

VOL. 7
2,100

CONSTITUENT ASSEMBLY OF INDIA



REPORTS OF COMMITTEES

सत्यमेव जयते

(First Series)

1947

(From December, 1946 to July, 1947)

PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, INDIA
PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI, INDIA
1948

Price annas 9 or 10d.

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REPORT OF THE UNION POWERS COMMITTEE TO THE CONSTITUENT ASSEMBLY

(PRESENTED ON 28TH APRIL, 1947)

We, the undersigned, members of the Committee appointed by the resolution of the Constituent Assembly of the 25th January to examine the scope of Union Powers, have the honour to submit this our report, Sir V. T. Krishnamachari and Sir B. L. Mitter were nominated to the Committee on 10th April, 1947, and the rest of us have had an opportunity of going over the entire ground again with them.

2. We consider that the scope of the subjects, Defence, Foreign Affairs and Communications in the Cabinet Delegation's Statement of the 16th May covers the following:—

A—"Defence" connotes the defence of the Union and of every part thereof and includes generally all preparation for defence, as well as all such acts in times of war as may be conducive to its successful prosecution and to effective demobilisation after its termination. In particular, "Defence" includes—

- (1) The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof for the defence of the Union and the execution of the laws of the Union and its Units; the strength, organisation and control of the existing armed forces raised and employed in Indian States;
- (2) Defence industries;
- (3) Naval, Military and Air Force works;
- (4) Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas;
- (5) Arms, fire arms, ammunition and explosives;
- (6) Atomic energy, and mineral resources essential to its production.

We recommend further that in order to enable the Union Government effectively to discharge its responsibility for defence, it should be vested with the powers similar to those contained in Sections 102 and 126-A of the Government of India Act, 1935.

B—"Foreign Affairs" connotes all matters which bring the Union into relation with any foreign country and in particular includes the following subjects:—

- (1) Diplomatic, consular and trade representation;
- (2) United Nations Organisation;
- (3) Participation in international conferences, associations and other bodies and implementing of decisions made thereat;
- (4) War and Peace;

- (5) The entering into and implementing of treaties and agreements with other countries;
- (6) Trade and Commerce with foreign countries;
- (7) Foreign loans;
- (8) Naturalisation and aliens;
- (9) Extradition;
- (10) Passports and visas;
- (11) Foreign jurisdiction;
- (12) Admiralty jurisdiction;
- (13) Piracies, felonies committed on the high seas and offences committed in the air against the law of nations;
- (14) Admission into, and emigration and expulsion from, the Union;
- (15) Port quarantine;
- (16) Import and export across customs frontiers as defined by the Union Government;
- (17) Fishing and fisheries beyond territorial waters.

C—The term "Communications" although it is wide enough to cover any connection between places should for the present purposes of the Union, in our opinion, include the following:—

- (1) Airways;
- (2) Highways and waterways declared by the Union to be Union highways and waterways;
- (3) Shipping and navigation on inland waterways, declared by the Union to be Union waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers, and goods on such waterways;
- (4) (a) Posts and Telegraphs:

Provided that the rights existing in favour of any individual State unit at the date of the establishment of the Union shall be preserved to the unit till the same are modified or extinguished by agreement between the Union and Unit concerned, subject however to the power of the Union to make laws for the regulation and control of the same.

- (b) Union telephones, wireless broadcasting and other like forms of communication; the regulation and control of all other telephones, wireless, broadcasting and other like forms of communication;
- (5) Union railways; the regulation of all railways (other than minor railways) in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the

responsibility of the administrations of such railways as carriers of goods and passengers ;

- (6) Maritime shipping and navigation, including shipping and navigation on tidal waters ; Admiralty jurisdiction ;
- (7) Major ports, that is to say, the declaration and delimitation of such ports and the constitution and powers of Port Authorities therein ;
- (8) Aircraft and air navigation ; the provision of aerodromes, regulation and organisation of air traffic and of aerodromes ;
- (9) Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft ;
- (10) Carriage of passengers and goods by sea or by air ;
- (11) Union Meteorological Services ;
- (12) Inter-Unit quarantine.

D—The expression “the powers necessary to raise the finances required” for the Union subjects in the Cabinet Delegation’s Statement necessarily includes the power to raise finances by taxation and loans. In existing circumstances, we recommend the following sources of revenue for the Union :—

- (1) Duties of customs, including export duties ;
- (2) Excise duties ;
- (3) Corporation tax ;
- (4) Taxes on income other than agricultural income ;
- (5) Taxes on the capital value of the assets, exclusive of agricultural land of individuals and companies ; taxes on the capital of companies ;
- (6) Duties in respect of succession to property other than agricultural land ;
- (7) Estate duty in respect of property other than agricultural land ;
- (8) Fees in respect of any of the matters in the list of Union powers, but not including fees taken in any Court, other than the Union Court.

We realise that, in the matter of industrial development, the States are in varying degrees of advancement and conditions in British India and the States are in many respects dissimilar. Some of the above taxes are now regulated by agreements between the Government of India and the States. We, therefore, think that it may not be possible to impose a uniform standard of taxation throughout the Union all at once. We recommend that uniformity of taxation throughout the Units may, for an agreed period of years after the establishment of the Union not exceeding 15, be kept in abeyance and the incidences, levy, realisation and apportionment of the above taxes in the State Units shall be subject to agreements between them and the Union Government. Provision should accordingly be made in the Constitution for implementing the above recommendation.

This is in addition to the recommendations of the Sub-Committee on Fundamental Rights regarding internal customs duties.

3. It is impossible to enumerate the powers implied or inherent in or resultant from the express powers of the Union. We think that in any case the following powers come within the category :—

- (1) Union judiciary ;
- (2) Acquisition of property for the purposes of the Union ;
- (3) Union agencies and institutes for the following purposes, that is to say for research, for professional or technical training, or for the promotion of special studies ;
- (4) Census ;
- (5) Offences against laws with respect to any of the matters in the list of Union powers ;
- (6) Enquiries, surveys and statistics for the purposes of the Union ;
- (7) Union Services ;
- (8) Industrial disputes concerning Union employees ;
- (9) Reserve Bank of India ;
- (10) Property of the Union and the revenue therefrom ;
- (11) Public debt of the Union ;
- (12) Currency, coinage and legal tender ;
- (13) All subjects in respect of Union areas ;
- (14) Powers to deal with grave economic emergencies in any part of the Union affecting the Union.

4. We are of the opinion that provision should be made in the new constitution for the recognition throughout the Union of the laws and public acts and records of the judicial proceedings of the Units and for judgment and orders delivered in one Unit being enforced in other Units. We note that a provision to this effect has already been made in the list of Fundamental Rights.

5. In addition to the above subjects which, in our view, come within the scope of Union powers in accordance with the Cabinet Delegation's Statement, we hope that the following subjects will also be included in the Union List by agreement :—

- (1) Insurance ;
- (2) Company Laws ;
- (3) Banking ;
- (4) Negotiable Instruments ;
- (5) Patents ; trade marks, trade designs ; copyright ;
- (6) Planning ;
- (7) Ancient and Historical Monuments ;
- (8) Standard Weights and Measures.

7. We also recommend that by agreement there may be a list of concurrent subjects as between the Union and the Units.

GOVIND BALLABH PANT

„ B. L. MITTER

.. JAIRAMDAS DAULATRAM

., N. GOPALASWAMI AYYANGAR

.. K. M. MUNSHI

.. V. T. KRISHNAMACHARI

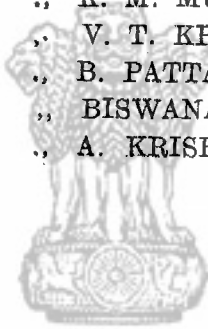
.. B. PATTABHI SITARAMAYYA

„ BISWANATH DAS

.. A. KRISHNASWAMI AYYAR

NEW DELHI;

17th April, 1947.



सत्यमेव जयते

II

**REPORT OF THE COMMITTEE APPOINTED TO NEGOTIATE
WITH THE STATES NEGOTIATING COMMITTEE**

(PRESENTED ON 28TH APRIL, 1947)

By a resolution of the Constituent Assembly passed on the 21st December 1946, the following members, *viz* :

- (1) The Hon'ble Pt. Jawaharlal Nehru
- (2) The Hon'ble Maulana Abul Kalam Azad
- (3) The Hon'ble Sardar Vallabhbhai J. Patel
- (4) Dr. B. Pattabhi Sitaramayya
- (5) Mr. Shankarrao Deo
- (6) The Hon'ble Sir N. Gopalaswami Ayyangar

were appointed as a Committee to confer with the Negotiating Committee set up by the Chamber of Princes, and with other representatives of Indian States, for the purpose of

- (a) fixing the distribution of the seats in the Assembly not exceeding 93 in number, which in the Cabinet Mission's Statement of May 16, 1946, are reserved for Indian States,
- (b) fixing the method by which the representatives of the States should be returned to the Assembly.

and thereafter to report the result of such negotiations. By a further resolution passed on the 21st January 1947, we were empowered to confer with such persons as we thought fit, for examining the special problems of Bhutan and Sikkim, and to report to the Assembly the result of such examination. This report deals only with the negotiations conducted by us in pursuance of the resolution of the 21st December.

2. The first series of our joint meetings with the States Negotiating Committee were held on the 8th and 9th February, 1947. The discussion largely centred on the scope of subjects to be negotiated between the two committees. It was urged by the States Negotiating Committee that there had been no decision yet on the part of the States to enter the Constituent Assembly, and that it would not be possible for them to decide this issue till they received satisfactory assurances on a number of points mentioned in the resolution adopted on the 29th January, 1947, by the General Conference of Rulers (Appendix A). On the other hand, we pointed out that most of those points could only be discussed by a fully constituted Constituent Assembly including the representatives of the States; they were in any case clearly beyond our competence as a Committee, our own functions being limited to the matters laid down in the resolution of the Constituent Assembly passed on the 21st December, 1946. But while we were not prepared as a committee to discuss matters going beyond our mandate, we raised no objection to discussing, in a friendly and informal manner as individuals, certain difficulties, and to removing certain misapprehensions which seemed to be causing concern to the Princes. The more important

of the points cleared up in the course of these discussions were summarised by Pandit Nehru as follows :—

"The first thing to be clear about is to proceed with the full acceptance of the Cabinet Mission's Statement. Apart from the legality of that Statement one thing also seems to me obvious, namely, that the scheme is essentially a voluntary one, where no compulsion, except, as I said, compulsion of events, is indicated. No doubt, so far as we are concerned, we accept it as a voluntary scheme where people may join as individuals, as groups, or Rulers or otherwise. We are not trying to force any to join if they do not want to. It is a matter for negotiation throughout.....

Now, to go back, apart from the acceptance of the scheme which is basic, some points were raised yesterday. One was about the monarchical form of Government. That question has not arisen at all in the Constituent Assembly nor, so far as we can see, does it arise at all from the Statement. But it has been repeatedly stated on our behalf in the Constituent Assembly as outside that we have no objection to it, we accept that, and we do not want to come in the way of the monarchical form of Government at all. This has been made perfectly clear.

Another point that we raised in our discussion yesterday was about some apprehension about territorial readjustments. I tried to point out that the Resolution passed by the Constituent Assembly had no reference in the minds of those who framed the Resolution or who proposed it there, to any change regarding the States. It has no relation to the States. It was an indication that there will be provision made in the constitution or in the process of re-grouping units, etc., where some changes may have to be made. It had no reference to changing boundaries. I can concede territorial boundaries being changed for economic reasons, for facilitating governmental purposes, etc., but any such territorial readjustments, we are quite clear, should be made with the consent of the parties concerned, and not be forced down. I say, for the moment we are not thinking in terms of any such thing, but if this question arises, it should be essential that the parties concerned should consent to it.

"The scheme, as has already been stated, is a voluntary one, and whether in regard to the entry into the Constituent Assembly or subsequently when the Constituent Assembly decides and comes to conclusions, there will be no compulsion, and the States will have the right to have their say at any stage just as anybody else will have the right to have their say at any stage. So the coercive factor must be eliminated from that.

"In regard to some confusion which has possibly arisen in regard to subjects and powers, we go on what the Cabinet Mission's Statement specifically says. The Cabinet Mission's Statement said: "The States will retain all subjects and powers other than those ceded to the Union." That is perfectly clear, we accept that statement, we accept that entirely. Generally speaking, those are the matters that came up yesterday in the course of discussion, and perhaps we might proceed on that basis and consider matters now."

We further explained that the Constituent Assembly could not possibly take up the position that they were not prepared to discuss matters with States not represented on the Chamber of Princes Negotiating Committee; or with representatives of State peoples, as that would involve an element of compulsion which was contrary to their conception of the scheme.

3. A general understanding having been arrived at, as a result of the above exchange of views, the States Negotiating Committee proceeded to consider the two matters on which we had been asked to negotiate by the Constituent Assembly. After a preliminary discussion, it was decided that the question of the distribution of the 93 seats should be referred to the Secretariats of the Constituent Assembly and the Chamber of Princes, and their recommendations placed before the next meeting of the two committees on the 1st March, 1947.

4. In the meanwhile, the Dewan of Baroda had asked for direct negotiation with us on the representation of Baroda in the Constituent Assembly. We accordingly met Sir B. L. Mitter on the 9th February. In the course of our discussion, he made it clear that it was the decision of the Baroda State, both the Ruler and the people, to give the fullest co-operation to the Constituent Assembly in its work and that they were prepared to take steps forthwith for the selection of representatives so that these could take part in the work of the Assembly at the earliest possible date. It was agreed between us and the Dewan that Baroda should, having regard to its population, send three representatives and that these should be elected by the Dhara Sabha (the State legislature) on the principle of proportional representation, by means of the single transferable vote, and that only its elected and nominated non-official members should take part in the election.

5. The next joint meeting of the two committees was held on the 1st March, 1947. At this meeting we urged that H. M. G.'s declaration of the 20th February had introduced an additional element of urgency in our task and that it would be greatly to the advantage of the States no less than to the British Indian representatives in the Constituent Assembly if States' representatives could join the Assembly during April session. We pointed out that there was nothing in the State Paper of the 16th May which operated as a bar against States doing so. We also suggested that it would be to our mutual advantage if States' representatives could function forthwith on some of the committees set up by the Constituent Assembly, particularly the Union Powers Committee and the Advisory Committee on fundamental rights, etc. The States Negotiating Committee, however, expressed their inability to take these steps in the absence of a mandate from the General Conference of Rulers whom they promised to consult at an early date.

6. The discussion then turned on the method of distribution of the 93 seats allotted to the States. The Committees approved of the distribution as proposed by the two Secretariats (Appendix B) and authorised the making of such minor modifications as are considered necessary by the parties concerned.

7. After this, we discussed the method of selecting representatives. Various proposals were made and discussed in a joint sub-committee

set up for the purposes. Eventually, after a consideration of the sub-committee's report, the following formula was accepted by both Committees, *viz.*, that not less than 50 per cent of the total representatives of States shall be elected by the elected members of legislatures or, where such legislatures do not exist, of other electoral colleges. The States would endeavour to increase the quota of elected representatives to as much above 50 per cent of the total number as possible.

This formula has since been ratified by the General Conference of Rulers held on the 2nd April. A copy of the resolution passed by the Conference is attached (Appendix C).

We pointed out that in regard to two States, *viz.*, Hyderabad and Kashmir elections to their legislatures had been boycotted by important organisations representing the people of the States concerned, and the legislatures therefore could not be considered to represent the people as they were intended to do. In the cases of these two States, we suggested that a suitable method of electing representatives for the Constituent Assembly should be devised. The Chancellor said that he would communicate the suggestion to the States concerned.

8. A Committee consisting of the following members: (1) Dr. Pattabhi Sitaramayya; (2) Sir N. Gopalaswami Ayyangar (3) Sir V. T. Krishnamachari; (4) Sir Sultan Ahmed; (5) Sir B. N. Rau; (6) Mir Maqbool Mahmood; (7) Mr. H. V. R. Iengar was set up to consider the modifications referred to para. 6 above and other matters of detail that might arise from time to time, and to report, if necessary, to the two Negotiating Committees.

We have been informed that the States of Baroda, Jaipur, Jodhpur, Rewa, Cochin and Bikaner have already selected their representatives in accordance with the agreement arrived at. These representatives have been invited to take their seats at the forthcoming session of the Assembly. The States of Patiala, Udaipur, Gwalior and Bhavnagar have also announced that they will take part in the work of the Constituent Assembly.

JAWAHARLAL NEHRU.

A. K. AZAD.

VALLABHBHAI PATEL.

N. GOPALASWAMI.

SHANKARRAO DEO.

B. PATTABHI SITARAMAYYA.

NEW DELHI;

24th April. 1947.

APPENDIX A

TEXT OF THE RESOLUTION PASSED AT PRINCES MEETING HELD ON 29-1-47

1. This meeting reiterates the willingness of the States to render the fullest possible co-operation in framing an agreed Constitution for, and in the setting up of, the proposed Union of India in accordance with the accepted plan; and declares:—

(a) that the following fundamental propositions *inter alia* form the basis for the States' acceptance of the Cabinet Mission's plan—

- (i) The entry of the States into the Union of India in accordance with the accepted plan shall be on no other basis than that of negotiation, and the final decision shall rest with each State. The proposed Union shall comprise, so far as the States are concerned, the territories of only such States or groups of States as may decide to join the Union, it being understood that their participation in the constitutional discussions in the meantime will imply no commitments in regard to their ultimate decision which can only be taken after consideration of the complete picture of the constitution.
- (ii) The States will retain all subjects and powers other than those ceded by them to the Union. Paramountcy will terminate at the close of the interim period and will not be transferred to or inherited by the new Government of India. All the rights surrendered by the States to the Paramount Power will return to the States. The proposed Union of India will, therefore, exercise only such functions in relation to the States in regard to Union subjects as are assigned or delegated by them to the Union. Every State shall continue to retain its sovereignty and all rights and powers except to the extent that those rights and powers have been expressly delegated by it. There can be no question of any powers being vested or inherent or implied in the Union in respect of the States unless specifically agreed to by them.
- (iii) The Constitution of each State, its territorial integrity, and the succession of its reigning dynasty in accordance with the custom, law and usage of the State, shall not be interfered with by the Union or any Unit thereof, nor shall the existing boundaries of a State be altered except by its free consent and approval.
- (iv) So far as the States are concerned, the Constituent Assembly is authorised only to settle the Union Constitution in accordance with the Cabinet Mission's plan, and is not authorised to deal with questions bearing on the internal administrations or constitutions of individual States or groups of States.
- (v) His Majesty's Government have made it clear in Parliament that it is for the States to decide freely to come in

or not as they choose. Moreover according to the Cabinet Mission's Memorandum of 12th May, 1946, on States Treaties and Paramountcy Political arrangements between the States on the one side and the British Crown and British India on the other will be brought to an end" after the interim period. "The void will have to be filled either by the States entering into a federal relationship with the successor Government..... British India, or failing this; entering into particular political arrangements with it."

(b) that the States Negotiating Committee, selected by the Standing Committee of the Chamber of Princes and set up at the request of His Excellency the Viceroy in accordance with paragraph 21 of the Cabinet Mission's Statement of the 16th May, 1946, is the only authoritative body competent under the Cabinet Mission's plan to conduct preliminary negotiations on behalf of the States, on such questions relating to their position in the new Indian Constitutional structure as the States might entrust to it;

(c) that while the distribution *inter se* of the States' quota of seats on the Constituent Assembly is a matter for the States to consider and decide among themselves, the method of selection of the States representatives is a matter for consultation between the States Negotiating Committee and the corresponding Committee of the British India portion of the Constituent Assembly before final decision is taken by the States concerned.

