DRAFT

CONSTITUTION

OF

INDIAN REPUBLIC

SOCIALIST PARTY

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DRAFT CONSTITUTION OF THE REPUBLIC OF INDIA

FOREWORD

The Constituent Assembly has been at work for over a year now, and its labours will soon reach their end. But, strange though it may seem, its work has so far failed to enthuse the country or create adequate interest. Its deliberations have been dominated by cool and sedate lawyers who give no evidence that they comprehend the significance of the turmoiled birth of a nation. There have been no passionate controversies raised in the Assembly, nor have we witnessed there the din and dust of any stubborn fight of interests and ideologies ; nor even the flash and spark of a collision of personalities. Thus, the Assembly has carried on its hum drum work for a year, inspired not by the revolutionary mood and aspirations of the people but by the natural conservatism and timidity of worthy *diwans* and legal luminaries.

The Indian Constitution is not likely to be, unless drastically amended, a fit instrument of full political and social democracy. The parts of the Constitution so far prepared by the Assembly confirm this fear.

Here in this Draft Constitution prepared and published by the Socialist Party is suggested the type of fundamental law that Free India should have. In the Review the defects of the law as being drafted in the

Assembly have been brought out and the salient points of the suggested constitution have been given.

The Socialist Party had intended to publish this volume much earlier, but it was not possible to avoid the delay. I hope, however, that even now when the final draft of the constitution has yet to be discussed in the Assembly, this publication will be of some value. Some time ago, a short statement on this subject was issued by the National Executive of the Party and the Party's programme, recently published, also briefly deals with the fundamental principles of the constitution. In the present volume the subject has been dealt with more fully.

It remains for me to acknowledge the help that Professor Mukut Behari Lal, Head of the Department of Political Science, Banaras Hindu University, has rendered in the preparation of this volume. It was entirely due to his labours, and the keen interest he took in it, that this work has been possible; and I have pleasure in expressing the Party's gratitude for the time and thought he gave to it.

Nowgong, Assam.
18–12–47. } Jayaprakash Narayan.

PART 1

REVIEW

Chapter I

THE STATE

The Constituent Assembly of India has no doubt done much good work. Many of its propositions are based on sound democratic principles and deserve full support.

SOVEREIGNTY OF THE PEOPLE

It has rightly maintained in the preamble that the constitution is decreed by the people through their representatives. But it would have been better if it had also positively asserted through a substantive proposition in the constitution that "the will of the people is the source and the foundation of the authority of the state", as has been done in many constitutions of the world. This is specially necessary in India because of the pretension of the rulers of the Indian States with respect to sovereignty.

SOVEREIGN DEMOCRATIC REPUBLIC

The Constituent Assembly has declared the Indian federation to be a sovereign independent Republic. It would have been better if the word 'democratic' had been substituted for 'independent.' The sovereign republic is always independent but need not be democratic. Republics of oligarchical and dictatorial character are not unknown to the world. But we surely wish our Republic to be democratic.

COMPLETE INDEPENDENCE

It is to be regretted that the Constituent Assembly has not so far resolved that India's membership of the British Commonwealth will terminate at the commen-

cement of the new constitution. Dominionhood can only be tolerated during the transitory period. It cannot be allowed to be a permanent feature of our political life. The Congress is pledged to complete independence which was always understood in the sense of the severance of the British connection and was so specified in the Congress pledge taken on Independence Day. It would be a desertion of our proclaimed ideal, if we allowed ourselves to be cajoled and humoured by British Statesmen or to be guided by the attitude of Pakistan.

It is not possible for us to interlink our foreign policy with British diplomacy. We are determined to lend our full diplomatic support to the oppressed peoples of Asia in the cause of their freedom and work for the democratic organisation of peace. Can this be expected of Great Britain when even the British Labour Party failed to lend its support to Indonesia ? The Irish Free State could be indifferent and sullen and even neutral during the last war, because De Valera, its prime minister, had all along opposed its membership of the Commonwealth. But if India chooses to be a member of the British Commonwealth voluntarily, how can it be passive and indifferent towards the problems of the Commonwealth ? Like Canada and Australia India shall willingly and voluntarily have to share with Great Britain the responsibilities of the defence of the British Commonwealth. It cannot then be free from entanglements which may make it impossible for India to remain neutral in the next world war. It may be said that India needs the protection of the British Navy which is possible if it is a member of the British Commonwealth. But to rely on the British Navy and defence forces will hardly be wise. During the last war the British could with difficulty spare two battleships for Singapur. But as no

aircraft carriers could be spared to accompany them, they were sunk without much difficulty by the Japs. There is no reason to believe that Britain will be in a position to help us more in future. Its economic conditions do not warrant us to cherish such hopes. India's membership of the Commonwealth may then easily turn out to be a political liability. Nor will it be wise to link Indian economy with the economic system of the Commonwealth. India has all along been opposed to the policy of Imperial preferences and it is doubtful if it will be proper for India to belong to the Sterling Bloc. Nor can it be said that Indians are better treated by the members of the Commonwealth than by other nations of the world. Thus, India may have reason to forget the past and develop amicable contacts with Great Britain, but will not be justified in remaining a member of the British Commonwealth.

The constitution must positively declare :

"India's membership of the British Commonwealth shall terminate at the commencement of the new constitution."

SECULAR STATE

The state is an association of territorially demarcated community.[1] It is "essentially territorial in nature"[2] and is distinguished from the old tribal organisation by "the grouping of its members on a *territorial basis*."[3] It comprehends within its fold all persons permanently domiciled in a territory and cannot justifiably be identified exclusively with any particular community. Religion has no relevance in the organisation of the state. In middle ages the society was dominated by religion and so the state assu-

1. Mac Iver : The Modern State p. 22.
2. Laski : Grammar of Politics p. 69.
3. Engels : The Origin of the Family, Private Property, And the State Chap. IX.

med theocratic character in some countries. The state was, thus, made subservient to the church and heretics were made to suffer inquisitions and persecutions. But the religious bond failed to stop internicine feudal wars, while crusades added to human misery. In the beginning of the modern age religious uniformity was regarded as essential for political and national unity. The idea forced nations to suffer civil wars and massacres and had ultimately to be discarded as unsound and dangerous. The political life is being increasingly differentiated from religion and has assumed secular character. To-day in some European countries, like Great Britain, the state church is no doubt allowed to exist but mainly because it has ceased to count in matters of the state. Religious political parties are also to be found in some European Countries, but their role has invariably been reactionary in character. Though in the past Indian society was largely dominated by religion, the Indian state remained largely secular in character. The state was recognised by *vedas* to be composed of persons of "different faiths and languages,"[1] and neither religious nor linguistic uniformity was ever insisted upon. Harmony and not uniformity has been our social ideal. Indian politics has not been free from religious influences, favouritism and prejudices. But all this not only vitiated our political life but also endangered peace and harmony. What we need most are the recognition of the territorial character of the state and complete differentiation of politics from religion. Even Gandhiji, essentially a man of religion, has begun to insist on the secular character of the state. Secularisation of politics is urgently needed and must be declared as our ideal.

