Dr. Ambedkar with the Simon Commission (Indian Statutory Commission)

Contents

A

REPORT ON THE CONSTITUTION OF THE GOVERNMENT OF BOMBAY

PRESIDENCY
PREFACE

I regret that I have not been able to agree in the tenor of the report prepared by my colleagues on the committee or to accept the more important of the conclusions on the matters falling within the scope of our inquiry. I have therefore submitted this separate report containing my own views and recommendations. The bulk of my report has exceeded that of my colleagues. It might perhaps have been possible, by including in my report nothing more than formal answers to the questions raised to limit its bulk. But I felt there was a question to which an answer could be given without some general explanation of the principles on which the answer was based or also the report could not be properly understood. I have therefore set aside all considerations of brevity which would have exposed me to the criticism that the recommendations in the report were not supported by a sufficient amount of reasons and arguments and have allowed the report to grow to the size it has reached.

SECTION 1
REDISTRIBUTION OF THE AREA OF THE PROVINCE

1. The area of the Bombay Presidency which extends over 1,223,541 square miles may be divided into four distinct linguistic divisions : (1) Maharashtra, (2) Gujarat, (3) Karnatak and (4) Sindh. The people of these divisions have been associated together under one administration for a long period. Gujarat, Maharashtra and Karnatak have been parts of the Bombay Presidency for last 110 years, while Sindh was joined to the Presidency 85 years ago. From this Confederacy, Karnatak and Sindh are now demanding that they be separated from the Presidency. The argument urged in favour of separation states that the Province does not represent a natural unit that not only it does not meet the test of unity of race or language but that it is actually built up by a deliberate fragmentation of homogeneous groups and their amalgamation with other heterogeneous groups. This, it is said, is an evil. For it is urged that the fragmentation involves a smothering of their distinctive cultures, while their amalgamation with other bigger groups makes them politically helpless.
2. In the case of Karnatak this argument has no doubt some force. That Karnatak has been dismembered into various small parts which have been linked up with other non-Karnatak areas for administrative purposes thereby causing a severance is true. Nor can it be gainsaid that the part united with the Presidency of Bombay has politically suffered by being under-represented in the Bombay Legislative Council. Notwithstanding all this, I am opposed to the separation of Karnatak from the Bombay Presidency. The principle of one language one province is too large to be given effect to

in practice. The number of provinces that will have to be carved out if the principle is to be carried to its logical conclusion shows in my opinion its unworkability. Nor can it be made workable by confining it to cases "where the language is a distinct cultural language with a past and a future " and " where there exists a strong linguistic consciousness." For the simple reason that every language which has a past if given an opportunity will have a future and every linguistic group of people if they are vested with the powers of government will acquire linguistic consciousness. I am aware that this may involve the sacrifice of Kanarese culture although I am not sure that that would be an inevitable consequence of the continuance of the present arrangement. But even if that be the consequence I do not think it is a matter for regret. *For, I am of opinion that the most vital need of the day is to create among the mass of the people the sense of a common nationality the feeling not that they are Indians first and Hindus, Mohammedans or Sindhis and Kanarese afterwards but that they are Indians first and Indians last.* If that be the ideal then it follows that nothing should be done which will harden local patriotism and group consciousness. The present heterogeneous character of the province has this much in its favour that it provides a common cycle of participation for a polyglot people which must go a great deal to prevent the growth of this separatist feeling. I think that an arrangement which results in such an advantage should be conserved. I am therefore opposed to the demand of Karnatak for separation.

3. My colleagues have summarily dismissed the claim of Karnatic for separation on the ground that no witness appeared before the conference to support the same. I do not regret it in view of the fact that I and my colleagues agree in our recommendation regarding it. But it is a surprise to me that my colleagues should have in the case of Sindh come to a different conclusion. For I think that as compared to Karnatak, Sindh has no case. There can be no two opinions regarding the fact that Sindh has gained substantially by its incorporation in the Bombay Presidency. Having been separated by long distance, Sindh instead of being made a subordinate member of the household has been accorded the superior status of a neighbour associated with on the most honourable terms. In so far as her affairs have been administered by a Commissioner who is next to the Governor, Sindh must be said to have preserved the dignity of her independence. She has been allowed to retain her ancient and customary code of laws. Seldom has she been subjected to any new law passed for the Presidency proper unless the same was deemed to be specially conducive to her benefit. Her tribunals are entirely independent of the tribunals of the Presidency. Her public service is virtually separate from the

Presidency Public Service and is manned by her own people. Her being linked to the Presidency cannot be said to have worked to her financial detriment. On the contrary she has been able to ride on the broad shoulders of the Presidency at a speed which would have been beyond her own capacity. It is her incorporation which has enabled her to draw so largely upon the great resources of this Presidency. Nor can Sindh be said to have failed to secure the consideration and attention from the Government which is due to it. Indeed since the introduction of the Reforms, Sindh has exercised an influence on the Government of Bombay out of all proportion to its magnitude. Given these facts it is difficult to understand what more is to be gained by separation when Sindh has all the advantages of separation without the disadvantages of incorporation.

4. It is also evident that all the communities of Sindh have not joined in making this demand. The evidence such as was placed before the joint Conference of the Commission and the Committee disclosed a sharp cleavage between the Moslems and the Hindus of Sindh, the former favouring separation and the latter arraying themselves in opposition to it. On an examination of the history of Sindh public opinion regarding this question I find that the politically minded people of Sindh as a body took up the question of the status of Sindh only in 1917. After the announcement of August, 1917, the Sindis held a Special Conference in November, 1917, to consider the place of Sindh in the coming Scheme of reforms. The Honourable Mr. G. M. Bhurgri, the leading Mohammedan citizen of Sindh, was the Chairman of the Reception Committee, while the President of the Conference was a Hindu gentleman, Mr. Harchandrai Vishindas. The Conference had before it four alternatives, namely : (1) Formation of Sindh as a separate Province, (2) Sindh and Baluchistan to form one province, (3) Sindh to go with the Punjab and (4) Sindh to remain with Bombay. It is noteworthy that this Special Conference turned down three of these four alternatives including the proposal to form Sindh into a separate province. Not only did the Conference reject the proposal of a separate province but in its resolution supported by Hindus and Mohammedans urged for a closer incorporation between Sindh and the Presidency by reducing the position of the Commissioner of Sindh to that of the Divisional Commissioner in the Presidency. The deputation consisting of Hindus and Muslims which waited upon the Secretary of State, Mr. Montague, and the Viceroy, Lord Reading, was, it is said, emphatic in its declaration that Sindh did not wish to be a separate Province. The same attitude towards this question was uniformly maintained by members of both the communities at subsequent sessions of the Conference which met in 1918, 1919 and 1920. Since 1920 the question

has not been considered by the Conference owing to its being swayed by the movement of non co-operation. From this survey it is clear that it is the Mohammedans who have changed front and it is they who have departed from an agreed point of view and that the demand far from being a united demand is a sectional demand originating from the Mohammedan Community only.

5. Before any sympathy can be shown to such a sectional demand, one must be satisfied that the purpose for which separation is sought is a proper one. Now although, the Mohammedan deputation which put forth this demand and the Hindu deputation which opposed it, both did their best not to reveal the real object of the demand and the real objection to its fulfilment. All the same those who knew the reality, must have felt that the contending factions had not placed all their cards on the table. But this purpose must be made clear so that it may be considered on its own merits and I propose to do so to the best of my information. On the 20th of March 1927, there were put forth what are known as the " Delhi Muslim Proposals," by prominent members of the Muslim Community as the terms for an *entente cordiale* between Hindus and Muslims. According to these proposals it was demanded (1) that Sindh should be made into a separate Province, (2) that the North-West Frontier Province should be treated on the same footing as other provinces and (3) that in the Punjab and Bengal the proportion of Muslim representation should be in accordance with their population. A glance at the above proposals is sufficient to indicate that the object of the scheme is to carve out as many Provinces with a Mohammedan majority as possible out of the existing arrangement. At present Punjab and Bengal are two Provinces with a bare Muslim majority. The proposals by demanding that in those provinces representation should be proportionate to population seeks to make the communal majority of the Muslims a political majority so that a Mohammedan Government will be assured in those provinces. Baluchistan and N. W. F. Province have an overwhelming Muslim majority. But they are as yet out of the pale of responsible Government with the result that the Mohammedan majority is not a ruling majority. The aim of the proposals is to rectify this anomaly so that they will make four Provinces with a Muslim majority with sure chances of forming a Muslim Government. The demand for the formation of Sindh which is predominantly Muslim in numbers into a separate Province is to add a fifth to the list of Muslim provinces contemplated by the scheme. Now what is the purpose behind the formation (of these Mohammedan Provinces ? In the eyes of the Mohammedans themselves it has the same purpose as communal electorates. For the authors of the scheme say that they are prepared to

give up communal electorates and agree to joint electorates in all provincial legislatures and in the Central Legislature provided their proposal of Mohammedan Provinces was agreed to. By parity of reasoning it follows that the object of carving out Mohammedan Provinces is to protect the Muslim minorities ; since that was the object of communal electorates. The scheme on the surface does not show how the creation of Muslim provinces is going to protect the Muslim minorities against Hindu majorities in Provinces in which the Hindus predominate. Indeed the scheme seems to weaken the position of the Muslim minorities by taking away the protection they receive or believed to receive from communal electorates. But if we probe into it we can see that the scheme is neither so innocent nor so bootless as it appears on the surface. At bottom it is an ingenious contrivance for the protection of Muslim minorities. For if the Hindu majority tyrannized the Muslim minority in the Hindu Provinces the scheme provides a remedy whereby the Mohammedan majorities get a field to tyrannize the Hindu minorities in the five Mohammedan Provinces. It is a system of protection by counter blast against blast ; terror against terror and eventually tyranny against tyranny. That is the purpose behind the whole scheme and also behind the demand for the separation of Sindh. Lest there should be any doubt on this point I wish to remove it by directing attention to the Report of the Nehru Committee in which they say : "we agree that the Muslim demand for the separation of Sindh was not put forward in the happiest way. It was based on communalism and tacked on irrelevantly to certain other matters with which it had no concern whatever." That the Nehru Committee should have fought shy of disclosing the real grounds of separation is a circumstance which raises the presumption that the purpose as known to the Committee must have been otherwise than laudable. But if we are to consent to it, it is better to know the worst about it. I will therefore raise the curtain and let Maulana Abdul Kalam Azad reveal the same. Addressing the Muslim League at its recent session at Calcutta in a speech which must be admired for its terseness and clarity he said— " That by the Lucknow pact they had sold away their interests. The Delhi proposals of last March opened a door for the first time to the recognition of the real rights of the Musalmans in India. Separate electorates by the pact of 1917 only ensured them Muslim representation, but what was vital for the existence of the community was the recognition of its numerical strength. Delhi opened the way to the creation of such a state of affairs as would guarantee to them in the future of India a proper share. Their existing small majority in Bengal and in the Punjab was only the census figure but the Delhi proposals gave them for the first time five provinces of which no less than three (Sind, N. W.

F. and Baluchistan) contained a real overwhelming majority. If Muslims did not recognise this great step they were not fit to live (applause). There would be now nine Hindu provinces against five Muslim provinces and whatever treatment Hindus accorded in nine provinces Muslims would accord same treatment to Hindus in the five provinces. Was not this a great gain ? Was not a new weapon gained for the assertion of Muslim rights ? " (Hindustan Times, 3rd January, 1928). No one who is not interested in misunderstanding the plain meaning of simple English can mistake the real purpose of the demand for the separation of Sind. It is obvious that the real purpose has very little to do with the destiny of Sind. It is part of a larger scheme designed for the protection of Muslim minorities and is based upon the principle that the best way of keeping peace is to be prepared for war.

6. Knowing the real purpose of the demand the question is should it be sympathised with ? I, for one, am unable to sympathise with it and no person I venture to say who has at heart the interests of good administration will consent to it. It will no doubt be said as is done by the Nehru Committee which has expressed itself in favour of separation that " the manner of putting it forward does not necessarily weaken the merits of a proposal." I take exception to this position. I hold that the manner discloses the motive and that motive, far from being a small matter, is important enough to change the face of the situation. For it cannot be gainsaid that the main force which sets an institution in motion and also fixes its direction centres round the motive which brings the institution into being. The motive that lies behind this scheme is undoubtedly a dreadful one involving the maintenance of justice and peace by retaliation and providing an opportunity for the punishment of an innocent minority, Hindu in Mohammedan provinces and Mohammedan in Hindu provinces, for the sins of their co-religionists in other provinces. A system must stand self-condemned which permits minorities to be treated in their own provinces as hostages rather than as citizens, whose rights are subject to forfeiture, not for any bad behaviour chargeable to them but as a corrective for the bad behaviour of their kindred elsewhere. And who can say that the grievance leading to such a forfeiture will always be just and substantial ? As often as not, a grievance is one at which one merely feels aggrieved so that any act be it great or trivial against a minority may be made to serve as a *causus belli* for a war between the Provinces. The consequences of such a scheme are too frightful to be contemplated with equanimity. That the Hindus get the same chance to tyrannize the Muslims in Hindu provinces does not alter for the better the character of the scheme which contains within itself the seeds of discord and disruption. The scheme is so shocking that if the

Mohammedans cannot feel secure without it I for one would prefer that Swaraj be deferred till mutual trust has assured them that they can do without it. The Nehru Committee argues that " a long succession of events in history is responsible for the distribution of the population of India as it is today " — and that in creating communal provinces " we have merely to recognize facts as they are." This is no doubt true. But the point remains whether we should create such admittedly communal provinces at a time when the communal feeling is running at full tide and the national feeling is running at its lowest ebb. There would be time for creating such provinces when the Hindus and Mohammedans have outgrown their communal consciousness and have come to feel that they are Indians first and Indians last. At any rate this question should wait till both have come to feel that they are Indians first and Hindus and Mohammedans afterwards. On these grounds I dissociate myself from the sympathy shown by my colleagues towards the question of the separation of Sindh.

7. It will be noticed that I say nothing about the financial difficulties that lie in the way of separating Sindh from the Presidency. That is not because I do not attach importance to them. I do. But my view is that they alone cannot be decisive and if I have not alluded to them it is because I hold that the objections which I have raised to the separation of Sindh will survive, even when the financial objections are met or withdrawn.

SECTION II

PROVINCIAL EXECUTIVE

CHAPTER I

DUAL VERSUS UNIFIED GOVERNMENT

8. My colleagues have recommended that the subject of Law and Order should be continued as a reserved subject for five years after the new regime has come into operation. I would not have cared to differ from my colleagues if their recommendation had involved nothing more than a short period of waiting to allow the Council an opportunity of settling down to its work. But unfortunately their recommendation involves more than this and is accompanied by a proviso that "after that period it should be left to the decision of the Legislative Council with the concurrence of the Upper House and of the Governor to decide that the subject should be transferred." I am unable to agree to this recommendation which means the continuance of dyarchy for an indefinite period. Such a recommendation cannot be supported except on the assumption that dyarchy is a workable system of Government and that as it has been successfully worked in the past it can be expected to work in future. This assumption is in my opinion quite

untenable.

9. Many things have been pointed out as being responsible for the unsatisfactory working of dyarchy as a form of Government. It is true that the Transferred side of the Government was hampered by certain checks which were introduced by way of safeguards. The subjects transferred to the control of the ministers all related to the well being of the people, as distinguished from subjects relating to the maintenance of law and order. Indeed the subjects were transferred largely because they were of that character. As a matter of policy, therefore, the finances of the Presidency should have been in the hands of a minister. For it is obvious that no policy has any chance of reaching fruition unless the Finance Department found the ways and means required for the same. This could be expected of the Finance Department only if it belonged to the Ministerial side of the Government. But it did not. Section 45A(3) provided for the constitution by rules under the Act of Finance Department and for the regulation of the functions of that department. The department as constituted is neither a Transferred nor a Reserved one but was common to both sides of the Government. Yet as rule 36(1) of the Devolution Rules laid down that the Finance Department should be controlled by a member of the Executive Council, that department was virtually converted into a Reserved Department. Having been placed into the hands of the Executive Councillor, not responsible to the legislature, it is only natural that the department should be on the Reserved side and the head of the department more or less identified with the work of the reserved departments to the disadvantage of the Ministers. The position assigned to the Governor in relation to the Transferred subjects was another factor which worked to the detriment of the transferred side of the Government. Under section *52(3)* it was laid down that in relation to the transferred subjects the Governor shall be guided by the advice of his ministers, unless he sees sufficient reason to dissent from their opinion. But the common complaint has been that the Governors instead of reducing their interference to exceptional occasions of fundamental difference claimed that in law the ministers were merely their advisers and they were free to reject their advice if they thought fit to do so. This perverse interpretation made the position of the ministers worse than the position of the Executive Councillors. For, the Executive Councillors could not be overruled in ordinary cases except by a majority of votes. While under the interpretation put by the Governors upon section *52(3)* Ministers were at the mercy of the Governor and were without the protection enjoyed by the Executive Councillors. There was another thing which also helped the aggrandizement of the powers of the Governors as against the ministers

and which tended to cripple the activity of the latter. The Instrument of Instructions issued to the Governor charged him to safeguard the interests of all members of the services employed in the Presidency in the legitimate exercise of their function and in the enjoyment of all their recognised rights and privileges. The duty was confined only to the question of the safeguarding of the interests of the services. But the Governors placed a wider interpretation on this instruction and insisted that all matters relating to the services including the question of their appointments, posting and promotions in the Minister's department should be under the charge of the Governors. In Bombay the Governor claimed this right even with regard to the services functioning under the Executive Councillors and to make it known that the Governor has this power ; the ordinary form " the Governor in Council is pleased to appoint " was changed to " Governor is pleased to appoint". The position assigned to the Secretary of a Ministerial Department also helped to weaken the authority of the minister and to increase the autocracy of the Governor. For, in all cases, where the Secretary differed from the decision of the ministers, he was permitted to approach the Governor over the head of his political chief and get his decision altered by the fiat of the Governor.