2. This meeting—

(a) endorses the Press Statement issued on 10th June, 1946, by the Standing Committee of the Chamber of Princes in consultation with the Committee of Ministers and the Constitutional Advisory Committee, in regard to the attitude of the States towards the Cabinet Mission's plan; and

(b) supports the official statement of the views communicated by the States Delegation to the Cabinet Mission on 2nd April, 1946, which *inter alia* associated the States with the general desire in the country for India's complete self-government or independence in accordance with the accepted plan.

3. This meeting resolves that, in accordance with this Resolution and the instructions and Resolutions of the States' Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee of Ministers, the States Negotiating Committee be authorised to confer with the corresponding Committee of the British India portion of the Constituent Assembly, as contemplated and declared by His Majesty's Government in Parliament, in order to negotiate (a) the terms of the States' participation in the Constituent Assembly when it reassembles under paragraph 19(6) of the Cabinet Mission's Statement, and (b) in regard to their ultimate position in the All-India Union, provided that the results of these negotiations will be subject to the approval of the aforesaid States' Committees and ratification by the States.

1. The allocation of seats proposed in the annexure has been prepared by the Secretariats of the Constituent Assembly and the Chamber of Princes and is intended as a basis of discussion for the Committees concerned.

3. States so desiring may pool or share their proportion of the allotted representation, whether individual or grouped, with that of any other State or group of States by mutual agreement, provided:—

- proximity, economic and linguistic

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ANNEKURE
A
SINGLE STATES

Division as shown in the
Table of Seats appended
to Part II of the First
Schedule to the Govt. of
India Act, 1935

	Name of State	Population in millions	Number of seats in the Constituent Assembly
1	2	3	4
I	Hyderabad	16.33	16
II	Mysore	7.32	7
III	Kashmir	4.02	4
IV	Gwalior	4.00	4
V	Baroda	2.85	3
IX	Travancore	6.07	6
IX	Cochin	1.42	1
X	Udaipur	1.92	2
X	Jaipur	3.04	3
X	Jodhpur	2.55	2
X	Bikaner	1.29	1
X	Alwar	0.82	1
X	Kotah	0.77	1
XI	Indore	1.51	1
XI	Bhopal	0.78	1
XI	Rewa	1.82	2
XIII	Kolhapur	1.09	1
XIV	Patiala	1.93	2
XIV	Bahawalpur	1.34	1
XVI	Mayurbhanj	0.99	1
	20	61.86	60

FRONTIER GROUPS

Division	Names of States in the Group	Population in millions	Number of seats in the Constituent Assembly
VI	Kalat	0.25	1
	Las Bela	0.07	
	Kharan	0.03	
XIV	Khairpur	0.31	
VII	Sikkim	0.12	1
XV	Cooch Behar	0.64	
XV	Tripura	0.51	1
XV	Manipur	0.5	
XVII	Khasi States	0.21	
XVII	Amb	0.05	1
XVII	Chitral	0.10	
XVII	Dir	0.25	
XVII	Swat	0.26	1
XVII	Phulra	0.01	
		3.32	4

INTERIOR GROUPS

Division	Names of States in the Group	Population in millions	Number of seats in the Constituent Assembly
VIII	Rampur Bonares	0.93	1
IX	Pudukottai Bangnapalla Sandur	0.49	Included in residuary Group XVII below.
X (13 States)	Bharatpur Tonk Dholpur Karauli Bundi Sirohi Dungarpur Banswara Partabgarh Jhalawar Jaisalmer Kishangarh Shahpura	2.86	3
XI			
XI	Datia Orehha Dhar Dewas (Senior) Dewas (Junior) Jaora Ratlam Panna Samthar Ajaigarh Bijawar Charkhari (26 States) Chhatarpur Beoni Nagod Maihar Baraundha Barwani Ali Rajpur Jhabua Sailana Sitamau Rajgarh Narsingarh Khilchipur XVII Kurwai	3.11	3

Division	Names of States in the Group	Population in millions	Number of seats in the Constituent Assembly
XII	Cutch Idar Nawanagar Bhavnagar Junagadh Dhrangadhra Gondal Porbandar Morvi Radhanpur Wankaner Palitana Dhrol Limbdi Wadhwan Rajkot	3.65	4
(16 States)			
XII-A	Rajpipla Palanpur Cambay Dharanpur Balasinor Baria Chhota Udepur Sant Lunawada Bansda Sachin Jawhar Danta Janjira Jafrabad	1.69	2
(15 States)			
XIII	Sangli Savantvadi Mudhol Bhor Jamkhandi Miraj (Senior) Miraj (Junior) Kurundwad (Senior) Kurundwad (Junior) Akalkot Phalton Jath Aundh Ramdurg	1.56	2
(14 States)			
XIV	Kapurthala Jind Nabha Mandi Bilaspur Suket Tehri-Garhwal Sirmur Chamba Faridkot Malerkotla Loharu	3.70	3
(14 States)			
XVII	Kalsia Bashahr		

Division	Names of States in the Group	Population in millions	Number of seats in the Constituent Assembly
XVI	Sonepur	4.25	3
	Patna		
	Kalahandi		
	Keonjhar		
	Dhenkanal		
	Nayagarh		
	Talcher		
	Nilgiri		
(25 States)	Gangpur		
	Bamra		
	Seraikela		
	Baud		
	Bonai		
XVII	Athgarhi		
	Pal Lahara		
	Athmalik		
	Hindol		
	Narsingpur		
	Baramba		
	Tigiria		
	Khandpara		
	Ranpur		
	Daspalla		
	Rajakhola		
	Kharsawan		
XVI-A	Bastar	2.81	3
	Surguja		
	Raigarh		
	Nandgaon		
	Khairagarh		
	Jashpur		
(14 States)	Kanker		
	Korea		

APPENDIX C

TEXT OF THE RESOLUTION PASSED AT PRINCES MEETING HELD IN
BOMBAY ON 2-4-47

1. This conference reiterates the support of the States to the freedom of the country, and their willingness to render the fullest possible co-operation in framing an agreed constitution and to all genuine efforts towards facilitating the transfer of power on an agreed basis. The conference reaffirms the resolution adopted by the General Conference of Rules and representatives of States on January 29, 1947.

2. It ratifies the general understanding reached between the States Negotiating Committee and the corresponding Committee set up by the Constituent Assembly in regard to the allocation of the States' quota of seats in, and the method of selection of the States representatives to, the Constituent Assembly, and on the fundamental points discussed at their meetings held on February 8 and 9 on March 1 and 2, subject to the acceptance of the aforesaid understanding by the Constituent Assembly.

3. It reiterates the previous decisions of the States to adhere strictly to the Cabinet Mission's plan, under which the representatives of such States as may so desire, may join the Constituent Assembly at the appropriate stage when that Assembly meets, in accordance with the Cabinet Mission's plan to settle the Union constitution, provided that such participation is preceded by acceptance by the Constituent Assembly, of the general understanding reached between the two Negotiating Committees in regard to the fundamental points, and other matters referred to in the second resolution.

4. The conference is glad to note that Mr. Attlee's statement of February 20, 1947, further confirms the declaration made by the Cabinet Mission that paramountcy will cease at the close of the interim period. This means that all the rights surrendered by the States to the paramount power will revert to them, and they will be in a position, as independent units, to negotiate freely in regard to their future relationship with others concerned.

5. This conference reaffirms its previous recommendations in regard to internal reforms, and emphasizes the urgency and importance of suitable action being taken without delay, where needed, with due regard to local conditions.

6. In view of the element of urgency introduced by Mr. Attlee's statement of February 20, 1947, this conference authorizes the Chancellor and the Standing Committee of the Chamber of Princes to conduct negotiations through the States Negotiating Committee or such other sub-committees as the Standing Committee may appoint, in regard to questions affecting the States in general: (a) with the Crown Representative in regard to matters relating to the lapse of paramountcy, and those arising out of the proposed transfer of power, so far as they affect the States; (b) with Interim Government and the

INTERIM REPORT OF THE ADVISORY COMMITTEE ON THE SUBJECT OF FUNDAMENTAL RIGHTS

(PRESENTED ON 29TH APRIL, 1947)

FROM

THE HON'BLE SARDAR VALLABHBHAI PATEL,

Chairman, Advisory Committee on Minorities,

Fundamental Rights, etc.

TO

THE PRESIDENT

Constituent Assembly of India.

SIR,

On behalf of the members of the Advisory Committee appointed by the Constituent Assembly of India on the 24th January, 1947, I have the honour to submit this interim report on fundamental rights. In coming to its conclusions, the Committee has taken into consideration not merely the report of the Sub-Committee on fundamental rights but also the comments thereon of the Minorities Sub-Committee.

2. The Fundamental Rights Sub-Committee recommended that the list of fundamental rights should be prepared in two parts, the first part consisting of rights enforceable by appropriate legal process and the second consisting of directive principles of social policy which

* Members of the Advisory Committee :—

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|--|--|
| 1. The Hon'ble Sardar Vallabhbhai Patel
(Chairman). | 30. Shri M. R. Masani. |
| 2. Shri Jairamdas Daulatram. | 31. Shri R. K. Sidhwa. |
| 3. The Hon'ble Shri Mehr Chand Kharana. | 32. Shri Rup Nath Brehma. |
| 4. Dr. Gopi Chandra Bhargava. | 33. Khan Abdul Gheffar Khan. |
| 5. Bakshi Sir Tek Chand. | 34. Khan Abdul Samad Khan. |
| 6. Dr. Profulla Chandra Ghosh. | 35. The Hon'ble Rev. J. J. M. Nichols-
Roy. |
| 7. Shri Surendra Mohan Ghose. | 36. Shri Aliba Imti. |
| 8. Dr. Swarn Prasad Mookherjee. | 37. Shri Phul Bhanu Shah. |
| 9. Shri Prithvi Singh Azad. | 38. Shri Devendra Nath Somanata. |
| 10. Shri Dharam Prakesh. | 39. Shri Jaipal Singh. |
| 11. Shri H. J. Khandekar. | 40. Acharya J. B. Kripalani. |
| 12. The Hon'ble Shri Jagjivan Ram. | 41. The Hon'ble Maulana Abul Kalam
Azad. |
| 13. Shri P. R. Thakur. | 42. The Hon'ble Shri C. Rajagopalachariar. |
| 14. Dr. B. R. Ambedkar. | 43. Rajkumari Amrit Kaur. |
| 15. Shri V. I. Muniswami Pillai. | 44. Shrimati Hansa Mehta. |
| 16. Sardar Jogendra Singh. | 45. The Hon'ble Pandit Gobind Ballabh
Pant. |
| 17. The Hon'ble Sardar Baldev Singh. | 46. The Hon'ble Shri Gopinath Bardoloi. |
| 18. Sardar Pratap Singh. | 47. The Hon'ble Shri Purushotamdas
Tandon. |
| 19. Sardar Harnam Singh. | 48. Sir Alladi Krishnaswami Aiyar. |
| 20. Sardar Ujjal Singh. | 49. Shri K. T. Shah. |
| 21. Gyani Kartar Singh. | 50. Shri K. M. Munshi. |
| 22. Dr. H. C. Mookherjee. | 51. Shri Amritlal V. Thakkar. |
| 23. Dr. Alban D'Souza. | 52. Mr. M. Ruthnaswamy. |
| 24. Shri P. K. Salve. | 53. Shri Raj Krishna Bose. |
| 25. Shri J. L. P. Rocho-Victoria. | 54. Sardar K. M. Panikkar. |
| 26. Mr. S. H. Prater. | |
| 27. Mr. Frank Reginald Anthony. | |
| 28. Mr. M. V. H. Collins. | |
| 29. Sir Homi Modj. | |

though not enforceable in Courts, are nevertheless to be regarded as fundamental in the governance of the country. On these latter, we propose to submit a subsequent report; at present, we have confined ourselves to an examination only of the justiciable fundamental rights.

3. We attach great importance to the constitution making these rights justiciable. The right of the citizen to be protected in certain matters is a special feature of the American constitution and the more recent democratic constitutions. In the portion of the Constitution Act, dealing with the powers and jurisdiction of the Supreme Court, suitable and adequate provision will have to be made to define the scope of the remedies for the enforcement of these fundamental rights. These remedies have been indicated in general terms in clause 22 of the Annexure.

4. Clause 20 of the Statement of May 16, 1946, contemplates the possibility of distributing fundamental rights between the constitutions of the Union, the Groups, if any, and the Units. We are of the opinion that fundamental rights of the citizens of the Union would have no value if they differed from Group to Group or from Unit to Unit or are not uniformly enforceable. We recommend that the rights set out in the Annexure to this report be incorporated in the constitution so as to be binding upon all authorities, whether of the Union or the Units.

5. Clause 10 deals with the freedom, throughout the Union, of trade commerce and intercourse between the citizens. In dealing with this clause we have taken into account the fact that several Indian States depend upon internal customs for a considerable part of their revenue and it may not be easy for them to abolish such duties immediately on the coming into force of the Constitution Act. We, therefore, consider that it would be reasonable for the Union to enter into agreements with such States, in the light of their existing rights, with a view to giving them time, up to a maximum period to be prescribed by the constitution, by which internal customs could be eliminated and complete free trade established within the Union.

6. We have made a special provision in regard to full faith and credit being given to the public Acts, records and judicial proceedings of the Union in every Unit and for the judgments and orders of one Unit being enforced in another Unit. We regard this provision as very important and appropriately falling within the scope of fundamental rights.

7. Clause 2 lays down that all existing laws, regulations, notifications, custom or usage in force within the territories of the Union inconsistent with the fundamental rights shall stand abrogated to the extent of such inconsistency. While in the course of our discussions and proceedings we have kept in view the provisions of existing Statute law, we have not had sufficient time to examine in detail the effect of this clause on the mass of existing legislation. We recommend that such an examination be undertaken before this clause is finally inserted in the constitution.

8. The Fundamental Rights Sub-Committee was of the opinion that the right of the citizen to have redress against the State is a

court of law shall not be fettered by undue restrictions. That Sub-Committee was not able, however, to draft a suitable formula as the matter requires more investigation than was possible in the time at its disposal. It was also suggested during our deliberations that certain additional fundamental rights should be inserted in the constitution. We have not had the time to consider these matters; we shall do so in due course and incorporate any recommendations we may have to make on them in our next report.

9. The Fundamental Rights Sub-Committee and the Minorities Sub-Committee were agreed that the following should be included in the list of Fundamental Rights :—

"Every citizen not below 21 years of age shall have the right to vote at any election to the legislature of the Union and of any Unit thereof, or, where the legislature is bicameral, to the lower chamber of the legislature, subject to such disqualifications on the ground of mental incapacity, corrupt practice or crime as may be imposed, and subject to such qualifications relating to residence within the appropriate constituency, as may be required, by or under the law.

(2) The law shall provide for free and secret voting and for periodical elections to the legislature.

(3) The superintendence, direction and control of all elections to the legislature, whether of the Union or of a Unit, including the appointment of Election Tribunals, shall be vested in an Election Commission for the Union of the Unit, as the case may be, appointed, in all cases, in accordance with the law of the Union."

While agreeing in principle with this clause, we recommend that instead of being included in the list of fundamental rights, it should find a place in some other part of the constitution.

I have the honour to be,

SIR,

Your most obedient servant,

(Sd.) VALLABHBHAI PATEL,

Chairman,

*Advisory Committee on Minorities,
Fundamental Rights, etc.*

COUNCIL HOUSE

New Delhi, the 23rd April, 1947.

Definition

JUSTICIABLE FUNDAMENTAL RIGHTS

Definition

1. Unless the context otherwise requires—

(i) "The State" includes the legislatures and the governments of the Union and the Units and all local or other authorities within the territories of the Union.

(ii) "The Union" means the Union of India.

(iii) "The law of the Union" includes any law made by the Union legislature and any existing Indian law as in force within the Union or any part thereof.

Application of Laws

2. All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated to the extent of such inconsistency, nor shall the Union or any unit make any law taking away or abridging any such right.

Citizenship

3. Every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union.

Rights of equality

4. (1) The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.

(2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to—

(a) access to trading establishments including public restaurants and hotels,

(b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public:

Provided that nothing contained in this clause shall prevent separate provision being made for women and children.

5. There shall be equality of opportunity for all citizens in matters of public employment and in the exercise of carrying on of any occupation, trade, business or profession.

Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services.

No citizen shall on grounds only of religion, race, caste, sex, descent place of birth or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union.

Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination.

6. "Untouchability" in any form is abolished and the imposition of any disability on that account shall be an offence.

7. No heritable title shall be conferred by the Union.

No citizen of the Union and no person holding any office of profit on trust under the State shall, without the consent of the Union Government accept any present, emoluments, office, or title of any kind from any foreign State.

Rights of freedom

8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned where by the security of the Union or the Unit, as the case may be, is threatened :—

(a) The right of every citizen to freedom of speech and expression :

Provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable.

(b) The right of the citizens to assemble peaceably and without arms :

Provision may be made by law to prevent or control meetings which are likely to cause a breach of the peace or are a danger or nuisance to the general public or to prevent or control meetings in the vicinity of any chamber of a Legislature.

(c) The right of citizens to form associations or unions :

Provision may be made by law to regulate and control in the public interest the exercise of the foregoing right provided that no such provision shall contain any political religions or class discrimination.

(d) The right of every citizen to move freely throughout the Union :

(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession :

Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority and tribes.

9. No person shall be deprived of his life, or liberty, without due process of law nor shall any person be denied the equal treatment of the laws within the territories of the Union :

Provided that nothing herein contained shall detract from the powers of the Union Legislature in respect of foreigners.

10. Subject to regulation by the law of the Union trade, commerce, and intercourse among the units by and between the citizens shall be free :

Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health or in an emergency :

Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject :

Provided further that no preference shall be given by any regulation of commerce or revenue by a Unit to one Unit over another.

11. (a) Traffic in human beings, and

(b) forced labour in any form including *begar* and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted,

are hereby prohibited and any contravention of this prohibition shall be an offence.

Explanation.—Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class.

12. No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment.

Explanation.—Nothing in this shall prejudice any educational programme or activity involving compulsory labour.

Rights relating to religion

13. All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion subject to public order, morality or health, and to the other provisions of this Chapter.

Explanation 1.—The wearing and carrying of *Kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation 2.—The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3.—The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform.

14. Every religious denomination shall have the right to manage its own affairs in matters of religion and, subject to the general law, to

own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes.

15. No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination.

16. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto.

17. Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.

Cultural and Educational Rights

18. (1) Minorities in every Unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.

(3) (a) All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language.

Miscellaneous Rights

19. No property, movable or immovable, of any person or corporation including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation for the property taken or acquired and specified the principles on which and the manner in which the compensation is to be determined.

20. (1) No person shall be convicted of crime except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

(2) No person shall be tried for the same offence more than once nor be compelled in any criminal case to be a witness against himself.

21. (1) Full faith and credit shall be given throughout the territories of the Union to the public acts, records and judicial proceedings of the Union and every Unit thereof, and the manner in which and the conditions under which such acts, records and proceedings shall be proved and the effect thereof determined shall be prescribed by the law of the Union.

(2) Final civil judgments delivered in any Unit shall be executed throughout the Union subject to such conditions as may be imposed by the law of the Union.

Right to Constitutional Remedies

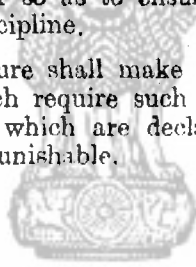
22. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed.