The constitution must, therefore, lay down that "the state is secular."

1. Atharv veda : Prithwi Sukta.

CURRENCY, CUSTOMS AND ECONOMIC ZONE

A federal union has always been an economic union. Its territories have always formed a customs and currency zone. No federation has ever been formed merely for the purposes of defence, foreign affairs and communications. The freedom of trade and commerce within the federation is an essential feature of federal polity. Customs barriers and federal unity are contradiction in terms. The existence of free ports is repugnant to federal link. Tariff policy is an integral part of foreign policy. The two cannot be separated and assigned to two independent authorities. Federal authority has invariably been asssigned jurisdiction over customs, currency and inter-unit trade and commerce. This must also be done in India. States cannot be federated with the Republic of India on any other terms. The economic unity of India cannot be allowed to be broken up by the States. They must be prepared to assign to the federation necessary economic functions and form part of the common economic, customs and currency zone. Their own interests can also be best served thereby. Most of the States being landlocked have to carry on trade with foreign lands through ports of other units, and can, therefore, have no effective voice in the tariff policy unless customs is a federal subject. The development of ports of Indian States also requires a common tariff policy and the abolition of all customs barriers between States and provinces. Common currency will also be to the obvious advantage of States, which are too small to form separate currency units. The constitution should, therefore, declare that "the territories of the Republic shall form a common economic, currency and customs zone." Such a provision formed part of the constitution of Austria, passed in 1920.

TOWARDS UNITY

We have achieved our freedom but not yet realised political unity. Certain provinces, States and territories have not yet joined the Indian Union. It should be the primary duty of the federal authority to promote the political unity of India through democratic and peaceful means. Complete unity of the whole of India may not be realised soon. Partial unity may be possible earlier. So it may be laid down in the constitution that "territories which do not form part of the Republic may by treaty or agreement be included within its currency, economic and customs zone or its administrative jurisdiction". This partial unity may turn out to be a precursor of complete unity of federal character. But independent of this consideration partial economic or administrative unity is to be welcomed for its own inherent advantages.

INDIAN STATES

It is obvious that a large majority of the States in India are too small to function as administrative units. Neither area and population, nor financial resources entitle them to be retained even as a district or a taluka for administrative purposes. More than fifty per cent of these States have an area of less than 30 sq. miles, population of less than 5 thousands and annual financial income of less than a lakh of rupees. Indeed, eighty per cent of the States have a population of less than a lakh, area of less than 500 sq. miles and annual financial income of less than 10 lakhs of rupees. Free India cannot allow these States to enjoy the freedom of stagnation and misery just to enable their rulers to pose as sovereigns. For the sake of the progress of their peoples these States will have to forego the honour of being distinct political entities and their territories will have to be either annexed to adjoining

districts or welded together to form suitable administrative zones or districts. The question is too complicated to be solved by a declaration in the constitution about the abolition of their distinct political entities. The constitution should, therefore, provide for the appointment of a commission to enquire into and report on ways and means and authorise the federal legislature to deal with the problem on the basis of the report.

Most of the remaining States may well serve as administrative units, but cannot shoulder the responsibilities of provincial administration. They do not deserve to be treated on par with the provinces as constituent units of the federation. Wherever possible they should be grouped into sub-federations, which shall serve as constituent units of the federal Republic of India. There is a general demand for the establishment of unions in Rajputana, Central India, as well as Gujarat-Kathiawar. But public opinion has not sufficiently crystallised about the extent of the authority and territorial jurisdiction of these unions.

The constitution should, therefore, provide :

"The federal authority shall promote the formation of sub-unions in Rajputana, Malwa-Bundelkhand and Kathiawar-Gujarat. It shall also encourage States of medium size outside the zones of the aforesaid unions to attach themselves to the provincial units with which they are geographically connected."

The constitution of these unions should be modelled on the principles of the constitution of the Indian Republic. It should be settled by mutual agreement and endorsed by a federal law. The people of the federated States attached to a provincial unit should have the power to return representatives on the legislature of the province concerned and such representatives should have the right to take part in the deliberations of the legislatures and to look after the administration

of such matters and departments as are ceded to the provincial units by the federated States. The Union of federated States should be in charge of the Public Service Commission, the Audit Department, the High Court and such other subjects placed by the new constitution under the exclusive legislative jurisdiction of the unit as may be assigned to the union by agreement among the States concerned and endorsed by a federal law. The union should also have power of concurrent legislation over all subjects placed by the federal constitution under the concurrent legislative jurisdiction of the federation and the units.

Chapter II

CITIZENSHIP

The federal state is a single body politic. It has common citizenship. The Constituent Assembly has, therefore, wisely decided to assign to the federal legislature exclusive jurisdiction over matters regarding citizenship and naturalisation. To indicate clearly uniformity of citizenship, it may be specified in the constitution, as was done in some other federal constitutions, that "the Republic shall have a single uniform citizenship with common and equal rights, privileges and responsibilities."

The Constituent Assembly has decided that "at the date of the commencement of the constitution

Every person domiciled in the territory subject to the jurisdiction of the Republic

(a) who has been ordinarily resident in those territories for not less than five years immediately preceding that, or

(b) who, or whose parents, or either of whose parents was or were born In India,

shall be a citizen of the Republic, provided that any such person being a citizen of any other state may, in accordance with federal law, elect not to accept the citizenship hereby conferred."

