a just demand.

We are therefore of opinion that even communal grounds justify the separation of Sind. If the Hindus stand to lose thereby and the Muslims stand to gain, of which we see no chance, such risk of loss by the one and the chance of gain by the other community will not, we hope and trust, be allowed by either to endanger the larger cause. We shall deal with the general aspect of the question later. We would note here that our colleague Mr. Aney does not agree with all the above views but agrees with our conclusion.

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while favouring the system, are of opinion that under present circumstances in India it will not work. We feel strongly attracted to this method and are of opinion that it offers the only rational and just way of meeting the fears and claims of various communities. There is a place in it for every minority and an automatic adjustment takes place of rival interests. We have no doubt that proportional representation will in future be the solution of our problem.

How far is it immediately practicable? Great stress is laid on its intricacy and of the general illiteracy of the electorate in India. We are told that it is impossible to work this system, desirable as it may be, so long as the electorate is not educated up to understanding its significance. We recognise this difficulty. It is considerable. And yet we feel that it is a little exaggerated. Proportional Representation requires not so much a high standard of intelligence in the voters, as expert knowledge in the returning officers and the people who count and transfer votes from one head to another. There can be no doubt that there is a sufficiency of Indians who are competent enough to do this work of counting of votes satisfactorily. As for the general electorate it is very true that a standard of intelligence is necessary for a proper choice to be made in order of merit. But a certain standard is also necessary to exercise the right of vote even in a single member constituency. It is notorious that even in highly democratic England that standard is lacking and votes are given not for high matters of policy or considerations that are really important, but for trivial matters or even sometimes most objectionable considerations which the exigencies of election times force to the front. A general election has turned in the past on the cry of hanging the ex-Kaiser or on a forged letter, and the men, who were to govern an empire and influence largely world events, have been elected for reasons which make every intelligent person despair of democracy. In India the standard of intelligence of the voter will, to begin with at least, be lower than that of the English voter. But these are reasons against democracy, not so much against Proportional Representation.

We are told that another strong argument against Pro-



portional Representation is that for the illiterate voter it would do away with the secrecy of the ballot. We think that the device of three boxes of the same colour for each candidate with different symbols painted on each box to indicate the first, second and third choice, would remove this objection. But it applies in equal measure to the illiterate voter at most of the ordinary elections to-day. In Malta, where there is a large majority of illiterate voters, Proportional Representation has been tried with success, but of course we cannot compare the little island of Malta to our enormous country with its millions.

Most of us feel that there are no insuperable difficulties in the way of giving a trial to Proportional Representation in India. There are drawbacks and risks, but no proposal which we have considered is free from objection, and some of these involve a departure from principle which may bring greater difficulties in its train. Some of our colleagues however are not satisfied that Proportional Representation can be introduced at this stage in India. We therefore refrain from recommending it.

It was suggested that the N.-W. F. Province be amalgamated with the Punjab and that there should then be no reservation of seats in this province.

**Amalgamation of Punjab and N.-W. F. Provinces**

We have no objection to this proposal but we do not know how far this will meet the different view points of the parties concerned. If it does meet with their approval, we would gladly recommend it. There is no special principle involved in it. Its acceptance or otherwise depends entirely on whether it is approved or not. Our colleague Sardar Mangal Singh does not approve of the proposal and we understand that some other people also are of his opinion. We therefore make no recommendation in regard to it.

A similar but more far reaching proposal was made to us, namely, that the Punjab, the N.-W. F. province, Baluchistan and Sind should all be amalgamated together, and that there should be no reservation of seats, unless the minority desires it, in this area. We were unable to entertain this proposal. It would mean the creation of an unwieldy province sprawling all over

**Amalgamation of Punjab N.-W. F. P. Sind & Baluchistan**

a longer lease of life to communalism. Everybody regrets the communal spirit and desires to exercise it from the body politic. But it is clear that it cannot go merely by talking about unity and indulging in pious platitudes which take us nowhere. [Communalism can only go when the attention of the people is directed to other channels, when they begin to take interest in questions which really affect their daily lives rather than in fancied fears based on an artificial division of society. We must therefore try to create this new interest in the people and we must put no barriers in the way of the development of this interest.] There can be no doubt that a majority reservation and fixation of seats is such a barrier.

- An examination of the methods by which reservation for a majority can be secured will show that it is not only a negation of representative government but is in direct conflict with the principle on which responsible government rests.

Methods of reservation

One of these methods has been applied in the Madras and parts of the Bombay presidency to secure a partial reservation for the overwhelming majorities of non-Brahmins in those presidencies. This large community which forms over 96 per cent. of the population of the Madras presidency succeeded in inducing the government, on the recommendation of the Southborough Committee, to reserve for them 28 seats out of a total of 98 to protect them from the small minority of Brahmins who did not exceed  $2\frac{1}{2}$  per cent. of the whole population. The manner in which this reservation was secured was that two purely non-Brahmin constituencies, each returning a single member, were created and, of the remaining constituencies, 25 were made plural, each returning three or more members, two of whom must be non-Brahmins in Madras City, and one must be a non-Brahmin in each of the remaining 24. The rule on the subject is thus stated:—

The Montagu-Chelmsford method

“When the counting of the votes has been completed the Returning Officer shall forthwith declare the candidate or candidates as the case may be, to whom the largest number of votes has been given, to be elected: provided that if one or more seats are reserved the Returning Officer shall first

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 to be placed among the first six who have polled the largest number of votes and that the only non-Brahman candidates who have secured any 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 occasion to put the rule into practice.

It is bad 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.

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 5 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 Muslim and non-Muslim representatives should be held separately but on the same day, so that the whole electorate, Muslim and non-Muslim, 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—Muslim and non-Muslim—would have the right and opportunity to vote. The real object of the clause seems to be to avoid competition between the Hindu and Muslim 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 shuts out all opportunity for a Hindu elector to vote for a Muslim 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 ballot for both and 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.

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 a 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 in 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.

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.

We have so far considered the question of 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 appendixes 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 Muslims are in a majority. These figures

conclusively show that there is no foundation in fact for the fears entertained by the Muslims 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 Mussulmans will not obtain adequate representation and the slight majority they have will be more than counter-balanced 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 Muslims 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 appendixes that in both the Punjab and Bengal the distribution of population is such that the Muslim 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.