(2) Without prejudice to the powers that may be vested in this behalf in other courts, the Supreme Court shall have power to issue directions in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo war ranto* and *certiorari* appropriate to the right guaranteed in this part of the Constitution.

(3) The right to enforce these remedies shall not be suspended unless when, in cases of rebellion or invasion or other grave emergency, the public safety may require it.

23. The Union Legislature may by law determine to what extent any of the rights guaranteed by this part shall be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of public order so as to ensure fulfilment of their duties and the maintenance of discipline.

24. The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this part and are not already punishable.



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REPORT OF THE ORDER OF BUSINESS COMMITTEE

(PRESENTED ON 30TH APRIL, 1947)

We, the undersigned, members of the Committee appointed by the Resolution of the Constituent Assembly dated the 25th January 1947, to recommend the order of the further business of the Assembly, have the honour to submit this our report.

We met on the 5th March, and on the 21st, 23rd and 27th April 1947, Pandit Jawaharlal Nehru was, by special invitation, present at all the meetings of the Committee except the one held on the 23rd.

The Statement of His Majesty's Government made in Parliament on the 20th February 1947, has imported an element of urgency into the work and proceedings of the Assembly and, in our opinion, it is essential that the constitution should be prepared well before the end of this year. The task of arranging the order of business and of framing a timetable is, however, by no means easy. The political situation is developing with great rapidity, and the changes that are taking place inevitably affect the work of the Assembly. We are not, therefore, in a position at this stage to make final recommendations except in regard to the immediate future; and we request that we be permitted to submit a further report at a subsequent stage.

We understand that when the Assembly meets on the 28th April, it will have before it the reports of the following Committees :—

- (1) The States Committee appointed by the Constituent Assembly, on 21st December 1946.
- (2) The Union Powers Committee appointed by the Constituent Assembly, on 25th January 1947.
- (3) The Advisory Committee appointed by the Constituent Assembly on 24th January 1947, but only on the subject of Fundamental Rights.

After the business connected with these reports has been disposed of by the Assembly, we recommend that two separate committees be appointed, one to report on the main principles of the Union constitution and the other to report on the principles of a model Provincial constitution. We consider that there are many advantages in having two committees, perhaps with an element of common membership, working side by side and considering the interrelated principles of the Union and the Provincial constitutions. The work of the committees will be of an exploratory nature to facilitate and expedite the work of the Union Assembly or the Sections thereof, as the case may be. After the committees have been set up, we recommend that the meeting be adjourned to a date to be fixed by the President at his discretion. We suggest this flexible arrangement partly in order that the Assembly may avoid difficulties likely to arise from the fixation of a date in advance and partly because experience has shown that committees are not always able to work up to a rigid timetable.

CLAUSES ON FUNDAMENTAL RIGHTS

(AS ADOPTED BY THE CONSTITUENT ASSEMBLY DURING
APRIL-MAY 1947 SESSION).

JUSTICIABLE FUNDAMENTAL RIGHTS

Definitions

1. Unless the context otherwise requires—

- (i) "The State" in this Part includes the legislatures and the governments of the Union and the Units and all local or other authorities within the territories of the Union.
- (ii) "The Union" means the Union of India.
- (iii) "The law of the Union" includes any law made by the Union legislature and any existing Indian law in force within the Union or any part thereof.

Application of Laws

2. All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this Part of the Constitution shall stand abrogated to the extent of such inconsistency, nor shall any such right be taken away or abridged except by an amendment of the Constitution.

Citizenship

*[3. Every person born in the Union and subject to its jurisdiction; every person either of whose parents was, at the time of such person's birth, a citizen of the Union; and every person naturalised in the Union shall be a citizen of the Union.]

Further provision regarding the acquisition and termination of Union citizenship may be made by the law of the Union.]

Rights of Equality

4. (1) The State shall not discriminate against any citizen on grounds of religion, race, caste or sex.

(2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to—

- (a) access to trading establishments including public restaurants hotels and places or public entertainment,
- (b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public:

Provided that nothing contained in this clause shall prevent separate provision being made for women and children.

*Further consideration held over. (This clause is as redrafted by the *ad hoc* Committee).

5. (a) There shall be equality of opportunity for all citizens in matters of public employment.

(b) No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office.

Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who in the opinion of the State, are not adequately represented in the public services.

Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination.

6. "Untouchability" in any form is abolished and the imposition of any disability on that account shall be an offence.

7. No title shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State.

Rights of Freedom

8. There shall be liberty for the exercise of the following rights subject to public order and morality and except in a grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened :—

- (a) The right of every citizen to freedom of speech and expression.
- (b) The right of the citizens to assemble peaceably and without arms.
- (c) The right of citizens to form associations or unions.
- (d) The right of every citizen to move freely throughout the Union.
- (e) The right of every citizen to reside and settle in any part of the Union, to acquire, hold, and dispose of property and to exercise or carry on any occupation, trade, business or profession :

Provision may be made by law to impose such restrictions as may be necessary in the public interest including the protection of minority groups and tribes.

9. No person shall be deprived of his life or liberty without due process of law, nor shall any person be denied equality before the law within the territories of the Union.

10. Subject to regulation by the law of the Union, trade commerce, and intercourse among the Units by and between the citizens shall be free.

Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject and under regulations and conditions which are non-discriminatory :

Provided that no preference shall be given by any regulation of commerce or revenue to one Unit over another :

Provided further than any Unit may by law impose restrictions in the interest of public order, morality or health or in an emergency.

*[11. Traffic in human beings, and *begar* and other similar forms of forced labour are prohibited, and any contravention of this prohibition shall be an offence :

Provided that nothing in this clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class].

12. No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment.

Rights relating to Religion

13. All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion subject to public order, morality or health, and to the other provisions of this Part.

Explanation 1.—The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation 2.—The above rights shall not include any economic, financial political or other secular activities that may be associated with religious practice.

Explanation 3.—The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform and for throwing open Hindu religious institutions of a public character to any class or section of Hindus.

14. Every religious denomination or a section thereof shall have the right to manage its own affairs in matters of religion and, subject to law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes.

15. No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination.

*Further consideration held over. (This clause is as redrafted by the *ad hoc* Committee).

*[16. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto].

*[17. Conversation from one religion to another brought about by coercion or undue influence shall not be recognised by law.]

Cultural and Educational Rights

18. (1) Minorities in every Unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

*[(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into state educational institutions, nor shall any religious instruction be compulsorily imposed on them.]

(3) (a) All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing state aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language.

Miscellaneous Rights

19. No property, movable or immovable, of any person or corporation, including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation for the property taken or acquired and specifies the principles on which and the manner in which the compensation is to be determined.

20. (1) No person shall be convicted of crime except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

(2) No person shall be tried for the same offence more than once nor be compelled in any criminal case to be a witness against himself.

21. (1) Full faith and credit shall be given throughout the territories of the Union to the public acts, records and judicial proceedings of the Union and every Unit thereof, and the manner in which and the conditions under which such acts records and proceedings shall be proved and the effect thereof determined shall be prescribed by the law the Union.

(2) Final civil judgments delivered in any Unit shall be executed throughout the Union subject to such conditions as may be imposed by the law of the Union.

Right to Constitutional Remedies

22. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights provided for in this Part are guaranteed.

(2) Without prejudice to the powers that may be vested in this behalf in other courts, the Supreme Court shall have power to issue directions in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* appropriate to the right guaranteed in this Part of the Constitution.

(3) The right to enforce these remedies shall not be suspended unless when, in cases of rebellion or invasion or other grave emergency declared to be such by the Government of the Union or of the Unit concerned, the public safety may require it.

23. The Union legislature may by law determine to what extent any of the rights guaranteed by this Part shall be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of public order so as to ensure fulfilment of their duties and the maintenance of discipline.

24. The Union legislature shall make laws to give effect to those provisions of this Part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this Part and are not already punishable.



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VI

REPORT OF THE PROVINCIAL CONSTITUTION COMMITTEE

(PRESENTED ON 14TH JULY, 1947)

FROM

THE CHAIRMAN,

ORDER OF BUSINESS COMMITTEE.*

TO

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

SIR,

During the last session of the Assembly, we submitted a report which was necessarily tentative because of the fluid political circumstances then obtaining. Since then, momentous changes have occurred and the position has become crystallised. His Majesty's Government have issued a fresh statement on June the 3rd which has been accepted by all the principal political parties; and as a result of the decisions taken in pursuance of that statement, certain parts of the country will secede from India. These changes have revolutionised both the procedural and the substantive parts of the scheme on the basis of which we have been working hitherto. So far as the procedural aspect is concerned, it is no longer necessary for the Assembly to split into Sections and to consider the question of groups, and the double majority provisions in regard to matters of major communal importance are no longer operative.

It is against this background that we held a meeting on the 3rd of July. Pandit Nehru was present at the meeting at our request, and we are grateful to him for the help he gave us.

2. We understand that during the next session, the Assembly will have before it three reports for consideration—those of the Union Constitution Committee, the Union Powers Committee and the Provincial Constitution Committee. Between them these reports will deal with a large majority of questions that would have to be decided by the Assembly. We recommend that the Assembly take decisions on these reports in the July session and direct that the work be taken up at once of drafting the Constitution Bill. We recommend also that the Assembly appoint a Committee of members to scrutinise the draft before it is submitted to the Assembly and its subsequent session.

3. The matters that will remain outstanding at the end of July session will be the reports of the Advisory Committee on Fundamental Rights, Minorities and the administration of the Tribal and

* *Members of the Committee :—*

1. Shri K. M. Munshi (Chairman).
2. The Hon'ble Sir N. Gopalaswami Ayyangar.
3. Shri Biawanath Das.

Excluded Areas. We suggest that the Advisory Committee complete its work in August and the recommendations made by them incorporated by the Draftsman in his Bill notwithstanding that no decisions will by then have been taken on them by the Assembly. Any changes which are subsequently considered necessary could be incorporated in the draft Bill by suitable amendments.

4. In our last report, we had suggested that the Assembly should complete its work by the end of October this year. We reiterate this recommendation; and, having regard to the progress made by the committees, we think this is quite practicable. We propose accordingly that the Assembly authorise the President to summon a session sometime in October, preferably in the early part of the month, for the purpose of considering the draft of the Constitution.

5. We do not think it necessary in the altered circumstances for decisions taken in the July session to be circulated in accordance with rule 63 of the Constituent Assembly Rules.

6. Our recommendations will involve an amendment to the Rules which we request the Steering Committee to take into consideration

I have the honour to be,

Sir,

Your most obedient servant,

K. M. MUNSHI,

Chairman,

(on behalf of the Committee).

COUNCIL HOUSE,
New Delhi, the 9th July 1947.



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VII

REPORT OF THE PROVINCIAL CONSTITUTION COMMITTEE

(PRESENTED ON 15TH JULY, 1947)

FROM

THE HON'BLE SARDAR VALLABHBHAI PATEL,
CHAIRMAN, PROVINCIAL CONSTITUTION COMMITTEE.*

TO

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

SIR,

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

I have the honour to be,

Sir,

Your most obedient servant,

VALLABHBHAI PATEL,

Chairman.

COUNCIL HOUSE,

New Delhi, the 27th June, 1947.

** Members of the Committee :—*

- | | |
|---|------------------------------|
| 1. Sardar Vallabhbhai Patel (<i>Chairman</i>) | 14. Dr. P. K. Sen. |
| 2. Dr. P. Subbarayan. | 15. Mr. C. M. Poonacha. |
| 3. Dr. B. Pattabhi Sitaramayya. | 16. Mr. Radhanath Das. |
| 4. Mr. B. G. Kher. | 17. Mr. Satyanarayan Sinha. |
| 5. Mr. Brijlal Biyani. | 18. Mr. Rafi Ahmad Kidwai. |
| 6. Dr. K. N. Katju. | 19. Mrs. Hansa Mehta. |
| 7. Mr. Phulan Prasad Verma. | 20. Rajkumari Amrit Kaur. |
| 8. Mr. Harekrishana Mahtab. | 21. Dr. H. C. Mookherjee. |
| 9. Mr. Kiran Shankar Roy. | 22. Acharya J. B. Kripalani. |
| 10. Mr. Rohini Kumar Choudhury. | 23. Mr. Shankar Rao Deo. |
| 11. Mr. Jairamdas Daulatram. | 24. Mr. R. R. Diwakar. |
| 12. Sardar Ujjal Singh. | 25. Mr. S. Nagappa |
| 13. Diwan Chaman Lal. | |

PROVINCIAL CONSTITUTION COMMITTEE

Memorandum on the Principles of a model Provincial Constitution

PART I GOVERNORS' PROVINCES

CHAPTER I

The Provincial Executive

1. **Governor.**—For each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage.

[*Note.*—The Committee were of the opinion that the election of the Governor should, as far as possible, synchronize with the general election to the Provincial Legislative Assembly. This may be difficult to provide by statute, because the Legislative Assembly may be dissolved in the middle of its term.]

2. **Term of Office.**—(1) The Governor shall hold office for a term of four years, except in the event of death, resignation or removal.

(2) The Governor may be removed from office for stated misbehaviour by impeachment, the charge to be preferred by the Provincial Legislature, or where the Legislature is bicameral, by the Lower House of the Provincial Legislature, and to be tried by the Upper House of the Federal Parliament, the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned.

(3) The Governor shall be deemed to have vacated his office by continued absence from duty or continued incapacity or failure to discharge his functions for a period exceeding four months.

(4) The Governor shall be eligible for re-election once, but only once.

3. **Casual vacancies.**—(1) Casual vacancies in the office of Governor shall be filled by election by the Provincial Legislature on the system of proportional representation by means of the single transferable vote. The person so elected shall hold office for the remainder of his predecessor's term of office.

(2) In the event of the Governor's absence from duty or incapacity or failure to discharge his functions for a period not exceeding four months, the President of the Federation may appoint such person as he thinks fit to discharge the Governor's functions until the Governor's return to duty or until the Governor is elected, as the case may be.

4. **Age qualifications.**—Every citizen of the Federation of India who has reached his 35th year of age shall be eligible for election as Governor.

5. **Disputes regarding election.**—Disputes regarding the election of a Governor shall be enquired into and determined by the Supreme Court of the Federation.

6. Conditions of Governor's Office.—(1) The Governor shall not be a member of the Provincial Legislature and if a member of the Provincial Legislature be elected Governor, he shall be deemed to have vacated his seat in that Legislature.

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

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

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

7. Executive authority of Province.—The executive authority of the Province shall be exercised by the Governor either directly or through officers subordinate to him, but this shall not prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge or officer or local or other authority.

8. Extent of the Executive authority of Province.—Subject to the provisions of this Constitution and of any special agreement, the executive authority of each province shall extend to the matters with respect to which the Provincial Legislature has power to make laws.

[*Note.*—The reference to special agreements in this provision requires a word of explanation. It is possible that in the future there may be Indian States or groups of Indian States desiring to have a common administration with a neighbouring Province in certain specified matters of common interest. In such cases, the Rulers concerned may by a special agreement cede the necessary jurisdiction to the Province. Needless to say, this will not interfere with the accession of the State or States concerned to the Federation, because the accession to the Federation will be in respect of Federal subjects, whereas the cession of jurisdiction contemplated here is in respect of Provincial subjects.

9. Council of Ministers.—There shall be a council of ministers to aid and advise the Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

[*Note.*—For the most part, the Governor will act on advice, but he is required to act in his discretion in the following matters:—

(1) the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof [clause 15(2) of this Part]

(2) the summoning and dissolving of the Provincial Legislature (clause 20 of this Part),

(3) the superintendence, direction, and control of elections [clause 22 proviso (2) of this Part],

(4) the appointment of the Chairman and the members of the Provincial Public Service Commission and of the Provincial Auditor General (Part III).

It is to be noted that the Governor, under the proposed Constitution, is to be elected by the people, so that he is not likely to abuse his "discretionary" powers.]

10 If any question arises whether a matter is one for the Governor's discretion or not, the decision of the Governor in his discretion shall be final.

11. The question whether any, and, if so, what advice was tendered by the ministers to the Governor shall not be enquired into in any court.

12. **Other provisions as to ministers.**—The Governor's ministers shall be chosen and summoned by him and shall hold office during his pleasure.

13. (1) A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister.

(2) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determine, shall be determined by the Governor :

Provided that the salary of a minister shall not be varied during his term of office.

14. **Conventions of responsible Government to be observed.**—In the appointment of his ministers and his relations with them, the Governor shall be generally guided by the conventions of responsible Government as set out in Schedule.....but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions.

[Note.—Schedule.....will take the place of the Instrument of Instructions now issued to Governors.]

15. **Special responsibilities of Governor.**—(1) In the exercise of his responsibilities, the Governor shall have the following special responsibility, namely, the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof.

(2) In the discharge of his special responsibility, the Governor shall act in his discretion :

Provided that if at any time in the discharge of his special responsibility he considers it essential that provision should be made by legislation, but is unable to secure such legislation, he shall make a report to the President of the Federation who may thereupon take such action as he considers appropriate under his emergency powers.

16 **Advocate-General for Province.**—(1) The Governor shall appoint a person, being one qualified to be a judge of a High Court, to be Advocate-General for the Province to give advice to the Provincial Government upon legal matters.

(2) The Advocate-General shall retire from office upon the resignation of the Prime Minister, but may continue to carry on his duties until a new Advocate-General shall have been appointed.

(3) The Advocate-General shall receive such remuneration as the Governor may determine.

17. Conduct of business of Provincial Government.—All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

18. Rules of Business.—The Governor shall make rules for the more convenient transaction of the business of the Provincial Government and for the allocation of duties among Ministers.

CHAPTER II

The Provincial Legislature

19. Constitution of Provincial Legislatures.—(1) There shall for every Province be a Provincial Legislature which will consist of the Governor and the Legislative Assembly; in the following Provinces, there shall, in addition, be a Legislative Council (here enumerate those Provinces, if any, which desire to have an Upper House).

(2) The representation of the different territorial constituencies in the Legislative Assembly shall be on the basis of population and shall be on a scale of not more than one representative for every lakh of the population, subject to a minimum of 50 for any Province.

The elections to the Legislative Assembly shall be on the basis of adult suffrage, an adult being a person of not less than 21 years of age.

(3) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting.

(4) In any Province where the Legislature has an Upper House, the composition of that House shall be as follows:—

(a) The total numerical strength of the Upper House should not exceed 25 per cent. of that of the Lower House.

(b) There should be within certain limits functional representation in the Upper House on the lines of the Irish Constitution, the distribution being as follows:—

one-half to be elected by functional representation on the Irish model;

one-third to be elected by the Lower House by proportional representation;

one-sixth to be nominated by the Governor on the advice of his ministers.

[*Note.*—Under the existing Constitution, Madras, Bombay, Bengal, the U. P., Bihar and Assam have 2 Houses and the rest 1. It was agreed that the members of the Constituent Assembly from each Province should vote separately and decide whether an Upper House should be instituted for the Province. There is to be no special representation in the Legislative Assembly either for universities, or for labour, or for women.]

20. **Composition of Provincial Legislatures, etc.**—The provisions for the meeting, prorogation and dissolution of the Provincial Legislature, the relations between the two Houses (where there are two Houses), the mode of voting, the privileges of members, disqualification for membership, parliamentary procedure, including procedure in financial matters, etc., shall be on the lines of the corresponding provisions in the Act of 1935.

21. **Language.**—In the Provincial Legislature, business shall be transacted in the Provincial language or languages or in Hindustani (Hindi or Urdu) or in English. The Chairman (where there is an Upper House) or the Speaker, as the case may be, shall make arrangements for giving the House, where he thinks fit, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House.