Indians who have recently migrated from Pakistan to the territories of the Indian Union are not at all satisfied with this definition of the citizenship of the Indian Union. They resent being designated as refugees and claim to be equal citizens of the Indian Union, specially because partition was imposed on them against their will. Their contention deserves a careful consideration. It will not be wise to keep them as

refugees and aliens in their motherland on the ground that before partition they resided in such territories in India as today form part of the Dominion of Pakistan. To facilitate their rehabilitation and assimilation it is necessary to recognise them as citizens of the Indian Republic, provided that they have been ordinarily resident for not less than five years in any part of the Indian peninsula. Due provision will have to be made to exclude from Indian citizenship persons who have voluntarily migrated or opted out to Pakistan, irrespective of their intimation to the Indian Government that they did not choose to accept the citizenship of the Indian Republic. It will not be possible or advisable for the federal government of the Indian Republic to shoulder any responsiblity for the protection or conduct of millions of persons who have migrated to Pakistan. Of course, if any of them, who was forced to leave his home because of communal disturbances, intimates his wish to retain his citizenship of the Indian Republic and comes back to his home in the Indian Republic, he should be allowed his citizenship.

It should, therefore, be laid down in the constitution that

"(A) At the commmencement of the constitution every person domiciled in the territory subject to the jurisdiction of the Republic,

"(a) who has been ordinarily resident in those territories for not less than five years immediately preceding the date, or

"(b) who, or whose parents, or either of whose parents was or were born in India,

"shall be a citizen of the Republic unless he (i) is a citizen of another state or (ii) has migrated to a territory outside the jurisdiction of the Republic.

"(B) Any Person

"(a) who is excluded from citizenhip under sub-section A (i) and A (ii), or

"(b) who or whose parents or either of whose parents was or were born in India and who was domiciled in a territory outside the jurisdiction of the Republic but migrated to a territory within the jurisdiction of the Republic for permanent residence before the commencement of the constitution,

"shall acquire the citizenship of the Republic, provided he, or in case he is a minor his guardian on his behalf, intimates to the federal government in the manner prescribed by law that he wishes to be a citizen of the Republic and to reside permanently in a territory within the jurisdiction of the Republic.

"(C) Every person, who or whose ancestors was or were born in India, and who is domiciled outside Indian peninsula and has not acquired citizenship of another state, shall be a citizen of the Republic."

CITIZENS' OBLIGATIONS

Citizenship confers rights and imposes obligations. Rights and obligations go together. A citizen cannot just claim protection of the state and enjoyment of other civic and political rights. He will also have to respect the rights of others and discharge his obligations to the state and community to which he belongs and whose protection he enjoys. The constitution must guarantee to citizens the enjoyment of fundamental rights. But it should also indicate his obligations to the state and impose such limitations on his rights as are necessary for the protection and promotion of vital social interests.

With regard to citizens' obligations to the state, the constitution should prescribe as follows :—

"Allegiance to the Republic shall be the supreme duty of a citizen.

"Every citizen shall obey the law, serve the interest of national unity, defend the country and carry the national burden in proportion to his means according to the provisions of law."

To preserve national unity, which is badly threatened by communal bitterness and conflicts, it is also necessary to lay down in the constitution that

"Any advocacy of communal, racial or national exclusiveness or hatred or contempt shall be an offence."

Chapter III

GENERAL FUNDAMENTAL RIGHTS

The Constituent Assembly has rightly decided to guarantee to citizens fundamental rights with respect to freedom of speech, association and assembly; inviolability of person, dwelling and correspondence; equality of civic and political rights irrespective of caste, creed, community and sex; and religious and cultural autonomy to all citizens and communities. It has also assured to them equality before law, proper observance of due legal process, the enforcement of fundamental rights by law courts, specially the Supreme Court of India; and required the federal legislature to prescribe punishment for those acts which are declared to be offences by constitutional provisions regarding fundamental rights.

The Constituent Assembly has, however, failed to assure to the citizens the right to approach law courts, without previous sanction of any executive authority, for the purpose of demanding redress against illegal acts done to them by the government, local self-governing bodies or their agents in official capacity. Due provision for it deserves to be made in the chapter pertaining to fundamental rights.

The constitution must, therefore, lay down:

"Every citizen has the right directly and without any one's approval to bring complaint to a law court against official persons or the government or self-governing bodies for illegal acts which they may commit against him in their official capacity. Special provisions may be prescribed for ministers, judges and soldiers under colours."

For the preservation of fundamental rights it is al-

so necessary to lay down in the constitution that

"The establishment of extraordinary tribunals shall not be permitted save only such military tribunals as may be authorised by law for dealing with military offences against military law, and

"The jurisdiction of military tribunals shall not be extended to or exercised over the civil population except in times of war or armed rebellion when ordinary law courts cannot function."

CULTURAL AND EDUCATIONAL RIGHTS

The Constituent Assembly rightly guarantees protection to minorities in every unit in respect of their language, script and culture and prohibits the enactment of such laws as may operate oppressively in this matter. It also rightly prohibits discrimination against any minority–whether based on religion, community or language–in regard to the admission into state educational institutions.

It prohibits compulsory religious instruction to all students in state aided schools and the students of minorities in state educational institutions. There does not seem to be any reason why students of majority community should be compelled to attend religious instruction in state educational institutions. Indeed, the state being secular should provide secular education and should not shoulder the responsibility of religious education of a religious majority or minority.

It must, then, definitely be laid down that

"No religious education shall be imparted in state educational institutions."

Of course, it shall be the duty of the state to impart moral instruction to students. But such education must be secular and social in character. It should neither be based on religious convictions of any particular com-

munity nor confined to students of a particular class or community. Moral education will have to be universal and humanistic in character and broad based on social ideals and civic needs with a view to promoting the development of a social personality.

It must be laid down in the constitution that

"In all educational and cultural institutions efforts shall be made to promote moral integrity, civic sentiments and sense of social responsibility".