Thus in the Punjab, we have a Muslim zone in the north and north-west of the province, where the Muslims 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 Muslims are predominant, but not overwhelmingly so. This analysis leads us to the conclusion that Muslims 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 Muslim area or in districts where the Muslims are the strongest single community. Allowing for every contingency we can not conceive of Muslims 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	..	11,444,321	..	55·3%
Hindus	..	6,579,260	..	31·8
Sikhs	..	2,294,207	..	11·1%
Others (mainly Christians)	..	367,236	..	1·8%
		<hr/>		<hr/>
Total Punjab population		20,685,024		100%

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

I. Fifteen districts in the overwhelmingly Muslim zone. The percentage of Muslims in one district is nearly 91; in nine districts it is between 80 and 90; in two districts it is 71 or over; and in three it is 63·3, 61·9 and 60·7. We have included the last three districts in this zone as, although the Muslim percentage is not so high as in the adjoining districts, it is very high compared to the Hindus and Sikhs combined. Thus in one (Sheikhupura) Muslims are 63·3%, Hindus 16·0% Sikhs are 15·9%; in Sialkot, Muslims are 61·9%, Hindus are 19·5% and Sikhs are 8·0%; in Lyallpur Muslims are 60·7%, Hindus are 18·1% and Sikhs are 16·4%.

It should be remembered that the non-Muslim minority in all these districts consists not of one group but of several communities Hindus, Sikhs, Christians and others.

If we give one member of the legislatures to every 1,00,000 population as we have suggested elsewhere, we find that 98 members will be returned from this Muslim zone alone. This amounts to 47·3 per cent of the total membership of the legislature.

II. There are two districts (Lahore and Gurdaspur)

which might be called the predominantly Muslim zone. Here the Muslims are greater than Hindus and Sikhs combined—in Lahore they are 57·3% of the total—but they are not so many as in zone I. The number of members of the legislature for these two districts are 19½ or 9·4 per cent of the total membership.

- 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 27½ that is 13·3 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 61½ or 29·7 per cent of the total.

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.

In Bengal the figures are even more illuminating. These are discussed in full detail in the separate note attached (see Appendix B). We give here only a brief summary. The population figures are :—

Muslims	..	25,210,802	..	54·0%
Hindus	..	20,203,527	..	43·3%
Others (chiefly tribal religions and Christians)	..	1,281,207	..	2·7%
Total Bengal population (British territory)		46,695,536		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. Predominantly 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. Nine districts with 118 members or 25 per cent of the total.

Thus in Bengal from the overwhelmingly Muslim zone alone, not taking into consideration the predominantly Muslim zone, Muslims are assured of over 60% 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.

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 economically 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—Mymensingh, Chittagong and Jessore. 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 49·8 per cent. In the latter the Muslims 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 Muslims in Bengal need no

Bengal district board elections

protection from all the non-Muslims put together. The case of Jessore 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 their 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 Appendixes A, B and C to those who are flooding the country with elaborate manifestoes and memoranda in support of communal electorates for the Punjab and Bengal.

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 the Hindus and Sikhs. We have seen that this superiority has 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, specially for all backward groups and communities.

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.

Looking at it purely from the Hindu point of view, however, we can well imagine that a reservation of seats for the Muslim majorities in the Punjab and 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.

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, sub-

ject 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 majorities 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 majorities on population basis under all circumstances and for any time howsoever 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 Behar 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 a contingency which can happen, if at all, only when that recommendation is rejected in favour of an agreement by all the parties concerned on reservation of seats on the population basis. There has not only been no such agreement among the members of this Committee but they have definitely expressed themselves in the first part of the resolution to be unanimously opposed to reservation. It is highly unlikely that the agreement referred to in the second part of the resolution will be reached in the All Parties Conference. But if by any chance such an agreement is arrived at, it would be binding on all those who join it and in that case all that the second part provides is that it should not be given effect to for more than ten

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

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.

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.

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 would in all probability be able to elect no more than 30 or 40 Muslims from the Punjab and Bengal, and perhaps one or two from the U. P. and Behar, 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. The same reasoning, it was urged, applied to the legislatures of provinces where the Muslims are in small minorities. We recognise the force of this argument and it is here that we feel compelled by force of circumstances to introduce a temporary element of communalism in the electoral system of the country. We are therefore unable to adopt the resolution of the informal conference of the 7th July in its entirety as our recommendation. In provinces other than the Punjab and Bengal we must

Reservation for minorities

Reservation for Muslim minorities in proportion to population

make an exception in favour of Muslim minorities by permitting reservation of seats, if so desired by them, in proportion to their population both in the central and the provincial legislatures. The retention of communal representation to this extent for some time to come is in our opinion a necessary evil. It will be seen that by making this concession in favour of Muslim minorities we are not introducing the anomalies arising out of reservation for majorities. A minority must remain a minority whether any seats are reserved for it or not and cannot dominate the majority.

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 Montagu-Chelmsford reforms, will disappear under our scheme. Such representation is only possible in separate electorates and has no place in joint or mixed electorates. It is of course not physically impossible to reserve a larger proportion of seats for Muslim minorities than their population would justify but, apart from the obvious injustice of such a course not only to the majorities but to the other minorities as well, it will in our opinion be harmful to the development of Muslims themselves on national lines. We have allowed them their full share on the population basis by reservation and anything over and above that share they must win by their own effort. We do not propose to impose any restrictions on their right to contest a larger number of seats than those reserved for them. The main consideration which has guided us in accepting reservation for their minority is that we are not thereby putting it in a ring-fence beyond which it cannot advance however competent it may be to do so. It is in our opinion more important to secure a free and open field for the expansion of the political activities of all communities large or small than to reserve a maximum number of seats for them even in excess of their numbers. Such reservation will never bring them in open competition with any community other than their own and the inevitable result will be stagnation. It is true that a Muslim candidate will have to canvass non-Muslim votes to defeat his Muslim rival but this is not calculated to advance the Muslim on national lines. It will always

Weightage not permissible

be a question of whether Muslim A is better than Muslim B without regard to the fact that non-Muslim C is better or worse than both.

Muslims cannot reasonably claim reservation of seats beyond their strict proportion to population along with the right to contest additional seats, and 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 help of 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.