22. **Franchise for the Provincial Legislature.**—The Provincial Legislature may from time to time make provisions with respect to all or any of the following matters, that is to say,

- (a) the delimitation of territorial constituencies;
- (b) the qualifications for the franchise and the preparation of electoral rolls;
- (c) the qualifications for being elected as a member of either House;
- (d) the filling of casual vacancies in either House;
- (e) the conduct of elections under this Constitution and the methods of voting thereat;
- (f) the expenses of candidates at such elections;
- (g) corrupt practices and other offences at or in connection with such elections;
- (h) the decision of doubts and disputes arising out of or in connection with such elections;
- (i) matters ancillary to any such matter as aforesaid:

Provided

- (1) that no member of the Lower House shall be less than 25 years of age and no member of the Upper House shall be less than 35 years of age;
- (2) that the superintendence, direction, and control of elections, including the appointment of election tribunals shall be vested in the Governor acting in his discretion.

CHAPTER III

Legislative powers of the Governor

23. (1) If at any time when the Provincial Legislature is not in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this clause shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Provincial Legislature, or if before the expiration of that period resolutions disapproving it are passed by the Legislature, upon the passing of the second of those resolutions; and

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

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

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

CHAPTER IV

Excluded and Partially Excluded Areas

[The provisions of this Chapter cannot be framed until the Advisory Committee has reported.]

PART II

The Provincial Judiciary

1. The provisions of the Government of India Act, 1935, relating to the High Court should be adopted *mutatis mutandis*; but judges should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed).

2. The judges of the High Court shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule.....

3. The emoluments and allowances of the judges shall not be diminished during their term of office.

PART III

Provincial Public Service Commission and Provincial Auditor-General

Provisions regarding Public Service Commissions and Auditors-General should be inserted on the lines of the provisions of the Act of 1935. The appointment of the Chairman and members of each Provincial Public Service Commission and of the Auditor-General should be vested in the Governor in his discretion.

PART IV

Transitional Provisions

1. Any person holding office as Governor in any province immediately before the commencement of this Constitution shall continue as such and shall be deemed to be the Governor of the Province under this Constitution until a successor, duly elected under this Constitution, assumes office.

2. There should be similar provisions, *mutatis mutandis*, in respect of the Council of Ministers, the Legislative Assembly and the Legislative Council (in Provinces which decide to have an Upper House)

[Note.—These provisions are necessary in order that there may be a Legislature and a Government ready to take over power in each Province as soon as this Constitution comes into force.]

3. The Government of each Governor's Province shall be the successor of the Government of the corresponding Province immediately before the commencement of this Constitution in respect of all property, assets, rights and liabilities.



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VIII
REPORT OF THE UNION CONSTITUTION COMMITTEE

(PRESENTED ON 21st JULY, 1947)

From

PANDIT JAWAHARLAL NEHRU,
CHAIRMAN, UNION CONSTITUTION COMMITTEE.

To

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

SIR,

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

I have the honour to be,

Sir,

Your most obedient servant
JAWAHARLAL NEHRU,

COUNCIL HOUSE.

Chairman.

New Delhi, the 4th July, 1947.

**Members of the Committee :—*

- | | |
|---|----------------------------------|
| 1. Pandit Jawaharlal Nehru (<i>Chairman</i>). | 9. Dr. Syama Prasad Mookerjee. |
| 2. Maulana Abul Kalam Azad. | 10. Sir V. T. Krishnamachari. |
| 3. Pandit Govind Ballabh Pant. | 11. Sardar K. M. Panikkar. |
| 4. Mr. Jagjiwan Ram. | 12. Sir N. Gopalaswami Ayyangar. |
| 5. Dr. B. R. Ambedkar. | 13. Mr. P. Govinda Menon. |
| 6. Sir Alladi Krishnaswami Ayyar. | 14. Mr. M. A. Srinivasan. |
| 7. Mr. K. M. Munshi. | 15. Mr. B. H. Zaidi. |
| 8. Prof. K. T. Shah. | |

MEMORANDUM ON THE INDIAN CONSTITUTION

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

PART I

FEDERAL TERRITORY AND JURISDICTION

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

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

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

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

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

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

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

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

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

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

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

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

SCHEDULE I

TERRITORIES SUBJECT TO THE JURISDICTION OF THE FEDERATION

I. Governors' Provinces.

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

II. Chief Commissioners' Provinces.

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

III. Indian States.

[Here enumerate the acceding or ratifying Indian States:—

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

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

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

PART II

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

CITIZENSHIP

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

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

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

shall be a citizen of the Federation :

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

Explanation—

For the purposes of this clause—

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

2. After the commencement of this Constitution—

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

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

Explanation—

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

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

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

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

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

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

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

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

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

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

"It is not possible to define exhaustively the conditions of nationality, whether by birth or naturalisation, by the Constitution. If certain conditions are laid down by the Constitution, difficulties may arise

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

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

PART III

FUNDAMENTAL RIGHTS INCLUDING DIRECTIVE PRINCIPLES OF STATE POLICY

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

PART IV

CHAPTER I

THE FEDERAL EXECUTIVE

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

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

- (a) the members of both Houses of Parliament of the Federation, and
- (b) the members of the Legislatures of all the Units or, where a Legislature is bicameral, the members of the Lower House thereof.

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

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

so formed and the Legislature of the Unit means the Legislatures of all the States in that group.

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

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

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

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

Provided that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Provided that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER II

THE FEDERAL PARLIAMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

[Note.—Taking into account only the “willing” Provinces, this clause gives the Council of States a maximum strength of about 200 members and the House of the People a maximum strength of between 300 and 400 members. The following tabular statement will serve to give a general picture of the composition of the Upper House under the above scheme. (The composition of the Lower House will be on a purely population basis).

COUNCIL OF STATES

Provinces

Madras	20
Bombay	12
Bengal (W)	12
U. P.	20
Punjab (E)	9
Bihar	20
C. P.	10
Assam	7
Orissa	6

TOTAL	118
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States

Hyderabad	10
Mysore	6
Travancore	5
Baroda	3
Gwalior	4
Jaipur	3
Kashmir	4
Jodhpur	2
Udaipur	2
Patiala	2
Rewa	2
Cochin	1
Bikaner	1
Kolhapur	1
Indore	1

47

For the groups of the remaining States whose population individually does not amount to one million	24
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TOTAL	71
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15. There should be the usual provisions for the summoning, prorogation and dissolution of Parliament, for regulating the relations between the two Houses, the mode of voting, privileges of members, disqualification for membership, Parliamentary procedure, including procedure in financial matters. In particular, money Bills must originate in the Lower House. The Upper House should have power to suggest amendments in money Bills; the Lower House would consider them and thereafter, whether they accept the amendments or not, the Bill as amended (where the amendments are accepted) or in its original form (where the amendments are not accepted) shall be presented to the President for assent and, upon his assent, shall become law. If there is any difference of opinion as to whether a Bill is a money Bill or not, the decision of the Speaker of the House of the People should be final. Except in the case of money Bills both the Houses should have equal powers of legislation and deadlocks should be resolved by joint meetings of the two Houses. The President should have the power of returning Bills which have been passed by the National Assembly for reconsideration within a period of six months.

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

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

CHAPTER III

LEGISLATIVE POWERS OF THE PRESIDENT

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

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

(a) shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of the Federal Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the record of these resolutions; and

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

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

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

CHAPTER IV

THE FEDERAL JUDICATURE

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

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

CHAPTER V

AUDITOR-GENERAL OF THE FEDERATION

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

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

*For Committee's Report see Appendix

CHAPTER VI

SERVICES

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

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

CHAPTER VII

ELECTIONS

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

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

PART V

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

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

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

PART VI

**ADMINISTRATIVE RELATIONS BETWEEN THE
FEDERATION AND THE UNITS**

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

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

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

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

PART VII

FINANCE AND BORROWING POWERS

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

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

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

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

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

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

PART VIII

DIRECTLY ADMINISTERED AREAS

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

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

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

PART IX

MISCELLANEOUS

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

PART X

AMENDMENT OF THE CONSTITUTION

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

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

PART XI

TRANSITIONAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) direct that this Constitution, except the provisions of the said Part and of this clause, shall, during such period, if any, as may be specified in the Act, have effect subject to such adaptations and modifications as may be so specified;
- (b) make such other provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the Act.

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

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

APPENDIX I

CONSTITUENT ASSEMBLY

Ad hoc Committee on Supreme Court

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

2. We consider the question under the following heads :

- I. Jurisdiction and powers of the Supreme Court.
- II. Advisory jurisdiction of the Court.
- III. Ancillary powers of the Court.
- IV. Constitution and strength of the Court.
- V. Qualifications and mode of appointment of judges.
- VI. Tenure of office and conditions of service of judges.
- I. JURISDICTION AND POWERS OF THE SUPREME COURT

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

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

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

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

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

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

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

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

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

8. Clause 22 of the draft of the Fundamental Rights provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights is guaranteed. We think, however, that it is undesirable to make the jurisdiction of the Supreme Court in such matters exclusive. The citizen will practically be denied these fundamental rights if, whenever they are violated, he is compelled to seek the assistance of the Supreme Court as the only Court from which he can obtain redress. Where there is no other Court with the necessary jurisdiction, the Supreme Court should have it; where there is some other Court with the necessary jurisdiction, the Supreme Court should have appellate jurisdiction, including powers of revision.

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

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

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

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

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

II. ADVISORY JURISDICTION OF THE COURT

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

a full Court may well be regarded as authoritative advice. This can be ensured by requiring that references to the Supreme Court for advice shall be dealt with by a full Court.

III. ANCILLARY POWERS OF THE COURT

12. Power should be conferred upon the Supreme Court as under section 214 of the Act of 1935 to make rules of procedure to regulate its work and provisions similar to those contained in Order 45 of the Civil Procedure Code should be made available so as to facilitate the preparation of the record in appeals to the Supreme Court as well as the execution of its decrees. It does not seem to us necessary to continue the restriction now placed on the Federal Court by section 209 of the Act of 1935. If the Supreme Court takes the place of the Privy Council, it may well be permitted to pronounce final judgments and final decrees in cases where this is possible or to remit the matter for further inquiry to the Courts from which the appeal has been preferred where such further inquiry is considered necessary. Provision must also be made on the lines of section 210 of the Act of 1935 giving certain inherent powers to the Supreme Court.

IV. CONSTITUTION AND STRENGTH OF THE COURT

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

V. QUALIFICATIONS AND MODE OF APPOINTMENT OF JUDGES

14. The qualifications of the judges of the Supreme Court may be laid down on terms very similar to those in the Act of 1935 as regards the judges of the Federal Court, the possibility being borne in mind (as in the Act of 1935) that judges of the superior courts even from the States which may join the Union may be found fit to occupy a seat in the Supreme Court. We do not think that it will be expedient to leave the power of appointing judges of the Supreme Court to the unfettered discretion of the President of the Union. We recommend that either of the following methods may be adopted. One method is that the President should in consultation with the Chief Justice of the Supreme Court (so far as the appointment of puisne judges is concerned) nominate a person whom he considers fit to be appointed to the Supreme Court and the nomination should be confirmed by a majority of at least 7 out of a panel of 11 composed of some of the Chief Justices of the High Courts of the constituent units, some members of both the Houses of the Central Legislature and some of the law officers of the Union. The other method is that the panel of 11 should recommend three names out of which the President, in consultation with the Chief Justice, may select a judge for the appointment. The same procedure should be followed for the appointment of the Chief Justice, except,

Justice. To ensure that the panel will be both independent and command confidence, the panel should not be an *ad hoc* body but must be one appointed for a term of years.

VI. TENURE OF OFFICE AND CONDITIONS OF SERVICE OF JUDGES

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

“30 *Appointment of ad hoc judge.*—If at any time there should not be a quorum of the judges of the Supreme Court available to hold or continue any session of the Court, owing to a vacancy or vacancies, or to the absence through illness or on leave or in the discharge of other duties assigned by statute or order in council, or to the disqualification of a judge or judges, the Chief Justice, or, in his absence, the senior puisne judge, may in writing request the attendance at the sittings of the Court, as an *ad hoc* judge, for such period as may be necessary, of a judge of the Exchequer Court, or, should the judges of the said court be absent from Ottawa or for any reason unable to sit, of a judge of a provincial superior court to be designated in writing by the Chief Justice or in his absence by any acting Chief Justice or the senior puisne judge of such provincial court upon such request being made to him in writing.

* * * * *

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

16. Not all the recommendations that we have made need find a place in the Constitution Act. The main features may be embodied in the Constitution Act and detailed provisions in a separate Judiciary Act to be passed by the Union Legislature. The form of procedure in the Supreme Court, *e.g.*, for the enforcement of fundamental rights may also be provided for in the Judiciary Act. We may point out that the prerogative writs of *mandamus*, prohibition and *certiorari* have been abolished in England by a statute of 1938. Corresponding orders have been substituted and the Supreme Court of Judicature has been empowered to make rules of court prescribing the procedure in cases

where such orders are sought. [See sections 7—10 of the Administration of Justice (Miscellaneous Provisions) Act, 1938.]

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

S. VARDACHARIAR.

A. KRISHNASWAMI AYYAR.

B. L. MITTER.

K. M. MUNSHI.

B. N. RAU.

New Delhi :

May 21, 1947.



IX
SUPPLEMENTARY REPORT OF THE UNION CONSTITUTION COMMITTEE

(PRESENTED ON 21ST JULY 1947).

FROM

PANDIT JAWAHARLAL NEHRU,
CHAIRMAN, UNION CONSTITUTION COMMITTEE.

TO

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

DEAR SIR,

1. On behalf of the members of the Committee appointed by you in pursuance of the resolution of the Constituent Assembly of the 30th April, 1947, I submitted a memorandum embodying the recommendations of the Committee.

2. The Committee met again on the 12th July, 1947, and decided on certain modifications to be made in the said memorandum. I have the honour to submit this supplementary report containing these recommendations.

3. In the opinion of the Committee, clause 3 of the memorandum should contain the following additional sub-clause to enable the Federal Parliament to alter the name of any Unit, namely:—

“(e) alter the name of any Unit.”

4. The Committee is of opinion that the following should be added to sub-clause (2) of clause 6 of Chapter I of Part IV of the memorandum to make it clear that if a member of the Council of States is elected as Vice-President he shall vacate his seat as such member, namely:—

“and if a member of the Federal Parliament is elected to be the Vice-President, he shall vacate his seat as such member”.

5. The Committee is further of the opinion that Part X of the memorandum on the Indian Constitution should be replaced by the following:—

“PART X
AMENDMENT OF THE CONSTITUTION

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

Provided that if such amendment is in respect of any provision of the Constitution relating to all or any of the following matters, namely:—

- (a) any change in the Federal Legislative List,
- (b) representation of Units in the Federal Parliament, and
- (c) powers of the Supreme Court,

it will also require to be ratified by the legislatures of Units representing a majority of the population of all the Units of the Federation in which Units representing at least one-third of the population of the Federated States are included.

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

Yours sincerely,
JAWAHARLAL NEHRU,
Chairman.

COUNCIL HOUSE,
New Delhi, the 13th July, 1947.



X

REPORT OF THE UNION POWERS COMMITTEE

FROM

PANDIT JAWAHARLAL NEHRU,
CHAIRMAN, UNION POWERS COMMITTEE*

TO

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

SIR,

On the 28th April 1947, the Honourable Sir N. Gopalaswamy Ayyangar, on behalf of our Committee, presented our first report to the Constituent Assembly. In doing so, he referred to the changes that were developing in the political situation and were likely to affect the nature and scope of the Committee's recommendations, and sought permission to submit a supplementary report at a later date. The House was pleased to grant us leave to do so.

2. Momentous changes have since occurred. Some parts of the country are seceding to form a separate State, and the plan put forward in the Statement of the 16th May on the basis of which the Committee was working is, in many essentials, no longer operative. In particular, we are not now bound by the limitations on the scope of Union Powers. The first point accordingly that we considered was whether, in the changed circumstances, the scope of these powers should not be widened. We had no difficulty in coming to a conclusion on this point. The severe limitation on the scope of central authority in the Cabinet Mission's plan was a compromise accepted by the Assembly much, we think, against its judgment of the administrative needs of the country, in order to accommodate the Muslim League. Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of co-ordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere. At the same time, we are quite clear in our minds that there are many matters in which authority must lie solely with the Units and that to frame a constitution on the basis of a unitary State would be a retrograde step, both politically and administratively. We have accordingly come to the conclusion—a conclusion which was also reached by the Union

* Members of the Committee:

- | | |
|---|-----------------------------------|
| 1. The Hon'ble Pandit Jawaharlal Nehru
(Chairman). | 8. Bakshi Sir Tek Chand. |
| 2. Shri Sarat Chandra Bose. | 9. Sir Alladi Krishnaswami Ayyar. |
| 3. Dr. B. Pattabhi Sitaramayya. | 10. Shri D. P. Khaitan. |
| 4. The Hon'ble Pandit Govind Ballabh Pant. | 11. Shri M. R. Masani. |
| 5. Shri Jairamdas Daulatram. | 12. Shri K. M. Munshi. |
| 6. Shri Biswanath Das. | 13. Sir B. L. Mitter. |
| 7. The Hon'ble Sir N. Gopalaswami Ayyangar. | 14. Sir V. T. Krishnamachari. |
| | 15. Sir A. Ramaswami Mudaliar. |
| | 16. Col. Maharaj Himmat Singhji. |

Constitution Committee—that the soundest framework for our constitution is a federation, with a strong Centre. In the matter of distributing powers between the Centre and the Units, we think that the most satisfactory arrangement is to draw up three exhaustive lists on the lines followed in the Government of India Act of 1935, *viz.*, the federal, the provincial and the concurrent. We have prepared three such lists accordingly and these are shown in the Appendix.

We think that residuary powers should remain with the Centre. In view however of the exhaustive nature of the three lists drawn up by us, the residuary subjects could only relate to matters which, while they may claim recognition in the future, are not at present identifiable and cannot therefore be included now in the lists.

3. It is necessary to indicate the position of Indian States in the scheme proposed by us. The States which have joined the Constituent Assembly have done so on the basis of the 16th May Statement. Some of them have expressed themselves as willing to cede wider powers to the Centre than contemplated in that Statement. But we consider it necessary to point out that the application to States in general of the federal list of subjects, in so far as it goes beyond the 16th May Statement, should be with their consent. It follows from this that in their case residuary powers would vest with them unless they consent to their vesting in the Centre.

4. To enable States and, if they so think fit, Provinces also, to cede wider powers to the Centre, we recommend that the constitution should empower the Federal Government to exercise authority within the Federation on matters referred to them by one or more Units, it being understood that the law would extend only to the Units by whom the matter is referred or which afterwards adopt the law. This follows the Australian model as set out in section 51 (xxxvii) of the Australian Constitution Act.

5. We have included in the federal list the item "the strength, organisation and control of the armed forces raised and employed in Indian States". Our intention in doing so is to maintain all the existing powers of co-ordination and control exercised over such forces.

6. We recommend to the Assembly the proposals contained in para. 2-D of our previous report on the subject of federal taxation. It is quite clear, however, that the retention by the Federation of the proceeds of all the taxes specified by us would disturb, in some cases violently, the financial stability of the Units and we recommend therefore that provision should be made for an assignment, or a sharing, of the proceeds of some of these taxes on a basis to be determined by the Federation from time to time.