The Constituent Assembly lays down that all minorities whether based on religion, community or language shall be free in any unit to establish and administer educational institutions of their choice. The provision is very wide and needs to be redrafted. The Indian nation is divided into various castes and sections on all conceivable grounds and each caste or section claims to be a communal entity. Educational institutions with narrow communal restrictions in respect of personnel of management and teaching staff are established all over the country by members of these sections. Such institutions hinder the growth of national unity and tend to narrow the vision of students. Sound education requires better social atmosphere than is provided in these institutions. It will not, therefore, be advisable to guarantee to minorities based on community the right to open their own institutions. Indeed, it will be the duty of the state to free existing educational institutions of their narrow communal basis.

It is almost universally recognised by all progressive thinkers that denominational institutions have in most cases done considerable harm to national unity. They have tended to promote religious bigotry and communal exclusiveness and bitterness and have been a hindrance to the growth of territorial nationalism. India cannot allow religious bigotry and narrowness

to cloud the vision of its youth. Religious autonomy, no doubt, includes freedom to every religious community to organise education in one's faith and tenets. But it does not necessarily include freedom to organise in any manner whatsoever the general education of the children of the community concerned. General education is being increasingly secularised all over the world and India needs its secularisation more than any other country of the world.

It must, therefore, definitely be laid down in the constitution that

"Denominational and communal educational institutions are forbidden except for the purposes of the study of religion and oriental learning."

In regard to the prohibition of denominational and communal educational institutions the question of the education of Harijans, workers and aboriginal tribes deserves special consideration. Harijans are provided special facilities for educational advancement. Special schools are opened for them and freeships and scholarships are liberally granted to them by the state and various public organisations. All this has, no doubt, promoted their educational advancement. But it is generally recognised that separate schools are a hindrance to social assimilation and education should be imparted to Harijans in common public schools. Of course, they may continue to be granted special fee concessions and scholarships. When untouchability in all forms is prohibited, special schools are not needed. But to facilitate the process without a jerk, a special provision may be made for the continuance of such institutions for a period not extending ten years.

The Socialist Party has decided to develop, in conjunction with trade unions, a workers' education movement that will remove the cultural backwardness of the

working class. It demands from the government and the employers the provision of facilities to the workers for technical training. This movement is sure to provide a healthy cultural basis to the labour movement and to contribute to the technical and social efficiency of the workers. It will broaden their vision, fit them for discharging civic responsibilities and enable them to shoulder responsibilities of nationalised industries. It must also be remembered that workers need special institutions because they are busy in their work during normal school hours.

So the constitution must, as a directive of state policy, provide :

"The workers' education movement shall be encouraged by the state and special facilities shall be provided to the trade unions for the establishment and organisation of workers' educational institutions."

Schools of special character are also needed for the education of the children of aboriginal tribes. Both enthusiasts and imperialists often ignore the folk culture of the aborigines and in their zeal for their cultural advancement or cultural assimilation try to impose upon them the education imparted in common schools through the medium of the official language. But experience has all over the world discredited such a practice. It is now generally recognised that their cultural advancement requires due consideration for their social and mental requirements.

The constitution must, therefore, guarantee to aboriginal tribes educational facilities through their mother tongue at least at a primary stage through educational institutions adjusted to their social and mental requirements. The official language may, however, be taught to them at the primary stage.

Linguistic minorities should, no doubt, be guaran-

teed right to establish, manage and control educational institutions and cultural associations for the promotion of the knowledge and study of their language and literature. At primary and pre-primary stages, children can learn best through the medium of their mother tongue. Linguistic minorities should, therefore, be allowed to establish, manage and control educational institutions of primary and pre-primary stages with a view to imparting general education to their children through the medium of their language. Indeed, in districts and towns where there is a considerable proportion of the citizens of the Indian Republic belonging to a linguistic minority, provision should be made by the state for their education through their mother tongue on par with the provisions made for the education of the linguistic majority through their mother tongue. But this cultural autonomy to linguistic minorities should be guaranteed on the clear understanding that in all educational institutions of primary stage, established by the state or community concerned for imparting education through a medium other than the recognised official language of the unit concerned, provisions shall be made for imparting education in the official language of the unit concerned. It must also be made clear that the private schools, organised by members of a linguistic group as a substitute for public schools, shall be subject to state regulation, supervision and control and shall have to satisfy academic and educational standards and follow the general curriculum prescribed by the state. Subject to these conditions, private schools organised as a substitute of state educational institutions may be granted state aid. It has, therefore, rightly been laid down in the constitution that "the state shall not, while providing state aid to schools, discriminate against schools organised to impart education through the medium of the language of

linguistic minorities."

At the secondary stage children of linguistic minorities should be afforded full facilities to learn their language and literature along with the language and literature of the unit concerned. But social assimilation between linguistic groups will be considerably retarded in case linguistic minorities are allowed to organise separate secondary schools to impart education through the medium of their language. At the primary stage, it is not possible for children to have education worth the name except through the medium of mother tongue. The children belonging to linguistic minorities will have, therefore, to be educated through the medium of their language, even though such a process may to an extent retard social assimilation among children of different linguistic groups. But at the secondary stage children of linguistic minorities educated in the official language of their units at the primary stage may be educated through the medium of the official language of the unit. It cannot be doubted that they can learn through their language even at the secondary stage much more easily than through the official language. But it cannot also be doubted that a person of a linguistic minority who has acquired knowledge through the medium of the official Indian language, may prove more useful than one who has acquired knowledge through any other language. But in certain provinces a linguistic minority may be in a majority in certain regions. In such cases the state can without difficulty and detriment to social harmony, provide for secondary education through the medium of the language of that minority. Indeed, often social harmony may require the recognition of the right of linguistic minority to impart education through the medium of their language. So no

uniform rule should be laid down by the constitution with regard to secondary education, except that provision shall be made for imparting the knowledge of their language to the children of linguistic minorities at secondary stage. The constituent units may be allowed to deal with the rest of the problem according to circumstances. But the linguistic majority has often suffered from linguistic imperialism and even at the cost of social harmony tried to impose its own language on linguistic minorities. So the federal legislature should be empowered to pass legislation in regard to the secondary education of linguistic minorities of a unit, if it deems fit.

SPECIAL FACILITIES FOR ABORIGINES AND BACKWARD PEOPLES

It is also necessary to make it clear that constitutional guarantees regarding equality in all forms does not absolve the state of its responsibility to provide special facilities to aboriginal tribes and other backward peoples for their economic and cultural advancement. It is obvious that without such facilities real equality will never be achieved by them, and legal equality assured to them by the constitution will serve only a negative purpose.