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 number fixed for them under the present system. In several urban areas in the U. P. they are in majorities and in others they have strong and influential minorities. They may perhaps lose a few seats in some other provinces but the net result of a general election in the country as a whole is likely to be fairly satisfactory to all.

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

Reservation for Muslims in the central legislature

the central legislature for Muslims. This point was not directly raised or discussed at the informal conference, but we think that it is concluded 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 a little less than one fourth of the total population of British India and they cannot be allowed reservation over and above that proportion 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 at 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  $\frac{1}{3}$  and  $\frac{1}{4}$ . 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.

{ For these reasons we recommend reservation of seats,  
when demanded, for Muslim minorities  
both in the Central and Provincial

Recommendation



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. Shuaib 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 Muslims.

As regards non-Muslim minorities the only provinces which deserve consideration are the N.W.F. and Baluchistan where they are in much the same position as the Muslim minorities in Madras and the C. P. We recommend that the same concession be made to them as to the Muslims in provinces other than the Punjab and Bengal.

Turning to the other non-Muslim minorities we find that there is no such sharp cleavage between them and the majorities among whom they live as there unfortunately is between Hindus and Muslims. We do not think that any protection by way of reservation is either necessary or desirable in their case. They will realize that we are recommending such protection to Muslim minorities under very special circumstances and for a limited period only. The latter have sooner or later to stand on their own legs. We shall indeed be glad if they will make up their minds to do without reservation from the beginning.

There is no analogy between the Muslim and non-Muslim minorities in India. The latter are nowhere when the total population of India is considered. Leaving out the case of Buddhists, who are to be found chiefly in Burma and are in a majority there, the percentage of the population of other non-Muslim minorities to the total population of India is as follows:—

Christians	1.2%
Sikhs	1.0%
Jains	.2%
Others (besides tribal religions in hill tracts)	.2%

It will thus appear that so far as the central legis-

lature is concerned the reservation of seats for non-Muslim minorities on a population basis will hardly help them to any appreciable extent and that there is no occasion to reserve seats for minorities, other than those in the N. W. F. Province and Baluchistan, even in the provincial legislature. Any attempt to do so will only cause confusion and will in our opinion be a very doubtful advantage to the communities concerned.

We have not mentioned the Hindu minorities in the Punjab and Bengal as by no stretch of the imagination 32 and 45 per cent of the population can be regarded as small minorities.

Among the non-Muslim minorities the Sikhs deserve special consideration. They are concentrated in the Punjab and the position they occupy in that province is very similar to that of the Muslims in the U. P. The latter being about 15% of the population are in fact more numerous in the U. P. than the Sikhs in the Punjab where they are only 11%. Under the existing system they have their separate electorate and are given considerable weightage. We recognise that Sikhs are a distinct and important minority which cannot be ignored and we have, all along, been giving our best consideration to the point of view of the Sikhs as expressed by our colleague Sardar Mangal Singh. It must be said to their credit that they have shown an admirable spirit of self-sacrifice by their decision to give up these communal advantages in the general interest of the country. Throughout the communal controversies that have raged round the question of representation in the legislature during recent years they have taken their stand on joint electorates with no reservation for any community. Our colleague Sardar Mangal Singh has drawn attention to the fact that the Sikhs do not form the majority of the total population of any district in the Punjab, and that the strongest position they occupy is in Ludhiana district where they are the strongest single community. Even in this district they are only 41.5 % and are not in a majority. In every other district they are outnumbered either by Muslims or Hindus, and usually by both. It is obvious that situated as the Sikhs are in the Punjab they are subject to all the disadvantages of a minority

in a joint mixed electorate based on the wide adult suffrage we have recommended. In these circumstances they have in the Punjab at least as strong a case for reservation both in the provincial and central legislatures as the Muslims have in the U. P. There is however a third and a very potent factor to be taken into account and that is the presence of the strong Hindu minority side by side with the Muslim majority and the Sikh minority. It is this circumstance in the Punjab which, apart from general considerations has so far defied all attempts at a satisfactory adjustment on the basis of reservation for any community. The Punjab problem has assumed an all India importance and we cannot look at it as an isolated case arising in a single province. The only effective way of avoiding complications and giving full play to the forces of nationalism is to eradicate the virus of communalism from the body politic of the Punjab. Our colleague, Sardar Mangal Singh, who has discussed the matter very fully and frankly with us shares our difficulty. We believe that nothing is farther from the wishes of the Sikh League than to introduce any complications directly or indirectly in the solution of the communal problem. They could, if they had insisted on any special advantage, have caused endless difficulties in the adoption of a uniform rule of representation. They fully realised this and voluntarily gave up all their claims with the sole object, we are assured, of preventing an impasse. We appreciate this spirit and congratulate them on their patriotic resolve.

The only alternative to the proposal we have made is to adopt the recommendation of the informal conference and have no reservation for any minorities, including Muslims, in any legislature. But this will cause considerable dissatisfaction to Muslims without conferring any special benefit on non-Muslims. It must be remembered that besides reservation by means of communal electorates the Muslims at present enjoy considerable weightage in every province. We are offering them the right to contest additional seats in lieu of this weightage and we cannot very well do away with reservation in their case. We see no hardship in this to non-Muslim majorities or

minorities. Endless complications will arise if we recommend reservation for all minorities. Besides the existing well defined minorities such as Christians, Parsis, Jews, fresh groups from among the Hindu castes and sub-castes will claim the right and it will be a perpetual source of trouble.

The communal question is essentially a Hindu-Muslim question and must be settled on that basis. We shall indeed be doing poor service if in our attempt to settle it we let communalism loose on the country to swallow up communities and sub-communities most of whom have not even dreamt of it.

There remain two important communities included in the Hindu majority—the non-Brahmans and the depressed classes. The sharp division between Brahman and non-Brahman is to be met with only in the south and is unknown in other parts of India. Where the non-Brahmans, as such are found, they are either an overwhelming majority as in Madras or a very strong minority as in parts of Bombay. They need no protection in the matter of representation in the legislatures as has been established by the elections held in recent times. Their grievances against Brahmans are all traceable to the ascendancy gained by the latter in the political and social life of the country. This is the natural result of their intellectual ascendancy which is now seriously threatened by the rapid advance of non-Brahmans.