I have the honour to be,

Sir,

Your most obedient servant,

JAWAHARLAL NEHRU,

Chairman.

NEW DELHI;
July 5, 1947.

APPENDIX

LIST I—FEDERAL LEGISLATIVE LIST

1. The defence of the territories of the Federation and of every part thereof and generally all preparation for defence, as well as all such acts as may be conducive in times of war to its successful prosecution and after its termination to effective demobilisation.
2. Requisitioning of lands for defence purposes including training and manoeuvres.
3. Central Intelligence Bureau.
4. Preventive detention in the territories of the Federation for reasons of State.
5. The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof for the defence of the territories of the Federation and for the execution of the laws of the Federation and its Units; the strength, organisation and control of the armed forces raised and employed in Indian States.
6. Defence industries.
7. Naval, Military and Air Force works.
8. Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas.
9. Arms, firearms, ammunition and explosives.
10. Atomic energy, and mineral resources essential to its production.
11. Foreign Affairs; all matters which bring the Federation into relation with any foreign country.
12. Diplomatic, consular and trade representation.
13. United Nations Organisation.
14. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
15. War and Peace.
16. The entering into and implementing of treaties and agreements with foreign countries.
17. Trade and Commerce with foreign countries.
18. Foreign loans.
19. Citizenship, naturalization and aliens.
20. Extradition.
21. Passports and visas.
22. Foreign jurisdiction.
23. Piracies, felonies committed on the high seas and offences committed in the air against the law of nations.
24. Admission into, and emigration and expulsion from, the territories of the Federation; pilgrimages to places beyond India.
25. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

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

27. The institutions known on the 15th day of August, 1947, as the Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and any other institution declared by Federal law to be an institution of national importance.

28. The institutions known on the 15th day of August, 1947, as the Benares Hindu University and the Aligarh Muslim University.

29. Airways.

30. Highways and waterways declared by the Federal Government to be Federal highways and waterways.

31. Shipping and navigation on inland waterways, declared by the Federal Government to be Federal waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on such waterways.

32. (a) Posts and telegraphs; provided that the rights existing in favour of any individual State Unit at the commencement of this Constitution shall be preserved to the Unit until they are modified or extinguished by agreement between the Federation and the Unit concerned or are acquired by the Federation, subject however, always to the power of the Federal Parliament to make laws for their regulation and control;

(b) Telephones, wireless, broadcasting, and other like forms of communication, whether owned by the Federation or not;

(c) Post Office Savings Bank.

33. Federal Railways; the regulation of all railways (other than minor railways) in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

34. Maritime shipping and navigation, including shipping and navigation on tidal waters.

35. Admiralty jurisdiction.

36. Ports declared to be major ports by or under Federal Law or existing Indian Law including their delimitation.

37. Aircraft and air navigation: the provision of aerodromes, regulation and organisation of air traffic and of aerodromes.

38. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

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

40. The Survey of India, the Geological, Botanical and Zoological Surveys of India: Federal Meteorological organisations:

41. Inter-Unit quarantine.

42. Federal Judiciary.

43. Acquisition of property for the purposes of the Federation.
44. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.
45. Census.
46. Offences against laws with respect to any of the matters in this list.
47. Enquiries, Surveys and statistics for the purposes of the Federation.
48. Federal services and Federal Public Service Commission.
49. Industrial disputes concerning Federal employees.
50. Reserve Bank of India.
51. Property of the Federation and the revenue therefrom, but as regards property situated in a Unit subject always to legislation by the Unit, save in so far as Federal Law otherwise provides.
52. Public debt of the Federation.
53. Currency foreign exchange, coinage and legal tender.
54. Powers to deal with grave economic emergencies in any part of the territories of the Federation affecting the Federation.
55. Insurance.
56. Corporations, that is to say, the incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within the State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one Unit, but not including universities.
57. Banking.
58. Cheques, bills of exchange, promissory notes and other like instruments.
59. Patents, copyright, inventions, designs, trademarks and merchandise marks.
60. Ancient and Historical Monuments: archaeological sites and remains.
61. Establishment of standards of weight and measure.
62. Opium, so far as regards cultivation and manufacture, or sale for export.
63. Petroleum and other liquids and substances declared by Federal Law to be dangerously inflammable, so far as regards possession, storage and transport.
64. Development of industries where development under Federal control is declared by Federal Law to be expedient in the public interest.
65. Regulation of labour and safety in mines and oilfields.
66. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal

control is declared by Federal Law to be expedient in the public interest.

67. Extension of the powers and jurisdiction of members of a police force belonging to any part of a Governor's Province or Chief Commissioner's Province to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any Unit to railway areas outside that Unit.

68. All Federal elections; and Election Commission to superintend, direct and control all Federal and Provincial elections.

69. The salaries of the Federal Ministers and of the Chairman and Vice-Chairman of the Council of States and of the Speaker and Deputy Speaker of the House of the People; the salaries, allowances and privileges of the members of the Federal Parliament.

70. The enforcement of attendance of persons for giving evidence or producing documents before committees of the Federal Parliament.

71. Duties of customs including export duties.

72. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

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

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

73. Corporation tax.

74. State lotteries.

75. Migration from one Unit to another.

76. Jurisdiction and powers of all courts, with respect to any of the matters in this list.

77. Taxes on income other than agricultural income.

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

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

80. Estate duty in respect of property other than agricultural land.

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

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

83. The development of inter-Unit waterways for purposes of flood control, irrigation, navigation and hydro-electric power.

84. Inter-Unit trade and commerce.
 85. Fishing and fisheries beyond territorial waters.
 86. Federal manufacture and distribution of salt; regulation and control of manufacture and distribution of salt by other agencies.
- Note.*—A section should be incorporated in the constitution itself prohibiting the imposition of any duty or tax on salt.
87. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST II—PROVINCIAL LEGISLATIVE LIST

1. Public order (but not including the use of naval, military or air forces in aid of the civil power); the administration of justice; constitution and organisation of all courts, except the Supreme Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.
2. Jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.
3. Police, including railway and village police.
4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other Units for the use of prisons and other institutions.
5. Public debt of the Province.
6. Provincial Public Services and Provincial Public Service Commissions.
7. Works, lands and buildings vested in or in the possession of the Province.
8. Compulsory acquisition of land except for the purposes of the Federation.
9. Libraries, museums and other similar institutions controlled or financed by the Province.
10. Elections to the Provincial Legislature and of the Governors of the provinces subject to the provisions of paragraph 68 of List I.
11. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof; the salaries allowances and privileges of the members of the Provincial Legislature; and the enforcement of attendance of persons for giving evidence or producing documents before Committees of the Provincial Legislature.
12. Local Government, that is to say, the Constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
13. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.
14. Pilgrimages, other than pilgrimages to places beyond India.
15. Burials, and burial and burning grounds.

16. Education including Universities other than those specified in paragraph 28 of List I.

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

18. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

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

20. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates, treasure trove.

21. Forests.

22. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal Control.

23. Fisheries.

24. Protection of wild birds and wild animals.

25. Gas and gasworks.

26. Trade and commerce within the Province, markets and fairs.

27. Money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods.

31. Weights and measures except establishment of standards.

32. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respect poisons and dangerous drugs, to the provisions of List III.

33. Relief of the poor; unemployment.

34. The incorporation, regulation, and winding-up of corporations not being corporations specified in List I. or Universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

35. Charities and charitable institutions; charitable and religious endowments.

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

37. Betting and gambling.

38. Offences against laws with respect to any of the matters in this List.

39. Inquiries and statistics for the purpose of any of the matters in this List.

40. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

41. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in the territories of the Federation—

(a) alcoholic liquors for human consumption;

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

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

42. Taxes on agricultural income.

43. Taxes on lands and buildings, hearths and windows.

44. Duties in respect of succession to agricultural land.

45. Estate duty in respect of agricultural land.

46. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Parliament relating to mineral development.

47. Capitation taxes.

48. Taxes on professions, trades, callings and employments.

49. Taxes on animals and boats

50. Taxes on the sale of goods and on advertisements.

51. Taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including tramcars.

52. Taxes on the consumption or sale of electricity.

53. Cesses on the entry of goods into a local area for consumption, use or sale therein.

54. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

55. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

56. Dues on passengers and goods carried on inland water-ways

57. Tolls.

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

LIST III.—CONCURRENT LEGISLATIVE LIST

1. Criminal Law, including all matters included in the Indian Penal Code at the date of commencement of this Constitution, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of the naval, military and air forces in aid of the civil power.
2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of commencement of this Constitution.
3. Removal of prisoners and accused persons from one Unit to another Unit.
4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of commencement of this Constitution; the recovery in a Governor's Province or a Chief Commissioner's Province of claims (in respect of taxes) and other public demands, including arrears of land revenue and sums recoverable as such arising outside that Province.
5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.
6. Marriage and divorce; infants and minors; adoption.
7. Wills, intestacy, and succession, save as regards agricultural land.
8. Transfer of property other than agricultural land; registration of deeds and documents.
9. Trusts and Trustees.
10. Contracts; including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.
11. Arbitration.
12. Bankruptcy and insolvency.
13. Administrators-general and official trustees.
14. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
15. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List II.
16. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
17. Legal, medical and other professions.
18. Newspapers, books and printing presses.
19. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
20. Poisons and dangerous drugs.
21. Mechanically propelled vehicles.
22. Boilers.
23. Prevention of cruelty to animals.
24. Vagrancy; nomadic and migratory tribes.
25. Factories.

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

27. Unemployment and social insurance.

28. Trade Union; industrial and labour disputes.

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

30. Electricity.

31. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to Federal waterways.

32. The sanctioning of cinematograph films for exhibition.

33. Persons subjected to preventive detention under Federal authority.

34. Economic and social planning.

35. Inquiries and statistics for the purpose of any of the matters in this List.

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



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CONSTITUENT ASSEMBLY OF INDIA



REPORTS OF COMMITTEES
(Second Series)
1948

(FROM JULY TO AUGUST 1947)

PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, INDIA
PRINTED BY THE MANAGER GOVERNMENT OF INDIA PRESS, NEW DELHI, INDIA
1948

Price Annas 12 or 1 sh.

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NOTE.—*For full text of the Reports please refer to Reports of Committees (First Series).

REPORT OF THE PROVINCIAL CONSTITUTION COMMITTEE*

Principles of a Model Provincial Constitution

(As adopted by the Constituent Assembly during July, 1947 Session)

PART I

GOVERNORS' PROVINCES

CHAPTER I

The Provincial Executive

1. **Governor.**—For each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage.

[*Note.*—The Committee were of the opinion that the election of the Governor should, as far as possible, synchronize with the general election to the Provincial Legislative Assembly. This may be difficult to provide by statute, because the Legislative Assembly may be dissolved in the middle of its term.]

2. **Term of Office.**—(1) The Governor shall hold office for a term of four years, except in the event of death, resignation or removal.

(2) The Governor may be removed from office for stated misbehaviour by impeachment, the charge to be preferred by the Provincial Legislature, or where the Legislature is bicameral, by the Lower House of the Provincial Legislature, and to be confirmed by the Upper House of the Federal Parliament after investigation by a special committee of that House, the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned.

(3) The Governor shall be eligible for re-election once, but only once.

3. **Deputy Governor.**—There shall be a Deputy Governor for every province. He will be elected by the Provincial Legislature on the system of proportional representation by single transferable vote after every general election. The Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of office of the Governor and he will also act for the Governor in his absence.

4. **Age qualifications.**—(1) Every citizen of the Federation of India who has reached his 35th year of age shall be eligible for election as Governor.

(2) No person holding any office or position of emolument in the regular services of the Provincial Government or the Union Government or any local authority subordinate to the same shall be eligible for election as Governor.

*For the Report as presented to the Assembly please refer to pp. 34–41 of Reports of Committees (First Series).

5. Disputes regarding election.—Disputes regarding the election of a Governor shall be enquired into and determined by the Supreme Court of the Federation.

6. Conditions of Governor's office.—(1) The Governor shall not be a member of the Provincial Legislature and if a member of the Provincial Legislature be elected Governor, he shall be deemed to have vacated his seat in that Legislature.

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

(3) The Governor shall have an official residence and shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule

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

7. Executive authority of Province.—The executive authority of the Province shall be exercised by the Governor either directly or through officers subordinate to him, but this shall not prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge or officer or local or other authority.

8. Extent of the Executive authority of Province.—It shall be competent for a Province, with the previous sanction of the Federal Government, to undertake, by an agreement made in that behalf with any Indian State, any legislative, executive or judicial functions vested in that State, provided that the agreement relates to a subject included in the Provincial or Concurrent Legislative List.

On such an agreement being concluded, the Province may, subject to the terms thereof, exercise the legislative, executive or judicial functions specified therein through the appropriate authorities of the Province.

8A. Subject to the provisions of the Constitution, and of any special agreement referred to in Clause 8, the executive authority of each Province, shall extend to the matters, with respect to which the Provincial Legislature has power to make laws.

[*Note.*—The reference to special agreements in this provision requires a word of explanation. It is possible that in the future there may be Indian States or groups of Indian States desiring to have a common administration with a neighbouring Province in certain specified matters of common interest. In such cases, the Rulers concerned may by a special agreement cede the necessary jurisdiction to the Province. Needless to say, this will not interfere with the accession of the State or States concerned to the Federation, because the accession to the Federation will be in respect of Federal subjects, whereas the cession of jurisdiction contemplated here is in respect of Provincial subjects.]

9. Council of Ministers.—There shall be a council of ministers to aid and advise the Governor in the exercise of his functions except in

so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

[*Note.*—For the most part, the Governor will act on advice, but he is required to act in his discretion in the following matters :—

(1) the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof [clause 15 (2) of this Part],

(2) the summoning and dissolving of the Provincial Legislature (clause 20 of this Part),

(3) the superintendence, direction and control of elections [clause 22 proviso (2) of this Part],

(4) the appointment of the Chairman and the members of the Provincial Public Service Commission and of the Provincial Auditor General (Part III).

It is to be noted that the Governor, under the proposed Constitution, is to be elected by the people, so that he is not likely to abuse his "discretionary" powers.]

10. If any question arises whether a matter is one for the Governor's discretion or not, the decision of the Governor in his discretion shall be final.

11. The question whether any, and, if so, what advice was tendered by the ministers to the Governor shall not be enquired into in any court.

12. **Other provisions as to ministers.**—The Governor's ministers shall be chosen and summoned by him and shall hold office during his pleasure.

13. (1) A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister.

(2) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determine, shall be determined by the Governor : .

Provided that the salary of a minister shall not be varied during his term of office.

14. **Conventions of responsible Government to be observed.**—In the appointment of his ministers and his relations with them, the Governor shall be generally guided by the conventions of responsible Government as set out in Schedule but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions.

[*Note.*—Schedule will take the place of the Instrument of Instructions now issued to Governors.]

15. **Special responsibilities of Governor.**—(1) Where the Governor of a Province is satisfied in his discretion that a grave situation has arisen which threatens the peace and tranquillity of the Province and that it is not possible to carry on the Government of the Province with the advice of his Ministers in accordance with the provisions of Section 9 he

may, by Proclamation, assume to himself all or any of the functions of Government and all or any of the powers vested in or exercisable by any Provincial body or authority ; and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Provincial body or authority:

Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any provision of this Act relating to High Courts.

(2) The Proclamation shall be forthwith communicated by the Governor to the President of the Union, who may thereupon take such action as he considers appropriate under his emergency powers.

(3) The Proclamation shall cease to operate at the expiration of two weeks, unless revoked earlier by the Governor himself or by the President of the Union.

16. Advocate-General for Province.—(1) The Governor shall appoint a person, being one qualified to be a judge of a High Court, to be Advocate-General for the Province to give advice to the Provincial Government upon legal matters.

(2) The Advocate-General shall retire from office upon the resignation of the Prime Minister, but may continue to carry on his duties until a new Advocate-General shall have been appointed.

(3) The Advocate-General shall receive such remuneration as the Governor may determine.

17. Conduct of business of Provincial Government.—All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

18. Rules of Business.—The Governor shall make rules for the more convenient transaction of the business of the Provincial Government and for the allocation of duties among Ministers.

CHAPTER II

The Provincial Legislature

19. Constitution of Provincial Legislatures.—(1) There shall for every Province be a Provincial Legislature which will consist of the Governor and the Legislative Assembly ; in the following Provinces, there shall, in addition, be a Legislative Council (here enumerate those Provinces, if any, which desire to have an Upper House).

(2) The representation of the different territorial constituencies in the Legislative Assembly shall be on the basis of population and shall be on a scale of not more than one representative for every lakh of the population, subject to a minimum of 60 for any Province, and a maximum of 300.

The elections to the Legislative Assembly shall be on the basis of adult suffrage, an adult being a person of not less than 21 years of age.

(3) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting.

(4) In any Province where the Legislature has an Upper House, the composition of that House shall be as follows :—

(a) The total numerical strength of the Upper House should not exceed 25 per cent. of that of the Lower House.

(b) There should be within certain limits functional representation in the Upper House on the lines of the Irish Constitution, the distribution being as follows :—

one-half to be elected by functional representation on the Irish model ;

one-third to be elected by the Lower House by proportional representation ;

one-sixth to be nominated by the Governor on the advice of his ministers.

[*Note.*—Under the existing Constitution, Madras, Bombay, Bengal, the U. P., Bihar and Assam have 2 Houses and the rest 1. It was agreed that the members of the Constituent Assembly from each Province should vote separately and decide whether an Upper House should be instituted for the Province. There is to be no special representation in the Legislative Assembly either for universities, or for labour, or for women.]

20. Composition of Provincial Legislatures, etc.—The provisions for the meeting, prorogation and dissolution of the Provincial Legislature, the relations between the two Houses (where there are two Houses), the mode of voting, the privileges of members, disqualification for membership, parliamentary procedure, including procedure in financial matters, etc., shall be on the lines of the corresponding provisions in the Act of 1935, with the following changes in the provisions of section 71 of the Government of India Act, 1935—

‘For sub-sections (3) and (4) of section 71 of the Government of India Act, 1935, substitute the following :—

“The powers, privileges and immunities of the members of the Legislature of the Province shall be such as are declared by the Provincial Legislature and until so declared shall be those of the members of Commons of the House of Parliament of the United Kingdom and of its members and committees at the establishment of this Constitution ”

20A. (1) The validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

***21. Language.**—In the Provincial Legislature, business shall be transacted in the Provincial language or languages or in Hindustani (Hindi or Urdu) or in English. The Chairman (where there is an Upper House) or the Speaker, as the case may be, shall make arrangement for giving the House, where he thinks fit, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House.

22. Franchise for the Provincial Legislature.—For the first election of the Provincial Legislature under this Constitution, the constituencies, qualifications of voters and other particulars shall be such as may be prescribed in the Schedule to this Constitution.

The Provincial Legislature may from time to time, in accordance with the procedure for amending the Provincial Constitution, make provisions with respect to all or any of the following matters, that is to say,

- (a) the delimitation of territorial constituencies ;
- (b) limitations to adult franchise on grounds of non-residence or personal disabilities not based on birth, race, religion or community, and the preparation of electoral rolls ;
- (c) the qualifications for being elected as a member of either House ;
- (d) the filling of casual vacancies in either House ;
- (e) the conduct of elections under this Constitution and the methods of voting thereat ;
- (f) the expenses of candidates at such elections ;
- (g) corrupt practices and other offences at or in connection with such elections ;
- (h) the decision of doubts and disputes arising out of or in connection with such elections ;
- (i) matters ancillary to any such matter as aforesaid :

Provided

- (1) that no member of the Lower House shall be less than 25 years of age and no member of the Upper House shall be less than 35 years of age ;
- (2) that all provisions under clause 22 (a) to (i) will be made on the principles and in conformity with the instructions laid down in the schedule annexed hereto so as to maintain uniformity in these matters throughout the Indian Union.