10. All this undoubtedly had an adverse effect on the satisfactory working of dyarchy. But what I wish to guard against is the inference often drawn that in the absence of these factors dyarchy could have been a workable system of Government. For I maintain that dyarchy is in itself an unworkable system of Government. Fortunately for me I am not alone in holding this opinion. The Government of Bombay, some members of which individually support the continuance of the system of dyarchy, has itself condemned it in 1919, as an unworkable system in words which are worth quoting : " A reference to the records of Government will show that there is scarcely a question of importance which comes up for discussion and settlement in any of the departments of Government which does not require to be weighed carefully in the light of considerations which form the province of another department of Government. The primary duty of the Government as a whole is to preserve peace and order, to protect the weak against the strong, and to see that in the disposal of all questions coming before them the conflicting interests of the many different classes affected receive due attention. And it follows from this that practically all proposals of importance put forward by the Minister in charge of any of the departments suggested for transfer.....will involve a reference to the authorities in charge of the reserved departments..... there are few, if any, subjects on which they (the functions of the two portions of the Government) do not overlap.

Consequently the theory that, in case of a transferred subject in charge of a Minister, it will be possible to dispose it off without reference to departments of Governments concerned with the control of reserved subjects is largely without foundation."

11. The dualism due to division of subjects is but one of the inherent defects which makes dyarchy unworkable. There is also another. Under it, it is no unity can be secured only by a common allegiance arising out of a common mandate. Ministers who are appointed from the legislature are bound to feel a real obligation towards that body that indeed is the reason why they are appointed and they would not serve their intended purpose unless they felt such obligation. But every link that binds them to the legislature works only to separate them from their official colleagues with the result that the dualism inherent in dyarchy tends to come to the surface. Once this dualism has established itself between the two halves of government — and the many instances in which Ministers and Executive Councillors have opposed each other by speech and vote in open Council prove its possibility — government must become impossible. This dualism in dyarchy is kept in check by a coalition. But this coalition is a forced and artificial union between two parties with totally different mandates and can easily lead to an impasse. That such an impasse has not occurred in the Bombay Presidency does not negative this inherent defect in dyarchy. It only throws in clear relief that in this coalition the ministers had surrendered themselves to the Councillors.
12. Notwithstanding these inherent defects, there are people who hold that dyarchy has been successfully worked in this Presidency. That view can be agreed to only if it means that the Governor was not obliged to suspend the constitution or to bring into operation the emergency powers given to him by the Government of India Act. This is true. But the question is not whether dyarchy worked. The question is whether it worked as a responsible form of Government. For it must not be overlooked that in 1919 there were many other alternative forms of Government competing with dyarchy for acceptance. There was the Congress League Scheme and there was the Scheme by heads of the Provinces, to mention no others. But all these schemes were rejected in preference to dyarchy because they failed to satisfy the tests of responsible government. Any estimate of the working of the dyarchical system of Government must therefore be based upon that supreme consideration alone. If we bear this fact in mind and then attempt to evaluate the working of dyarchy, the conclusion that in this province dyarchy has been a failure is beyond dispute. Responsible government means, that the Executive continues to be in office only so long as it

commands a majority in the House. That is the essence of the doctrine of ministerial responsibility. Now if we apply this test to the working of dyarchy in the Bombay Presidency and take into account the occasions on which the Council divided on motions relating to the transferred subjects, we find a most unedifying spectacle that the ministers have been defeated time and again on the floor of the House and yet they have continued in office as though nothing had happened. This lamentable tale is told by the following table :—

Year	Total No. of Divisions	No. of divisions in which Govern-ment were neutral	No. of Government defeats	No. of Government defeats if official block is eliminated	No. of Government successes	No. of ties
1921	3		2	2	1	
1922	17		4	8	9	
1923	4	1	1	2	1	
1924	19		10	14	5	1
1925	30	1		11	18	
1926	3			1	2	1
1927	26		3	10	16	
1928	2		1	1	1	

These figures show that in 1921 out of three divisions the ministers were defeated on 2 ; in 1922 out of 17 on 8; in 1924 out of 19 on 14 ; in 1925 out of 30 on II; in 1926 out of 3 on 1; in 1927 out of 26 on 10 ; in 1928 out of 2 on 1. Notwithstanding this there has never been a case in this Presidency of a minister having resigned. With these facts before us it is impossible to agree to any conclusion which implies the dyarchy has worked as a responsible system of government.

13. It is of course open to argument that if the ministers did not resign it is because the Council did not intend by these divisions to indicate want of confidence; otherwise it would have refused supplies to the ministers whom it had discredited by its adverse vote. That the Bombay Legislative Council was too effete to impose its will effectively upon the ministers is a fact too well known to need mention. Its division into cliques and factions, its vicious way of following men rather than principles, made it a toy in the bands of the executive, so much so, that the House as a whole failed to exercise even the selective function which any popular House conscious of its power is expected to fulfil. Any popular House, howsoever dominated by

the executive, will not tolerate the candidature of any member of the House for office unless he shows that he has some power of speech, some dexterity in the handling of a subject, some readiness of reply and above all some definite vision which can constitute the basis of a rational policy of social and economical betterment. Even in England where the dominance of the cabinet is as complete as it could be, no Prime Minister in filling the subordinate offices of Government will choose men who have not shown themselves acceptable to the House of Commons. The Legislative Council of Bombay was incapable even of this, with the result that the choice for political office did not always fall on the best man available. But supposing that the Council being better organised, had imposed its will more effectively on the executive. What would have been the result ? Would it have made dyarchy work as a responsible form of Government ? My answer is emphatically in the negative. For, any effective action on the part of the legislature against the Executive can produce only one result, namely, it will lead to the use by the Governor of the emergency powers of suspension and certification, which are entrusted to him under the Act. That this is the inevitable result of strong action on the part of the legislature is the testimony of all provinces where the constitution has been suspended. But to admit this is to admit that the moment the Council begins to assert its power to the fullest extent dyarchy must crumble unless jacked by the emergency powers of the Governor. It is therefore obvious that in either case dyarchy fails. It fails by the inaction of the legislature as in the Bombay Presidency. It fails as much by the action of legislature as in Central Provinces. In the one case by reason of the weakness of the legislature the executive gets the freedom to be irresponsible. In the other case the legislature by force of action compels the Governor to keep into being an irresponsible executive.

14. Many have suggested that dyarchy would have worked better if the Governor has chosen to conduct himself as a constitutional head in accordance with the provisions of Section 52(3) and the advice given by the Joint Parliamentary Committee. I do not share this view. First of all there is no foundation of facts to support the contention that the Governor was bound to act as a constitutional head. It is often forgotten that though the dyarchical form of government was selected as being a responsible form of government implying that the Governor in relation to the ministers was to be a constitutional head. But the Joint Report made it quite clear that be was not to be reduced to that position. They expressly stated, " We do not contemplate that from the outset the Governor should occupy the position of a purely constitutional Governor who is bound to accept the

decision of his ministers. We reserved to him the power of control because we regard him as generally responsible for his administration". Nor did the Joint Parliamentary Committee recommend that he should work as a constitutional Governor. The Committee distinctly stated in paragraph 5 of their Report that the Ministers will be assisted and guided by the Governor who will accept their advice and promote their policy whenever possible. This is far from saying that the Committee intended him to function as a constitutional head. Indeed such an intention would be inconsistent with the provisions of the Act under which the Governor's dictatorial powers were expressly reserved and nothing that is said in the Joint Report or in the Report of the Parliamentary Committee nullifies their use; so that if the Governor has himself governed and has not allowed the ministers to govern through him it is no fault of his. But granting that the Governor should have acted as a constitutional head, the question again is, would it have made dyarchy workable as responsible form of government? My answer to this question is also in the negative. For, as I see the situation, if you take away the power of the Governor and make him a constitutional head, you thereby expose the existence of the reserved side of the Government to an attack from a popularly elected chamber. From this peril the reserved side deprived of the protection of the Governor has only one escape and that is to consent to be ruled by the wishes of the Council. In other words, if you remove them from the leap of the Governor, you have no other alternative except to place them on the same footing as the transferred side. But this is only another way of slating that if the desire is to reduce the position of the Governor to that of a constitutional head you must first put an end to dyarchy.

15. So far I have argued against the view that dyarchy is not a system which is made unworkable by certain other factors and in support of the view that owing to its inherent defects, it is not only unworkable but it is incapable of being worked as a responsible form of a government. Of course dyarchy with complete dualism involving the functioning of two separate governments and two separate legislatures, in one the legislature is subordinate to the executive and in the other the executive is subordinate to the legislature, is free from the criticism which has been urged above against the system of dyarchy-with-dualism such as is in operation. But the alternative of dyarchy-with-dualism was rejected by the Government of India in 1919 and is open to the same objections which apply to the system of government that was established by the Morley-Minto Reforms and which have never been so forcibly voiced as in the Montague-Chelmsford Report. A return to such a system at this stage in the evolution of political

life in India is unthinkable and I therefore refrain from saying anything on a possible recourse to such a system. The only alternative left is to discontinue dyarchy and transfer all subjects to the control of the ministers.

16. So far the general grounds of my opposition to the recommendations of my colleagues who have given their sanction to the continuance of dyarchy have been stated. I now proceed to state my grounds of objection to the continued reservation of the particular subject, namely law and order. The principal reason urged against the transfer of law and older to the charge of a minister is that being subject to the wishes of the electorates and being removable by an adverse vote of the Council the minister will not be able to administer the department impartially. The inevitable consequence of such a situation, it is feared, will be that the services working in the administration of that department will be placed in a false position. Never knowing when they will be supported and when they will be censured, the uncertainty will paralyse their action to the grave detriment of peace and good government. It is further urged that in view of the series of Hindu-Moslem riots which have, of late, become so very common we ought not to transfer law and order to the control of a minister who is subject to the vagaries of public opinion and who is likely to be swayed by communal prejudices, Hindu or Moslem.
17. To be frank this argument has produced no effect upon me although my colleagues seem to have been considerably impressed by it. It is one of the stock arguments of bureaucracy. To admit its force is to accept that bureaucratic government is the best form of government Unfortunately bureaucratic government has been known to India too long for anybody to be deceived by any such argument. It is so extravagant that its acceptance would involve the negation of all responsible government. Whatever its antecedents, responsible government, it must be recognised has come to stay in India. Any change time can bring along with it must be in the direction of expansion of the principle. Any Plan therefore which hinders the broadening of this basic principle must create a serious conflict between the Government and the people. Nor does it appear to me that there exists any ground why we should needlessly give rise to such a conflict by acting upon the bureaucratic argument. For, in my opinion, the fear that the ministers will succumb to the clamour of their followers in the House or that their followers will be malevolent in their attitude is not backed by experience and in so far as it is, it does them a great injustice. The suspension of the Local Boards and Municipalities which had been captured by the non-co-operators in 1922 at a time when Mr. Gandhi was in the plenitude of his power gives us hope to say that ministers can be

trusted to act independently of the wishes of the electorates when such an action is demanded of them. Members of Government will I am sure testify that the Bombay Legislative Council has invariably acted with the necessary restraint which consciousness of responsibility always brings with it. But even if one is compelled to admit that the House may not keep itself unruffled on occasions of communal feeling and communal clash this is no argument against transfer. For one may point out in reply that no community whatever its attitude towards another has any vested interest in disorder such as will induce its accredited representatives to be so irresponsible as to lead them to work against peace and goodwill. The fear therefore which operates on the mind of those who support the reservation of law and order is merely the fear of the unseen, unknown and the untried. My colleagues in not recommending the transfer are no doubt adopting a most cautious course. But I am not certain that they are thereby following the wisest course. For, there is such a thing as too much caution which prohibits the liberty to make an experiment which the wisest course must demand in order to find out whether or not the fear is real. The very same fear of the unknown which is now urged against the transfer of law and order was urged in 1919 against the transfer of the subjects now entrusted to the control of the ministers. But they were all brushed aside by the Secretary of States and the Government of India who both consented to take the leap in the dark. I prefer to adopt the same course with respect to law and order.

18. But there is another reason why if we are to make the experiment it is wise that we should make it without delay. It is obvious that the transfer of a subject brings in its wake an increase in the number of Indians employed in the services. It is possible that the Indians might be less efficient, at any rate, less experienced than the European members of the staff. To postpone the transfer of law and order is therefore to increase the dangers incident upon every transitional stage. Consequently it is much the safest to take the step at once and emerge through that stage while the experienced trained civil servants, who could be relied upon to loyally assist in working the new constitution with as little dislocation as possible, are still with us. Fortunately for me this suggestion comes from a very important authority, in fact it comes from an experienced civil servant, who supplied his views in a note to Mr. Barker who has reproduced the same in his book on the " Future of Government of India and the I.C.S.".

" I propose to state," says Mr. Barker, " the lines of such criticism, as it is advanced in a Note written by an experienced civil servant..... In the first place it is urged by the author of the Note that the maintenance of law and

order, and matters concerned with land revenue and tenancy rights, ought to be transferred." " These departments," he urges, " are administered under Government by the strongest and most able branch of all the services in India — the Indian Civil Service. The principles of their administration have long been laid down, and are well understood. The service has great tradition behind it which will ensure that, that. administration will get the best assistance and most outspoken advice..... It is admitted that the people of India are quiet and easily governed people, though occasionally liable to excitement over things affecting their caste or religion. The task of maintaining law and order is not therefore a very difficult one..... the argument that land revenue and tenancy questions affect the interest of the masses rather than of the classes who will be represented in the Legislature (and therefore, on the fifth of the canons mentioned above, should not be transferred) is absolutely inconsistent with the franchise and electorate scheme which has been put forward for the Provinces..... The convinced advocate of the compartmental system who is afraid to transfer some at any rate of the departments concerned with law and order and with revenue administration admit that he is afraid of his own scheme. I, though I am not an advocate of dyarchy, should not be afraid to make the experiment, because I should hope to find among the Ministers that common sense, goodwill, and forbearance which are essential to the success of any scheme, dyarchical or not."

19. I quite realise the anxiety of the minorities in respect of the transfer of law and order. But it is somewhat difficult to understand how they expect to gain by its reservation. There will be no difference between a bureaucrat in charge of law and order and a minister from the standpoint of personal bias if the bureaucrat is to be an Indian. If he is to be a European, then the most that can be said of him is that he will be a neutral person. But this is hardly an advantage. For, there is no guarantee that a neutral person will also be an impartial person. On the contrary a person who is neutral has also his interests and his prejudices and when he has no such interest he is likely to be ignorant. The European personal of the bureaucrat is therefore a doubtful advantage to the minorities who are anxious for the reservation of law and order. What however passes my comprehension is the failure of some of the representatives of the minorities to realise the great advantage which the ministerial system gives them as against the bureaucratic regime. For the best guarantee which the minorities can have for their own protection is power to control the actions of the executive. The bureaucratic system is impervious to this control. If it protects the minorities it is because it likes to do so. But if on any occasion it chooses not to take action, the

minorities have no remedy. In other words, a minister can be dictated to; but a bureaucrat may not even be advised. This it seems to me is a vital difference between the regime of the bureaucrat and the regime of the minister. Personally myself, I do not see how the minorities will lose by the transfer of law and order and I say this, although I belong to a minority whose members are treated worse than human beings. My view is that in a Legislature where minorities are adequately represented, it is to their advantage that law and order should be transferred. For, such transfer gives them the power of control over the administration of the subject which is denied to them under reservation. I think the minorities should consider seriously whether there is not sufficient truth in the statement that a rogue does better under the master's eye than an honest man unwatched; and if they do, I think they will realise that they can with good reason prefer inferior officers, over whom they can exercise an influence, to the most exemplary of mankind entirely free from such responsibility.

20. There is however another and a more important reason why Minorities prefer reservation to transfer. It is because their representation in the Legislature is so small as to make them inconsequential. From the standpoint of the minorities, the choice obviously is between reservation and no representation on the one hand and transfer and adequate representation on the other. Here again the second alternative must be deemed to be more beneficial than the first. It would therefore be more in the interest of the minorities to insist on adequate representation than to persist in opposing the transfer of law and order. But, if the fear of mal-administration in the department of law and order to the prejudice of the minorities cannot be allayed by the grant of adequate representation to the minorities, I am prepared to add a proviso to my recommendation to the effect that if a minority of say 40 per cent. in the Legislative Council should decide by a vote that law and order be a reserved subject, it shall then be withdrawn from the list of transferred subjects. I make the proposal in preference to that of the Majority, because I hold that some day the subject shall have to be transferred if the principle of responsible government laid down in the Pronouncement of 20th August, 1917, is to be made good and that the proposal while it does not come in the way of giving effect to it immediately it does not preclude the possibility of cancelling the transfer, if experience shows that the fears entertained about it are well founded.

CHAPTER 2
THE EXECUTIVE IN WORKING

21. The introduction of a unified government based on ministerial responsibility gives rise to four important questions. Of these the first pertains to the stability of the executive, the second to communal representation in the Executive, the third to the enforcement of the responsibility *of* the Executive and the fourth to the mutual relation among the members of the Executive.
22. Regarding the first question it is said that owing to the communal bias of the members of the legislature, the legislature is bound to be composed of groups. With attachment to community more pronounced than loyalty to principles, the ministry may find itself resting on uncertain foundation of communal allegiance measured out in proportion to communal advantage so that if communities choose to transfer their allegiance according to their will and without reference to principles, ministries may crumble as soon as they are formed. To prevent such an evil it is proposed that the ministry might be formed from a panel of men chosen by the various groups in the Council and once it is formed it should be made irremovable during the lifetime of the Council. I recognise that the fear of an unstable executive may come true. But I do not think that it calls for a remedy or a remedy of the kind suggested. India is not the only country with the group tendency manifesting itself in the Legislature. The French Chamber of Deputies is a more glaring instance of the group tendency involving frequent disruption of the ministeries. All the same the French have felt that the situation, bad as it is, is not so intolerable as to call for a remedy. But assuming that what is anticipated comes true and the situation becomes intolerable, I am convinced that the remedy is not the right one. That the remedy will immensely weaken the responsibility of the ministers is beyond dispute. What, however, I am afraid of, is that the scheme instead of making for the coalescence of the groups will only serve to harden and perpetuate them; so that the remedy far from curing the disease will only aggravate it. The true remedy appears to me to lie along the line of reconstruction of the existing electorates.
23. I am totally opposed to the recognition of communal representation in the executive of the country. Under it, the disease will break out in its worst form in a most vital organ of the governmental machinery. It will be a dyarchy or triarchy depending upon the number of communities that will have to be recognised as being entitled to representation in the cabinet. It will no doubt be a communal dyarchy somewhat different from the political dyarchy which we have today. But that will not make it better than political dyarchy. The defects inherent in the one are inherent in the other and if the aim of constitutional reconstruction is a unified government, dyarchy in its communal form must be as summarily rejected as dyarchy in its political

form. Indeed there is greater reason for the rejection of communal dyarchy than there is for the rejection of political dyarchy. For under political dyarchy the possibility of a Government based on principle exists. But communal dyarchy is sure to result in a Government based on class ideology.