SOCIAL EQUALITY

Equality to be real must be not only legal and political but also social. It should be the foundation of the whole social structure and the fundamental principle of all public activities. The Constiuent Assembly has to an extent recognised it when it resolved to abolish untouchability in all forms and to regard the imposition of any disability on that account as an offence. It has also promoted the cause of social equality by provisions that "no titles shall be conferred by the Republic", that

"no citizen shall accept any title from any foreign state", and that "there shall be no discrimination against any citizen on grounds of religion, race, caste or sex in regard to (1) access to trading establishments including public restaurants and hotels,(2) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public, (3) possession of property or exercising or carrying on of any occupation, trade, business or profession within the Repuplic." These provisions deserve to be endorsed but they are not sufficient by themselves to ensure or promote social equality. For that, proper protection of economic rights of producing masses and directive principles of state policy on socialist lines are absolutely necessary.

Chapter IV

ECONOMIC RIGHTS

TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR

The Constituent Assembly has failed to deal properly with the problem of economic rights. The Advisory Committee of the Assembly proposed that traffic in human beings and forced labour in any form including *begar* and involuntary service except as a punishment of crime whereof the party shall have been duly convicted are hereby prohibited and any contravention thereof shall be an offence. But this recommendation was referred back to the Advisory Committee and ultimately dropped. The proposition deserves to be incorporated in the constitution with the proviso that it shall be the duty of all citizens to perform, in accordance with law, personal service for the state and local self-governing bodies. The proviso will ensure to the state and local self-governing bodies personal services of the citizens in accordance with law, while the main proposition will ensure citizens immunity from the high handedness of executive officers and petty officials and misbehaviour of members of propertied classes.

RIGHT WITH RESPECT TO PROPERTY

The Constituent Assembly has decided to provide in the constitution: "No property, movable or immovable, of any person or corporation, including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation for the property taken or acquired and specifies the principles on which and the manner in which the compensation is

to be determined." An attempt is, thus, made to guarantee to their owners private property subject to acquisition for public use on the payment of compensation to be determined by the manner and principles specified by a law passed for the purpose.

The clause is unhappily worded. It is likely to lead to a lot of litigation. It is doubtful if the acquisition of property for public use includes socialisation or compulsory transference of property from one set of persons to another set of persons. It may easily be argued that the phrase implies acquisition of property for the general use of the government, local self-governing bodies and other public and charitable institutions but cannot be stretched to authorise socialisation of land and industries. It may at best be said to include socialisation or municipalisation of works of public utilities, such as electric power houses. If this contention is accepted, the question will arise what industries and economic undertakings may reasonably be declared to form part of public utilities. Some may maintain that it is for the government to determine what constitutes 'public use', and work of public utility. But judges may consider this contention to be improper as it grants too wide a latitude to the government and may claim the right to determine whether the 'use' for which property is expropriated is 'public use'. One need not be surprised if the word 'public use' is given a strict interpretation on the plea that it is the duty of law courts to protect individual rights from encroachment. On the other hand, it may be argued that the state is sovereign and has full legislative powers to regulate property within its jurisdiction in any way it deems fit, unless its legislative powers are specifically restricted by the constitution. As the constitution has restricted in some manner the acquisition of private pro-

perty for public use only, the state retains full legislative power to socialise property or transfer it from one section to the other with or without compensation, except such property as may fall within the purview of public utilities. Thus, while one class of persons may maintain that under the provision only public utilities may be socialised and even that with compensation according to law, the other class of persons may maintain that the provision only debars socialisation of public utilities without compensation but is no hindrance to liquidation of landlordism and grant to peasants of full proprietary rights in the land as well as to socialisation without compensation of all economic undertakings, except works of public utility.

It is obvious that the proposition as it stands is either too restricted or too wide and does not deal adequately with the problem of the regulation of property or its acquisition by the state. To deal with the problem we will have to discard the theory of natural right in property as well as Kantian conceptions that property is a projection of personality and invasion of property is interference with personality itself. We cannot confuse personality with personalty, nor can we forget the social and functional character of property. Man has no natural right in property. Right in property is a claim acquired by law recognised by the community and the claim has never been recognised as absolute or irrevocable. The community has always reserved to itself the right to modify laws with respect to property in the social interest and to acquire it from its owners for public purposes. In all countries laws of property have changed from time to time. Many proprietary rights recognised in the middle ages were gradually abolished in modern times without any compensation. For example, when slavery was abolished,

no compensation was given to slave owners for loss sustained by them, even though many of them had to pay hard cash for acquiring claims over slaves. Property is a social institution and like all other social institutions is subject to social regulation and claims of common good and liable to abolition when it outlives its utility and hinders social progress or welfare. The property of the entire people, it must be understood, is the mainstay of the state in the development of national economy and the right of private property cannot be allowed to stand or be used to the detriment of the community. The state must have full right to regulate, limit and expropriate private property by means of law, if common interests of the people require it.

The doctrine of compensation as a condition on expropriation cannot be accepted as a gospel truth. If the form of death duties partial expropriation without compensation is an essential feature of the financial system of many countries of the world. It is also almost universally recognised that full compensation would make impossible large scale projects of social or economic welfare which impinge upon vested interests. It is impossible for the state to pay to owners in all cases market value of the property which is to be acquired or requisitioned in cases of grave emergency or for the purposes of socialisation of big industries with a view to eliminating exploitation and promoting common good. Partial compensation is, therefore, suggested as a via media by many thinkers. It is maintained that it would make socialisation possible without depriving a considerable number of persons of their means of livelihood. Much can be said in favour of partial compensation when socialisation is carried on gradually retaining the system of individual economy over a wide field. But even partial compensation will

hardly have any justification when general transformation of economic structure on socialist lines is resolved by the community and expropriation of property is made on a wide scale for an early realisation of that transformation. In such a case all that persons with vested interests can reasonably demand is a share and opportunity in a socialist economy on par with other citizens of the state. Thus, it is not possible to be dogmatic on the question of compensation and the constitution will have to give to the state full freedom to determine it according to social will and prevalent social conditions.