The problem of the “depressed” or “suppressed” classes has come to the front in recent years and their present condition is put forward as an argument against the political advancement of India. We are certainly of opinion that the Hindus are chiefly responsible for this suppression of a large class, but we are equally clear that the solicitude for this class which the British government has endeavoured to show has its basis on reasons other than humanity or love for this class. This solicitude is of very recent growth. As the national movement has grown in the country, so has the political value of the “depressed” classes grown in the eyes of the government. It is only since 1917 that their numbers have been separately given in the official reports on educa-

tion and reference has been made to the educational facilities offered to them. The solicitude of government has so far brought little relief to these classes. It has resulted in giving them some nominated seats in the legislatures and some minor contributions for special schools.

Far more serious and effective attempts have been made by non-official Indian agencies to raise these classes. The Christian missions have also helped in this task. The Congress made the abolition of untouchability one of its principal planks in 1920 and, as is well known, Mahatma Gandhi has thrown himself with all his great powers and energy into the movement. Other political organisations, and we are glad to find even communal organisations, have with equal emphasis declared against untouchability. The practical work done and the considerable results achieved already make it quite clear that these declarations were not mere pious wishes. We realise that there are still conservative elements in the country which are strong enough to put obstacles in the way and retard the progress of the movement. But we are convinced that untouchability is doomed.

In our suggestions for the constitution we have not made any special provision for the representation of the "depressed" classes in the legislatures. This could only be done by way of special electorates or by nomination. We have dealt fully in another place with the question of special electorates and reservation of seats. We are not prepared to extend this unsound and harmful principle if we can help it, nor do we think that we will do any good to these classes by ensuring some seats for them in this way. We are still more opposed to nomination. This can only result, as it has resulted, in the government of the day nominating some one who will support it through thick and thin, and will not represent anybody.

We feel strongly however that the "depressed" classes must be abolished or rather that they should be raised socially and economically so that they may take their proper place in the community. The only effective way to do this is to give them educational and other facilities for this advance and to remove all obstacles in

the way of this advance. Some of the articles in the Declaration of Rights, which we have recommended, will go a long way to remove the disabilities from which these classes suffer and will give them an opportunity to go ahead. The proposal that we should have adult suffrage will also automatically raise their level and increase their political power. Finally, we have strongly recommended that the education of all backward classes should be a special concern of the state. If all these recommendations are acted upon we are convinced that the "depressed" classes will rapidly disappear and will be replaced by a self-reliant and progressive group, co-operating with other groups in the welfare of the entire community.

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## CHAPTER IV

### REDISTRIBUTION OF PROVINCES

We are glad to take leave of communal problems and enter upon matters more germane to the constitution. The question of redistribution of provinces as a part of the constitution should ordinarily be disposed of by a few general rules governing all cases. But, as we have seen, the simplest problems have a tendency to become difficult and almost insoluble if approached in the wrong spirit and considered not on their own merits but as parts of an entirely different problem. We have already dealt with the communal aspect of the separation of Sind from Bombay and shown how a very simple matter has become a major issue in our politics. We shall now consider the general question on the merits apart from its communal bearings.

Every one knows that the present distribution of provinces in India has no rational basis. It is merely due to accident and the circumstances attending the growth of the British power in India. As a whole it has little to do with geographical or historical or economic or linguistic reasons. Even from the purely administrative point of view it is not a success. It is clear that there must be a redistribution of provinces. Some of us favour small provinces, others prefer large provinces. But small or large the question of redistribution has to be tackled.

What principles should govern this redistribution? Partly geographical and partly economic and financial, but the main considerations must necessarily be 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

Present distribution  
irrational

Principles of redistribution

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 stunted. No democracy can exist where a foreign language is used for these purposes. A democracy must be well informed and must be 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.

We are certainly not against the use of English. Language 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 regrouped 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.



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 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 is 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.

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 Bengali area, the Assamese, the Oriya, the Telugu, Tamil, Malayalam, Canarese, Marathi, Gujerati 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 area, of Utkal (Oriya) of Karnatak (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. 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. Subhas 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.

As regards Kerala we have received a resolution of their Provincial Conference urging unification and separation. *Prima facie* Kerala 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 thus at present not prepared to make any recommendation, in the absence of any material, in regard to Kerala.

The case for the Karnataka was placed before us by a representative of the Karnataka Unification Sangh 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 a 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 these with the rest. It might also not be convenient to unite the small islands 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-Brahman problem although this did not effect the question of unification much. There was no organised opposition although a small number of Brahmans were opposed. On behalf of the Maharashtrians 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 Karnataka was very

strong and even at present there was a considerable surplus in the British part of the Karnataka.

Our colleague, Mr. M. S. Aney, does not wholly agree with our view point regarding the Karnataka. He was unfortunately not present at the sitting of the Committee when this question was considered with the help of the representative from the Karnataka. Mr. Aney is of opinion that the opposition may be greater than we imagine and they may not have approached us as they did not know that we were considering the question. This is hardly likely as the press of the Karnataka has been full of this question and considerable publicity has been given to the Karnataka representation to our Committee. If any body of men felt keenly enough in opposition to this demand we think that they would certainly have informed us of their views.

We cannot of course decide this question finally but we feel that the advocates of unification have *prima facie* established their right to it. We cannot suggest the exact limits of the new province. It may be that some of the border tracts are bilingual and an enquiry will have to be made on the spot. This work will have to be done by an expert committee. Messrs. Aney and Pradhan refrain from expressing any opinion on this subject.

It is unfortunate that although the separation of  
Sind  
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 of course no definite data about the number of people desiring separation. But we have yet to know that even a single Musalman opposes it, and Musalmans are 74% of the population. We also know that some at least of the members of other communities in Sind—Hindus and Parsis—support separation. We may therefore safely presume that the great majority of the population desire separation. We are aware that there is a section amongst the Hindus, comprising it may be most of the Hindus in Sind, which is strongly opposed to separation. It has been urged that before a province is separated a section—one third has been suggested—of the minority community must also agree to such separation. This, it seems to us is an utterly wrong principle, cutting at the roots not only of self-determination but of the very principle of decision by majority and is likely to lead to extraordinary results. For instance, it may be, that 10% or 15% of the population may effectively prevent the 90% or 85% from having their way. This is not democracy.

Then again what is the minority community in such a case? Ordinarily a redistribution of provinces is not likely to be a Hindu-Muslim or communal question. The minority which opposes will oppose on the merits and not on communal grounds. How is a single person belonging to this minority to be made to change his opinion? And if some people are converted, another minority remains and it may be urged again that one-third of these should be won over.