24. It is a cardinal principle of the constitutional law of Great Britain and the self-governing Dominions that every minister is amenable to the law Courts. Indeed it is owing to this wise principle that British subjects at home and in the Dominions are secure in person and property against ministerial wrong doing. India alone stands in strange contrast with Great Britain and the Dominions in the matter of legal responsibility of the Executive for illegal acts. During the course of a better conflict between the judiciary headed by Sir Iliajah Impey and the Executive backed by Warren Hastings, the Executive in India as early as 1780 secured for itself immunity from the control of the Courts. That immunity has been continued to it ever since and now finds its place in sections 110 and III of the Government of India Act. Such an immunity was tolerated because it was local and not general. For it was provided that members of the Executive who could not be prosecuted in India were liable to prosecution in England for illegal acts done in India. This system of accountability if it was remote was none the less efficacious because under the old regime almost every member of the Executive by reason of the fact that he was a European returned to England. The composition of the Executive has now undergone a change. It is largely Indian in personnel and as the chances of any one of them going to England are so rare their liability can never in fact be enforced. The situation as it now stands provides no remedy either immediate or remote against wrongful acts of ministers. To allow the situation to continue, is to destroy the very basis of constitutional government. I therefore recommend that sections 110 and 111 of the Government of India Act should be amended so as to allow all British subjects, whether Indian or European, the right to resort to the Courts in respect of illegal acts ordered by ministers. Such a change in the law was urged in 1919 in respect of ministers. But it was not then accepted because its acceptance, it was thought, would introduce an invidious distinction between Ministers and Executive Councillors. With the introduction of full responsible government in the Provinces, this objection does not survive.

25. I hold so strongly to the view of enforcing legal responsibility of ministers for illegal acts that I propose that the constitution should provide for the constitution of a tribunal composed of the Legislature or partly of the Legislature and partly of the Judiciary before which ministers may be

impeached for acts unlawful in themselves or acts prejudicial to the national welfare. I am aware that owing to the introduction of ministerial responsibility impeachment has fallen into disuse. But I feel that ministerial responsibility in India is only in the making and until the Legislature and the Executive have become conscious of its implications it is better to provide a more direct means of curbing the extravagances of power in the hands of men who are unused to it and who may be led to abuse it by excessive loyalty to caste and creed. A safeguard is never superfluous because it is not often invoked.

26. In determining the relationship between the members of the executive — whether each should be liable for his acts only or whether each should be liable for the acts of all, in other words, whether the liability should be individual or joint — is a question on which no one can dogmatise. All the same I am for joint responsibility. I am aware that under it the Legislature is practically helpless in the matter of punishing a delinquent minister. With joint responsibility the legislature will not be able to dismiss a minister of whose acts it disapproves; it will not be in position even formally to censure him, unless it is prepared to get rid of his colleagues as well. This no legislature functioning with a parliamentary executive dare do. For if it does, and overthrows the executive, the executive will also overthrow the Legislature by asking for a dissolution. Notwithstanding this defect, I am in favour of joint responsibility and for two reasons. In a modern state the function of the executive as an administering body applying legislation has become a secondary function. Its main function is to determine policy and submit proposals to the Legislature. Indeed so necessary is the function that the usefulness of the Legislatures would be considerably diminished if the executive failed to perform it. But in order that the executive may perform the function of policy-making, there must be a unity of outlook among its members. Such a unity of outlook will not be possible without complete coherence in the executive. Joint responsibility, it appears to me, can alone ensure such coherence. Second reason why I recommend joint responsibility is because I fear that the principle of individual responsibility will never permit the growth of a common political platform transcending the boundaries of caste and creed. It will perpetuate groups and the Presidency will for ever be condemned to a rule of Government by Coalition of groups which by their readiness to form new combinations, will plague the administration with instability and which by their preference for a policy of manoeuvres to a policy of ideas, will fatally affect the integrity of the work of the administration. Under joint responsibility although a party may be a collection of units of varying views yet members of each unit, not

only shall be forced to do the best they can to formulate a unified policy but will be compelled to be bound by it. The habit of submitting to a party programme which is wider than the group programme will furnish a kind of education, the need of which must be keenly felt by all who know the conditions of India.

27. How to secure joint responsibility is a matter of some importance. To do it by express terms of law will leave no liberty either to the Head of the administration or the Legislature to dismiss a minister without dismissing the whole of the executive. It is therefore better to leave it to convention. The question how to make the convention operative still remains. It seems to me that if instead of the Governor choosing the ministers, the task was entrusted to one of the ministers to choose his colleagues, a cabinet so formed is bound to function on the basis of joint responsibility and would yet leave room for getting rid of an individual minister without changing the whole personnel of the government. I therefore suggest that the Governor should be instructed not to undertake directly the task of appointing individual ministers but to choose a chief minister and leave to him the work of forming a government.

28. My colleagues have recommended that there should be 7 ministers to take charge of the administration of the Presidency. I am unable to concur in the recommendation in so far as it fixes the number of ministers. It may be that the future government of the Presidency might be able to do with less than 7 or may feel the necessity for having more than 7 to make no mention of having to appoint ministers without portfolios for satisfying the personal ambitions of members of the Legislature without whose support it may not be possible to carry on the government of the Province. Under these circumstances the wisest course seems to me to leave the question of the number of ministers open to be determined by the Legislature of the day.

CHAPTER 3
THE POSITION AND POWERS OF THE GOVERNOR

29. Under the existing constitution the Governor of a Province does not occupy a well defined position. He has not the position of a constitutional head representing the Crown in the Province without any responsibility for the government of the Province. Nor is his position such as to invest him with a complete direction of the affairs of the Province. His position partakes of both. Such a position for the Governor which makes him play the double role of an autocrat and a constitutional head is not a very happy position either from the standpoint of the Governor or from the standpoint of smooth

working of the governmental machine. Whatever the nature of the difficulties of the position of a Governor was made to occupy it was quite consistent with the type of the constitution that was introduced in 1919. As the constitution did not grant full responsible government the Governor was naturally not reduced to the position of a constitutional head. On the other hand, as the direction of the affairs of the Provinces was in some departments at any rate, transferred to responsible ministers, the Governor was not permitted to retain his former position as an irresponsible head. The change in the position of the Governor was thus based on an intelligent principle of reducing the executive powers of the Governor in direct ratio to the advance made towards responsible government. Following the logic of the principle laid down in 1919, of making the position of the Governor to accord with the transfer of responsibility, I recommend that the Governor of the Province should be reduced to the position of a constitutional head. Indeed no other position for the Governor can be thought of, which will be compatible with the system of full responsible government.

30. Regarding his powers he shall have in his capacity as representing the Crown in the Executive of the Province the power to make appointments to the Cabinet. In the same capacity, he will have the ultimate power of giving or refusing sanction, to any order proposed by the minister in any matter pertaining to any branch of the administration. As representing the Crown in the Legislature he will have in dealing with Bills passed by the Council the power (1) to assent, (2) to reserve assent pending signification of His Majesty's pleasure and (3) to refuse assent.
31. The exercise of these powers given to the Governor must of course be made conditional upon the formula that it must be with the advice of ministers responsible to the Legislature. This does not mean that he will not have the discretion to disagree with his ministers. Far from that being the case, he will retain the liberty not merely to tell his ministers that he does not approve of their policy but actually to dismiss the ministers who persist in a policy to which he is opposed. For there cannot be any obligation on a constitutional head compelling him to follow a minister responsible to a Legislature. The essence of his obligation is to follow the general wish of the electors and if he appears to follow the minister it is because a minister is supposed to represent the will of the electors. But there may be occasions when he may have reasons to doubt that the minister correctly represents the Will of the general electorates. Consequently not only do the constitutions of all responsible governments recognise this possibility but they actually provide him with all possible means of ascertaining what the

Will of the electorates is. For that purpose the constitution of every responsible government permits the Governor to dismiss the ministers and appoint others who agree with him in the hope that the Legislature will support them. If the Legislature refuses support to the new ministers, the constitutions of all responsible governments permit him another resource that of an appeal to the electorates in the hope that they might support him. These resources the Governor of the Province must be allowed. But it is also necessary to bear in mind that no constitution gives him larger powers than these. If after the ascertainment of the Will of the electorates, it is found that the decision has gone against him the constitution of every responsible government leaves him no other alternative but to yield, abdicate or fight. The Governor of a Province must be content with these resources. Under no circumstances can he have independent powers of action such as he has under the present constitution to certify measures not passed by the Legislature, sanction expenditure refused by the legislature or suspend the constitution by dismissing the ministers and assuming the direction of affairs himself. What is necessary therefore for making the Governor a constitutional head is to take away his powers of certification and suspension and thus make it impossible for him to act independently of ministers responsible to the Legislature.

32. The precise language of the Section in which the obligation of the Governor to act on the advice of the minister is a matter of some moment Section 52(3) which deals with this seems to be too vaguely worded. It is too indefinitely worded to secure the desired end. Instead of stating that the Governor shall act on the advice of his ministers it would be better if the Section stated that no order of the Governor shall be valid unless it is countersigned by a minister. The obligatory force of such language is obvious. Accordingly I recommend such a change in the language of the Section.

33. Along with the definition of the powers of the Governor, the place of the Governor in the Executive must also be defined. Being relieved from the responsibility for the direction of affairs the function of the Governor becomes supervisory rather than executive. His main business will be to see that those on whom the responsibility will now fall do not infringe the principles enunciated in the constitution for their guidance. In order that he may perform this function, he must be independent of local politics. That independence is absolutely essential to unprejudicial supervision. The best way of keeping him independent is to keep him away from the executive. Nothing will undermine public confidence in his impartial judgement so much as a direct participation by the Governor in political controversies nor

can it be doubted that his association in the public mind with the controversies between the Legislature and the Executive will have any other result. If the Governor is to discharge his functions in a manner that will be regarded as fair it is very important that he must be above party. For that purpose he must be emancipated from the Executive as he has been dissociated from the Legislature. I therefore recommend that it should be provided that the Governor shall not be a part of the Executive nor shall he have the right to preside over it. The meetings of the Executive shall be summoned and presided over by the Prime Minister without any intervention of the Governor.

SECTION III

PROVINCIAL LEGISLATURE

CHAPTER I

FRANCHISE

34. My colleagues have recommended that the franchise in urban areas should remain as it is and that in rural areas the land revenue assessment should be halved. I am unable to agree to this. My colleagues have treated the question of franchise as though it was a question of favour rather than of right. I think that such a view is too dangerous to be accepted as the basis of political society in any country. For if the conception of a right to representation is to be dismissed as irrelevant; if a moral claim to representation is to be deemed as nothing but a metaphysical or sentimental obstruction; if franchise is considered a privilege to be given or withheld by those in political power according to their own estimate of the use likely to be made of it, then it is manifest that the political emancipation of the unenfranchised will be entirely at the mercy of those that are enfranchised. To accept such a conclusion is to accept that slavery is no wrong. For slavery, too, involves the hypothesis that men have no right but what those in power choose to give them. A theory which leads to such a conclusion must be deemed to be fatal to any form of popular Government, and as such I reject it in toto.

35. My colleagues look upon the question of franchise as though it was nothing but a question of competency to put into a ballot box a piece of paper with a number of names written thereon. Otherwise they would not have insisted upon literacy as a criterion for the extension of the franchise. Such a view of the franchise is undoubtedly superficial and I involves a total misunderstanding of what it stands for. If the majority had before its mind the true conception of what franchise means they would have realised that franchise, far from being a transaction concerned with the marking of the

ballot paper, " stands for direct and active participation in the regulation of the terms upon which associated life shall be sustained and the permit of good carried on." Once this conception of franchise is admitted, it would follow that franchise is due to every adult who is not a lunatic. For, associated life is shared by every individual and as every individual is affected by its consequences, every individual must have the right to settle its terms. From the same premises it would further follow that the poorer the individual the greater the necessity of enfranchising him. Form in every society based on private property the terms of associated life as between owners and workers are from the start set against the workers. If the welfare of the worker is to be guaranteed from being menaced by the owners the terms of their associated life must be constantly resettled. But this can hardly be done unless the franchise is dissociated from property and extended to all propertyless adults. It is therefore clear that judged from either point of view the conclusion in favour of adult suffrage is irresistible. I accept that conclusion and recommend that the franchise should be extended to all adults, male and female, above the age of 21.

36. Political justice is not the only ground for the introduction of adult suffrage. Even political expediency favours its introduction. One of the reasons why minorities like the Mohammedan insist upon communal electorates is the fear that in a system of joint electorates the voters of the majority community would so largely influence the election that seats would go to men who were undesirable from the standpoint of the minority. I have pointed out in a subsequent part of the report that such a contention could be effectively disposed of by the introduction of adult suffrage. The majority has given no thought to the importance of adult suffrage as an alternative to communal electorates. The majority has proceeded as though communal electorates were a good to be preserved and have treated adult suffrage as though it was an evil to be kept within bonds. My view of them is just the reverse. I hold communal electorates to be an evil and adult suffrage to be a good. Those who agree with me will admit that adult suffrage should be introduced not only because of its inherent good but also because it can enable us to get rid of the evil of communal electorates. But even those whose political faith does not include a belief in adult suffrage, will, I am sure, find no difficulty in accepting this view. For it is only common-sense to say that a lesser evil is to be preferred to a greater evil and there is no doubt that adult suffrage, if it is at all an evil, is a lesser evil than communal electorates. Adult suffrage, which is supported by political justice and favoured by political expediency, is also, I find, demanded by a substantial body of public opinion. The Nehru Committee's

report, which embodies the views of all the political parties in India except the Non-Brahmins and the Depressed Classes, favours the introduction of adult suffrage. The Depressed Classes have also insisted upon it. The Sindh Mohammedan Association, one Mohammedan member and one Non-Brahmin member of the Government of Bombay, have expressed themselves in favour of it. There is thus a considerable volume of public opinion in support of adult franchise.' My colleagues give no reason why they have ignored this volume of public opinion.

37. Two things appear to have weighed considerably with my colleagues in their decision against the introduction of adult suffrage. One is the extent of illiteracy prevalent in the country. No one can deny the existence of illiteracy among the masses of the country. But that this factor should have any bearing on the question of franchise is a view the correctness of which I am not prepared to admit. First of all, illiteracy of the illiterate is no fault of theirs. The Government of Bombay for a long time refused to take upon itself the most important function of educating the people, and, when it did, it deliberately confined the benefit of education to the classes and refused to extend it to the masses.

(Lest this fact should be regarded as a fiction, I invite attention to the extracts from the Report of the Board of Education of the Bombay Presidency for the year 1850-51. (These extracts are printed at the end of this report as Appendix at pages 402-06.—*Editor)*

38. It was not until 1854, that Government declared itself in favour of mass education as against class education. But the anxiety of Government for the spread of education among the masses has gone very little beyond the passing of a few resolutions. In the matter of financial support Government always treated education with a most niggardly provision. It is notorious, how Government, which is always in favour of taxation refused to consent to the proposal of the Honourable Mr. Gokhale for compulsory primary education, although it was accompanied by a measure of taxation. The introduction of the Reform has hardly improved matters. Beyond the passing of a Compulsory Primary Education Act in the Presidency there has not been any appreciable advance in the direction of mass education. On the contrary there has been a certain amount of deterioration owing to the transfer of education to local authorities which are manned, comparatively speaking, by people who being either indifferent or ignorant, are seldom keen for the advancement of education.

39. In the case of the Depressed Classes the opportunity for acquiring literacy has in fact been denied to them. Untouchability has been an insuperable bar in their way to education. Even Government has bowed before it and has sacrificed the rights of the Depressed Classes to admission in public

schools to the exigencies of the social system in India. In a resolution of the year 1856 the Government of Bombay in rejecting the petition of a Mahar boy to a school in Dharwar observed :

" The question discussed in the correspondence is one of very great practical difficulty.....

" 1. There can be no doubt that the Mahar petitioner has abstract justice in his side; and Government trust that the prejudices which at present prevent him from availing himself of existing means of education in Dharwar may be are long removed.

" 2. But Government are obliged to keep in mind that to interfere with the prejudices of ages in a summary manner, for the sake of one or few individuals, would probably do a great damage to the cause of education. The disadvantage under which the petitioner labours is not one which has originated with this Government, and it is one which Government cannot summarily remove by interfering in his favour, as he begs them to do."

The Hunter Commission which followed after the lapse of 26 years did say that Government should accept the principle that nobody be refused admission to a Government College or School merely on the ground of caste. But it also felt it necessary to say that the principle should " be applied with due caution " and the result of such caution was that the principle was never enforced. A bold attempt was, no doubt, made in 1921 by Dr. Paranjpye, when he was the Minister of Education. But as his action was without any sanction behind it, his circular regarding admission of the Depressed Classes to Schools is being evaded, with the result that illiteracy still continues to be a deplorable feature of the life of the Depressed Classes.

40. To the question that is often asked how can such illiterate people be given the franchise, my reply therefore is, who is responsible for their illiteracy ? If the responsibility for illiteracy falls upon the Government, then to make literacy a condition precedent to franchise is to rule out the large majority of the people who, through no fault of their own, have never had an opportunity of acquiring literacy provided to them. Granting that the extension of franchise must follow the removal of illiteracy what guarantee is there that efforts will be made to remove illiteracy as early as possible ? The question of education like other nation-building questions is ultimately a question of money. So long as money is not forthcoming in sufficient amount, there can be no advance in education. How to find this money is therefore the one question that has to be solved. That a Council elected on the present franchise will never be in a position to solve the problem is

beyond dispute. For the simple reason that money for education can only be provided by taxing the rich and the rich are the people who control the present Council. Surely the rich will not consent to tax themselves for the benefit of the poor unless they are compelled to do so. Such a compulsion can only come by a radical change in the composition of the Council which will give the poor and illiterate adequate voice therein. Unless this happens the question of illiteracy will never be solved. To deny them that right is to create a situation full of injustice. To keep people illiterate and then to make their illiteracy the ground for their non-enfranchisement is to add insult to injury. But the situation indeed involves more than this. It involves an aggravation of the injury. For to keep people illiterate and then to deny them franchise which is the only means whereby they could effectively provide for the removal of their illiteracy is to perpetuate their illiteracy and postpone indefinitely the day of their enfranchisement.