Public needs often require transference of public property from one public authority to the other. For example, public utility undertakings owned and managed by different municipalities may after some time require to be pooled together and organised on a provincial basis. Public good may, thus, need their transference to the charge of provincial authorities. But their transference must be accompanied with compensation, specially when different public authorities are allowed by law to have separate accounts, finances, assets and liabilities. Transference of public property from one authority to the other without any compensation may undermine financial stability of public bodies of lower grades and even tend to undermine harmony which must exist amongst various consituent units of a federel state. It is, therefore, necessary to provide for compensation in cases of expropriation over against the provinces, the States, local self-governing bodies and associations serving public welfare.

The constitution must, therefore, provide:—

"The property of the entire people is the mainstay of the state in the development of the national economy.

"The administration and disposal of the property of

the entire people are determined by law.

"Private property and private enterprise are guaranteed to the extent they are consistent with general interest of the people of India.

"Private property and private enterprise may be expropriated or socialised with or without compensation, in accordance with the law, the state being the sole judge of the extent of the compensation when offered.

"Expropriation over against the States and the provinces as well as the local self-governing bodies and associations serving the public welfare may take place only upon the payment of compensation."

CHILD AND WOMEN WORKERS

The Constituent Assembly has rightly decided to prohibit the employment of a child below the age of 14 in any factory, mine or other hazardous employment. It is equally necessary to prohibit the employment of women in mines, at night and in industries detrimental to health.

WORKERS' AND PEASNTS' RIGHT OF ASSOCIATION

The right of association, which is proposed to be guaranteed to all citizens, will surely entitle workers to form unions of their own for the protection and promotion of their economic interests and general welfare. This perhaps led the Constituent Assembly not to make any particular provision with regard to the formation of trade unions. But a more amplified guarantee in regard to trade unions is needed, specially because peasants and workers, who constitute the bulk of the Indian society, cannot protect their economic interests except through unions and because employers all over the world have tried to deprive, through various indirect ways, workers of the benefits of the right of asso-

ciation. The development of their organisational capacity will promote the growth of democratic life in the country and deserves encouragement.

The constitution must, therefore, definitely lay down as a separate proposition :

"To ensure protection against economic exploitation and the development of organisational initiative amongst them, peasants and workers are guaranteed the right to unite into public organisations–trade unions, *Kisan Sabhas*, cooperative societies as well as social, cultural and technical associations.

"The State shall encourage them in their organisational activities. All agreements between employers and employees which attempt to limit this freedom of association or seek to hinder its exercise shall be illegal".

PRIVATE ENTERPRISERS

Private enterprisers may also be ensured the right of association for the promotion of economic interests as well as social and cultural welfare. Private resources will have to be pooled into joint stock concerns for organising many economic enterprises. But experience has proved that even in capitalist states the right of association for economic purposes cannot be granted to capitalists without some restrictions. In the U. S. A. and other countries the combination of capitalist concerns into trusts and syndicates had to be regulated and prohibited. In the new constitution of Bulgaria such combinations are prohibited by a constitutional provision.

The constitution must, therefore, lay down :

"Private enterprisers shall have freedom of negotiation and organisation in business affairs subject to such regulations as the legislature may deem necessary in the social interest. Private monopolies such as trusts, cartels, syndicates and the like, are forbidden".

PERSONS ENGAGED IN INTELLECTUAL PURSUITS

The new Bulgarian constitution designates intellectuals as workers by brain and ensures to them the protection of the state on par with workers by hand. It lays down that "workers by hand and brain as also their organisational and creative abilities enjoy the special protection of the state". Rights of authorship and invention are respected and guaranteed to intellectuals in all democratic countries. Intellectuals' creative abilities are a great asset of the society and can be ignored and slighted by it only at its own peril. The right of authorship and invention cannot, however, claim to override the supreme claim of the social interest. Individual right will have to be harmonised with social good. The former can be recognised to the extent it is consistent with the latter. The right of authorship can, therefore, be guaranteed subject to social regulation in the interests of social good.

The constitution must, therefore, lay down :

"Citizens engaged in intellectual pursuits are assured freedom in their organisational and intellectual activities.

"The state will endeavour to assist science and art with a view to developing the people's culture and prosperity.

"Proprietary rights in works of authorship and invention shall be recognised and protected by law. The right may be limited and regulated by law with a view to protecting social interests and promoting people's culture and prosperity."

ABOLITION OF LANDLORDISM

In 1946 the Congress sought the confidence of the electorates on the issues of the political freedom of India and the economic emancipation of the masses. Special

emphasis was laid on the liquidation of landlordism and all intermediaries between the state and cultivators. In all provinces which form part of the Indian Dominion, peasant masses approved the policy and programme of the Congress and returned congressmen to provincial legislatures in overwhelming majorities. The Congress has, thus, a clear mandate of the people of India to end landlordism and eliminate all intermediaries between the state aud cultivators. There is no reason to believe that when the franchise will be extended to all adults of both the sexes, the electorates will be less enthusiastic about their economic emancipation and progress. Indeed, adult franchise will only increase mass pressure and the delay in fulfilling pledges given to peasant masses by the Congress Party in the last elections will be highly resented. The people of the States federated to the India Republic are also fully conscious that their economic emancipation requires the liquidation of landlordism. It is certainly obvious that political freedom alone will not satisfy the agrarian masses who constitute the bulk of the Indian nation. They can appreciate liberty only when it is accompanied with their economic freedom. In an agricultural country like India no economic progress is possible unless agriculture is freed from the thraldom of landlordism.

The Constituent Assembly must, therefore, decide to liquidate landlordism and eliminate all intermediaries between the state and cultivators. Both economic and political freedom must be assured to cultivators on the day of the promulgation of the new constitution. Agrarian legislation should be given the first priority by Governments in all provinces and suitable laws should be passed without delay.

The constitution should, therefore, lay down :

"All the intermediaries between the state and the

tillers of the soil are abolished. Cultivators shall receive such title to the land as may be determined by the legislatures of the units, which may also determine the compensation, if any, which should be paid to landlords and other intermediaries."