CHAPTER III

Legislative powers of the Governor

23. (1) If at any time when the Provincial Legislature is not in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

*Consideration of this clause was held over.

(2) An ordinance promulgated under this clause shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the re-assembly of the Provincial Legislature, or if before the expiration of that period resolutions disapproving it are passed by the Legislature, upon the passing of the second of those resolutions ; and

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

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

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

24. The Governor of a Province in which the legislature consists of a single chamber shall have the right to return at his discretion a Bill passed by the legislature for reconsideration and may suggest amendments. If the Bill is passed again by the legislature with or without amendments, he shall assent to it.

CHAPTER IV

Excluded and Partially Excluded Areas

[The provisions of this Chapter cannot be framed until the Advisory Committee has reported.]

PART II

THE PROVINCIAL JUDICIARY

1. The provisions of the Government of India Act, 1935, relating to the High Court should be adopted *mutatis mutandis* ; but judges should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed) :

Provided that

(a) all the High Courts in the Union of India shall have right to issue prerogative writs or any substituted remedies therefor throughout the area subject to the appellate jurisdiction ;

(b) the restriction as to jurisdiction in revenue matters referred to in section 226 of the Government of India Act, 1935, shall no longer apply to the High Courts ; and

(c) in addition to the powers enumerated in section 224 of the Government of India Act, 1935, the High Courts shall have powers of superintendence over subordinate courts as under section 107 of the Government of India Act, 1915.

2. The judges of the High Court shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule.....

3. The emoluments and allowances of the judges shall not be diminished during their term of office.

PART III

PROVINCIAL PUBLIC SERVICE COMMISSION AND PROVINCIAL AUDITOR GENERAL

Provisions regarding Public Service Commissions and Auditors-General should be inserted on the lines of the provisions of the Act of 1935. The appointment of the Chairman and members of each Provincial Public Service Commission and of the Auditor-General should be vested in the Governor in his discretion.

PART IV

TRANSITIONAL PROVISIONS

1. Any person holding office as Governor in any province immediately before the commencement of this Constitution may be continued as such and when so continued shall be deemed to be the Governor of the Province under this Constitution until a successor, duly elected under this Constitution, assumes office.

2. There should be similar provisions, *mutatis mutandis*, in respect of the Council of Ministers, the Legislative Assembly and the Legislative Council (in Provinces which decide to have an Upper House).

[*Note.*—These provisions are necessary in order that there may be a Legislature and a Government ready to take over power in each Province as soon as this Constitution comes into force.]

REPORT OF THE UNION CONSTITUTION COMMITTEE

*Memorandum on the Indian Constitution

(As adopted so far by the Constituent Assembly during July-August 1947 Session)

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

PART I

FEDERAL TERRITORY AND JURISDICTION

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

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

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

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

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

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

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

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

3. Creation of New Units and Alteration of Boundaries of Units.—The Parliament of the Federation may by Act, with the consent of the Legislature of every Province and the Legislature of every Indian State whose boundaries are affected thereby,

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

* Note—(1) The Memorandum incorporates the amendments introduced by the Supplementary Report, dated the 13th July, 1947.

(2) The clauses adopted have been printed in italics and the clauses, the consideration of which have been held over, or, which have not been reached, have been printed in ordinary type.

† Note—(3) The Report as presented to the Assembly appears on pp. 42-63 Reports of Committees (First Series).

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

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

SCHEDULE I

TERRITORIES SUBJECT TO THE JURISDICTION OF THE FEDERATION

I. Governors' Provinces.

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

II. Chief Commissioners' Provinces.

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

III. Indian States.

[Here enumerate the acceding or ratifying Indian States.]

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

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

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

*PART II

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

CITIZENSHIP

1. **Citizenship.**—At the date of commencement of this Constitution :—
every person domiciled in the territories subject to the jurisdiction of the Federation—

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

shall be a citizen of the Federation :

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

Explanation—

For the purposes of this clause—

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

2. After the commencement of this Constitution—

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

shall be a citizen of the Federation.

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

Explanation—

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

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

“Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State at the time of the coming into operation of this Constitution, who was born in Ireland or either of whose parents was born in Ireland, or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State for not less than seven years, is a citizen of the Irish Free State and shall, within the limits of the jurisdiction of the Irish Free State, enjoy the privileges and be subject to the obligations of such citizenship :

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

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

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

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

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

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

"It is not possible to define exhaustively the conditions of nationality, whether by birth or naturalisation, by the Constitution. If certain conditions are laid down by the Constitution, difficulties may arise regarding the interpretation of future legislation which may appear to be contrary to or to depart in any way from them. For example, the draft of the nationality clause placed before the Constituent Assembly lays down that any person born in the Union would be a citizen of the Union. But what about a woman citizen of the Union marrying an alien national or about an alien woman marrying a Union national? Would the Union Legislature have power to legislate in the first case that the woman would lose her Union nationality or in the second case that she would acquire Union nationality (such being the law of most of the countries)? These are intriguing questions, but all these things have to be pondered before a rigid clause is inserted in the Constitution itself. It would, in our opinion, therefore, be better to specify who would be citizens of the Indian Union at the date when the Constitution comes into force as in the Constitution of the Irish Free State and leave the law regarding nationality to be provided for by legislation by the Indian Union in accordance with the accepted principles of Private International Law." (Calcutta Weekly Notes, Vol. II, No. 27, May 26, 1947).

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

PART III

FUNDAMENTAL RIGHTS INCLUDING DIRECTIVE PRINCIPLES
OF STATE POLICY

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

PART IV

CHAPTER I

THE FEDERAL EXECUTIVE

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

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

- (a) *the members of both Houses of Parliament of the Federation, and*
- (b) *the elected members of the Legislatures of all the Units or, where Legislature is bicameral, the elected members of the Lower House thereof.*

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

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

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

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

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

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

Provided that—

- (a) *a President may by resignation under his hand addressed to the Chairman of the Council of States and the Speaker of the House of the People resign his office ;*
 - (b) *a President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in sub-clause (2).*
- (2) (a) *When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of the Federal Parliament, but no proposal to prefer such charge shall be adopted by that House except upon a resolution of the House supported by not less than two-thirds of the total membership of the House.*
- (b) *When a charge has been so preferred by either House of the Federal Parliament the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation..*

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

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

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

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

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

4. Conditions of President's Office.—(1) The President shall not be a member of Parliament or of any Legislature and, if such a member be elected President, he shall be deemed to have vacated his seat in Parliament or in the Legislature concerned.

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

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

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

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

5. Vacancies in the Office of President.—Appropriate provision should be made for elections to fill vacancies in the office of President, whether occurring before, or at, the end of the normal term of an incumbent of that office, the detailed procedure for elections being left to be regulated by Act of the Federal Parliament:

Provided that in the case of a vacancy occurring before the end of the normal term of a particular incumbent,

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

(b) the person elected as President at such election shall be entitled to hold office for the full term of five years.

6. Vice-President.—(1) During the interval between the occurrence of a vacancy in the office of President and its filling up by election and when the President is unable to discharge his functions owing to absence, illness or any other cause, his functions will be discharged by the Vice-President.

(2) The Vice-President shall be elected by both Houses of the Federal Parliament in joint session by secret ballot on the system of proportional representation by means of the single transferable vote and shall be ex-officio President of the Council of States and if a member of the Federal Parliament is elected to be the Vice-President, he shall vacate his seat as such member.

(3) During the time the Vice-President is acting in the place of the President, the Council may if necessary elect a temporary Chairman.

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

(5) *No person who has not completed the age of 35 years can be elected as the Vice-President.*

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

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

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

(b) *The power to grant pardons, reprieves, respites, remissions, suspensions or commutations of punishment imposed by any Court exercising criminal jurisdiction shall be vested in the President in the case of convictions—*

(i) *for offences against Federal laws relating to matters in respect of which the Federal Parliament has, and the Unit Legislature concerned has not, the power to make laws; and*

(ii) *for all offences tried by Courts Martial.*

Such power may also be conferred on other authorities by Federal Law:

Provided that nothing in this sub-clause affects any power of any officer of the Armed Forces of the Federation to suspend, remit or commute a sentence passed by a Court Martial. Where any person has been sentenced to death in a province, the President shall have all such powers of suspension, remission or commutation of sentence as are vested in the Governor of the Province.

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

8-A. (1) *The Government of the Federation may, by agreement with any acceding Indian State but subject to the provisions of the Constitution in regard to the relationship between the Indian Federation and an acceding Indian State, undertake any legislative, executive or judicial functions in that State.*

(2) *Any such agreement entered into with an Indian State not acceding to the Federation shall be subject to the governed by any Act relating to the exercise or foreign jurisdiction by the Parliament of the Federation.*

(3) *If any such agreement covers any of the matters included in an agreement between a Province and a State under Clause 8 of the Provincial Constitution, the latter, to the extent it is covered by the agreement with the Federation, shall stand rescinded and revoked.*

(4) *On an agreement under the provisions of sub-clause (1) being concluded, the Federation may, subject to the terms of the agreement, exercise the legislative, executive or judicial functions specified therein through appropriate authorities.*

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

[NOTE—Like the corresponding provision in section 8 (2) of the Act of 1935 this clause gives the Rulers of Indian States, who have acceded to the Federation, concurrent executive power even in Federal subjects, until otherwise provided by

Federal authority. (In this respect, the position of the Provincial units is rather different: these have no executive power in respect of Federal subjects save as given by Federal law.) Such a clause is necessary, for, otherwise, all statutory powers in respect of Federal subjects will come to an end in the acceding States upon the commencement of this Constitution.]

10. Council of Ministers.—*There shall be a council of Ministers with the Prime Minister at the head, to aid and advise the President in the exercise of his functions. The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister. The Council shall be collectively responsible to the House of the People.*

11. Advocate-General for the Federation.—*The President shall appoint a person, being one qualified to be appointed a judge of the Supreme Court, to be Advocate-General for the Federation, to give advice to the Federal Government upon legal matters that may be referred or assigned to him, by the President and to exercise the powers and discharge the duties vested in him under this Act or under any Federal law; and in the performance of his duties, the Advocate-General shall have right of audience in all courts situated in the territories of the Federation. The Advocate General shall hold office during the pleasure of the President and shall receive such remuneration as the President may determine.*

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

CHAPTER II.

THE FEDERAL PARLIAMENT

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

14. (1) (a) *The strength of the Council of States shall be so fixed as not to exceed one half of the strength of the House of the People. Not more than 25 members of the Council shall be returned by functional constituencies or panels constituted on the lines of the provisions in section 18 (7) of the Irish Constitution of 1937. The balance of the members of the Council shall be returned by constituencies representing Units on a scale to be worked out in detail:*

Provided that the total representation of Indian States does not exceed 40 per cent. of this balance.

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

(b) *The representatives of each Unit in the Council of States shall be elected by the elected members of the legislature of such Unit and in cases where a legislature consists of two Houses by the elected members of the Lower House of that legislature.*

(c) *The strength of the House of the People shall be so fixed as not to exceed 500. The Units of the Federation, whether Provinces, Indian States or groups of Indian States, shall be divided into constituencies and the number of representatives allotted to each constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000:*

Provided that the ratio of the total number of Indian States representatives to their total population shall not be in excess of the ratio of the total number of representatives for the Provinces to their total population.

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

(e) *The fixing of the actual strength of the Council of States and of the House of the People, the distribution of the strength so fixed amongst the Units of the Federation, the determination of the number, nature and constitution of functional panels or constituencies for the Council of States, the manner in which the smaller States should be grouped into Units for purposes of election to the two Houses, the principles on which territorial constituencies to the two Houses should be delimited and other ancillary matters shall be referred back to and investigated by the Union Constitution Committee. After such investigation, the Union Constitution Committee shall submit to the President of the Constituent Assembly its recommendations as to the provisions relating to these matters which should be inserted in the draft text of the Union Constitution.*

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

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

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

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

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

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

15. *There should be the usual provisions for the summoning, prorogation and dissolution of Parliament, for regulating the relations between the two Houses, the mode of voting, privileges of members, disqualification for membership, Parliamentary procedure, including procedure in financial matters. In particular, money Bills must originate in the Lower House. The Upper House should have power to suggest amendments in money Bills; the Lower House would consider them and thereafter, whether they accept the amendments or not, the Bill as amended (where the amendments are accepted) or in its original form (where the amendments are not accepted) shall be presented to the President for assent and upon his assent, shall become law. If there is any difference of opinion as to whether a Bill is a money Bill or not, the decision of the Speaker of the House of the People should be final. Except in the case of money Bills both the Houses should have equal powers of legislation and deadlocks should be resolved by joint meetings of the two Houses. Bills, other than money Bills, presented to the President for assent may be returned by him to the Federal Legislature for re-consideration, but no such return shall be made later than six weeks after the passing of the Bills by the Assembly.*

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

NOTE.—This follows the corresponding provisions in the Constituent Assembly Rules.]

CHAPTER III.

LEGISLATIVE POWERS OF THE PRESIDENT.

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

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

(a) *shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the reassembly of the Federal Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and*

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

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

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

CHAPTER IV.

THE FEDERAL JUDICATURE.

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

Provision shall also be made for the removal of Judges of the Supreme Court on the following Lines :—

A judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour or incapacity. Further provision may be made by Federal law for the procedure to be adopted in this behalf.

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

CHAPTER V.

AUDITOR-GENERAL OF THE FEDERATION.

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

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

CHAPTER VI.

SERVICES

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

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

CHAPTER VII.

ELECTIONS

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

Provided that until such provision is made, all elections shall be held in accordance with the provisions of Schedule — and the constituencies shall be those set out in Schedule —.

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

*For Committee's Report see Appendix.

PART V

DISTRIBUTION OF LEGISLATIVE POWERS BETWEEN THE FEDERATION AND THE UNITS

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

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

PART VI

ADMINISTRATIVE RELATIONS BETWEEN THE FEDERATION AND THE UNITS

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

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

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

3. *Where by virtue of Clause 1 powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of the Supreme Court in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties.*

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

PART VII

FINANCE AND BORROWING POWERS

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

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

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

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

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

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

PART VII-A

There shall be an Inter-State Commission constituted in the manner prescribed by a federal law, with such powers of adjudication and administration as may be similarly prescribed for the execution and maintenance of the provisions of this Constitution relating to trade and commerce and generally for adjudicating in similar matters as may be referred to it from time to time by the President.

Accepted in principle only

PART VIII

DIRECTLY ADMINISTERED AREAS

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

Consideration held over pending report by Special Committee

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

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

PART IX

MISCELLANEOUS

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

PART X

AMENDMENT OF THE CONSTITUTION

The amendment of the Constitution may be initiated in either House of the Federal Parliament an when the proposed amendment is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent ; and upon such assent being given, the amendment shall come into operation :

Provided that if such amendment is in respect of any provision of the Constitution relating to all or any of the following matters, namely :—

- (a) any change in the Federal Legislative List,
- (b) representation of Units in the Federal Parliament, and
- (c) powers of the Supreme Court,

it will also require to be ratified by the legislatures of Units representing a majority of the population of all the Units of the Federation in which Units representing at least one-third of the population of the Federated States are included.

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

PART XI

TRANSITIONAL PROVISIONS

1. *The Government of the Federation shall be the successor to the Government of India established under the Government of India Act, 1935, as adapted under the provisions of the Indian Independence Act, 1947, as regards all property, assets, rights and liabilities.*

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

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

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

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

On and after the coming into force of this Constitution, the jurisdiction of the Judicial Committee of His Majesty's Privy Council to entertain and dispose of appeals and petitions from any Court in the Union of India, including the jurisdiction in respect of criminal matters in the exercise of His Majesty's prerogative, shall cease, and all appeals and other proceedings pending before the Judicial Committee of the Privy Council shall stand transferred to, and be disposed of by the Supreme Court. Further provision may be made by the Parliament of the Federation to implement and give effect to this provision.

4. *Excepting holders of the offices specified in Schedule— every person who, immediately before the date of the commencement of this Constitution, was in the service of the Crown in India, including any judge of the Federal*

Court or of any High Court, shall, on that date be transferred to the appropriate service of the Federation or the Unit concerned and shall hold office by a tenure corresponding to his previous tenure.

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX.*CONSTITUENT ASSEMBLY****Ad hoc Committee on Supreme Court**

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

2. We consider the question under the following heads :

- I. Jurisdiction and powers of the Supreme Court.
- II. Advisory jurisdiction of the Court.
- III. Ancillary powers of the Court.
- IV. Constitution and strength of the Court.
- V. Qualifications and mode of appointment of judges.
- VI. Tenure of office and conditions of service of judges.

I. Jurisdiction and powers of the Supreme Court

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

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

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

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

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

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

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

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

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

8. Clause 22 of the draft of the Fundamental Rights provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights is guaranteed. We think, however, that it is undesirable to make the jurisdiction of the Supreme Court in such matters exclusive. The citizen will practically be denied these fundamental rights

if, whenever they are violated, he is compelled to seek the assistance of the Supreme Court as the only Court from which he can obtain redress. Where there is no other Court with the necessary jurisdiction, the Supreme Court should have it; where there is some other Court with the necessary jurisdiction, the Supreme Court should have appellate jurisdiction, including powers of revision.

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

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

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

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

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

II. Advisory Jurisdiction of the Court

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

III

ers of the Court

12. Power should be conferred upon the Supreme Court as under section 214 of the Act of 1935 to make rules of procedure to regulate its work and provisions similar to those contained in Order 45 of the Civil Procedure Code should be made available so as to facilitate the preparation of the record in appeals to the Supreme Court as well as the execution of its decrees. It does not seem to us necessary to continue the restriction now placed on the Federal Court by section 209 of the Act of 1935. If the Supreme Court takes the place of the Privy Council, it may well be permitted to pronounce final judgments and final decrees in cases where this is possible or to remit the matter for further inquiry to the Courts from which the appeal has been preferred

where such further inquiry is considered necessary. Provision must also be made on the lines of section 210 of the Act of 1935 giving certain inherent powers to the Supreme Court.

IV. Constitution and strength of the Court

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

V. Qualifications and mode of Appointment of Judges

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

VI. Tenure of Office and Conditions of Service of Judges

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

“30. *Appointment of ad hoc judge.*—If at any time there should not be a quorum of the judges of the Supreme Court available to hold or continue any session of the Court, owing to a vacancy or vacancies, or to the absence through illness or on leave or in the discharge of other duties assigned by statute or order in council, or to the disqualification of a judge or judges, the Chief Justice, or, in his absence, the senior puisne judge, may in writing request the attendance at the sittings of the Court, as an *ad hoc* judge, for such period as may be necessary, of a

judge of the Exchequer Court, or, should the judges of the said court be absent from Ottawa or for any reason unable to sit, of a judge of a provincial superior court to be designated in writing by the Chief Justice or in his absence by any acting Chief Justice or the senior puisne judge of such provincial court upon such request being made to him in writing.

* * *

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

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

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

S. VARDACHARIAR.

A. KRISHNASWAMI AYYAR.

B. L. MITTER.

K. M. MUNSHI.

B. N. RAU.

NEW DELHI.

May 21, 1947.

* APPENDIX TO THE SECOND REPORT OF THE UNION POWERS COMMITTEE

(As adopted by the Constituent Assembly so far)

List 1.—FEDERAL LEGISLATIVE LIST

1. The defence of the territories of the Federation and of every part thereof and generally all preparation for defence, as well as all such acts as may be conducive in times of war to its successful prosecution and after its termination to effective demobilisation.