41. It might be said that the question is not who is responsible for illiteracy ; the question is whether illiterate persons should be given the right to vote. My answer is that the question cannot be one of literacy or illiteracy ; the question can be of intelligence alone. Those who insist on literacy as a test and insist upon making it a condition precedent to enfranchisement in my opinion, commit two mistakes. Their first mistake consists in their belief that an illiterate person is necessarily an unintelligent person. But everyone knows that, to maintain that an illiterate person can be a very intelligent person, is not to utter a paradox. Indeed an appeal to experience would fortify the conclusion that illiterate people all over the world including India have intelligence enough to understand and manage their own affairs. At any rate the law presumes that above a certain age every one has intelligence enough to be entrusted with the responsibility of managing his own affairs. The illiterate might easily commit mistakes in the exercise of the franchise. But then the Development Department of Bombay has fallen into mistakes of judgement equally great which though they are condemned, are all the same tolerated. And even if they fall into greater errors it may still be well that they should have franchise. For all belief in free and popular Government rests ultimately on the conviction that a people gains more by experience than it loses by the errors of liberty and it is difficult to perceive why a truth that holds good of individuals in non-political field should not hold good in the political field. Their second mistake lies in supposing that literacy necessarily imports a higher level of intelligence or knowledge than what the illiterate possesses. On this point the words of Bryce might be quoted. In his survey of " Modern Democracies " he raises the question how far ability to read and write goes

towards civic competence and answers thus : " Because it is the only test practically available, we assume it to be an adequate test. Is it really so ? Some of us remember, among the English rustics of sixty years ago shrewd men, unable to read but with plenty of mother wit, and by their strong sense and solid judgement quite as well qualified to vote as are their grand-children today who read a newspaper and revel in the cinema..... The Athenian voters..... were better..... fitted for civic franchise than most of the voters in modern democracies. These Greek voters learnt politics not from the printed and, few even from any written page, but by listening to accomplished orators and by talking to one another. Talking has this advantage over reading, that in it mind is less passive. It is thinking that matters, not reading, and by thinking, I mean the power of getting at facts, and arguing consecutively from them. In conversation there is a clash of wits, and to that some mental exertion must go..... But in these days of ours reading has become substitute for thinking. The man who reads only the newspaper of his own party, and reads its political intelligence in a medley of other stuff, narratives of crimes and descriptions of football matches, need not know that there is more than one side to a question and seldom asks if there is one, nor what is the evidence for what the paper tells him. The printed page, because it seems to represent some unknown power, is believed more readily than what he hears in talk. He takes from it statements, perhaps groundless, perhaps invented, which he would not take from one of his follows in the workshop or the counting house. Moreover, the Tree of Knowledge is the Tree of the Knowledge of Evil as well as of Good. On the Printed Page Truth has no better chance than Falsehood, except with those who read widely and have the capacity of discernment. A party organ, suppressing some facts, misrepresenting some others, is the worst of all guides, because it can by incessantly reiterating untruth produce a greater impression than any man or body of men, save only ecclesiastics clothed with a spiritual authority, could produce before printing was invented. A modem voter so guided by his party newspapers is no better off than his grandfather who eighty years ago voted at the bidding of his landlord or his employer or (in Ireland) of his Priest. The grandfather at least knew whom he was following, while the grandson, who only reads what is printed on one side of a controversy may be the victim of selfish interests who own the organs which his simplicity assumes to express public opinion or to have the public good at heart. So a democracy that has been taught only to read and not also to reflect and judge, will not be better for the ability to read."

42. It seems to me that too much is being made out of the illiteracy of the

masses in India. Take the English voter and inquire into his conduct as a voter and what do we find ? This is what the Times Literary Supplement of August 21, 1924, says about him :

" The mass of the people have no serious interest. Their votes decide all political issues, but they know nothing of politics. It is a disquieting, but too well-founded reflection that the decision about tariff reform or taxation or foreign policy is now said by men and women who have never read a dozen columns of serious politics in their lives. Of the old narrow electorate of eight years ago probably at least two-thirds eagerly studied political speeches on the question of the day. Today not live per cent. of the voters read either debates or leading articles. The remnant, however remarkable, is small. Democracy as a whole is as content with gross amusement as Bottles was with vulgar ones, and like him it leases his mind to its newspaper which makes his Sundays much more degrading than those which he spent under his Baptist Minister. This is the atmosphere against whose poisonous gases the schools provide in vain the helmet of their culture."

43. Surely if British Democracy — say the British Empire is content to be ruled by voters such as above, it is arguable that Indians who are opposed to adult suffrage are not only unjust and visionaries but are protesting too much and are laying themselves open to the charge that they are making illiteracy of the masses an excuse to pocket their political power. For, to insist that a thorough appreciation of the niceties of political creeds and the ability to distinguish between them are necessary tests of political intelligence is, to say the least, hypercritical. On small political questions no voter, no matter in what country he is, will ever be accurately informed. Nor is such minute knowledge necessary. The most that can be expected from the elector is the power of understanding broad issues and of choosing the candidate who in his opinion will serve him best. This, I make bold to say, is not beyond the capacity of an average Indian.

44. The other thing which apparently weighed with my colleagues in refusing to accept adult suffrage is the analogy of the countries like England. It is argued that the extension of the franchise from forty shilling freehold in 1429 to adult suffrage in 1832 there were less than 500,000 persons who had the right to vote in the election of members of Parliament; that it was not until the Reform Act of that year that the number of voters was increased to nearly 1,000,000; that no further step was taken to lower the franchise till the passing of the Act of 1867 which increased it to 2,500,000; that the next step was taken 17 years after when the Act of 1884 increased it again to 5,500,000; and that adult suffrage did not come till after a lapse

of 34 years when People's Representation Act of 1918 was passed. This fact has been used for very different purposes by different set of peoples. A set of politicians who are social Tories and political radicals use this in support of their plea that the legislature can be given full powers although it may not be fully representative and in reply to this argument of their opponents that the transference of power to a legislature so little representative will be to transfer it to an oligarchy. By others in support of their plea that in the matter of franchise we must proceed slowly and go step by step as other nations have done. To the second group of critics my reply is that there is no reason why we should follow in the footsteps of the English nation in this particular matter. Surely the English people had not devised any philosophy of action in the matter of franchise. On the other hand, if the extension was marked by such long intervals it was because of the self-seeking character of the English ruling classes. Besides, there is no reason why every nation should go through the same stages and enact the same scenes as other nations have done. To do so is to refuse to reap the advantage which is always open to those who are born later. To the other section of critics my reply is that their contention as a fact is true, that Parliament did exercise full powers of a sovereign state even when it represented only a small percentage of the population. But the question is with what results to the nation ? Anyone who is familiar with the history of social legislation by the unreformed Parliament as told by Lord Shaftesbury certainly will not wish the experiment to be repeated in this country. This result was the inevitable result of the restricted franchise which obtained in England. The facts relied upon by these critics in my opinion do not go to support a government based upon a restricted franchise is a worse form of government in that it gives rise to the rule of oligarchy. Such a result was never contemplated by the authors of the Joint Report. Indeed they were so conscious of the evil that in paragraph 262 of their Report they were particular enough to say that among the matters for consideration the Statutory Commission should consider the working of the franchise and the constitution of electorates, including the important matter of the retention of communal representation. " Indeed we regard the development of a broad franchise as the arch on which the edifice of self-government must be raised : for we have no intention that our reforms should result merely in the transfer of powers from a bureaucracy to an oligarchy."

45. What is however the remedy for preventing oligarchy? The only remedy, that I can think of is the grant of adult suffrage. It is pertinent to remark that the members of the Ceylon Commission of 1928 who like the authors of the Joint Report were conscious that " the grant of a responsible government to

an electorate of these small dimensions would be tantamount to placing an oligarchy in power without any guarantee that the interests of the remainder of the people would be consulted by those in authority " and who felt it " necessary to observe that His Majesty's Government is the trustee not merely of the wealthier and more highly educated elements in Ceylon but quite as much of the peasant and the coolie, and of all those poorer classes which form the bulk of the population " and who held that " to hand over the interests of the latter to the unfettered control of the former would be a betrayal of its trust," came " to the conclusion that literacy should not remain as one of the qualifications for voters at election of State Council." They said " the development of responsible government requires, in our opinion, an increasing opportunity to the rank and file of the people to influence the Government and the franchise cannot be fairly or wisely confined to the educated classes." If adult franchise can be prescribed for Ceylon the question that naturally arises is why should it not be prescribed for India ? Similarity in the political, social, economic, and educational conditions of the two countries is so striking that to treat them differently in the matter of franchise is to create a distinction when there is no real difference to justify the same. Analogy apart and considering the case purely on merits it is beyond doubt that of the two if any one of them is more fitted to be trusted with the exercise of adult it is the people of India and more so the people of the Bombay Presidency wherein the system of adult suffrage is already in vogue in the village panchayats.

CHAPTER 2
ELECTORATES

46. The existing Legislative Council is composed of 114 members, of whom 26 are nominated and 86 are elected. The nominated members fall into two groups (a) officials to represent the reserved half of the Government and *(b)* the non-officials to represent (1) the Depressed Classes, (2) Labouring Classes, (3) Anglo-Indians, (4) Indian Christians and (5) the Cotton Trade. Of the elected members (1) some are elected by class-electorates created to represent the interests of the landholders, commerce and industry, (2) some by reserved electorates for Maratha and allied castes and the rest, (3) by communal electorates which are instituted for the Muhammedans and the Europeans. The question is whether this electoral structure should be preserved without alteration. Before any conclusion can be arrived at, it is necessary to evaluate it, in the light of considerations both theoretical as well as practical.

Nominated members

47. Against the nominated members it is urged that their presence in the Council detracts a great deal from its representative character. Just as the essence of responsible self-government is the responsibility of the Executive to the Legislature, so the essence of representative government lies in the responsibility of the legislature to the people. Such a responsibility can be secured only when the legislature is elected by the people. Not only does the system of nominated member make the house unrepresentative, it also tends to make the Executive irresponsible. For by virtue of the power of nominations, the Executive on whose advice that power is exercised, appoints nearly 25 per cent. of the legislature with the result that such a large part of the house is in the position of the servants of the Executive rather than its critics. That the nominated non-officials are not the servants of the Government cannot go to subtract anything from this view. For the nominated non-official can always be bought and the Executive has various ways open to it for influencing an elected member with a view to buy up his independence. A direct conferment of titles and honours upon a member, or bestowal of patronage on his friends and relatives, are a few of such methods. But the nominated non-official members are already in such an abject state of dependence that the Executive has not to buy their independence. They never have any independence to sell. They are the creatures of the Executive and they are given seats on the understanding, if not on the condition, that they shall behave as friends of the Executive. Nor is the Executive helpless against a nominated member who has the audacity to break the understanding. For, by the power of re-nomination which the Executive possesses, it can inflict the severest penalty by refusing to re-nominate him and there are instances where it has inflicted that punishment. Like the King's veto, the knowledge that this power to re-nominate exists, keeps every nominated member at the beck and call of the Executive.
48. Another evil arising from the system of nomination must also be pointed out. The nominated non-official members were to represent the interests of certain communities for whose representation the electoral system as devised, was deemed to be inadequate just as the nominated official members were appointed to support the interests of government. The regrettable thing is that while the nominated officials served the interests of government, the nominated non-officials failed to serve the interests of their constituents altogether. Indeed a nominated non-official cannot serve his community. For more often that not the interests of the communities can only be served by influencing governmental action, and this is only possible

when the Executive is kept under fire and is made to realise the effects of an adverse vote. But this means is denied to a nominated member by the very nature of his being, with the result that the Executive, being assured of his support, is indifferent to his cause and the nominated member, being denied his independence, is helpless to effect any change in the situation of those whom he is nominated to represent. Representation by nomination is thus no representation. It is only mockery.

49. Another serious handicap of the system of nomination is that the nominated non-officials are declared to be ineligible for ministership. In theory there ought not to be limitations against the right of a member of the legislature to be chosen as a minister of an administration. Even assuming that such a right is to be limited, the purpose of such limitation must be the interests of good and efficient administration. Not only that is not the purpose of this limitation but that the limitation presses unequally upon different communities owing to the difference in the manner of their representation and affects certain communities which ought to be free from its handicap. Few communities are so greatly in need of direct governmental action as the Depressed Classes for effecting their betterment. It is true that no degree of governmental action can alter the face of the situation completely or quickly. But making all allowance for this, no one can deny the great benefits that wise legislation can spread among the people. All these classes do in fact begin and often complete their lives under a weight of inherited vices and social difficulties, tor the existence of which society is responsible, and of the mitigation of which much can be done by legislation. The effect of legislation to alter the conditions under which the lives of individuals are spent hus been recognised everywhere in the world. But this duty to social progress will not be recognised unless those like the Depressed Classes find a place in the Cabinet of the country. The system of nomination must therefore be condemned. Its only effect has been to produce a set of eventually subordinate the care of the constituents to the desire for place.

Elected members

50. *Class Electorates*— These class electorates are a heritage of the Morley-Minto Reforms. The Morley-Minto Scheme was an attempt at make-believe. For under it the bureaucracy without giving up its idea to rule was contriving to create legislatures by arranging the franchise and the electorates in such a manner as to give the scheme the appearance of popular rule without the reality of it. To such a scheme of things, these class electorates were eminently suited. But the Montague Chelmsford Scheme was not a make-believe. It contemplated the rule of the people.

Consequently it was expected to suggest the abolition of such class electorates. Owing, however, to the powerful influence, which these classes always exercised, the authors of the Report were persuaded to recommend their continuance, which recommendation was given effect to by the South-borough Committee. Whatever the reason that led to the retention of these class electorates, there is no doubt that their existence cannot be reconciled with the underlying spirit of popular government. Their class character is a sufficient ground for their condemnation. In a deliberative assembly like the legislature, where questions of public interest are decided in accordance with public opinion, it is essential that members of the Council who take part in the decision should each represent that opinion. Indeed no other person can be deemed to be qualified to give a decisive vote on the issues debated on the floor of the house. But the representatives of class interests merely reflect the opinions one might say, the prejudices of their class, and should certainly be deemed to be disqualified from taking part in the decision of issues which lie beyond the ambit of the interests of their class. Notwithstanding their class character as members of legislature they acquire the competence to vote upon all the issues whether they concern their own class or extend beyond. This, in my opinion, is quite subversive of the principle of popular government. It might be argued that representatives of such class interests are necessary to give expert advice on those sectional issues with which the unsectional house is not familiar. As against this, it is necessary to remember that in a democracy, the ultimate principle is after all self-government and that means that final decision on all matters must be made by popularly elected persons and not by experts. It is moreover not worthy that the advice of such people is not always serviceable to the house. For, their advice invariably tends to become eloquent expositions of class ideology rather than careful exposition of the formulae in dispute.

51. Assuming, however, that it is necessary either to safeguard the interests of these classes or to tender advice to the house on their behalf, it is yet to be proved that these interests will not secure sufficient representation through general electorates. Facts, such as we have, show that they can. Taking the case of the Inamdars, though they have been given three seats through special electorates of their own, they have been able to secure 12 seats through the general electorates. Indeed by virtue of the solidarity which they have with other landholding members of the Council, they felt themselves so strong in numbers that only a few months back they demanded a ministerial post for the leader of their class. Besides, it is not true that without class-electorates there will be no representation of the

interests of these classes in the Council. Such interests will be amply safeguarded by a member belonging to that class, even it he is elected by a general constituency. This will be clear if we bear in mind that a member taking his seat in the legislature, although he represents directly his constituency, yet indirectly he does represent himself and to that extent also his class. Indeed, from the very nature of things this tendency on the part of a member, indirectly to represent himself, although it might be checked, controlled and over-ruled, so surely manifests itself that it throws, and must necessarily throw, direct representation into the background. No one for instance can believe that a European gentleman representing a Chamber of Commerce will only represent the interests of commerce and will not represent the interests of the European community because he is elected by a Chamber of Commerce and not by the general European community. It is in the nature of things that a man's self should be nearer to him than his constituency. There is a homely saying that a man's skin sits closer to him than his shirt and without any imputation on their good faith so it is with the members of the legislature. It is the realisation of this fact which has led the English people who at one time wished that the shipping trade, the woollen trade and the linen trade should each have its spokesman in the House of Commons, to abandon the idea of such class-electorates. It is difficult to understand why a system abandoned elsewhere should be continued in India. It is not necessary in the interests of these classes and it is harmful to the body politic. The only question is whether or not persons belonging to the commercial and individual classes can secure election through the general constituencies. I know of nothing that can be said to handicap these classes in the race of election. That there is no handicap against them is proved by the success of Sardars and Inamdars in general election. Where Inamdars and Sardars have succeeded there is no reason why representatives of commerce and industry should not.

52. *Reserved Electorates*—Three objections can be raised against the system of reserved electorates. One is that it seeks to guarantee an electoral advantage to a majority. It is true that the Marathas and the allied castes form a majority in the Marathi speaking part of the Presidency both in population as well as in voting strength and as such deserve no political protection. But it must be realised that there is all the difference in the world between a power informed and conscious of its strength and power so latent and suppressed that its holders are hardly aware of that they may exercise it. That the Marathas and the allied castes are not conscious of their power, is sufficiently evident if we compare the voting strength of the Marathas and the allied castes in those constituencies wherein, seats are

reserved for them, with the rank of their representatives among the different candidates contesting the elections. In every one of such constituencies the Maratha voters, it must be remembered, have a preponderance over the voters of other communities. Yet in the elections of 1923 and 1926, out of the seven seats allotted to them, they could not have been returned in three had it not been for the fact that the seats were reserved for them. It is indeed strange that the candidates of a community which is at the top in the electoral roll, should find themselves at the bottom, almost in a sinking position. This strange fact is only an indication that this large community is quite unconscious of the power it possesses, and is subject to some influence acting upon it from without.