Chapter V

DIRECTIVE PRINCIPLES OF STATE POLICY

LABOUR WELFARE

In the draft constitution of India, prepared for the Constituent Assembly, it is rightly laid down that the state shall direct its policy towards securing to all citizens of both sexes the right to an adequate means of livelihood, equal pay for equal work, and the protection of the strength and energy of workers against exploitation and misuse in vocations unsuited to their age as well as that of their childhood and youth against moral and material abandonment. It is also rightly laid down that the state shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness, disablement and other cases of undeserved want. It is also rightly provided in the draft constitution that the state shall make provisions for just and humane conditions of work and maternity relief, endeavour to secure living wage and decent standard of life for workers, provide free and compulsory primary education up to the age of 14 and promote with special care educational and economic interests of the weaker sections of the people, particularly the Scheduled Castes and the tribes. It is also rightly stated to be the primary duty of the state to raise the level of nutrition and the standard of living of its people and to improve public health. All these propositions deserve endorsement as they are in consonance with the pledges given by the Congress to the electorates and are necessary for the amelioration of workers' economic, social and moral conditions.

CONTROLLED CAPITALISM VS SOCIALISM

The Constituent Assembly is also reported to have laid down that "the state shall direct its policy towards securing : (i) that the ownership and control of the material resources of the community are so distributed as best to serve the common good; (ii) that the operation of free competition does not result in the concentration of the ownership or control of essential commodities in a few individuals to the common detriment."

These suggestions are obviously intended to provide against the concentration of ownership and control of the material resources and essential commodities in the hands of a few individuals to the detriment of the community and favour their wide distribution to subserve the common good. The framers of these suggestions seem to believe in the control of the operation of free competition and to favour controlled capitalism, which they would perhaps like to describe as private enterprise subject to state regulation.

For more than a century theorists of the capitalist class, the economists of the classical school, upheld free competition as just and scientifically sound. Indeed, some of them required the state to pursue the policy of *Laissez Faire* scrupulously and treat the principle of free trade as a natural economic law which could be ignored, in their opinion, at the peril of the community. But today even the theorists of the capitalist class have ceased to have their old faith in free competition and have begun to favour the state regulation and control over the operation of free competition. Capitalism suffers from many contradictions and needs for its existence state regulation and support. But for these capitalism would have collapsed long ago. State regulation and control have, no doubt, saved the community from many evil consequences of free competition and contra-

dictions of capitalism, and have secured to workers better economic conditions. But they have not been able to check the concentration of material resources of the country in the hands of a few capitalists. Inspite of state control society is being increasingly polarised in all countries, the economy of which is based on private ownership of the means of production. Large scale industries ceased to be controlled even by the bulk of the capitalists. They are being increasingly controlled by a few financiers and directors of industries. In capitalist countries like the U. S. A., where the state has prohibited and checked the organisation of private monopolies such as cartels and trusts, the directorates of industries are being increasingly monopolised by a few capitalists and financiers.

All this clearly indicates that the state control of free competition and large scale industries will fail to save India from the evil consequences of the concentration of material resources and essential commodities in a few individuals. As in the U. S. A so in India capitalism inspite of state regulation is bound to develop into finance capitalism, which will, instead of being controlled by the state, control it. Industries of monopolistic tendencies must be owned by the state, unless the community wishes the state to be owned by them.

Small scale industries should also be organised on cooperative basis as far as possible. Cooperatives will eliminate middleman's acquisitiveness and exploitation and enable the people to organise production for the satisfaction of new needs. Thus, to save the community from the evils of exploitation and concentration of economic resources and power the sector of private enterprise and ownership of means of production should be limited to such small scale industries as cannot be organised on cooperative basis.

The Constituent Assembly must, therefore, provide for ending exploitation and domination in all forms and lay the foundation of socialist economy along with that of political democracy. Freedom and democracy to be real must also be social and economic. Political democracy must develop into socialist democracy.

The Constituent Assembly must, therefore, lay down :

"The state shall direct its policy towards securing :

"(a) the transfer to public ownership of important means of communications and credit and exchange, mineral resources and sources of natural power as well as other important economic enterprises suitable for socialisation ;

"(b) the municipalisation of public utilities ;

"(c) the control of industries and enterprises privately owned with a view to securing justice to workers and consumers and preserving vital interests of the community ;

"(d) the provision of cheap credit on cooperative basis ;

"(e) the organisation of agriculture and small scale industries on cooperative basis;

"(f) the control of private enterprises and of the operation of free competition with a view to securing to the people maximum satisfaction of their needs along with decent service conditions to workers and preventing the waste and misuse of material resources as well as the concentration of their ownership and control in a few individuals."

PLANNING COMMISSONS AND ECONOMIC COUNCILS

Production is meant to satisfy the needs of society and must, therefore, be adjusted to those needs. Material resources of the society must also be made to yield the maximum satisfaction of social needs, present and future.

The production of commodities and the utilisation of material resources must, therefore, follow a plan drawn up in accordance with social needs, and should not be left to the wasteful and planless competitive process. Planning must be both central and regional. Central planning is imperative in certain spheres, such as key industries, exports and imports, currency, finance, prices of basic industries, reinvestment etc. But regional planning will be advisable with respect to commodities locally consumed. To avoid the danger of bureaucratism and dictatorship the central planning authority should be so constituted as to be a representative body. It should consist not only of the representatives of the Central Government but also of the Provincial Governments, trade unions and cooperatives.

Economic councils should also be organised on functional basis with a view to advising the legislatures on politico-social and politico-economic matters. These councils should be empowered as well to initiate and plan economic schemes as to tender advice on measures referred to them by the governments and the legislatures. These councils should provide representation among others to scientists, engineers, physicians and surgeons, educationists, lawyers, political and administrative experts ; business, economic and agricultural experts and to trade unions, cooperatives, peasants' organisations and other similar bodies. They should be authorised to divide themselves into sections and work section-wise as well as hold general sessions.

The planning commissions and economic councils so constituted will enable the legislatures and governments to have the full advantage of the advice of experts and plan economic and social life of the country properly and scientifically. These commissions and councils will neither impose any restrictions on supreme authority

of the legislatures, territorially elected on the basis of adult franchise, nor prove a hindrance to social legislation of progressive character which the second chambers have invariably proved to be.