2. Requisitioning of lands for defence purposes including training and manœuvres.

3. Central Intelligence Bureau.

4. Preventive detention in the territories of the Federation for reasons of State.

5. The raising, training, maintenance and control of Naval, Military and Air forces and their employment; the strength, organisation and control of the armed forces raised and employed in Indian States.

6. Industries declared by Federal Law as being necessary for the purpose of defence or for the prosecution of war.

7. Naval, Military and Air Force works.

8†. Local self government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas.

9. Arms, firearms, ammunition and explosives.

10. Atomic energy, and mineral resources essential to its production.

11. Foreign Affairs; all matters which bring the Federation into relation with any foreign country.

12. Diplomatic, consular and trade representation.

13. United Nations Organisation.

14. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

15. War and peace.

16. The entering into and implementing of treaties and agreements with foreign countries.

17. Trade and Commerce with foreign countries.

18. Foreign loans.

19. Citizenship, naturalization and aliens.

20. Extradition.

21. Passports and visas.

22. Foreign Jurisdiction.

23. Piracies, felonies and offences against the law of nations committed on the high seas and in the air.

NOTE.—*During their last session the Assembly considered only 37 items of List 1 and further consideration of the Report was held over.

For the Report as presented to the Assembly please, refer to pp.66-76 Reports of Committees (First Series).

† Consideration held over.

24. Admission into, and emigration and expulsion from, the territories of the Federation ; pilgrimages to places beyond India.

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

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

27. The institutions known on the 15th day of August, 1947, as the Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and any other institution financed by the Federation wholly or in part and declared by Federal law to be an institution of national importance.

28. The institutions known on the 15th day of August, 1947, as the Benares Hindu University and the Aligarh Muslim University.

29. Airways.

30. National highways declared to be such by Federal law.

31. Shipping and navigation on inland waterways, declared by Federal law to be Federal waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways ; carriage of passengers and goods on such waterways.

32. (a) Posts and telegraphs ; provided that the rights existing in favour of any individual State Unit at the commencement of this Constitution shall be preserved to the Unit until they are modified or extinguished by agreement between the Federation and the Unit concerned or are acquired by the Federation, subject however, always to the power of the Federal Parliament to make laws for their regulation and control ;

(b) Federal telephones, wireless, broadcasting and other like forms of communication ; the regulation and control of all other telephones, wireless, broadcasting and other like forms of communications.

(c) Post Office Savings Bank.

33. Federal Railways ; the regulation of all railways, other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers ; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

34. Maritime shipping and navigation, including shipping and navigation on tidal waters ; provision of education and training for the mercantile marine and regulation of such education and training provided by Units and other agencies.

35. Admiralty jurisdiction.

36. Ports declared to be major ports by or under Federal law or existing Indian Law including their delimitation ; and the constitution and powers of port authorities therein.

37. Aircraft and Air navigation ; provision of aerodromes ; regulation and organisation of air traffic and of aerodromes ; provision for aeronautical education and training and regulation of such education and training provided by units and other agencies.

REPORT OF THE ADVISORY COMMITTEE

On the subject of Minority Rights

(PRESENTED ON THE 27TH AUGUST 1947)

FROM

THE HON'BLE SARDAR VALLABHBHAI PATEL,
CHAIRMAN, ADVISORY COMMITTEE ON MINORITIES,
FUNDAMENTAL RIGHTS, ETC.

TO

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA

DEAR SIR,

On behalf of the members of the Advisory Committee appointed by the Constituent Assembly on the 24th January 1947 and subsequently nominated by you, I have the honour to submit this report on minority rights. It should be treated as supplementary to the one forwarded to you with my letter No. CA/24/Com./47, dated the 23rd April 1947 and dealt with by the Assembly during the April session. That report dealt with justiciable fundamental rights; these rights, whether applicable to all citizens generally or to members of minority communities in particular, offer a most valuable safeguard for minorities over a comprehensive field of social life. The present report deals with what may broadly be described as political safeguards of minorities and covers the following points :—

- (i) Representation in legislatures ; joint *versus* separate electorates ; and weightage.
- (ii) Reservation of seats for minorities in Cabinets.
- (iii) Reservation for minorities in the Public Services.
- (iv) Administrative machinery to ensure protection of minority rights.

2. Our recommendations are based on exhaustive discussion both in the Sub-Committee on Minorities as well as in the main Advisory Committee. From the very nature of things, it was difficult to expect complete unanimity on all points. I have pleasure in informing you, however, that our recommendations, where they were not unanimous, were taken by very large majorities composed substantially of members belonging to minority communities themselves.

Joint *versus* separate electorates and weightage

3. The first question we tackled was that of separate electorates ; we considered this as being of crucial importance both to the minorities themselves and to the political life of the country as a whole. By an overwhelming majority, we came to the conclusion that the system of separate electorates must be abolished in the new constitution. In our judgment, this system has in the past sharpened communal differences to a dangerous extent and has proved one of the main stumbling blocks to the development of a healthy national life. It seems specially necessary to avoid these dangers in the new political conditions that have developed in the country and from this point of view the arguments against separate electorates seem to us absolutely decisive.

4. We recommend accordingly that all elections to the Central and Provincial legislatures should be held on the basis of joint electorates. In order that minorities may not feel apprehensive about the effect of a system of unrestricted joint electorates on the quantum of their representation in the legislature, we recommend as a general rule that seats for the different recognised minorities shall be reserved in the various legislatures on the basis of their population. This reservation should

be initially for a period of 10 years, the position to be reconsidered at the end of that period. We recommend also that the members of a minority community who have reserved seats shall have the right to contest unreserved seats as well. As a matter of general principle, we are opposed to weightage for any minority community.

5. For two reasons the application of the above principles to specific minorities was considered in detail by the committee. In the first place, it was known to us that minorities are by no means unanimous as to the necessity, in their own interests, of statutory reservation of seats in the legislatures. Secondly, the strict application of the above principles to a microscopic minority like the Anglo-Indians seemed to require very careful examination. We accordingly classified minorities into three groups—group 'A' consisting of those with a population of less than 1/2 per cent. in the Indian Dominion excluding the States, group 'B' consisting of those with a population of more than 1/2 per cent. but not exceeding 1 1/2 per cent. and group 'C' consisting of minorities with a population exceeding 1 1/2 per cent. These three groups are as follows :—

Group 'A'—

1. Anglo-Indians.
2. Parsees.
3. Plains' tribesmen in Assam.

Group 'B'—

4. Indian Christians.
5. Sikhs.

Group 'C'—

6. Muslims.
7. Scheduled Castes.

6. *Anglo-Indians.*—The population of the Anglo-Indian community excluding the States is just over a lakh, that is, .04 per cent. Mr. Anthony, on behalf of the Anglo-Indians, contended that the census figures were inaccurate but even admitting a larger figure than the one given in the census, this community is microscopic, and to deal with it on a strictly population basis would mean giving it no representation at all. The representatives of the Anglo-Indians on the committee asked originally that they should have the following representation in the legislatures :—

House of the People	3
West Bengal	3
Bombay	2
Madras	2
C. P. & Berar	1
Bihar	1
U. P.	1

Subsequently they asked that they should be guaranteed to seats in the House of the People and one in each province in which they have representation at present, that is, a total of 8 altogether. After very considerable discussion, in the course of which the representatives of the Anglo-Indian community gave full expression to their views, the committee unanimously accepted the following formula, namely, that there shall be no reservation of seats for the Anglo-Indians but the President of the Union and the Governors of Provinces shall have power to nominate representatives of the Anglo-Indian community to the lower house in the Centre and in the

Provinces respectively if they fail to secure representation in the legislatures as a result of the general election. We wish to congratulate the representatives of the Anglo-Indian community on the committee for not pressing their proposals which would not merely have introduced the principle of special weightage which was turned down as a general proposition by an overwhelming majority but would also have encouraged other small minorities to ask for representation wholly out of proportion to their numbers. We feel sure that by the operation of the formula recommended by us Anglo-Indians will find themselves given adequate opportunity effectively to represent in the legislatures the special interests of their community.

7. *Parsees*.—In the Minorities Sub-Committee, Sir Homi Modi had urged that in view of the importance of the Parsee community and the contribution, it had been making to the political and economic advancement of the country Parsees should have adequate representation in the Central and Provincial Legislatures. The Sub-Committee were of opinion that this claim should be conceded. In view, however, of the opinion expressed to him by several members that an advanced community like the Parsees would be adequately represented in any event and did not need specific reservation, Sir Homi had asked for time to consider the matter.

When the issue came before the Advisory Committee, Sir Homi stated that though the committee had already accepted the Parsee community as a recognised minority entitled to special consideration on the same basis as other minorities in Group A, he had decided to follow the traditions which the community had maintained in the past and to withdraw the claim for statutory reservation. He assumed that Parsees would remain on the list of recognised minorities and urged that if, during the period prescribed in the first instance for the special representation of the minorities it was found that the Parsee community had not secured proper representation, its claim would be reconsidered and adequate representation provided, if the separate representation of minorities continued to be a feature of the constitution. The Committee appreciated the stand taken by Sir Homi and agreed to his proposal.

8. *Plains' tribesmen in Assam*.—The case of these tribesmen will be taken up after the report of the Excluded and Partially Excluded Areas Sub-Committee is received.

9. *Indian Christians*.—The representatives of the Indian Christians stated that, so far as their community was concerned, they did not desire to stand in the way of nation building. They were willing to accept reservation proportionate to their population in the Central Legislature and in the Provincial legislatures of Madras and Bombay. In the other provinces, they would have the liberty of seeking election from the general seat. They were against any weightage being given to any community, but made it plain that if weightage was given to any minority in Groups 'B' and 'C', they would demand similar weightage. As weightage is not being conceded to any community, this means that the Indian Christians are prepared to throw in their lot with the general community subject only to the reservation of certain seats for them on the population basis in the Central legislature and in Madras and Bombay.

10. *Sikhs*.—In view of the uncertainty of the position of the Sikhs at present, pending the award of the Boundary Commission in the Punjab, the committee decided that the whole question of the safeguards for the Sikh community should be held over for the present.

11. *Group 'C'—Muslims and Scheduled Castes*.—The Committee came to the conclusion that there are no adequate grounds for departing from the general formula in the case either of the Muslims or of the Scheduled Castes. Accordingly it is recommended that seats be reserved for these communities in proportion to their population and that these seats shall be contested through joint electorates.

12. A proposal was made in the committee that a member of the minority community contesting a reserved seat should poll a minimum number of votes of his own community before he is declared elected. It was also suggested that cumulative voting should be permitted. The Committee was of the view that a combination of cumulative voting and a minimum percentage of votes to be polled in a community would have all the evil effects of separate electorates and that neither of these proposals should be accepted.

Representation of minorities in Cabinets

13. Some members of the committee proposed that there should be a provision prescribing that minorities shall have reserved for them seats in Cabinets in proportion to their population. The committee came unhesitatingly to the conclusion that a constitutional provision of this character would give rise to serious difficulties. At the same time, the committee felt that the constitution should specifically draw the attention of the President of the Union and the Governors of Provinces to the desirability of including members of important minority communities in Cabinets as far as practicable. We recommend accordingly that a convention shall be provided in a schedule to the constitution on the lines of paragraph VII of the Instrument of Instructions issued to Governors under the Act of 1935 and reproduced below :

“VII. In making appointments to his Council of Ministers, our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers”.

Representation in Services

14. A proposal was made to us that there should be a constitutional guarantee of representation in the public services of the minority communities in proportion to their population. We are not aware of any other constitution in which such a guarantee exists and, on merits, we consider, as a general proposition that any such guarantee would be a dangerous innovation. At the same time, it is clear to us that consistently with the need of efficiency in administration, it is necessary for the State to pay due regard to the claims of minorities in making appointments to public services. We recommend, therefore, that, as in the case of appointments to Cabinets, there should be in some part of the constitution or the schedule an exhortation to the Central and Provincial Governments to keep in view the claims of all the minorities in making appointments to public services consistently with the efficiency of administration.

The Anglo-Indian members of our committee have represented to us that owing to the complete dependence of the economy of their community on their position in certain services and their existing educational facilities, their case require special treatment. We have appointed a sub-committee to investigate this question and to report to us.

15. The minorities' representatives in the committee naturally attached importance to the provision of administrative machinery for ensuring that the guarantees and safeguards provided for the minorities both in the constitution and by executive orders are in fact implemented in practice. After considerable discussion, we have come to the conclusion that the best arrangement would be for the Centre and for each of the Provinces to appoint a special Minority Officer whose duty will be to enquire into cases in which it is alleged that rights and safeguards have been infringed and to submit a report to the appropriate legislature.

16. We have felt bound to reject some of the proposals placed before us partly because, as in the case of reservation of seats in Cabinets, we felt that a rigid constitutional provision would have made parliamentary democracy unworkable and partly because, as in the case of the electoral arrangements, we considered it necessary to harmonise the special claims of minorities with the development of a healthy national life. We wish to make it clear, however, that our general approach to the whole problem of minorities is that the State should be so run that they should stop feeling oppressed by the mere fact that they are minorities and that, on the contrary, they should feel that they have as honourable a part to play in the national life as any other section of the community. In particular, we think it is a fundamental duty of the State to take special steps to bring up those minorities which are backward to the level of the general community. We recommend accordingly that a Statutory commission should be set up to investigate into the conditions of socially and educationally backward classes, to study the difficulties under which they labour and to recommend to the Union or the Unit Government as the case may be, the steps that should be taken to eliminate their difficulties and, suggest the financial grants that should be given and the conditions that should be prescribed for such grants

17. A summary of our recommendations is attached in the Appendix.

COUNCIL HOUSE ;
New Delhi, the 8th August 1947.

Yours truly,
VALLABHBHAI PATEL,
Chairman.



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APPENDIX

Representation in Legislatures

1. *Electorates*.—All elections to the Central and Provincial Legislatures will be held on the basis of joint electorates :

Provided that as a general rule, there shall be reservation of seats for the minorities shown in the schedule in the various legislatures on the basis of their population :

Provided further that such reservation shall be for 10 years, the position to be reconsidered at the end of the period.

SCHEDULE

GROUP : A.—Population less than $\frac{1}{4}$ per cent. in the Indian Dominion, omitting States.

1. Anglo-Indians.
2. Parsees.
3. Plains' tribesmen in Assam.

B.—Population not more than $1\frac{1}{2}$ per cent.

4. Indian Christians.
5. Sikhs.

C.—Population exceeding $1\frac{1}{2}$ per cent.

6. Muslims.
7. Scheduled Castes.

2. *Anglo-Indians*.—(a) There shall be no reservation of seats for the Anglo-Indians, but the President of the Union and the Governors of Provinces shall have power to nominate their representatives in the Centre and the Provinces respectively if they fail to secure adequate representation in the legislatures as a result of the general election.

Parsees.—(b) There shall be no statutory reservation in favour of the Parsee Community, but they would continue to remain on the list of recognized minorities :

Provided that if as a result of elections during the period prescribed in proviso 2 to para. 1 above it was found that the Parsee Community had not secured proper representation, their claim for reserved seats would be reconsidered and adequate representation provided should the separate representation of minorities continue to be a feature of the Constitution.

NOTE.—The above recommendations represent the view taken by the representatives of the Parsee community.

3. *Indian Christians*.—(a) There shall be reserved representation for Indian Christians in proportion to their population in the Central Legislature and in the Provincial Legislatures of Madras and Bombay. In other provinces, they will have the right to seek election from the general seats.

Sikhs.—(b) The question of minority rights for the Sikhs will be considered separately.

Muslims and Scheduled Castes.—(c) There shall be reservation of seats for the Muslims and Scheduled Castes in the Central and Provincial Legislatures on the basis of their population.

4. *Additional right to minorities*.—The members of a minority community who have reserved seats shall have the right to contest unreserved seats as well.

5. *No weightage*.—The minorities for whom representation has been reserved will be allotted seats on their population ratio, and there shall be no weightage for any community.

6. *No condition for a minimum number of votes of one's own community.*—There shall be no stipulation that a minority candidate standing for election for a reserved seat shall poll a minimum number of votes of his own community before he is declared elected.

7. *Method of voting.*—There may be plural member constituencies but cumulating voting shall not be permissible.

Representation of Minorities in Cabinets

8. *No reservation for minorities.*—(a) There shall be no statutory reservation of seats for the minorities in Cabinets but a convention on the lines of paragraph **VII of the Instrument of Instructions issued to Governors under the Government of India Act, 1935 shall be provided in a Schedule to the Constitution.

**VII. In making appointments to his Council of Ministers our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

Recruitment in Services

9. *Due share to all minorities guaranteed.*—In the all-India and Provincial Services, the claims of all the minorities shall be kept in view in making appointments to these services consistently with the consideration of efficiency of administration.

(NOTE.—Appropriate provision shall be embodied in the Constitution or a schedule thereto to this effect.)

10. *Position of Anglo-Indian community.*—Owing to the complete dependence of the economy of the Anglo-Indian community on their position in certain services and their existing educational facilities, a sub-committee consisting of the following members has been appointed to submit a report :

1. Pandit G. B. Pant,
2. Mr. K. M. Munshi,
3. Mrs. Hansa Mehta,
4. Mr. S. H. Prater, and
5. Mr. F. R. Anthony.

Working of safeguards

11. *Officer to be appointed.*—An Officer shall be appointed by the President at the Centre and by the Governors in the Provinces to report to the Union and Provincial Legislatures respectively about the working of the safeguards provided for the minorities.

12. *Statutory Commission for backward classes.*—Provision shall also be made for the setting up of a Statutory Commission to investigate into the conditions of socially and educationally backward classes, to study the difficulties under which they labour and to recommend to the Union or the Unit-Government, as the case may be, the steps that should be taken to eliminate the difficulties and the financial grants that should be given and the conditions that should be prescribed for such grants.

SUPPLEMENTARY REPORT OF THE ADVISORY COMMITTEE

On the position of the Anglo-Indians in certain services and the grant of special educational facilities for them.

(PRESENTED ON THE 27TH AUGUST 1947)

FROM

**THE HON'BLE SARDAR VALLABHBHAI PATEL,
CHAIRMAN, ADVISORY COMMITTEE ON MINORITIES FUNDAMENTAL
RIGHTS, ETC.**

To

**THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.**

SIR,

I have the honour to refer to paragraph 14 of my letter No. CA/24/Com/47 dated the 8th August and to submit this supplementary report on the position of Anglo-Indians in certain services and the grant of special educational facilities for them. This report is based on a consideration of the findings of a sub-committee appointed by us,

(a) Position of Anglo-Indians in certain Services

We find that, as a result of historical circumstances the whole economy of this community is at present dependent on finding employment in certain types of posts in the Railways, the Posts & Telegraphs and the Customs Departments. A recent survey conducted by the Provincial Board for Anglo-Indian Education in Bombay showed that 76 % of the employable section of the community there were dependent for their livelihood on these appointments. We believe that the position is almost the same all over India ; the total number of Anglo-Indians at present employed in these three departments being about 15,000. The special reservation given to them in the Government of India Act 1935 does not however extend to *all* the categories of posts in these departments but only in those with which they have had long past associations. In view of this we feel that if the existing safeguards in this regard are not continued in some form for some years to come, the community will be subjected to a sudden economic strain which it may not be able to bear. We therefore recommend that

- (i) The present basis of recruitment of Anglo-Indians in the Railways, the Posts & Telegraphs and the Customs Departments shall continue unchanged for a period of two years after the coming into operation of the Federal constitution. After that, at intervals of every two years, the reserved vacancies shall be reduced each time by 10%. This shall not, however, bar the recruitment of Anglo-Indians in the categories of posts in which at present they have reserved places *over and above* the prescribed quota of reserved appointments, if they are able to secure them on individual merit in open competition with other communities. It shall also in no way prejudice their recruitment on merit to posts in these departments, or any other in which they have not been given a reserved quota.
- (ii) After a period of ten years from the date of the coming into operation of the Federal Constitution all such reservations shall cease.
- (iii) In these services there shall be no reservation for any community after the lapse of 10 years.