Sind undoubtedly satisfies the two main tests. Further it is clearly a geographical unit and its connection with Bombay is a most unnatural one. It is not even easily accessible from Bombay and thus from an administrative point of view a separation is desirable.

It is stated, however, that economically, and even more so financially, Sind cannot shoulder the burden of a separate provincial existence. It is further stated that there is a large deficit in Sind every year which is met from the revenues of other parts of the Bombay

presidency. We are of opinion that ordinarily a province should be self-sufficient in regard to finances and must not look to the central government for doles. We can imagine exceptional cases when the central government might reasonably help the development of a province for a short period in order to make it self-sufficient in the future. There may also be other special cases when such help may be necessary. But an area which desires separation must not live in hopes of money flowing in from outside to enable it to run its administrative machine. It must feel and declare that it will shoulder its own burden.

We shall presume that Sind is at present carrying on its government with the help of outside money. But this does not carry us very far. It may be that a retrenchment in the scale of expenditure will make both ends meet. It may also be, and this is likely, that additional sources of revenue from fresh cultivation or otherwise will increase its income considerably. This problem will have to be faced all over India as soon as we are free. Our first thought then will be to spend money on the development of the country and specially in the nation building departments. This money can only come by applying the axe to provincial expenditure and by tapping fresh sources of revenue.

*Prima facie* Sind is capable of great development. Karachi is likely to become a great harbour and there are large tracts which are either uncultivated 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 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 we are for the present unable to imagine any such insuperable difficulties, Sind should be separated.

We would add that our colleague Messrs Aney and Pradhan are not wholly at one with us in 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.

Before leaving the subject of Sind we must notice a document called the "Sind Pact" received from the Sind National League. It consists of ten clauses covering a wide field and bears 31 signatures of Hindu, Muslim and Parsi gentlemen. We have also received representations from the Sind Aryan Sammelan and the Sind Provincial Hindu Sabha and a number of telegrams from individual Hindu Sindhis repudiating this pact and challenging the representative character of its authors. We have no materials before us to judge between these rival claims to represent Sind nor do we think it is any part of our business to do so. It is clear that there is no such general agreement among Sindhis as would impose an obligation on this Committee to adopt the "pact" as such. As a representation from a number of responsible gentlemen it 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 "cut 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 clauses of "pact".

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## CHAPTER V

### THE INDIAN STATES AND FOREIGN POLICY

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 or other on the problem of the Indian States. The Congress and the Liberal League and the Hindu 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

Attitude of public men  
and organisations to-  
wards Indian States



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 sensitiveness of some Indian princes has in recent years been touched by what they consider to be a somewhat obtrusive 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 view point 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 internal problems or tried to envisage the development of the constitutional relations between them and the future self-governing India from a different angle of vision, it is no more than what it is clearly entitled to do. We are afraid that the present tendency to stress the problem of Indian States as presenting insurmountable obstacles in the way of British India achieving dominion status is full 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.

While the fact that there is an "Indian India" consisting of these 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 shortsighted 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 erect artificial geographical barriers between the two Ideas and opinion travel from one part of

**Affinities between  
British India and Indian  
States**

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 interest 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 pressing 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 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 is an integral part of the machinery established by Parliament for the Government of India. Section 67 of the Act of 1858 provided that "all treaties made by the said Company shall be binding on her Majesty" and similarly section 132 of the Act now in force provides that "all treaties made by the East India Company so far as they are in force at the commencement of this Act are binding on his Majesty". In point of fact, the enforcement of those treaties, the fulfilment of the obligations created by those treaties, and the interpretation of those treaties, have hitherto been among the normal functions and duties of the Government of India, subject to a so-called 'appellate' or supervisory jurisdiction of the Secretary of State for India. It is inconceivable that any Indian prince could, under the present constitution, ignore the Government of India or the Secretary of State and take up any matter relating to such obligations to the King or to his Majesty's Government. Again, the fact is that the Government of India 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 unoften been resorted to by the Government of India for the extension of their jurisdiction.

By the resolution dated the 29th of October, 1920,

Resolution of Govern-  
ment of India

the Government of India have given effect to the recommendations contained in paragraph 309 of the report on Indian Constitutional Reforms which prescribed a procedure for dealing with cases in which "the question arises of depriving a ruler of an important State, temporarily or permanently, of any of the rights, dignities, powers or privileges to which he, as a ruler, is entitled, or debarring from succession the heir apparent or any other member of the family of such ruler who according to the law and custom of his State is entitled to succeed".

Lord Reading on the  
constitutional position

In his letter dated the 27th March, 1926, Lord Reading emphasised the constitutional position as follows :—(a) The sovereignty of the British Crown is supreme in India, and therefore no ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British government, while scrupulously respecting all treaties and engagements, to preserve peace and good order throughout India. (b) 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. (c) 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 have claimed and exercised the right of (a) "installing" princes on the *gaddis* (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 princes 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 or impracticable to define the limits within which the Government of India, as it is constituted at present, or as it may be in future, may seek to interfere. We think however that the plain fact ought not to be overlooked that the Government of India as a dominion will be as much the King's government, as the present Government of India is, and that there is no constitutional objection to the dominion government of India stepping into the shoes of the present Government of India.

If there are personal ties of allegiance or devotion which bind the Indian princes to the throne, person or dynasty of the King, they cannot, and ought not, to suffer in strength by a change or modification in the composition of the King's government in India, when India attains dominion status. There will always be plenty of room for the discharge of those duties to the Crown and for the exercise on the part of the Crown of those prerogatives which may be inseparable from the personal relation that might have subsisted between the Crown and the Indian rulers.

We shall now turn to the latest contribution on the subject. It comes from no less distinguished an authority than 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 a 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

Sir Leslie Scott's views

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 then 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 of law. 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 discount 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 fundamental tie is consent and its recognition by Britain is unequivocal'. This may be assumed to be true. It implies nothing more than what can be said of any two states bound together by treaties or mutual understandings.