53. The second ground of objection, urged by the members of the higher classes who are particularly affected by the system of reserved seats. is that it does an injustice to them in that it does not permit them the benefit of a victory in a straight electoral fight. It is true that the system places a restriction upon the right of the higher classes to represent the lower classes. But is there any reason why " the right to represent," as distinguished from "a right to representation," should be an unrestricted right? Modern politicians have spent all their ingenuity in trying to find out the reason for restricting the right to vote. In my opinion there is a greater necessity why we should strive to restrict the right of a candidate to represent others Indeed, there is no reason why the implications of the representative function should not define the condition of assuming it. It would be no invasion of the right to be elected to the Legislature to make it depend, for example, upon a number of years' service on a local authority and to rule out all those who do not fulfil that condition. It would be perfectly legitimate to hold that that service in a legislative assembly is so important in its results, that proof of aptitude and experience must be offered before the claim to represent can be admitted. The argument for restricting the rights of the higher classes to represent the lower classes follows the same line. Only it makes a certain social attitude as a condition precedent to the recognition of the right to represent. Nor can it be said that such a requirement is unnecessary. For aptitude and experience are not more important than the social attitude of a candidate towards the mass of men whom he wishes to represent. Indeed, mere aptitude and experience will be the cause of ruination if they are not accompanied and regulated by the right sort of social attitude. There is no doubt that the social attitude of the higher classes towards the lower classes is not of the right sort. It is no doubt always said to the credit of these communities that they are intellectually the most powerful communities in India. But it can with equal

truth be said that they have never utilised their intellectual powers to the services of the lower classes. On the other hand, they have always despised, disregarded and disowned the masses in belonging to a different strata, if not to a different race than themselves. No class has a right to rule another class, much less a class like the higher classes in India. By their code of conduct, they have behaved as the most exclusive class steeped in its own prejudices and never sharing the aspirations of the masses, with whom they have nothing to do and whose interests are opposed to theirs. It is not. therefore, unjust to demand that a candidate who is standing to represent others shall be such as shares the aims, purposes and motives of those whom he desires to represent.

54. The third objection to the system of reserved electorates is that it leads to inefficiency inasmuch as a candidate below the line gets the seat in supersession of a candidate above the line. This criticism is also true. But here, again, there are other considerations which must be taken into account. First of all, as Professor Dicey rightly argues, " it has never been a primary object of constitutional arrangement to get together the best possible Parliament in intellectual capacity. Indeed, it would be inconsistent with the idea of representative government to attempt to form a Parliament far superior in intelligence to the mass of the nation." Assuming, however, that the displacement of the intellectual classes by the candidates belonging to the non-intellectual classes is a loss, that loss will be more than amply recompensed by the natural idealism of the backward communities. There is no doubt that the representatives of the higher orders are occupied with the pettiest cares and are more frequently concerned with the affairs of their own class than with the affairs of the nation. Their life is too busy or too prosperous and the individual too much self-contained and self-satisfied for the conception of the social progress to be more than a passing thought of a rare moment. But the lower orders are constantly reminded of their adversity, which can be got over only by a social change. The consciousness of mutual dependence resulting from the necessities of a combined action makes for generosity, while the sense of untrained powers and of undeveloped faculties gives them aspirations. It is to the lower classes that we must look for the motive power for progress. The reservation of seats to the backward Hindu communities makes available for the national service such powerful social forces, in the absence of which any Parliamentary government may be deemed to be poorer.

55. *Communal Electorates*—That some assured representation is necessary and inevitable to the communities in whose interests communal electorates

have been instituted must be beyond dispute. At any rate, for some time to come the only point that can be open to question is, must such communal representation be through communal electorates ? Communal electorates have been held by their opponents to be responsible for the communal disturbances that have of late taken place in the different parts of the country. One cannot readily see what direct connection there can be between communal electorates and communal disturbances. On the contrary, it has been argued that by satisfying the demand of the Mohammedans, communal electorates have removed one cause of discontent and ill-feeling. But it is equally true that communal electorates do not help to mitigate communal disturbances and may in fact help to aggravate them. For communal electorates do tend to the intensification of communal feeling and that they do make the leaders of the two communities feel no responsibility towards each other, with the result that instead of leading their people to peace, they are obliged to follow the momentary passions of the crowd.

56. The Mohammedans who have been insisting upon the retention of the communal electorates take their stand on three grounds.

57. In the first place they say that the interests of the Mohammedan community are separate from those of the other communities, and that to protect these interests they must have separate electorates. Apart from the question whether separate electorates are necessary to protect separate interests, it is necessary to be certain that there are any interests which can be said to be separate in the sense that they are not the interests of any other community. In the secular, as distinguished from the religious field, every matter is a matter of general concern to all. Whether taxes should be paid or not, if so, what and at what rate; whether national expenditure should be directed in any particular channel more than any other; whether education should be free and compulsory : whether Government lands should be disposed of on restricted tenure or occupancy tenure; whether State aid should be granted to industries ; whether there should be more police in any particular area; whether the State should provide against poverty of the working classes by a scheme of social insurance against sickness, unemployment or death; whether the administration of justice is best served by the employment of honorary magistrates, and whether the code of medical ethics or legal ethics should be altered so as to produce better results, are some of the questions that usually come before the Council. Of this list of questions, is there any which can be pointed out as being the concern of the Mohammedan community only ? It is true that the Mohammedan community is particularly interested in the question of

education and public service. But there again it must be pointed out that the Mohammedan community is not the only community which attaches particular importance to these questions. That the non-Brahmin and the depressed classes are equally deeply interested in this question becomes evident from the united effort that was put forth by all three in connection with the University Reform Bill in the Bombay Legislative Council. The existence of separate interests of the Mohammedan community is therefore a myth. What exists is not separate interests but special concern in certain matters.

58. Assuming, however, that separate interests do exist, the question is, are they better promoted by separate electorates than by general electorates and reserved seats ? My emphatic answer is that the separate or special interests of any minority are better promoted by the system of general electorates and reserved seats than by separate electorates. It will be granted that injury to any interest is, in the main, caused by the existence of irresponsible extremists. The aim should therefore be to rule out such persons from the councils of the country. If irresponsible persons from both the communities are to be ruled out from the councils of the country, the best system is the one under which the Mohammedan candidates could be elected by the suffrage of the Hindus and the Hindu candidates elected by the suffrage of the Mohammedans. The system of joint electorates is to be preferred to that of communal electorates, because it is better calculated to bring about that result than is the system of separate electorates. At any rate, this must be said with certainty that a minority gets a larger advantage under joint electorates than it does under a system of separate electorates. With separate electorates the minority gets its own quota of representation and no more. The rest of the house owes no allegiance to it and is therefore not influenced by the desire to meet the wishes of the minority. The minority is thus thrown on its own resources and as no system of representation can convert a minority into a majority, it is bound to be overwhelmed. On the other hand, under a system of joint electorates and reserved seats the minority not only gets its quota of representation but something more. For, every member of the majority who has partly succeeded on the strength of the votes of the minority if not a member of the minority, will certainly be a member for the minority. This, in my opinion, is a very great advantage which makes the system of mixed electorates superior to that of the separate electorates as a means of protection to the minority. The Mohammedan minority seems to think that the Council is, like the Cardinals' conclave, convened for the election of the Pope, an ecclesiastical body called for the determination of religious issues. If that

was true then their insistence on having few men but strong men would have been a wise course of conduct. But it is time the community realised that Council far from being a religious conclave is a secular organisation intended for the determination of secular issues. In such determination of the issues, the finding is always in favour of the many. If this is so, does not the interest of the minority itself justify a system which compels others besides its own members to support its cause ?

59. The second ground on which the claim to separate electorates is-made to rest is that the Mohammedans are a community by themselves; that they are different from other communities not merely in religion but that their history, their traditions, their culture, their personal laws, their social customs and usages have given them such a widely different outlook on life quite uninfluenced by any common social ties, sympathies or amenities; that they are in fact a distinct people and that they do so regard themselves even though they have lived in this country for centuries. On this assumption it is argued that if they are compelled to share a common electorate with other communities, the political blending consequent upon it will impair the individuality of their community. How far this assumption presents a true picture, I do not step to consider. Suffice it to say, that in my opinion it is not one which can be said to be true to life. But conceding that it is true and conceding further that the preservation of the individuality of the Mohammedan community is an ideal which is acceptable to that community one does not quite see why communal electorates should be deemed to be necessary for the purpose. India is not the only country in which diverse races are sought to be brought under a common Government. Canada and South Africa are two countries within the British Empire where two diverse races are working out a common system of government. Like the Hindus and the Mohammedans in India, the British and the Dutch in South Africa and the British and the French in Canada are two distinct communities with their own distinctive cultures. But none has ever been known to object to common electorates on the ground that such a common cycle of participation for the two communities for electoral purposes is injurious to the preservation of their individualities. Examples of diverse communities sharing common electorates outside the Empire are by no means few. In Poland there are Poles, Ruthenians, Jews. White Russians, Germans and Lithuanians. In Latvia, there are Latvians. Russians, Jews, Germans, Poles, Lithuanians and Esthonians. In Esthonia. there are Germans, Jews, Swedes, Russians, Latvians and Tartars. In Czechoslovakia, there are Czechs, Slovaks, Germans, Magyars, Ruthenians. Jews and Poles. In Austria, there are Germans, Czechs and

Slovenes: while in Hungary there are Hungarians, Germans, Slovaks, Roumanians, Ruthenians, Croatians, and Serbians. All these groups are not mere communities. They are nationalities each with a live and surging individuality of their own, living in proximity of each other and under a common Government. Yet none of them have objected to common electorates on the ground that a participation in them would destroy their individuality.

60. But it is not necessary to cite cases of non-Moslem communities to show the futility of the argument. Cases abound in which Mohammedan minorities in other parts of the world have never felt the necessity of communal electorates for the preservation of their individuality against what might be termed the infectious contagion of political contact with other communities. It does not seem to be sufficiently known that India is not the only country where Mohammedans are in a minority. There are other countries, in which they occupy the same position. In Albania, the Mohammedans form a very large community. In Bulgaria, Greece and Roumania they form a minority and in Yugoslavia and Russia they form a very large minority. Have the Mohammedan communities there insisted upon the necessity of separate communal electorates ? As all students of political history are aware the Mohammedans in these countries have managed without the benefit of separate electorates ; nay, they have managed without any definite ratio of representation assured to them. In India, at any rate, there is a consensus of opinion, that as India has not reached a stage of complete secularisation of politics, adequate representation should be guaranteed to the Mohammedan community, lest it should suffer from being completely eclipsed from the political field by the religious antipathy of the majority. The Mohammedan minorities, in other parts of the world are managing their affairs even without the benefit of this assured quota. The Mohammedan case in India, therefore, overshoots the mark and in my opinion, fails to carry conviction.

61. The third ground on which it is sought to justify the retention of separate communal electorates of the Mohammedans, is that the voting strength of the Mohammedans in a mixed electorate may be diluted by the non-Mohammedan vote to such an extent that the Mohammedan returned by such a mixed electorate, it is alleged, will be a weak and instead of being a true representative of the Mohammedans will be a puppet in the hands of the non-Mohammedan communities. This fear has no doubt the look of being genuine, but a little reasoning will show that it is groundless. If the mass of the non-Muslim voters were engaged in electing a Mohammedan candidate, the result anticipated by the Mohammedans may perhaps come

true if the non-Muslims are bent on mischief. But the fact is that at the time of general election there will be many non-Mohammedan candidates standing for election. That being the case, the full force of all the non-Muslim voters will not be directed on the Mohammedan candidates. Nor will the non-Mohammedan candidates allow the non-Mohammedan voters to waste their votes by concentrating themselves on the Mohammedan candidates. On the contrary, they will engage many voters, if not all, for themselves. If this analysis is true, then it follows that very few non-Mohammedan voters will be left to participate in the election of the Mohammedan candidates, and that the fear of the Mohammedans of any mass action against Muslim candidates by non-Muslim voters is nothing but a hallucination. That the Mohammedans themselves do not believe in it is evident from what are known as the " Delhi " proposals. According to these proposals, which have been referred to in an earlier part of this report, the Mohammedans have shown their willingness to give up communal electorates, in favour of joint electorates, provided the demand for communal Provinces and certain other concessions regarding the representation of the Muslims in the Punjab and Bengal are given to them. Now, assuming that these communal Provinces have no purpose outside their own, and it is an assumption which we must make, it is obvious that the Mohammedan minority in any province must be content with such protection as it can derive from joint electorates. It is therefore a question as to why joint electorates should not suffice without the addition of communal Provinces when they are said to suffice with the addition of communal Provinces. But this consideration apart, if there is any substance in the Muslim view that the watering of votes is an evil which attaches itself to the system of joint electorates, then the remedy in my opinion does no lie in the retention of communal electorates. The remedy lies in augmenting the numbers of the Mohammedan electors to the fullest capacity possible by the introduction of adult suffrage, so that the Mohammedan community may get sufficiently large voting strength to neutralise the effects of a possible dilution by an admixture of the non-Muslim votes.

62. All this goes to show that the case for communal electorates cannot be sustained on any ground which can be said to be reasonable. What is in its favour is feeling and sentiment only. I do not say that feeling and sentiment have no place in the solution of political problems. I realise fully that loyalty to Government is a matter of faith and faith is a matter of sentiment. This faith should be secured if it can be done without detriment to the body politic. But communal representation is so fundamentally wrong that to give in to sentiment in its case would be to perpetuate an evil. The fundamental

wrong of the system, has been missed even by its opponents. But its existence will become apparent to any one who will look to its operation. It is clear that the representatives of the Muslims give law to the non-Muslims. They dispose of revenue collected from the non-Muslims. They determine the education of the non-Muslims, they determine what taxes and how much the non-Muslims shall pay. These are some of the most vital things which Muslims as legislators do, whereby affect the welfare of the non-Muslims. A question may be asked by what right can they do this ? The answer, be it noted, is not by right of being elected as representatives of the non-Muslims. The answer is by a right of being elected as the representatives of the Muslims ! Now, it is an universally recognised canon of political life that the Government must be by the consent of the governed. From what I have said above communal electorates are a violation of that canon. For, it is government without consent. It is contrary to all sense of political justice to approve of a system which permits the members of one community to rule other communities without their having submitted themselves to the suffrage of those communities. And if as the Mohammedans allege that they are a distinct community with an outlook on life widely different from that of the other communities, the danger inherent in the system becomes too terrible to be passed over with indifference.

63. Such are the defects in the existing structure of the Council. It was framed by the Southborough Committee in 1919. The nature of the framework prepared by that Committee was clearly brought forth by the Government of India in their Despatch No. 4 of 1919 dated 23rd April, 1919, addressed to the Secretary of State in which they observed :

" 2. Before we deal in detail with the report (of the Southborough Committee) one preliminary question of some importance suggests itself. As you will see, the work of the Committee has not to any great extent been directed towards the establishment of principles. In dealing with the various problems that came before them they have usually sought to arrive at agreement rather than to base their solution upon general reasonings."

64. My colleagues have not cared to consider the intrinsic value of the framework as it now stands. They have no doubt recommended that the system of nominations should be done away with and in that I agree with them. But excepting that they have kept the whole of the electoral structure intact, as though it was free from any objection. In this connection I differ from them. As I have pointed out, the whole structure is faulty and must be overhauled. I desire to point out that the object of the Reforms are embodied in the pronouncement of August 1917, declares the goal to be the establishment of self-governing institutions. The electoral structure then

brought into being was only a halfway house towards it and was justified only because it was agreed that a period of transition from the rule of the bureaucracy to the rule of the people, was a necessity. This existing electoral structure can be continued only on the supposition that the present system of divided government is to go on. The existing system of representation would be quite incompatible with a full Government and must therefore be over-ruled.

65. There is also another reason why the present system of representation should be overhauled. Representative government is everywhere a party government. Indeed a party government is such a universal adjunct of representative government that it might well be said that representative government cannot function except through a party government. The best form of party government is that which obtains under a two-party-system both of ensuring stable as well as responsible government. An executive may be made as responsible as it can be made by law to the legislature. But the responsibility will only be nominal if the legislature is so constituted that it could not effectively impose its Will on the executive. A stable government requires absence of uncertainty. An executive must be able to plan its way continuously to an ordered scheme of policy. But that invokes an unwavering support of a majority. This can be obtained only out of a two-party-system. It can never be obtained out of a group system. Under the group system the executive will represent not a general body of opinion, but a patchwork of doctrines held by the leaders of different groups who have agreed to compromise their integrity for the sake of power. Such a system can never assure the continuous support necessary for a stable government since the temptation to reshuffling the groups for private advantage is ever present. The existing Council by reason of the system of representation is, to use the language of Burke, " a piece of joinery so crossly indented and whimsically dovetailed, a piece of diversified mosaic, a tessellated pavement without cement, patriots and courtiers, friends of government and open enemies. This curious show of a Legislature utterly unsafe to touch and unsure to stand on" can hardly yield to a two-party-system of government, and without a party system there will neither be stable government nor responsible government. The origin of the group system must be sought in the formation of the electorates. For, after all, the electorates are the moulds in which the Council is cast. If the Council is to be remodelled so that it may act with efficiency, then it is obvious that the mould must be recast.

66. In making my suggestions for the recasting of the electoral system I have allowed myself to be guided by three considerations : (1) Not to be led

away by the fatal simplicity of many a politician in India that the electoral system should be purely territorial and should have no relation with the social conditions of the country, (2) Not to recognise any interest, social or economic, for special representation which is able to secure representation through territorial electorates, (3) When any interest is recognised as deserving of special representation, its manner of representation shall be such as will not permit the representatives of such interest the freedom to form a separate group.

67. Of these three considerations the second obviously depends upon the pitch of the franchise. In another part of this Report I have recommended the introduction of adult suffrage. I am confident that it will be accepted. I make my recommendations therefore on that basis. But in case it is not, and if the restricted franchise continues, it will call for different recommendations, which I also proposed to make. For the reasons given above and following the last mentioned consideration I suggest that—

I. If adult suffrage is granted there shall be territorial representation except in the case of the Mohammedans, the Depressed Classes, and the Anglo-Indians.

II. If the franchise continues to be restricted, all representation shall be territorial except in the case of the Mohammedans, the Depressed Classes, Anglo-Indians, the Marathas and the allied castes and labour.

III. That such special representation shall be by general electorates and reserved seats and of labour by electorate made up of registered trade unions.