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The term 'Anglo-Indian' used in this Report has the meaning given to it in the Government of India Act 1935.

- COUNCIL HOUSE,
New Delhi, the 25th August, 1947.

Yours sincerely,
VALLABHBHAI PATEL.

APPENDIX TO THE REPORT OF THE ADVISORY COMMITTEE

On the Subject of Minority Rights

(As adopted by the Constituent Assembly during August 1947 Session)

Representation in Legislatures

1. *Electorates*.—All elections to the Central and Provincial Legislatures will be held on the basis of joint electorates :

Provided that, as a general rule, there shall be reservation of seats for the minorities shown in the Schedule and the section of the Hindu community referred to in paragraph 1-A hereof in the various Provincial Legislative Assemblies on the basis of their population :

Provided further that such reservation shall be for 10 years, the position to be reconsidered at the end of the period.

SCHEDULE

GROUP A.—Population less than $\frac{1}{2}$ per cent. in the Indian Dominion, omitting States.

1. Anglo-Indians.

2. Parsees.

3. Plains' tribesmen in Assam, other than tea garden tribes.

B.—Population not more than $1\frac{1}{2}$ per cent.

4. Indian Christians.

5. Sikhs.

C.—Population exceeding $1\frac{1}{2}$ per cent.

6. Muslims.

1-A.—The section of the Hindu community referred to as Scheduled Castes as defined in Schedule I to the Government of India Act, 1935, shall have the same rights and benefits which are herein provided for minorities specified in the Schedule to paragraph 1.

2. *Anglo-Indians*.—(a) There shall be no reservation of seats for the Anglo-Indians, but the President of the Union and the Governors of Provinces shall have power to nominate their representatives in the Centre and the Provinces respectively if they fail to secure adequate representation in the legislatures as a result of the general election.

Parsees.—(b) There shall be no statutory reservation in favour of the Parsee community, but they would continue to remain on the list of recognized minorities :

Provided that if as a result of elections during the period prescribed in proviso 2 to para. 1 above it was found that the Parsee community had not secured proper representation, their claim for reserved seats would be reconsidered and adequate representation provided should the separate representation of minorities continue to be a feature of the Constitution.

NOTE.—The above recommendations represent the view taken by the representatives of the Parsee community.

3. *Indian Christians*.—(a) There shall be reserved representation for Indian Christians in proportion to their population in the Central Legislature and in the Provincial Legislatures of Madras and Bombay. In other provinces, they will have the right to seek election from the general seats.

East Punjab.—(b) In view of the special situation of East Punjab, the whole question relating to it will be considered later.

Muslims.—(c) There shall be reservation of seats for the Muslims in the lower Houses of the Central and Provincial Legislatures on the basis of their population.

3-A. The section of the Hindu community referred to as Scheduled Castes as defined in Schedule I to the Government of India Act, 1935, shall have the same rights and benefits which are herein provided for the minority community specified in paragraph 3 (c).

4. *Additional right to minorities.*—The members of a minority community who have reserved seats shall have the right to contest unreserved seats as well.

In view of the special situation of West Bengal, the question relating to it will be considered later.

5. *No weightage.*—The minorities for whom representation has been reserved will be allotted seats on their population ratio, and there shall be no weightage for any community.

6. *No condition for a minimum number of votes of one's own community.*—There shall be no stipulation that a minority candidate standing for election for a reserved seat shall poll a minimum number of votes of his own community before he is declared elected.

7. *Method of voting.*—There may be plural member constituencies, but the voting shall be distributive, that is, each voter will have as many votes as there are members and he should give only one vote to a candidate.

Representation of Minorities in Cabinets

8. *No reservation for minorities.*—(a) There shall be no statutory reservation of seats for the minorities in Cabinets but a convention on the lines of paragraph **VII of the Instrument of Instructions issued to Governors under the Government of India Act, 1935 shall be provided in a Schedule to the Constitution.

** VII. In making appointments to his Council of Ministers our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

Recruitment in Services

9. *Due share to all minorities guaranteed.*—In the all-India and Provincial Services, the claims of all the minorities shall be kept in view in making appointments to these services consistently with the consideration of efficiency of administration.

(NOTE.—Appropriate provision shall be embodied in the Constitution or a schedule thereto to this effect.)

10. *Position of Anglo-Indian community.*—(a) (i) The present basis of recruitment of Anglo-Indians in the Railways, the Posts and Telegraphs and the Customs Departments shall continue unchanged for a period of two years after the coming into operation of the Federal Constitution. After that, at intervals of every two years, the reserved vacancies shall be reduced each time by 10%. This shall not however bar the recruitment of Anglo-Indians in the categories of posts in which at present they have reserved places over and above the prescribed quota of reserved appointments, if they are able to secure them on individual merit in open competition with other communities. It shall also in no way prejudice their recruitment on merit to posts in these departments, or any other in which they have not been given a reserved quota.

(ii) After a period of ten years from the date of the coming into operation of the Federal Constitution all such reservations shall cease.

(iii) In these services there shall be no reservation for any community after the lapse of 10 years.

(b) (i) The present grants to Anglo-Indian education made by the Central and Provincial Governments should be continued unchanged for three years after the coming into operation of the Federal Constitution.

(ii) After the expiry of the first three years, the grants may be reduced by 10% and by a further 10% after the sixth year, and again by a further 10% after the ninth year. At the end of the period of 10 years, special concessions to Anglo-Indian schools shall cease.

(iii) During this 10 years period, 40% of the vacancies in all such State-aided Anglo-Indian schools shall be made available to members of other communities.

Working of Safeguards

11. *Officer to be appointed.*—An Officer shall be appointed by the President at the Centre and by the Governors in the Provinces to report to the Union and Provincial Legislatures respectively about the working of the safeguards provided for the minorities.

12. *Statutory Commission for backward classes.*—Provision shall also be made for the setting up of a Statutory Commission to investigate into the conditions of socially and educationally backward classes, to study the difficulties under which they labour and to recommend to the Union or the Unit-Government, as the case may be, the steps that should be taken to eliminate the difficulties and the financial grants that should be given and the conditions that should be prescribed for such grants.



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REPORT ON THE FUNCTIONS OF THE CONSTITUENT ASSEMBLY

Under the Indian Independence Act, 1947

(PRESENTED ON THE 29TH AUGUST, 1947)

FROM

SHRI G. V. MAVALANKAR,

CHAIRMAN, COMMITTEE ON THE FUNCTIONS OF THE CONSTITUENT
ASSEMBLY UNDER THE INDIAN INDEPENDENCE ACT.

TO

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

SIR,

On behalf of the members of the Committee* appointed by you on the 21st of August, 1947, to consider and report on certain matters connected with the future working of the Constituent Assembly, I beg to submit this report.

I. Preliminary :

2. At our first meeting on Friday the 22nd, I was elected Chairman. The Committee met also on the 23rd and the 25th.

3. Our terms of reference are :

- (1) What are the precise functions of the Constituent Assembly under the Indian Independence Act ?
- (2) Is it possible to distinguish between the business of the Constituent Assembly as a Constitution making body and its other business and can the Constituent Assembly set apart certain days or periods solely for the former ?
- (3) Should the members representing the Indian States in the Constituent Assembly be given the right to take part in proceedings which do not relate to Constitution-making or to the subjects in respect of which they have acceded ?
- (4) What new Rules or Standing Orders, if any, and what amendments, if any, in the existing Rules or Standing Orders should be made by the Constituent Assembly or its President ?

We proceed to state our views on these terms in the order mentioned.

II. First term of reference :

4. The business to be transacted by the Constituent Assembly falls under two categories.

- (a) To continue and complete the work of Constitution-making which commenced on the 9th December, 1946, and
- (b) To function as the Dominion Legislature until a Legislature under the new Constitution comes into being.

*Members of the Committee :—

1. Shri G. V. Mavalankar (Chairman).
2. Mr. Hussain Imam.
3. The Hon'ble Shri Purushottam Das Tandon.
4. Dr. B. R. Ambedkar.
5. Shri Alladi Krishnaswami Ayyar.
6. Shri N. Gopalaswami Ayyangar.
7. Sir B. L. Mitter.

III. Second term of reference:

5. It is not only possible but necessary for the proper functioning of the Constituent Assembly in its two capacities that its business as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature. We consider that for the purpose of avoiding complications and confusion, different days, or separate sittings on the same day, should be set apart for the two kinds of business.

IV. Third term of reference:

6. We agree that, as implied in the wording of this term of reference, the members of the Assembly representing the Indian States are entitled to take part in the proceedings of the Assembly on all days set apart for the business of Constitution-making. They further have the right on days set apart for the functioning of the Assembly as the Dominion Legislature to participate in business relating to subjects in respect of which the States have acceded to the Dominion. Though it is competent for the Constituent Assembly to deny or limit their participation in business relating to subjects in respect of which the States have not acceded, we would recommend that no ban or restriction be placed by rule on their participation in such business also.

V. Fourth term of reference:

7. So far as Constitution-making is concerned, the existing Rules of Procedure and Standing Orders made by the Constituent Assembly and its President are adequate and only such amendments need be made therein from time to time as may be considered necessary in the light of experience. As regards the functioning of the Constituent Assembly as the Dominion Legislature, under section 8 (2) of the Indian Independence Act, the relevant provisions of the Government of India Act as adapted and the Rules and Standing Orders of the Indian Legislative Assembly have generally to be followed. It will, however, be necessary to make modifications and adaptations in these Rules and Standing Orders in respect of matters common to both the classes of business to be transacted by the Assembly. We have not been able, within the time at our disposal, to attempt a detailed examination of these Rules and Standing Orders with a view to make suggestions as regards the modifications, adaptations and additions that may be necessary. We would suggest that necessary modifications, adaptations and additions be made under the orders of the President.

8. We desire to refer to three matters of importance which besides being relevant to the main issue remitted to us for consideration, have a bearing on the question of the need for the making by the Constituent Assembly or its President of new Rules or Standing Orders and the amendment of existing Rules or Standing Orders.

9. The provisions for the election of a Speaker in Section 22 of the Government of India Act 1935 have been omitted. This read together with the other modifications carried out in that Act show that the President of the Constituent Assembly is the person to preside over it when functioning as the Dominion Legislature also, unless other provision is made in the Rules of Procedure of the Constituent Assembly itself for the election of an officer for the purpose of presiding over the Assembly when transacting ordinary legislative business. It has to be remembered that though transacting two kinds of business, the Assembly is one and can have only one President who is the supreme head of it both on its deliberative side and on its administrative side. We would, however, point out that it would be constitutionally inappropriate for the person presiding over the Constituent Assembly when functioning as the Dominion Legislature being also a Minister of the Dominion Government. It is obviously desirable that steps should be taken for avoiding this anomaly. We would suggest that for this purpose the following alternatives might be considered

- (a) The President of the Constituent Assembly should be a person whose whole time is given to the work of the Assembly both when engaged on Constitution-making and when transacting business of the Dominion Legislature.
- (b) If the President of the Constituent Assembly is a Minister, provision may be made in the Rules of the Constituent Assembly for the election of an officer to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.

10. Under the Government of India Act as adapted, the power of summoning and proroguing the Dominion Legislature vests in the Governor-General. We consider that, consistently with the powers which of right belong to the Constituent Assembly and with the Rules already made by it and with a view to secure proper co-ordination of the work of the Assembly in its two spheres, this power of summoning that Assembly for functioning as the Dominion Legislature and proroguing it should also vest only in the President. A new Rule to this effect may be added to the Constituent Assembly Rules of Procedure and a further adaptation of the relevant section of the Government of India Act may be made to bring it into conformity with this new Rule.

11. At present five members of the Dominion Government have no seats in the Constituent Assembly. These Ministers have the right to participate in the business of the Constituent Assembly when functioning as the Dominion Legislature, though they will not have the right to vote. They will, however, not have the right even to participate in the work of the Constituent Assembly when it transacts business connected with Constitution-making. We, however, recommend that such Ministers may by a suitable addition to the Rules of the Constituent Assembly be given the right to attend and participate in its work of Constitution-making, though until they become members of the Constituent Assembly they will not have any right to vote.

Yours sincerely,

G. V. MAVALANKAR,
Chairman.

COUNCIL HOUSE;
New Delhi, the 25th August, 1947

**Resolution adopted by the Constituent Assembly on the
REPORT OF THE FUNCTIONS OF THE CONSTITUENT ASSEMBLY**

Under the Indian Independence Act, 1947.

(PRESENTED ON THE 29TH AUGUST, 1947)

1. That with reference to the Motion *by the Hon'ble Dr. B. R. Ambedkar regarding the consideration of the Report on the functions of the Constituent Assembly under the Indian Independence Act, it is hereby resolved that :—

- (i) The functions of the Assembly shall be—
 - (a) to continue and complete the work of Constitution-making which commenced on the 9th December, 1946, and
 - (b) to function as the Dominion Legislature until a Legislature under the new Constitution comes into being.
- (ii) The business of the Assembly as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature, and different days or separate sittings on the same day should be set apart for the two kinds of business.
- (iii) The recommendations contained in para. 6 of the Report regarding the position of representatives of Indian States in the Assembly be accepted.
- (iv) Suitable provision should be made in the Rules of the Constituent Assembly for the election of an officer to be designated the Speaker to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.
- (v) The power of summoning the Assembly for functioning as the Dominion Legislature and proroguing it should vest in the President.
- (vi) Ministers of the Dominion Government, who are not members of the Constituent Assembly, should have the right to attend and participate in its work of Constitution-making, though until they become members of the Constituent Assembly they should not have any right to vote.
- (vii) Necessary modifications, adaptations and additions should be made—
 - (a) by the President of the Constituent Assembly to the Rules and Standing Orders of the Indian Legislative Assembly to bring them into accord with the relevant provisions of the Government of India Act as adapted under the Indian Independence Act, 1947.
 - (b) by the Constituent Assembly or the President, as the case may be to the Rules and Standing Orders to carry out the provisions of para. 9 of the Report and where necessary to secure an appropriate adaptation of the relevant section of the Government of India Act to bring it into conformity with the new Rule.

* "Resolved that this Assembly do proceed to take into consideration the Report on the functions of the Constituent Assembly under the Indian Independence Act, 1947, submitted by the Committee appointed by the President in pursuance of the decision of the Assembly of the 20th August, 1947."

**SUPPLEMENTARY REPORT OF THE ADVISORY COMMITTEE ON THE
SUBJECT OF FUNDAMENTAL RIGHTS.**

(PRESENTED ON THE 30TH AUGUST, 1947)

FROM

THE HON'BLE SARDAR VALLABHBHAI PATEL,
CHAIRMAN, ADVISORY COMMITTEE ON MINORITIES,
FUNDAMENTAL RIGHTS, ETC.

TO

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

Dear Sir,

In continuation of my letter No. CA/24/Com/47, dated the 23rd April 1947, I have the honour, on behalf of the committee, to submit this supplementary report on Fundamental Rights.

2. We have come to the conclusion that, in addition to justiciable fundamental rights, the constitution should include certain directives of State policy which, though not cognisable in any court of law, should be regarded as fundamental in the governance of the country. The provisions that we recommend are contained in Appendix A.

3. In para. 8 of our previous report, we had referred to the recommendation of the Fundamental Rights Sub-Committee that the right of the citizen to have redress against the State in a Court of law should not be fettered by undue restrictions. After careful consideration, we have come to the conclusion that it is not necessary to provide in the constitution for any further right in this connection than those already contained in clause 22 as accepted by the Assembly in the April-May session.

4. The Constituent Assembly had referred back to us clauses 16, 17 and 18 (2) of our previous report. We have re-examined the clauses and our recommendations are as follows :—

Clause 16.—“No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto.

We recommend that this clause be accepted by the Assembly in its present form.

Clause 17.—“Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law”.

It seems to us on further consideration that this clause enunciates a rather obvious doctrine which it is unnecessary to include in the constitution and we recommend that it be dropped altogether.

Clause 18 (2).—“No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them”.

We recommend that the latter portion of the clause, namely “nor shall any religious instruction be compulsorily imposed on them” be deleted in view of clause 16 above which we have recommended for retention. We recommend that the rest of the clause be adopted by the Assembly.

We have examined the question as to whether the scope of the clause should be extended so as to include *State-aided* educational institutions also and have come

* NOTE—For previous report please refer to pp. 18—25 Report of Committee (First Series)

to the conclusion that in present circumstances we would not be justified in making any such recommendation.

5. The Fundamental Rights Sub-Committee in their report to us had recommended the adoption of Hindustani, written either in Devanagari or the Persian script, as the national language of the Union of India, but we had thought fit to postpone consideration of the matter in April 1947. In view of the fact the Constituent Assembly is already seized of the matter by certain recommendations of the Union Constitution Committee's report, we think it unnecessary to incorporate any provision on the subject in the list of fundamental rights.

6. We have also examined numerous amendments in the nature of new provisions, notice of which had been given by several members during the April-May session of the Assembly, and have not been able to accept any of them. Some of them relate to matters which have already been provided for either in the clauses already accepted by the Assembly or in the new clauses which we have recommended in this report ; and the others seem to us unnecessary or inappropriate.

Yours sincerely,

VALLABHBHAI PATEL,

Chairman.

COUNCIL HOUSE ;
New Delhi, the 25th August, 1947.



APPENDIX

FUNDAMENTAL PRINCIPLES OF GOVERNANCE

PREAMBLE

1. The principles of policy set forth in this part are intended for the guidance of the State. while these principles are not cognizable by any court, they are nevertheless fundamental in the governance of the country and their application in the making of laws shall be the duty of the State.

PRINCIPLES

2. The State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

3. The State shall, in particular, direct its policy towards securing—

- (i) that the citizens, men and women equally, have the right to an adequate means of livelihood ;
- (ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good ;
- (iii) that the operation of free competition shall not be allowed to result in the concentration of the ownership and control of essential commodities in a few individuals to the common detriment ;
- (iv) that there shall be equal pay for equal work for both men and women ;
- (v) that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their age and strength ;
- (vi) that childhood and youth are protected against exploitation and against moral and material abandonment.

4. The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness, disablement, and other cases of undeserved want.

5. The State shall make provision for securing just and humane conditions of work and for maternity relief for workers.

6. The State shall endeavour to secure, by suitable legislation, economic organisation and in other ways, to all workers, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

7. The State shall endeavour to secure for the citizens a uniform civil code.

8. Every citizen is entitled to free primary education, and it shall be the duty of the State to provide within a period of 10 years from the commencement of this Constitution for free and compulsory primary education for all children until they complete the age of 14 years.

9. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the aboriginal tribes, and shall protect them from social injustice and all forms of exploitation.

10. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

11. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by the law of the Union to be of national importance, from spoliation, destruction, removal, disposal or export, as the case may be, and to preserve and maintain according to the law of the Union all such monuments or places or objects.

12. The State shall promote international peace and security by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and the scrupulous respect for treaty obligations in the dealings of organised people with one another.