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 rulings 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 somewhat 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 in making these contracts gave their confidence to the British Crown and nation; and the Crown cannot assign the contracts to any third party. "The British Government as paramount power has undertaken the defence of all the States, and *therefore to remain in India with whatever military and naval forces may be requisite to enable it to discharge that obligation.* It cannot hand over these forces to any other Government—to a foreign power such as France or Japan; to a dominion Government such as Canada or Australia; nor even to British India" (*our italics*).

The necessary corollary to this is stated in the fifth proposition *viz.*, that "The Crown can normally choose its agents. But an agent cannot act when his interest may conflict with his duty. In all matters of common concern with the States—customs, railways, ports, the salt monopoly, etc.—there is always the possibility that the interest of British India may not be identical with the interest of a particular State. The Crown's duty is, or may be, to safeguard the interest of the State—particularly in case of a minority administration. Should the interest of the agent be given the chance of conflicting with the duty of the principal"? This if true is putting up an effective barrier against the progress of British India towards dominion status, now and for ever, for it is obvious that if these 'contracts' between the Indian princes

and the British Crown and nation are of a personal character India must always continue to be divided between what is British India and Indian States, and the British Nation must always maintain adequate military and naval forces to discharge its obligations to Indian States. The argument we venture to say does not appear to us as anything more than ingenious. It starts on a false analogy and in applying that analogy 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 confidence in the other. The so-called contracts were made under stress of circumstances and would have been of the same or similar character with any other power if it occupied the same position as the British. The argument ignores the settled practice of the Government of India and by invoking so-called first principles in determining the "legal relationship" it overlooks the hard and unchallengeable fact that from the early days of the Company it has been the Government of India and the Government of India alone which has dealt with Indian princes and Indian States. It introduces an element of "personal confidence" between them and the British nation which is not easy to understand. It suggests that the past and present Governments of India which have so far exercised the power, said to be delegated from the Crown, were and are acceptable to the Indian princes and Indian States; but that the future Government of India, if it is to be of the dominion type, will not be so acceptable. This in plain English means that the past and present govern-



ments of India were acceptable because they were essentially foreign in their composition and not responsible to the Indian electorate and that the future responsible Government of India would not be acceptable to the Indian princes because it will consist of their own countrymen and because it will be responsible to an electorate of their own countrymen. But supposing that this is so is there any authority for the proposition that when a "contract" may be performed by an agent the choice of that agent does not rest with the principal but with the other party to the "contract". We have shown that so far the "contract" has been performed by white agents to the apparent satisfaction of the brown princes. On what principle of law, we ask, may that "contract" not be performed by brown agents to the equal if not greater satisfaction of the brown princes?

Let us now consider the argument that the principal cannot delegate to the agent the discharge of obligations where the agent's interest conflicts with his duty. Here again we find that the hard facts have been entirely ignored. The argument overlooks the fact that the agent of the Crown *viz.*, the present Government of India, has been regularly acting when its interest has conflicted with its duty, without any qualms of conscience on the part either of the principal or of the agent and without any public protest on the part of the Indian States. Sir Leslie Scott then says that when "the legal relationship" has been "made clear"—that is to say according to his own conception of that relationship—"suitable constitutional machinery for harmonious working between the two sides of India can be devised, and the States have already made it clear that they are ready and willing to follow such a plan on reasonable lines". In other words if Sir Leslie Scott's theory of personal relationship and personal confidence, and the consequent duty of the paramount power remaining in India to discharge its obligations, is accepted, the princes would be ready and willing to fall in with British India on reasonable lines. Once this argument is accepted as sound it is obvious that whatever be the machinery devised for harmonious working between the Indian States and British India, dominion status

for India must be ruled out for all time to come. We have shown that this argument is wholly unsound, and we sincerely hope that legal ingenuity will not be allowed to prevail against the larger interests of the country, and that the patriotism and statesmanship of the Indian princes, aided by the growing patriotism and love of freedom among their subjects, will be concentrated more upon the establishment of practical machinery for the settlement of issues between them and a responsible Commonwealth of India than upon a determination of the theoretical question of legal relationship, which can do them no good and is fraught with mischievous possibilities which can only lead to disaster. Mutual relations can only be satisfactorily determined with mutual consent and we believe that there is still plenty of room for it. But we must sound a note of warning that the natural and the legitimate aspirations of India cannot and will not be allowed to be defeated or checkmated by ingenious arguments which have no application to facts as they are.

We take special note of the following passage in Sir Leslie Scott's letter :

"The political issues are of first-class importance to the future of India as a whole. Their wise solution will affect directly the successful accomplishment by Sir John Simon and his colleagues of the task imposed by Parliament upon the Statutory Commission for British India. From an Imperial standpoint a statesmanlike treatment of the Princes now may well prove a vital factor in the future attitude of India towards the British Empire".

So that the findings of the Butler Committee arrived at in camera are to decide the fate of the people of British India without the latter being given a chance to be heard, and Sir John Simon and his colleagues, who are themselves not seized of these "political issues of first-class importance", are to be guided by their "wise solution" by the Butler Committee if they are to accomplish successfully the task imposed by Parliament upon them. This was foreseen in India and openly declared from various platforms. We know now exactly what the Statutory Commission is going to accomplish. The only wise solution of these issues.

suggested by Sir Leslie Scott is that the British Government must "remain in India with whatever military and naval forces may be requisite to enable it to discharge its obligations". We thank Sir Leslie Scott for this authoritative forecast of the recommendations of the Statutory Commission which fully justifies the attitude taken in regard to it by all the well-known parties in India.

Leaving aside the theory of the relationship between the Crown and the Indian princes and coming to the position as it is, we maintain that we are right in saying that as a matter of fact and actual practice, it is with the Government of 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 a 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 if the political department gives any decision against an 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 in the present circumstances this is supposed to be a valued right, but this is probably due to the very unsatisfactory procedure followed in the first instance in India. It is obvious that a right of appeal in a case which is not fairly tried is of little value and we think that it is possible to replace it by adequate constitutional provisions for the future.