68. From these suggestions it will be seen that I am for the abolition of all class electorates, such as those for (1) Inamdars and Sardars, (2) Trade and Commerce, whether Indian or European, (3) Indian Christians, and (4) Industry; and merge them in the general electorates. There is nothing to prevent them from having their voice heard in the Councils by the ordinary channel. Secondly, although I am for securing the special representation of certain classes, I am against their representation through separate electorates. Territorial electorates and separate electorates are the two extremes which must be avoided in any scheme of representation that may be devised for the introduction of a democratic form of government in this most undemocratic country. The golden mean is the system of joint electorates with reserved seats. Less than that would be insufficient, more than that would defeat the ends of good government. For obvious reasons I make an exception in the case of the European community. They may be allowed to have their special electorates. But they shall be general electorates and not class electorates.

CHAPTER 3
DISTRIBUTION OF SEATS
1. Distribution of seats among the minorities

69. The quota of seats assigned by my colleagues to the different minorities is given below in the tabular form :

	Minority	No. of Seats out of 140	
		General	Special
I	Europeans	2	5
II	Anglo-indians	2	Nil
III	Indian Christians	1	Nil
IV	Depressed Classes	10	Nil
V	Mohammedans	43	2

70. From this table it will be seen that in distributing the seats among the different minorities, my colleagues have not acted upon any uniform principle. Nor does it appear that they have striven to do justice lo the minorities concerned. This is clear if we compare the treatment given by my colleagues to the Mohammedans with the treatment they have given to the Depressed Classes. Mohammedans form 19 per cent. of the population of the Presidency. My colleagues have proposed to give them over 31 per cent. of the total representation provided for the Legislative Council. The Depressed Classes on the other hand who form according to the most conservative estimate 8 per cent. of the total population of the Presidency are allowed only 7 per cent. of the total seats in the Council. The reasons for this discrimination are difficult to comprehend. Of the two minorities the Mohammedan minority is undoubtedly stronger in numbers, in wealth and in education. Besides being weak in numbers, wealth and education, the Depressed Classes are burdened with disabilities from which the Mohammedans are absolutely free. The Depressed Classes cannot take water from public watering places even if they are maintained out of public funds; the Mohammedans can. The Depressed Classes, by virtue of their untouchability, cannot enter the Police, the Army and the Navy, although the Government of India Act lays down that no individual shall be denied his right to any public office by reason of his caste, creed or colour. The Mohammedans have not only an open door in the matter of public service, but that in certain departments they have secured the

largest share. The Depressed Classes are not admitted in Public schools even though they are maintained out of public money; there is no such bar against the Mohammedans. The touch of a Depressed Class man causes pollution; the touch of a Mohammedan does not; that trade and industry are open to a Mohammedan while they are closed to a man from the Depressed Classes. The Mohammedan does not bear the stigma of inferiority as does a man from the Depressed Classes with the result that the Mohammedan is free to dress as he likes, to live as he likes and to do what he likes. This freedom the Depressed Class man is denied. A Depressed Class man may not wear clothes better than the villagers even though he may have the economic competence to pay for its cost. He must live in a hut. A Depressed Class man may not make much display of wealth and splendour even on ceremonial occasions and may certainly not take the bridegroom on a horse in procession through the main streets. Any act contrary to the customary code or beyond his status is bound to be visited by the wrath of the whole body of villagers amongst whom he happens to live. The Depressed Class man is far often subject to the tyranny of the majority than the Mohammedan is. The reason is that the Mohammedan who has all the elementary rights of a human being accorded to him, has no cause for quarrel against the majority, except when a religious issue comes to the front. But the position of the Depressed Class man is totally different. His life which is one incessant struggle for the acquisition of the rights of a human being, is a constant challenge to the majority which denies him these rights. The result is that he is constantly in antagonism with the majority. This is not all. If on any occasion the Mohammedan is visited by the tyranny of the majority, he has on his sides the long arm of the Police and the Magistracy. But when the Depressed Class man is a victim of the tyranny of the majority, the arm of the Police or of the Magistracy seldom comes to his rescue. On the contrary it works in league with the majority to his detriment, for the simple reason that the Mohammedan can count many of their kith and kin in the Police and the Magistracy of the Province; while the Depressed Classes have no one from them in these departments. And be it noted that the Depressed Classes have not merely to bear the brunt of the orthodox Hindu force. It has also to count against the Mohammedans. It is ordinarily supposed that the Mohammedan is free from social prejudices of the Hindus against the Depressed Classes. Nothing can be a greater error than this. Leaving aside the urban areas, the Mohammedan in the rural parts is as much affected by the poison as the Hindu. The fracas that took place at Harkul, a village in the Mangaon Taluka of the Kolaba District, is

an instance in point. In this district the Depressed Classes launched a campaign of social elevation and resolved to give up certain unclean practices which have marked them out as persons of inferior status. The Hindus of the district, who had formerly preached to these people the abandonment of these unclean practices as a necessary condition of their uplift, turned upon these poor people and tyrannised them by bringing to bear upon them a social and economic boycott. But it was never expected that the Mohammedans of the district would follow their Hindu neighbours. On the contrary it was the hope of the Depressed Classes that in their struggle with the touchable Hindus the Mohammedans would act as their friends. But these hopes of theirs were dashed to pieces. For, it was soon found that the Mohammedans, although they did not observe untouchability, were as much infected as the Hindus with the noxious belief that the Depressed Classes were born to an inferior social status and that their attempt to raise themselves above it by giving up their unclean habits was an affront and an insult which required to be put down. As a result many were the fights that took place between the Mohammedans and the Depressed Classes of the district, in one of which, at Harkul, a Depressed Class man actually lost his life.

71. It is therefore clear that the problem of the Depressed Classes is far greater than the problem of the Mohammedans. The Mohammedans may be backward in the race, although they are so forward that in education at least they are second only to the advanced Hindus. But they are certainly not handicapped, so that with effort and encouragement they can hope to rise. The Depressed Classes, on the other hand, are not merely backward, they are also handicapped, so that no effort or encouragement will enable them to rise unless the handicap is first removed. That being the difference between the two, whatever degree of political power that may be necessary for the Mohammedans to change their backward state, the Depressed Classes will require twice as much if not more to do so. Yet my colleagues have reversed the proportion of their representation. The Mohammedans, who are 19 per cent. and who form a strong minority, are given 31 per cent. of seats in the Council, while the Depressed Classes, who form 8 per cent. of the population on the most conservative estimates, are given only 7 per cent. of the seats in the Council which, in fact, is I per cent. less than their population ratio.
72. There is a view that the problem of the Depressed Classes is a social problem and that its solution must be sought for in the social field. I am surprised that this view prevails even in high quarters. I am afraid that those who hold this view forget that every problem in human society is a

social problem. The drink problem, the problem of wages, of hours of work, of housing, of unemployment insurance are all social problems. In the same sense the problem of untouchability is also a social problem. But the question is not whether the problem is a social problem. The question is whether the use of political power can solve that problem. To that question my answer is emphatically in the affirmative. True enough that the State in India will not be able to compel touchables and untouchables to be members of one family whether they liked it or not. Nor will the State be able to make them love by an Act of the Legislature or embrace by order in Council of the Executive. But short of that the State can remove all obstacles which make untouchables remain in their degraded condition. If this view is correct, then no community has a greater need for adequate political representation than the depressed classes.

73. My colleagues nowhere explain why the Mohammedan minority should get 12 per cent. more than its population ratio and why the Depressed Classes should not get even the share that is due to them on the basis of their population. It is noteworthy that the Mohammedan witnesses who pleaded for the excess of their representation did not claim it on the ground, as one might have expected, that it was necessary to ensure their progress or their well being. Their only ground was that the Mohammedans were the descendants of a ruling class and that they required this excessive representation because without it, they feared that the community would suffer in importance and influence. From this it will be seen that the Mohammedan claim for such excessive representation proceeds not on the basis of adequacy but on the basis of supremacy. I am strongly of opinion that in any democratic form of government all communities must be treated as of equal political importance and that there should be no room left for any one community to claim that it is *uber alles.* When anyone said that his community was important and should receive fair and adequate representation the claim was entitled to the sympathetic consideration of all. But when any one urged that his community was specially important and should therefore receive representation in excess of its fair share, the undoubted and irresistible implication was that the other communities were comparatively inferior and should receive less than their fair share. That is a position to which naturally the other communities will not assent. The earlier therefore the Mohammedan community is disabused of this extravagant notion, the better it will be for the future of the community. For there is no benefit in an advantage which not being willingly conceded by the other communities has perpetually to be fought for. On the contrary it may result in positive

harm to the Mohammedan community by sowing the seeds of estrangement and perhaps of positive antipathy between it and the other communities concerned.

74. The Mohammedan's is not the only case of a ruling class which has suffered a fall in its position. The French in Canada and the Dutch in South Africa are other instances where a class fell from its position of a ruling class to that of a subject class. But neither the French in Canada nor the Dutch in South Africa put forth claims to extravagant representation in order to be able to maintain their former position as rulers. Nor is such a consideration shown to the Mohammedan minorities in other parts of the world. The Mohammedan minorities in Albania, Roumania, Greece, Bulgaria are the remnants of what was once a ruling race. Yet in none of these countries have they claimed a royal share of representation. The Mohammedan claim for representation according to the influence is not only not heard of but is quite foreign to the system of representative government. The landowners, the capitalists, and the priests have an immense influence in every society, but no one has ever conceded that these classes should be given an immense share of representation. There is therefore no reason why the Mohammedan claim should be recognised when claims of similar nature have been dismissed elsewhere.

75. Whatever may have been their position before the advent of British rule in India—and there again it must not be forgotten, that if the Mohammedans have ruled India for five centuries, the Hindus have ruled for countless centuries before them and even after them — the safest course is to proceed on the basis that as a result of the British conquest all communities stand on a common level and pay no heed to their political past. Such an attitude far from being unjust will be perfectly in keeping with the sentiments expressed by the Law Commissioners who drafted the Indian Penal Code in their address to the Secretary of State. Therein they observed :

" Your Lordship in Council will see that we have not proposed to except from the operation of this Code any of the ancient sovereign houses of India residing within the Company's territories. Whether any such exception ought to be made is a question which, without a more accurate knowledge than we possess of existing treaties, of the sense in which those treaties have been understood, of the history of negotiations, of the temper and of the power of particular families, and of the feeling of the body of the people towards those families, we could not venture to decide. We will only beg permission most respectfully to observe that every such

exception is an evil; that it is an evil that any man should be above the law; that it is still greater evil that the public should be taught to regard as a high and enviable distinction the privilege of being above the law; that the longer such privileges are suffered to last, the more difficult it is to take them away; that there can scarcely ever be a fairer opportunity of taking them away than at the time when the Government promulgates a new Code binding alike on persons of different races and religion; and that we greatly doubt whether any consideration except that of public faith solemnly pledged, deserves to be weighed against the advantages of equal justice."

76. These are words of great wisdom and I am sure that words of greater wisdom have not been uttered for the guidance of those in charge of the public affairs of India. Nor is their wisdom restricted to the occasion on which or the purpose in relation to which they were uttered. I have no doubt that they apply to the present occasion with equal if not greater force. Indeed using the language of the Law Commissioners, I am led to say that it is an evil that the constitutional law of the country should recognise that any one community is above the rest; that it is a still greater evil that sections of public should be taught to weigh themselves in the scales of political importance in such a manner as to lead one to look up to and the other to look down upon; that the longer such notions are suffered to last the more difficult it is to eradicate them and that there can scarcely ever be a fairer opportunity for dispelling them than at the time when Parliament promulgates a new code of constitutional law binding alike on persons of different races and religion.

77. Equal treatment of all the minorities in the matter of representation is only a part of the problem of the representation of minorities. To determine a satisfactory quantitative measure for the distribution of seats is another and a more important part of the problem. But this is a most controversial question. Of the two opposing theories one is that the representation of a minority should be in a strict proportion to its population. The other theory which is strongly held by the minorities is that such representation must be adequate. I do not think that the arithmetical theory of representation can be agreed to. If the Legislative Council was a zoo or a museum wherein a certain number of each species was to be kept, such a theory of minority representation would have been tolerable. But it must be recognised that the Legislative Council is not a zoo or a museum. It is a battle ground for the acquisition of rights, the destruction of privileges and the prevention of injustice. Viewed in this light a minority may find that its representation is in full measure of its population yet it is so small that in every attempt it

makes to safeguard or improve its position against the onslaught of an hostile majority it is badly beaten. Unless the representation of minorities is intended to provide political fun the theory of representation according to population must be discarded and some increase of representation beyond their population ratio must be conceded to them by way of weightage.

78. To recognise the necessity of weightage is no doubt important. But what is even of greater importance is to recognise that this weightage must be measured out to the minorities on some principle that is both intelligent and reasonable. For it must be recognised that the minorities under the pretext of seeking adequate protection are prone to make demands which must be characterised as preposterous. To avoid this we must define what we mean by adequacy of representation. No doubt adequacy is not capable of exact definition, but its indefiniteness will be considerably narrowed if we keep before our mind certain broad considerations. First of all a distinction must be made in the matter of minority representation between adequacy on the one hand and supremacy on the other. By supremacy, I mean such a magnitude of representation as would make the minority a dictator. By adequacy of representation I mean such a magnitude of representation as would make it worth the while of any party from the majority to seek an alliance with the minority. Where a party is compelled to seek an alliance with a minority, the minority is undoubtedly in the position of a dictator. On the other hand where a party is only drawn to seek an alliance with the minority, the minority is only adequately represented. The first thing, therefore, that should be kept in mind in the matter of the allotment of seats to minorities is to avoid both the extremes— inadequacy as well as supremacy. These extremes can in my opinion be avoided if we adopt the rule that minority representation shall, in the main, be so regulated that the number of seats to which a minority is entitled will be a figure which will be the ratio of its population to the total seats multiplied by some factor which is greater than one and less than two.

79. This principle, it is true, merely defines the limits within which the representation of a minority must be fixed. It still leaves unsettled and vague with what this multiplier should vary. My suggestion is that it should vary with the needs of the particular minority concerned. By this method we arrive at a principle for measuring out the weightage to the minorities which is both intelligible and reasonable. For, the needs of a minority are capable of more or less exact ascertainment. There will be general agreement that the needs of a minority for political protection are

commensurate with the power it has to protect itself in the social struggle. That power obviously depends upon the educational and economic status of the minorities. The higher the educational and economic status of a minority the lesser is the need for that minority of being politically protected. On the other hand the lower the educational and economic status of a minority, the greater will be the need for its political protection.

80. Taking my stand on the sure foundation of the principle of equality on the one hand and the principle of adequacy on the other I feel I must demur to the allotment of seats proposed by my colleagues to the different minorities. My proposal is that out of 140 seats the Mohammedans should have 33 and the Depressed Classes 15. This gives the Mohammedans 23 per cent. and the Depressed Classes 10.7 per cent. of the total seats in the Council. By this, the Mohammedans get nearly 4 per cent. and the Depressed Classes 2 per cent. above their respective population ratios. This much weightage to the respective communities is, in my opinion, reasonable and necessary and may be allowed. Besides my proposal has one thing in its favour and that is, it keeps the ratio of Mohammedan representation unaltered. In the present Council, the Mohammedans have 23 per cent. of the total representation. As a result of my proposal they will have the same ratio of representation in the new Council.

81. In view of the fact that some people disfavour, I do not say oppose, the degree of representation I have allowed to the Depressed Classes, I think it is necessary that I should clear the cloud by additional explanation. There is no doubt that the initial representation allowed to the Depressed Classes was grossly unfair. The authors of the Joint Report expressly stated (paragraph 153) " we intend to make the best arrangements we can for (the) representation (of the Depressed Classes)". But this promise was thrown to the wind by the Southborough Committee which was subsequently appointed to devise franchise, frame constituencies and to recommend what adjustments were needed to be made in the form of the proposed popular Government as a consequence of the peculiar social conditions prevalent in India. So grossly indifferent was the Southborough Committee to the problem of making adequate provision for safeguarding the interests of the Depressed Classes that even the Government of India which was not particular in this matter, felt and called upon in paragraph 13 of their Despatch on the Report of the Southborough Committee to observe: " We accept the proposals (for non-official nomination) generally. But there is one Community whose case appears to us do require more consideration than the Committee gave it. The Report on Indian Constitutional Reforms clearly recognised the problem of the Depressed

Classes and gave a pledge respecting them. The castes described as ' Hindus—others ' in the Committee's Report though they are defined in varying terms, are broadly speaking all the same kind of people. Except for differences in the rigidity of their exclusion they are all more or less in the position of the Madras Panchamas, definitely outside the part of the Hindu Community which is allowed access to their temples. They amount to about one-fifth of the total population, and have not been represented at all in the Morley-Minto Councils. The Committee's Report mentions the Depressed Classes twice but only to explain that in the absence of satisfactory electorates they have been provided, or by nomination. It does not discuss the position of these people of their capacity for looking after themselves. Nor does it explain the amount of nomination which it suggests for them. Paragraph 24 of the Report (of the Franchise Committee) justified the restriction of the nominated seats on grounds which do not suggest that the Committee were referring to the Depressed Classes. The measure of representation which they proposed for this Community is as follows :

Province	Total population in millions	Population of Depressed classes in millions	Total Seats	Seats for the Depressed Classes
Madras	39.8	6.3	120	2
Bombay	19.5	.6	113	1
Bengal	45.0	9.9	127	1
United Provinces	47.0	10.1	120	1
Punjab	19.5	1.7	85	…
Bihar and Orissa	32.4	9.3	100	1
Central Provinces	12.0	3.7	72	1
Assam	6.0	.3	54	
	221.2	41.9	791	7

These figures speak for themselves. It is suggested that the one-fifth of the entire population of British India should be allotted seven seats out of practically 800. It is true that in all the councils there will be roughly a one-sixth proportion of officials who may be expected to bear in mind the interests of the Depressed; but that arrangement is not, in our opinion, what the Report on Reforms aims at. The authors stated that the Depressed Classes should also learn the lesson of self-protection. It is surely fanciful to hope that this result can be expected from including a single member of the Community in an assembly where there are 60 to 90

Caste Hindus. To make good the principles of paragraphs 151, 152, 155 of the Report we must treat the out-castes more generously....."

82. Even the Joint Select Committee recognised that the Depressed Classes were unjustly treated in the matter of representation by the South-borough Committee. For the Committee in its Report felt bound to observe that " the representation proposed for the Depressed Classes is inadequate. Within the definition are comprised, as shown in the Report of the Franchise Committee, a large proportion of the whole population of India. They think that the Government of India should, as it advises, be instructed to give such classes a larger share of representation by nomination, regard being had to the numbers of Depressed Classes in each Province, and after consultation with the Local Governments. This representation should, if necessary, be in addition to, but not in diminution of, the general electorate." All this of course was of no avail and the wrong done by the Southborough Committee to the Depressed Classes remained unredressed. The present is not an attempt to give excessive representation to the Depressed Classes. It is only an attempt to rectify the wrong done. Nor can it be said that in suggesting the measure of representation it is open to the objection of being extravagant. For, even the Muddiman Committee which said that there was " a very general recognition of the fact that it is desirable that both these interests (i.e., the labouring classes and the Depressed Classes) should receive further representation " and expressed itself as being " in agreement with this view " proposed to give them II seats in a Legislative Council of 113. If 11 seats out of 113 was a reasonable allotment, then the allotment of 15 out of 140 must be admitted to be very moderate. The quota of 15 appears excessive only because the initial quota was small. Those who object to the quota of 15 because it is out of proportion to the existing quota forget that the initial quota of seats which they are adopting as the standard measure is neither just nor proper.

83. There is one other matter which needs to be cleared up. My colleagues in paragraph 16 of their Report in which they discuss the question of the allotment of seats to the Mohammedan community say, " Two of our members, Sirdar Mujumdar and Dr. Ambedkar, are of the opinion that this arrangement can stand only so long as the Lucknow pact stands as regards all provinces." My colleagues have misunderstood me and have therefore misrepresented me. What I wanted to point out was that as they had not justified communal electorates or the number of seats to be given to the Mohammedans it would be better if they stated in their report that this was in pursuance of the Lucknow pact. The way in which my

colleagues have reported me seems to suggest that I support the Lucknow pact. I take this opportunity to say that the suggestion is quite unwarranted.

II Geographical distribution of seats

84. My difference with my colleagues is not confined only to the question of allotment of seats to the different minorities. It extends also to the question of distribution of seats among the different constituencies. One unpleasant feature of the Council as now constituted is the overrepresentation of some part and an under-representation of the rest. The enormous extent of the evil is made clear by the following figures :

Table

Maharashtra	47,854	8,536,217	21818155	25
Karnataka	10,118	2,958,849	99,41,264	16
Gujarat	18,870	3,188,523	82,91,225	8
Sind	46,506	3,279,377	1,03,85,031	19

85. How glaring are the inequalities becomes evident from the above table. Taking population as the basis, Maharashtra and Karnatak are grossly under-represented. Adopting representation of Gujarat as the standard, Maharashtra ought to be allowed 48 seats and Karnatak 17. Even taking revenue as the basis of distribution, Maharashtra and Karnatak have undoubtedly been treated quite unfairly. For, on that basis also Maharashtra is entitled to 32 and Karnatak 15. This demand for equal electoral power is not a mere sentimental demand or a demand for exact electoral symmetry. It has also behind it ample theoretical justification. For, in a system in which the value of a vote is high in one constituency and low in another, it is open to objection that every member of the community has not an equal share with each of the rest of the people in the choice of their rulers. But even if the principle of exact equivalence of all votes be not treated as a fundamental principle of political justice, yet the differences of this kind do not fail to produce the evil consequences of the overrepresentation of one part of the country or one set of opinions or interests at the expense of the other. Experience has shown that the existing distribution of seats has unduly divided the centre of gravity of legislative and executive action to certain parts of the Presidency to the prejudice of other parts of the Presidency, with the result that the latter have unintentionally been deprived of an adequate share of consideration

and attention from the Government. From this practical point of view the existing distribution of seats is a grievance, the justice of which cannot be denied. As matters now stand Karnatak and Maharashtra can never exercise in this Province that influence on the Government to which they consider themselves entitled by reason of their numbers. This is a substantial grievance which must be keenly felt as indicated by the evidence from Karnatak. This grievance is bound to increase as the responsible character of the Legislative Council increases and with it the influence which it will exercise upon the conduct of public affairs. There is, therefore, too much reason to fear that instead of dying out, the bitterness of feeling will become more and more acute. It is, therefore, proper that at a time when we are overhauling the machinery of Government with a view to make it a representative and a responsible government, this grievance should also be redressed.

86. The evil of over-representation of some parts of this Presidency at the expense of other parts was due to the fact that the Southborough Committee acted quite capriciously and refused to follow any definite principle in the matter of the distribution of seats. I am glad to find that my colleagues have sought to follow a uniform principle in the matter of distribution of seats as far as possible. But my complaint is that they have taken the worst possible principle as the basis of the distribution of seats. Contributions to the exchequer, electors on the roll and population in the constituency are the three conceivable tests that can be adopted as the basis for the distribution of seats. Of these three the test of the electors is the most unjust and indefinite. In the first place where the franchise is so restricted as we now have, it means the rule of wealth. It means that if any particular area on any arbitrary test of property qualification does not produce the basic quota of electors it should go without representation. That this must be inevitable consequence of following the test of electors is clearly brought out in the distribution proposed by the Majority for the Depressed Classes, according to which the Depressed Classes of some parts have enormous representation while those of the other part of the Presidency have no representation at all. A theory which produces such an absurd result must be regarded as indefensible and must be ruled out. Revenue is a better test than the test of electorates. For it may be argued that the power to influence government should be commensurate with the revenue paid to Government. This test must even be rejected as being deceptive and inadequate, owing to the fact that as all revenue might not be paid when it is earned, it would be difficult to know the true revenue of a State. A constituency in which a large revenue is earned may suffer in

distribution of seats because it is paid in another. But the most fatal objection to both these tests is that the State does not exist for the benefit of the electors or the taxpayers. Nor does the State limit its coercive action to them. Its jurisdiction extends over all the people who are its subjects irrespective of the question whether or not he is a taxpayer or an elector. From that it follows that the population is the only test for a just and proper distribution of seats. That is the test applied in England and in all countries which have a representative system of government, and I recommend that the seats for the Bombay Legislative Council should be distributed on that basis.

III. Other aspects of the distribution of seats

87. The want of principle which is noticeable in the distribution of seats among the minorities as proposed by my colleagues is also noticeable in the distribution of seats they have proposed between Capital and Labour, and between Landlords and Tenants. To capital as represented through Commerce and Industry they have given II seats, while to labour they give only four. To tenants they give none except what they can scrape through in the general election; while to the landlords they give five. But this is not correct for if we take into consideration the Sindh members and others from the Presidency, the seats to the landlords in the Council might easily come up to forty. Nor can I say that my colleagues have paid sufficient attention to the question of the proper distribution of seats between urban and rural areas. The Legislature is at present too much at the mercy of the rural classes and there is a great danger of governmental powers being exploited in the name of the agriculturists for legalising dangerous fads such as permanent settlements, cheap irrigation and free forests. If such fads are to be kept out of the statute book it is necessary to increase the representation of the urban classes whose representation is not commensurate with their ability or their contribution. It would have been better if my colleagues had left the task of a proper distribution of seats between the different parts of the Presidency to a separate Committee. I cannot say they have succeeded in doing justice to the weaker parties. I would suggest that a separate committee should be appointed to deal with this problem.

IV. Seats and residential qualification

88. Under rule *6(1)(b)* of the Bombay Electoral Rules, a residential qualification is prescribed for candidates for election to the Legislative Council. The rule lays down that "No person shall be eligible for election as a member of the Council to represent a general constituency unless he has for the period of six months immediately preceding the last date fixed for the

nomination of candidates in the constituency, resided in the constituency or in a division any part of which is included in the constituency." The rule has been interpreted in this Presidency to mean that actual or habitual residence in the constituency (and not merely a place of residence or occasional visits to it) is necessary before a candidate can stand for election from a particular constituency. Before I give my own opinion on this question I would like to state briefly the history of this restriction so far as this Presidency is concerned. Paragraph 84 of the Joint Report commented on the fact that a noteworthy result of the electoral system then existing was the large percentage of the members of the legal profession who succeeded at elections and went on to point out that so great a predominance of men of one calling in the political field was clearly not in the interests of the general community and suggested that in framing the new constituencies an important object to be borne in mind was to ensure that men of other class and occupations found a sufficient number of seats in the councils and that it was possible that this could be done by prescribing certain definite qualifications for rural seats. The question was carefully examined by the Southborough Committee, who in paragraph 29 of their report referred to the fact that some of the local governments, namely, those of the United Provinces, Behar and Orissa and Assam did not press for the insertion of the residential qualification, while the Governments of Bengal, Bombay, Madras and the Punjab held that it would be detrimental to the interests of a large proportion of the new electorate to admit as candidates, persons who were not resident in the areas they sought to represent. The majority of the Southborough Committee were on principle opposed to the residential qualification, but they resolved, by way of a compromise, to impose the restriction in the Central Provinces. Bombay and the Punjab but not in the remaining provinces. The Government of India, in expressing their views upon the recommendations of the Southborough Committee, accepted those recommendations, but pointed out that the Committee's treatment of the question had placed them in some difficulty in that while the Committee accepted the views of some of the local governments in favour of the restriction, they discarded the views of some others who equally pressed for it. The Joint Parliamentary Committee on the Government of India Bill recommended that the compromise suggested by the Franchise Committee should be accepted. This was done and the residential qualification was imposed only in the Central Provinces, Bombay and the Punjab. I would point out that subsequent to this the residential qualification was done away with in the Punjab in the revision of the rules

which proceeded the General Elections of 1923. The Punjab Government themselves in the opinion which they gave to the Muddiman Committee stated that for the first general elections the residential qualification wave the rural representatives an entry from which they had not been dispossessed, and there appeared to be no adequate reason for restoring the qualification. The position at present therefore is that Bombay and the Central Provinces are the only provinces in which the residential qualification still exists. In the Central Provinces the restriction is not interpreted as strictly as it is in this Presidency. It is, in my opinion, difficult to justify the retention of this restriction in this the most advanced Province in India when provinces much more backward have felt no necessity for it. The retention of this qualification is, in my opinion, to some extent responsible for the election of inferior men to the Councils and for the keeping out of the Councils men of position, ability and proved political capacity who are mostly found in the larger urban areas and who by the existence of the qualification are prevented from seeking election anywhere else if for some reason they are unable to secure election from their own residential area. I therefore recommend that the residential qualification should now be abolished so far as this Presidency is concerned.

CHAPTER 4
LUCKNOW PACT

89. I am aware that my recommendations regarding the substitution of joint electorates for communal electorates and the distribution of seats conflict with the terms of the Lucknow Pact in so far as they affect the representation of the Mohammedan community. The representation of the Mohammedan community as settled under the rules framed in 1919 was largely based upon what is known as the Lucknow Pact. This pact embodies an agreement arrived at in 1917 at Lucknow between the Moslem League and the Congress, the former acting on behalf of the Mohammedans and the latter on behalf of the Hindus. It gave to the Mohammedans communal electorates and a varying proportion of seats in the Provincial and Central Legislature. I realise that the views I have put forth on the representation of the Mohammedan community are subversive of this agreement, and I feel that it is incumbent upon me to state why I think that this agreement should be scrapped.
90. My first argument is that the settlement embodied in the Lucknow Pact is wrong settlement. This was admitted by all the local governments. The Government of India in their Despatch reviewing the recommendations of

the Franchise Committee to the Secretary of State, reported : " We note that local governments were not unanimous in subscribing to the compact. The Government of Madras framed their own proposals for Mohammedan representation without regard to it. The Bombay Government, while adopting the compact, did not rule out from discussion a scheme of representation upon a basis of population. The Chief Commissioner of the Central Provinces was opposed to separate Mohammedan electorates and considered that the percentage proposed in the compact was ' wholly disproportionate to the strength and standing of the community.' The Chief Commissioner of Assam thought it was a mistake even from a Muslim point of view to give that community representation in excess of their numerical proportion." Nor did the Government of India differ from this view generally held by the Provincial Governments. Evaluating the results of the Lucknow Pact in the different Provinces, they observed, "the result is that while Bengal Mohammedans get only three-quarters and the Punjab Mohammedans nine-tenths of what they would receive upon a population basis, the Mohammedans of other Provinces have got good terms and some of them extravagantly good. We cannot ourselves feel that such a result represents the right relation either between Mohammedans in different Provinces, or between Mohammedans and the rest of the community ". Sir William Vincent, in a note of dissent, went so far as to say, "In my view.....we should proceed without regard to the details of the Lucknow Settlement to fulfil our own pledges to the Mohammedans in what we ourselves think is the best way."

91. The wrong in the Lucknow Pact is not so much that it treated the Mohammedans in the different Provinces in a dissimilar manner, providing for them generously in some and niggardly in others. This is comparatively speaking a small matter. The principal defect in the Lucknow Pact is that in allotting the seats to the Mohammedans it did not take into consideration the effect it will have upon other interests. The framers of the pact, as pointed out by the Government of India, failed to remember that whatever advantage is given to the Mohammedans is taken away from some other interest or interests. Sir William Vincent, too, was careful enough to point this out. He also said in his minute of dissent, " The compact meets with much more acceptance than criticism of the present time; but hereafter, when the value of votes and representation comes to be realised, it must be expected that the interests which are hard hit by it will complain with some injustice that the Government of India should have endorsed it." The extent to which this prediction has been realised is remarkable, and the universal dissatisfaction that is felt with the result of the Lucknow Pact is

more than sufficient testimony to show that settlement embodied in the Lucknow Settlement is a wrong settlement. Now there can be nothing improper in asking that what is wrongly settled shall be re-settled. Such a demand is bound to meet with opposition from the Mohammedan community. Having obtained representation on an extravagant scale, they are sure to take their stand on precedent and past rights. But as Thomas Paine pointed out, the error of those who reason by precedents drawn from antiquity respecting their rights is that they would not take that time to the starting point when no vested rights existed. If they did they would realise that rights, far from being immutable, are historical accidents and are therefore liable to readjustment from time to time. This must be so, for all political and social progress is based upon the maxim that wrong cannot have a legal descent and that what is not rightly settled is never settled.

This is not the only instance in which a pact like the Lucknow Pact is sought to be revised. The Act of Union between Ireland and England was also a pact of the same sort. It certainly had a far greater binding force than the Lucknow Pact. In fact it was regarded as a treaty which guaranteed to Ireland 100 seats in Parliament. All the same, Mr. Balfour's Government, when it found that the excessive representation granted to Ireland had become a positive wrong, did not hesitate to bring in a Bill in 1905 which would have had the effect of reducing the Irish seats by 30. That owing to the resignation of Mr. Balfour's Government the Bill did not become law is another matter. But the fact remains that a revision of the Irish Settlement in the matter of the representation was not excluded by the fact that the settlement was based upon an agreement between the two parties. Nor was Mr. Balfour agreeable to the view that such revision could be carried out only with the consent of Ireland. Indeed, he had launched upon the scheme of redistribution in the teeth of the Irish opposition. But it is not necessary to go so far a field to find a precedent when there is one near at hand. The constitution of Ceylon had also given recognition to pacts and agreements between various organisations allowing communal representation and communal distribution of seats. But the Ceylon Commission of 1928 was emphatic in its view that " in any case, in considering afresh the whole problem of representation, private arrangements between races or groups, while worthy of attention, cannot take precedence of considerations in the interests of the Ceylon people as a whole." It had therefore no hesitation in revising the whole scheme of representation in Ceylon out of recognition. What is asked herein is no more than what is done elsewhere.

92. It is further to be remembered that the Lucknow Pact is valueless not

merely because its terms, to use the words of Government of India, "were the result rather of political negotiation than of deliberate reason," but also because it was brought about by organisations neither of which had any real authority to speak in the name of those on whose behalf they purported to act. The All-India Muslim League was not entitled to speak for all Mohammedans, and that it was the view of the Government of India in their despatch on the Report of the Southborough Committee is abundantly clear. Regarding the Congress, it is indisputable that it is a body which does not represent the vast mass of the Non-Brahmins and the Depressed Classes. A pact arrived at by organisations which are not constituent assemblies of the mass of people may bind themselves, but they certainly cannot bind the generality of the people. To give the pact an authority as though it was treaty negotiated between duly empowered plenipotentiaries of different States is to assume in the League and the Congress an authority which they did not possess. It has become necessary to assess the binding force of the agreement because of the view taken by the Government of Bombay that, " Any change in the direction of abolishing separate electorates must, however, be based on agreement between the two communities, and cannot be forced on the Mohammedans against their wish. The question is also an All-India one and can hardly be dealt with on different lines for each Presidency. The Government of Bombay adhere to the view which they had expressed in 1916 that communal electorates are not acceptable to them and that their abolition is desirable, if it can be secured with the consent of both parties as in the case of the Lucknow Pact." In my opinion this is an attitude which is as irresponsible as it is dangerous. It is irresponsible because it involves the surrender of the right of Parliament to decide in the matter. That the Government of India thought it wise not to " ignore " the pact, which in their opinion represented a genuine attempt on the part of the two communities upon so highly controversial a subject and "on behalf of the larger community at least a subordination of their immediate interests to the cause of unanimity and united political advance," is true. But that is far from saying that the Government of India or any other authority held the view that on the question of Mohammedan representation their position was merely to register the decision which the Congress and the League may by mutual negotiations make. Indeed, Sir William Vincent was careful to point out that "in this matter (the Government of India) cannot delegate (its) responsibility to Parliament into other hands."