In ordinary experience, the matters in regard to which the Indian States come into contact or conflict with the Government of India are those relating to customs, excise, extradition, railways, post offices, and ports or harbours. In addition to this, there is the bigger common interest of self-defence. It is not necessary for us to examine what are understood to be the grievances of the Indian States in regard to these matters. We simply note the fact that responsible

Indian rulers and ministers of Indian States have, at times, raised their voice against what they have described to be the inequitable treatment which they received at the hands of the Government of India. How far those grievances are capable of being remedied, and how best they can be remedied, are matters for investigation and joint consultation, but we venture to think that their solution is not inextricably mixed up with the continuance of the present constitution of the Government of India, or the establishment of an entirely separate and independent machinery for the exclusive treatment of these subjects. If we refrain from going into this question at greater length, it is only because the public have not hitherto been permitted to know enough of the scheme which has been in the course of incubation during the last few months. But if it is permissible to us to draw our own inferences from such statements as have been made in this connection by Sir Leslie Scott, the counsel for the Indian princes, before his departure for England, we shall sound a note of warning against the attempt that is being made to duplicate the machinery, by bringing into existence a separate Council for the Indian States to work with the Governor-General. Apart from the fact that it will be a cumbersome thing, its separate existence cannot secure the solution of matters of conflict with British India or with the future Commonwealth government. It strikes us as being a vicious extension of the system of diarchy with all its attendant incongruities, inconveniences, and constitutional difficulties.

A federation of some sort was foreshadowed by Sir Malcolm Hailey, in the speech to which we have already referred, and there is no doubt that some such idea is also present to the mind of Sir Leslie Scott. But if the constitution of India is to be a federal one, as we think it might well be, the position of the Indian States in relation to that federation appears to us to call for a definite determination and the ideas, on the subject, require to be cleared up. Are the Indian States willing and ready to join a real federation? We put this question as we believe that the lines on which the princes and Sir Leslie Scott are working cannot lead to any kind of federation in its well understood sense. 'A

federal state', says professor Newton, 'is a perpetual union of several sovereign states, based first upon a treaty between those states, or upon some historical status common to them all, and secondly, upon a federal constitution accepted by their citizens. The central government acts not only upon the associated states but also directly upon their citizens. Both the internal and external sovereignty of the states is impaired and the federal union in most cases alone enters into international relations'. It would be, in our opinion, a most one sided arrangement if the Indian States desire to join the federation, so as to influence by their votes and otherwise, the policy and legislation of the Indian Legislature, without submitting themselves to common legislation passed by it. It would be a travesty of the federal idea. If the Indian States would be willing to join such a federation, after realizing the full implications of the federal idea, we shall heartily welcome their decision and do all that lies in our 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.

Accordingly, we have provided (a) 'all treaties made between the East India Company and the Indian States and 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

Our recommendations

India exercised and discharged previous to the passing of this Act". We have made these suggestions in no spirit of vanity or idealism. We fully realise their implications and the obligations that such provisions will impose upon the future Government of India. We do believe that the Government of India of 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, sanads 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 far better 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 to our mind, 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 good will 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 represen-

tatives 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 recognise 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 effectually 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 criticised by Mr. Hosakoppa 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 too deep to be rooted out and finally, a keen desire to preserve the individuality of their respective 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 or arrangements shall become null and void at the date of the commencement of the constitution. He then 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 unqualified 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 inconsistencies of these provisions or to criticise them on constitutional grounds beyond which we have not permitted ourselves to go for reasons already stated.

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 and then 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 realise that in a well-knit 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 in 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 inexpediency 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.

## CHAPTER VI

### OTHER PROPOSALS

We shall now consider the main provisions of the constitution, as suggested by us. These are framed as has already been stated, on the model of the dominions.

The resolution of the Madras Congress lays down that the basis of the constitution must be a Declaration of Fundamental Rights. Considerable stress has been laid on this and all the draft constitutions we have considered have formulated such a declaration. Canada, Australia, and South Africa have no declaration of rights in their constitutions but there are various articles to be found in the constitution of the Irish Free State which may properly be grouped under the general head "fundamental rights". The reason for this is not far to seek. Ireland is the only country where the conditions obtaining before the treaty were the nearest approach to those we have in India. The first concern of the people of Ireland was, as indeed it is of the people of India to-day, to secure fundamental rights that have been denied to them. 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.

A reference 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.

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 peasantry, 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 hinderance 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 tenantry is very deplorable and even some fixity of tenure would bring great relief. But it would be a shortsighted policy indeed if to gain some relief now we were to barter 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.

We have added an article to the Declaration dealing with the right of all citizens to access to, and use of, public roads, public wells, and all other places of public resort. This may be considered obvious enough but in view of the peculiar circumstances and the customs prevailing in some parts of the country we feel that it is desirable to lay emphasis on it.

Right to use of roads  
etc.

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 admission into any educational institutions maintained or aided by the state".

No distinctions of caste  
in schools

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.

Habeas Corpus

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

Kripans

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 uni-cameral.

The Legislature

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 100 members.

Number of members

For the House of Representatives and the provincial councils we are of opinion that the largest possible franchise should be

Franchise

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 60 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, cesses and taxes.
  - (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 60 millions, as a stepping stone to adult suffrage. Adult suffrage would probably give us about 120 millions of voters in British India, and the second proposal would thus enfranchise half of these and would be a great step in advance. There were difficulties however in the way of this proposal. At present the voting ratio between different communities is not the same as the population ratio. Thus in the Punjab although the Muslims outnumber the Hindus and Sikhs combined the number of their votes is far less than the Hindu and Sikh voters. This is due to the superior economic position of the latter. We are strongly of opinion that this anomaly should be ended and the voting ratio should be made to correspond with the population ratio. With adult suffrage this happens auto-

matically, but with any other restricted franchise the only possible way to do it is to have different electoral qualifications for different groups and communities. Thus the basis of representation of different communities cannot be uniform and this may be considered a grievance by some groups. We were thus driven to the conclusion that the only solution is adult suffrage and we have recommended accordingly. We find that the Ceylon Reform Commission has come to the same conclusion. It has recommended a universal manhood suffrage with a restricted franchise for women over 30 years of age. The restriction has been imposed "in view of the necessity for keeping the number of votes within reasonable bounds". We see no such necessity. Any artificial restriction on the right to vote in a democratic constitution is an unwarranted restriction on democracy itself. It is quite a different thing to say that a system of universal adult suffrage is difficult to work. But the difficulty, howsoever great has to be faced if what is contemplated is full responsible government in its true sense and with all its implications. The Ceylon Reform Commission have created a novel form of government which has no parallel in the constitutions of the world. But whatever else it may be, it certainly is not responsible government in any sense, and it is responsible government alone with which we are concerned. We do not therefore propose to put any restriction on the right of women to vote which does not equally apply to men.