93. The attitude taken by the Bombay Government is dangerous because, admitting that an error has been committed, it refuses to take upon itself

the task of correcting it. I would have looked upon such an attitude as a pardonable sin if the error was not an error in the constitutional arrangement of the country. But unfortunately it is an error in the constitution, and, having found its lodgement in a most vital part thereof, it affects its working in a fatal manner. An error of such a character cannot be tolerated. A mistake in constitutional innovation directly affects the entire community and every part of it. It may be fraught with calamity or ruin, public or private, and correction is virtually impossible. The Government of Bombay practically takes for granted that all constitutional changes are final and must be submitted to, whatever their consequences. Doubtless this assumption arises from a fateful renunciation that in these matters we are propelled by an irresponsible force on a definite path towards an unavoidable end towards destruction. But I am glad to find that the Government of India in accepting the pact did not concede that its terms as embodied in the Act should stand unaltered. Far from leaving the matter shrouded in ambiguity, they made it quite clear that the arrangement was not to stand beyond the first Statutory Commission. In their Despatch on the Report of the South-borough Committee they said : " Before we deal in detail with the Report, one preliminary question of some importance suggests itself. As you will see, the work of the Committee has not to any great extent been directed towards the establishment of principles. In dealing with the various problems that came before them they have usually sought to arrive at agreement rather than to base their solutions upon general reasonings. It was no doubt the case that the exigencies of time alone made any other course difficult for them. But in dealing with their proposals, we have to ask ourselves the question whether the results of such methods are intended to be in any degree permanent..... Whatever be the machinery for alteration, however, we have to face the practical question of how long we intend the first electoral system set up in India to endure. Is it to be opened to reconstruction from the outset at the wish of the Provincial Legislature or is it to stand unchanged at least until the first Statutory Commission ? There are reasons of some weight in either direction. In the interest of the growth of responsibility it is not desirable to stereotype the representation of the different interests in fixed proportion; the longer the separate class and communal constituencies remain set in a rigid mould, the harder it will become to progress towards normal methods of representation. *On* the other hand, it is by no means desirable to invite incessant struggle over their revision." It is for the Commission to say whether the life of this error shall be prolonged. I have hopes that the Commission will not merely say, " Well, we feel the force of the objections

to principle of the communal system fully. But we cannot help as India has deliberately chosen her road to responsible government." For the Commission will realise that its duty to point out the right road and lead India on to it arises not merely out of a conscientious regard for what is right but also out of the moral obligation of the British authorities who are primarily responsible for pointing out in 1909 this wrong road.

CHAPTER 5
SECOND CHAMBER

94. My colleagues have recommended the institution of a second chamber as a part of the Provincial Legislature of this Presidency and have suggested a framework for its constitution. I am afraid my colleagues have not devoted sufficient thought to the difficulties pertaining to its construction. In the matter of its composition, a second chamber, if there is to be one, must be different than the first. In the matter of its powers, they must be such that a second chamber can work without impediment to the first chamber. It seems to me to be very difficult to constitute a second chamber which will satisfy both these conditions. A nominated second chamber is out of question. The Canadian Senate is a standing warning against the introduction of a nominated second chamber. It cannot have the moral authority of a popularly elected chamber to command respect for its decisions. Nor can it have the independence possessed by a popularly elected chamber to sit in judgement, as a revising chamber must, over the very executive which brings it into being. If the second chamber is an elective chamber then its working smoothly with the first will depend upon their respective franchise, times of election and their powers. If the second chamber is elected on the basis of a restricted franchise, it is sure to end in the raising of a small group from amongst the aristocracy into a governing class having a special degree of control over the destiny of the masses. Such a second chamber, far from being a revising chamber acting as a check upon the supposed rashness of the lower chamber, will be a chamber which, instead of putting a premium upon improvement in general, will put a premium upon the upkeep of vested interests. It would be dormant under a conservative administration and would be vigilant only under a radical one. When it ought to revise it will refuse, and when it ought to refuse to revise it will revise and may perhaps obstruct. If the two are elected on a uniform franchise, then the second will only be a replica of the first and will be quite superfluous. The same would be the result if the second chamber was elected simultaneously with the first. On the other

hand, if the second chamber is elected at a different time than the first, then it is bound to enfeeble the executive and diminish its efficiency. For it would work as a hindrance to adequate policy making and may cause such a violent break in the policy of the executive as to lead to constant general elections. If the two chambers are coequal in powers there are bound to be deadlocks, and the inevitable result of all deadlocks is an unhappy compromise, if not a total abandonment of the principle in dispute. On the other hand, if the powers of the second chamber are inferior to those of the first, it will not be able to control the supposed rashness of the first chamber and will thus fail to perform the purpose of its life.

95. In framing the constitution of a second chamber my colleagues have ignored all these difficulties. In doing so they have created a second chamber which, if I may say so, has all the faults and none of the virtues which a second chamber should have. In supporting the idea of a second chamber it seems to me that my colleagues have more or less followed the crowd psychology. A widespread existence of second chambers in historical times has given rise to the dogma of political science that a second chamber is a necessary accompaniment of a popular government. But it is forgotten that a two-chamber system which had its origin in England was a purely historical accident. That it found a place in the constitution of other countries was the result of the imitation of the superior by the inferior, and the virtue ascribed to it of serving as a brake on the rashness of the popular chamber is a subsequent invention of the human mind to justify the existence of what had become a universal fact. But it must be noted that this faith in the second chamber has been dwindling of late and that pre-war constitutions like Canada and South Africa and many post-war constitutions like those of Latvia, Lithuania, Esthonia and Yugoslavia have dispensed with the second chamber. This reaction has come about by the growing conviction that a government must) be judged not by the symmetry of its structure, but by its practical achievement, by the content of actual service that it renders to the community and by the amount of well-being that it brings to the nation as a whole.

96. Looking at the institution of a second chamber from the utilitarian point of view, I refuse to accept that it can perform the function of a revising chamber. If to revise means to interpret the will of the electorates, I fail to understand how the second chamber is more likely than the first to be correct in its judgement as to what the electoral will is. My view is that the electorate and not the second chamber will be the best judge when such a question arises, unless we suppose that the members of the second chamber by virtue of their position have a greater presence than the

members of the lower chamber. I deny that the second chamber possesses any such virtue. Indeed, a second chamber is not only as much likely to fail in correctly gauging the popular will, but its own interests in the matter are likely to give it such a personal bias one way or the other as to make it quite incapable of coming to an independent and rational judgement. It is therefore better, safer and more reasonable to have a single chamber and to throw the responsibility of decision, when doubt arises, upon the electorate which chooses the chamber. Besides, if the idea underlying the second chamber is to delay the decision of the first chamber, then this is already secured by the Governor having the power to refer back any particular measure which has been passed by the Legislature for reconsideration. If the Legislature does not reconsider, but passes it in original form, the Governor can still stop it by vetoing it. And if the Legislature does not abide by the decision of the Governor, it may compel him to submit the matter in dispute to the electorate by compelling the dissolution of the House. It is therefore obvious that what the second chamber can do or is expected to do, can be done by the Governor with his powers to veto, to refer back and to dissolve. If this is admitted, then a second chamber becomes a useless appendage to a popular chamber.

97. I am sure my colleagues would not have been led away by what exists in some other countries without applying the utilitarian standard if they had made sure that their assumption that a single chamber is likely to pass hasty and ill-conceived laws was based on sure foundations. It seems to me that the assumption is quite unfounded and displays a total ignorance of the working of modern politics. No piece of legislation in modern times is flung upon the Legislature as a surprise. On the other hand every legislative proposal before it is enacted into law goes through a long process of discussion and dissection at the hands of the public extending over a long period of years. Indeed, if the antecedent history of every measure which has found its place in the Statute Book were investigated it would demonstrate that the period that has intervened between the conception of the idea and its enactment into a law has varied more often on the side of length than on the side of brevity. Such being the case the assumption that a popular chamber acts hastily and therefore needs a brake upon its wheels is to prescribe for a disease which does not exist.

98. What however my colleagues are after is not a revising chamber but a governing caste. This is clear from the purpose assigned to it, from the franchise on which it is sought to be built and the powers which are proposed to be given to it. I confess I am somewhat surprised that they should have thought that a devolution of powers on the Legislature must be

circumscribed by the institution of a second chamber as an insurance against such powers being used to the detriment of a particular community, or a particular interest. For the desire really felt, as I understand it, is not that we should have a reform in which the centre or the balance of political power shall remain unchanged but that within certain limits it shall be surreptitiously shifted in the direction of the mass of the people. To attempt to circumscribe this devolution of power seems to suggest that my colleagues think that the most desirable kind of political reform is one which does not alter the balance of power amongst the different communities concerned. Persons who hold such a view in my opinion either do not know what political reform means or, knowing what it means, do not desire a reform which will disturb the *status quo.* As for myself, I make no mistake about the fact that the essence of all reforms is to change the balance of power among the different classes. If the lower classes gain, some other class must lose. If each class remains with no more political power than before then there will have been no real reform. It is idle to suppose that either the lower classes or for the matter of that any class interested in reform will be satisfied with a measure, either because it is called political reform or because while proposing to change everything it contrives to keep things where they are. It would be much better to say in plain terms that the scheme of devolution of political power should be so conditioned that the flow of power shall stop with the classes and shall not reach the masses. I must however make it plain that I cannot be a party to any such scheme of reforms.

99. Granting that a second chamber is a necessity there is one supreme difficulty in the way of its formation. The authors of the Montague-Chelmsford Report had in 1917 carefully considered the question of establishing second chambers in the Provinces. But taking all things into consideration they decided against the proposal. They said, " We see very serious practical objections to the idea. In many provinces it would be impossible to secure a sufficient number of suitable members for two Houses. We apprehend also that a second chamber representing mainly lended and monied interests might prove too effective a barrier against legislation, which affected such interests. Again, the presence of large landed proprietors in the second chamber might have the unfortunate result of discouraging other members of the same class from seeking the votes of the electorates. We think that the delay involved in passing legislation through two Houses would make the system far too cumbrous to contemplate for the business of Provincial Legislature. We have decided for the present therefore against bicameral institution for the Provinces."

The objections raised to second chambers in 1917 hold good even today. I am quite certain that this Presidency has not at its command a sufficient number of eminent men to run both the Houses. A second chamber will sap the life of the first or the first will sap the life of the second. There is not enough material to build both. Under such circumstances it is better to have a single efficient chamber than to have two effective ones. For these reasons I oppose the institution of a second chamber in the Presidency.

CHAPTER 6
POWERS OF THE LEGISLATURE

100. *Power of appointing and removing the President.*—Prior to the reforms of 1919 the Governor who was the chief of the executive of the Province was the President of the Provincial Legislature. By the changes introduced in 1919 the Provincial Legislature obtained the right of electing one of its members as its President and to remove him from office. This was a valuable privilege. The exercise of this privilege was, however, made subject to certain restrictions inasmuch as the appointment of the President was made subject to the approval and his removal subject to the concurrence of the Governor. These limitations are the remnants of the time when the Executive was supreme over the Legislature. They are not to be found in the constitution of the dominions. They are incompatible with the independence of the Legislature and must be removed. Granting that the President must be made independent of the executive, question is, must he also be made independent of the judiciary ? Section 110 of the Government of India Act defines the officers and the matters in respect of which they are exempt from the jurisdiction of the High Courts. The President of the Legislative Council is not included among the officers who enjoy this immunity. That being the case, the President of the Legislature is subject to the jurisdiction in respect of what he does as a President. That means that his conduct as a President is liable to be questioned in a Court of Law. It is feared that this opens a vast field to vexatious litigation involving great delay in the conduct of the business of the Legislature. This is sought to be remedied by granting exemption to the President from the jurisdiction of the Courts. I am opposed to this change and prefer to leave things as they are.
101. *Power of defining Privileges.*—No one will question the expediency of allowing a Legislature every power reasonably necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute. The position of the Provincial Legislatures under the

existing law is very unsatisfactory. Beyond giving certain immunities to the members of the Legislature and barring the meagre powers given to the President by rule 17 of the Legislative Council Rules for expelling a disorderly member, the law gives no authority to the Legislature to vindicate itself against a wrong calculated to obstruct its work or lower its dignity. Such authority can no longer be withheld from the Legislature. I therefore recommend that the Provincial Legislatures like the Dominion Legislatures should be given the power within prescribed limits to define by law the powers and privileges which it thinks are necessary in its own interest.

102. *Power of regulating Procedure.*—The conduct of business in the Bombay Legislative Council is governed by Rules framed under Section. 72D (6) of the Government of India Act supplemented by Standing Orders framed under Section 72D (7) of the same. In the framing of this code of procedure the Provincial Legislature has had no hand. The standing orders were made by the Governor-General in Council, though the Legislature had had the liberty to suggest amendments to them. But the Rules are framed under the provisions of Section 129A by the Governor-General in Council which expressly prohibits the Provincial Legislature from altering or repealing them. I am of opinion that the Provincial Legislature should have the power of regulating its own procedure. The difficulty in giving such freedom to the Provincial Legislatures seems to arise from the fact that some of the Rules embody provisions which in other countries form parts of their constitutional law; so that the power to amend rules virtually become power to alter the constitution. But this difficulty can be easily avoided if an attempt was made to enact such rules as section of the Government of India Act. If this is done, the recommendation I have made can be easily given effect to and the Provincial Legislatures brought on a par with the Dominion Legislatures of Australia, South Africa and Canada.

103. *Power of Legislation.*—Section 80C of the Government of India Act provides that it shall not be lawful for any member of any local Legislature to introduce, without the previous sanction of the Governor, Lieutenant Governor or Chief Commissioner, any measure affecting the public revenue of a province, or imposing any charge on those revenues. This section is a serious limitation upon the powers of the Legislature. It is a relic of the days when the people had no voice in the administration of the affairs of the country. The retention of these powers will ill accord with a Legislature supreme over the executive. This section must therefore be deleted. The Governor will still have the power of vetoing any legislation

that will be passed by the Council. That power must suffice. More than that will not be consistent with the position he will have to occupy under a system of complete ministerial responsibility.

104. *Power of Appropriation.*—The Legislative Council under Section 72D may assent or refuse its assent to a demand or reduce the amount referred to therein either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed. This power is subject to certain important provisions. In the case of a demand relating to a reserved subject, the Governor has the power of over-ruling the decision of the Legislature if he certifies that the expenditure provided for in the demand is essential to the discharge of his responsibility for the subject. Another proviso limiting the powers of appropriation of the Legislature is contained in Section 72D, Clause *(2)(b),* by virtue of which the Governor has the " power in cases of emergency to authorise such expenditure as may be in his opinion necessary for the safety or tranquillity of the Province, or for the carrying on of any department." These are also very serious limitations on the powers of the Legislative Council, and I suggest that they should be removed from the Act. The powers given to the Governor under the first proviso are out of place in a Government which is fully responsible and in which the Governor is not charged with the direction of affairs. The safety and tranquillity of the Province will not be a special concern of the Governor any more than that of the responsible Executive. Consequently the power given by the second proviso to the Governor is unnecessary and should be taken away.

105. Another restraint on the financial powers of the Legislature is embodied in Section 72D(3). By virtue of this, the executive is not required to submit to the Legislature for its vote expenditure on certain specified heads mentioned therein. The result is that the Budget of the Province contains permanent appropriations to a large extent which the Legislative Council cannot touch. Theoretically speaking, every item of expenditure should be sanctioned each year by the Legislature. But the Budget, in almost every country, contains permanent appropriations which do not require to be voted annually by the Legislature. Even in England there has grown up quite a list of permanent appropriations covering before the War in the aggregate about one-third of the total annual expenditure. Whether the Executive can or cannot be trusted to fix the amount and determine the character of public expenditure depends upon the stage of development at which people have arrived in their realisation of constitutional government If the stage be such that there exists an uncertainty concerning the

political rights of the Government and the people, it would not be safe to permit such permanent appropriations of public moneys without Legislative sanction as are contemplated by Section 72D (3). It is true that the foundation of responsible government in the Provinces is just being laid and the Provincial Legislatures have jealously to guard against the encroachments of the Executive. All the same, it must, I think, be recognised that the right of popular control over public affairs is recognised and will be under the new constitution fully conceded, so that under the various checks upon the arbitrary use of public authority the submission for annual sanction of every item of public expenditure need not be insisted upon. I do not therefore object to this scheme of permanent appropriations. But I object to their being made so by law, thereby curtailing the powers of the Legislature. Their being made a matter of law has had the effect of debarring the Legislature from even discussing the policy underlying the administration of non-votable items. The creation of non-votable items must be a matter of convenience. There ought to be no restraint about them on the Legislature by law.

106. *Power of controlling the Executive.*—Originally Provincial Legislatures under the reformed constitution of 1919 could control the Minister in three ways : (1) by legislation, (2) by refusing supplies, and (3) by refusing or reducing their salaries. The second and the third were the only two ways whereby the Legislature could control the administration by the Ministers. This control could normally be exercised only once a year, and was therefore insufficient. Consequently provision was made in 1926 for a motion regarding want of confidence in a Minister. These powers are sufficient for the Legislature to control the actions of a Minister and were in keeping with the idea that the Ministers were to be individually liable for their actions. The future Ministry will be based upon the principle of joint responsibility under which Ministers will stand together or fall together. There is nothing in the existing powers of the Legislature to indicate that it desires to dismiss the Ministry as a whole. I think provisions to this effect should be made by adding a new class of motion to be called " a motion of no confidence " as distinguished from the existing motion, which should be renamed as " motion questioning a Minister's policy in a particular matter ". This was suggested by the Muddiman Committee but was not carried out.

107. *Power of altering the Constitution.*—The Provincial Legislatures are bound by the terms of the instrument which has created them. By virtue of that instrument they are made bodies with "plenary powers" possessing a specific and defined power of government in their territory over all

persons. The plenary powers of government do not *per se* carry a power to alter the constitution itself. There is a desire that the Provincial Legislatures should have the powers of a constituent Assembly to alter the constitution of the Province. There is much that can be said in favour of such a proposal. Parliament having consented to grant self-government to the people of the Province, it is as well that the people of the Province had the right to decide the form of government under which they liked to live. But it must be recognised that there are minorities who will not like their constitutional rights to be determined by the majority, as would be the case if the Provincial Legislatures were allowed the right to alter the constitution. This is the principal reason why the constitution of Canada gives no power to the Canadian Parliament to alter the constitution of Canada. There is, however, the example of South Africa, which shows that the powers of altering the constitution can be conferred on a Legislature without detriment to the position of the minorities. There is therefore no reason why the example of South Africa should not be followed. I recommend that the power of altering the constitution of the Province should be granted to the Provincial Legislature; provided that it shall have no power to alter the provisions regarding the representation of minorities in the Legislature.

108. What special procedure should be prescribed for passing such legislation is a matter which it is very difficult to decide. But it might, however, be stated that the mode of amending the constitution should be such as to make it sufficiently rigid to protect the fundamental rights of the citizens but which should at the same time leave it flexible enough to recognise that development is as much a law of life as existence and to secure deliberation before action and final decision in harmony with the principle of rule by majority. The safest course, it seems to me, would be to prescribe different procedure for different kinds of amendments to the constitution. For the more fundamental amendments the procedure should be more exacting than for amendments to less fundamental parts of the constitution.

Part II