Universal adult suffrage is at present being successfully worked on a small scale in the elections to the Shromani Gurdwara Prabandhak Committee (Central Sikh Shrines Committee), which are held all over the Punjab. Its introduction on a larger scale only means a multiplication of the machinery employed. We do not see why such multiplication with all the trouble and expense it involves should be considered unreasonable when it is necessary for the purpose of laying the foundation upon which responsible government rests.

We attach no weight to the objections based on the prevailing illiteracy of the masses and their lack of political experience. The proportion of literacy being very small the same objections will apply to the great

majority of voters howsoever much the franchise may be restricted. There is no reason or justice in undertaking the political education of a person earning a certain income and refusing the same education to another person earning a little less. Political experience can only be acquired by an active participation in political institutions and does not entirely depend upon literacy. There should be equal opportunities available to all to acquire this experience. The most advanced countries in the world did not wait to achieve a hundred per cent of literacy before introducing adult suffrage. Why should India?

In regard to the Senate we recommend that the electorates should be the legislatures of the provinces, a specific number of seats being allotted to each province, the basis being population, subject to a minimum.

Senate

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 reconsiderations 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 Senate can thus only result in either a replica of the lower house or in producing a reactionary body representing some vested interests only. The method of indirect election we have suggested gets over this difficulty. The electorate consisting 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 electorates in the country. There will be a greater chance of minority and other special interests to be represented, specially, 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 such 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.

We have suggested that a specific number of seats should be allotted to each province, the basis being population, subject to a minimum. We have not fixed a minimum. Our idea is that although the rough population test should be applied in the allotment of seats, it should not be adhered to in its entirety, so that even the smaller provinces may have adequate representation. In some countries, like the United States of America, the constituent states of the Union send the same number of members to the Senate, regardless of population. In view of the great difference in size and population of our provinces this principle of equal representation of all provinces may not be desirable but the differences between the representation of one province and another in the Senate should not be wholly disproportionate.

We have suggested that the House of Representatives should continue for five years and the Senate for seven years.

We have adopted many of the recommendations of the first committee but we have added to them and made several changes. We have not provided for concurrent powers in any subject of both the central and provincial legis-

lature. This is likely to lead to friction, and so we have endeavoured to place the functions of the two in entirely separate compartments with no overlapping.

The other provisions relating to legislatures are on the lines of the dominion acts. In the case of the central legislature, the House of Representatives has been given sole power to deal with money bills.

We have recommended that the executive council of the Commonwealth should consist of a Prime Minister and not more than six ministers. There will probably be a tendency to increase the number of ministers so as to give representation to various communities. We do not approve of this, and in view of the provincial autonomy we are providing for, we feel that seven ministers ought to suffice in the central executive. The executive council will of course be collectively responsible to the legislature.

#### The Executive

For the provincial executive we have suggested five ministers—a Chief Minister and four others.

The powers of the central and provincial executives are similar to those found in the dominion constitutions.

We have provided for a Supreme Court, besides the High Courts, and we suggest that ordinarily no appeals should go to the King in Council except under certain conditions, which we have specified.

#### The Judiciary

We draw particular attention to the cases falling under the original jurisdiction of the Supreme Court. The most important of these are matters arising out of treaties, engagements, sanads, and similar other documents between the Commonwealth and Indian States which may be referred by the Governor-General in Council with the consent of the State concerned to the Supreme Court for its decision.

#### Supreme Court

The division of the revenues of the country between the central and provincial governments, and the assignment of money for defence, education and other essential matters, will be difficult and will require the greatest care.

#### Finance

We have recommended that immediately after the establishment of the Commonwealth a commission be appointed to institute an enquiry into

Commission of Enquiry  
1. The sources of revenue which may be assigned to the Commonwealth and to the provinces, and

2. The financial relations between the central and the provincial governments.

In making the recommendation we have followed the constitution of the Union of South Africa, section 118, as the most suitable.

We have laid an additional duty on this commission to appoint

(i) a special committee to examine the whole question of the training of officers for the land, naval and air forces, and the establishment of schools and colleges to give this training.

Training of Officers  
(ii) Another committee to investigate and report on the introduction of general primary education, and the grant of special educational facilities to backward classes.

Primary education and backward classes  
(iii) Such other committees as it may consider necessary.

We feel that the commission we have recommended will not be in a position to make a comprehensive report without the help of these committees which will be composed mostly of experts.

We have recommended that on the establishment of the Commonwealth a permanent Public Services Commission should also be appointed.

The Civil Services  
One of the first duties of the Commonwealth on its establishment will be the reorganisation and readjustment of the departments of public services. It is notorious that the Indian administration to-day is top heavy and the services are paid at a higher rate than anywhere else in the world inspite of the grinding poverty of the country. The first problem before the dominion of India will be how to find money for defence, education, industry, sanitation and a host of other purposes. We cannot

possibly afford to keep extravagantly paid civil or military services and we must try to reduce the over head charges of administration to find money for developing the country. The people, or rather the articulate section of them, have all along protested against the heavy salaries of our officials. But the only answer to these protests came in the shape of the Lee Commission. This commission as is well-known was appointed in the teeth of unanimous Indian opposition and its recommendations were adopted over the head of the Indian legislature. We feel therefore that the entire question of the sources and methods of recruitment of the services, their salaries, emoluments, pensions and allowances in the future will require re-examination in the light of the new political conditions which will be created under the new constitution. For this we have provided for the appointment of a special Public Service Commission which will cease to function after the reorganisation and readjustment of the services have been effected. But we have provided adequate guarantees for persons holding offices at the establishment of the Commonwealth both in case of their electing to retire and to remain in the service of the Commonwealth. We have given three years for the exercise of the option to retire on the same terms and conditions which may be applicable to those officers at the commencement of the Commonwealth.

We have made similar provisions for all officers serving in the army, the navy, the Royal Indian Marine and in the Air Force of India serving in India at the commencement of the new constitution.

We have suggested the appointment of a Committee of Defence consisting of :

- (1) Prime Minister
- (2) Minister of Defence
- (3) Minister of Foreign Affairs
- (4) The Commander-in-Chief
- (5) The Commander of Air Forces
- (6) The Commander of Naval Forces
- (7) The Chief of the General Staff, and
- (8-9) Two other experts