The constitution must, therefore, provide for the establishment of economic councils and planning commissions as statutory bodies. The economic councils should be authorised to initiate and plan measures of politico-social and politico-economic importance and place them before the legislature concerned for its consideration. The government should also be required to submit to the economic council for its consideration and advice all drafts of politico-economic and politico-social legislative measures which it wishes to introduce into the legislature for enactment.

The Constitution must then lay down :

"The state shall direct its policy, towards securing the economic development of the country in accordance with a general economic plan, relying on state and cooperative sectors, while achieving a general control over the private economic sectors."

SELF-GOVERNMENT IN INDUSTRY.

State socialism suffers from the dangers of bureaucratism. State management may turn out to be bureaucratic and dictatorial. The periodical elections to the legislatures may not enable workers to correct the bureaucratic character of state machinery in charge of various industries. Workers have to spend the best part of their lives in factories and workshops and they can hardly claim to be free when they are required to submit to dictates of others in these factories and workshops. The bureaucratism of state socialism must, therefore, be corrected by the principle of self-government in industry. Economic democracy implies democratic

management of economic undertakings. Workers must, therefore, have a share in the management of socialised industries. They must, then, be enabled to influence decisions and orders,which they are required to observe.

The need of workers' cooperation in the management of large-scale private undertakings is also keenly felt. Workers resent to be dictated in all matters and demand an effective voice in the management, specially with regard to matters which concern their service conditions and welfare. Even impartial observers have begun to feel that if workers are afforded opportunities of constructive cooperation with the management, industrial peace will thereby be promoted. France has recently provided for the establishment of works committees in all industrial and commercial undertakings employing at least 50 wage earners. These committees are to cooperate with the management in the improvement of the collective working and living conditions of the personnel as well as the regulations which govern them. They are authorised to supervise all welfare activities and are granted right of consultation in many economic matters.

The constitution must, therefore, lay down as follows:

"It shall be the primary duty of the state to promote self-government in industry and encourage workers' creative and constructive abilities. For these purposes the state shall, in particular, provide for the establishment of workers' councils composed of delegates of workers of all types engaged in the undertaking concerned with powers to cooperate with the management in:—

"(a) the improvement of the collective working and living conditions of the personnel as well as the regulations which govern them ;

"(b) the organisation, administration and the general running of the undertaking ;

"(c) the organisation and supervision of welfare activities for the benefits of workers in undertakings concerned."

INTERNATIONAL POLICY

With regard to the policy to be followed by the federation in the international sphere, the Constituent Assembly is reported to have laid down : "the state shall promote international peace and security by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct amongst governments and by the maintenance of justice and the scrupulous respect for treaty obligations in the dealings of organised people with one another."

All these propositions deserve to be endorsed. India's international policy must be further elaborated. Present international law is weak, incomplete and iniquitous. It gives full recognition to imperialism and ensures no protection to dependent peoples against the imperialist power. International law requires to be developed on democratic lines and we should try to promote such development in cooperation with other states.

India must also work for :-

"(a) the peaceful settlement of international disputes and democratic organisation of peace ;

"(b) the promotion of political and economic emancipation and cultural advancement of the oppressed and backward peoples ;

"(c) the international regulation of the legal status of workers with a view to ensuring a universal minimum of social rights to the entire working class of the world.

"(d) the promotion of social, cultural and economic progress of humanity through constructive cooperation amongst the nations of the world."

Chapter VI
THE DISTRIBUTION OF FUNCTIONS

The Union Constitution Committee proposed that (1) the constitution should be a federal structure with a strong centre; (2) there should be three exhaustive legislative lists ; viz. federal, provincial and concurrent with residuary powers in the centre; (3) the States should be on par with the provinces as regards the federal legislative list subject to the consideration of any special matter which may be raised when the lists have been fully prepared. The Union Powers Committee drew up three exhaustive lists on the lines followed in the Government of India Act of 1935 and suggested that residuary powers should remain with the centre. It further observed that as the States had joined the Constituent Assembly on the basis of the 16th May Settlement, the application to States in general of the federal list of subjects, in so far as it goes beyond the 16th May Settlement, should be with their consent and in their case residuary powers would vest with them unless they consent to their vesting in the centre.

STRONG FEDERAL CENTRE

When the partition of India is a settled fact and the Constituent Assembly is free to frame the constitution of the Indian Republic the way it deems best in the interest of the people, the Union Powers Committee was perfectly justified in ignoring the severe limitation on the scope of the central authority imposed by the Cabinet Mission plan. It will surely be injurious to the interests of the country to provide for a weak central authority which will be incapable of ensuring peace,

of coordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere. The Constituent Assembly is, therefore, perfectly justified in providing for a strong central authority. The Union Constitution Commitee has also rightly recommended that the States should be on par with the provinces as regards the federal legislative list. The Cabinet Mission's plan was a clumsy compromise with, if not an actual surrender to, the separatism of the Muslim League. It did not deserve to be accepted by the Congress and cannot be allowed to be used by the princes to weaken the central authority with a view to preserving their own autocracy. The people of Indian States are as much interested in strong central authority as those of the provinces. The federal authority will never be able to promote the economic welfare and even satisfy certain vital economic needs of the people of the States, if its authority and powers with respect to the States is confined within the framework of the Cabinet Mission's plan The people of the States will enjoy equal political rights and participate in public affairs of India on par with the people of the provinces only when the powers and responsibilities of the federal authotity with respect to the States are on par with the provinces. This means that the authority of the federal legislature should extend over the States just as with the provinces in all matters of federal and concurrent legislative lists.

THE DECENTRALISTION OF FUNCTIONS

In modern times a federal state cannot afford to have a weak centre. But it will be equally unwise to emaciate units of power and strength. Over-centralisation leads to bureaucratism and regimentation of life, saps vitality and makes difficult adaptation to

needs and environments. It not only over-burdens the central authority with power and functions, authority and responsibility, but also results in the concentration of centrifugal forces. Decentralisation is an essence of democracy. It enables adaptation to environments, ensures greater association of the people with public affairs, and enriches the political life in many other ways. It is but obvious that service which is performed at the base has greater chance of representing the views of, and of being controlled by, the people than one performed at the apex. The tendency towards centralisation of authority and functions, which an important section of the Constituent Assembly seems to favour, must, therefore, be resisted. The lists of federal, provincial and concurrent subjects should be revised, and the constituent units should be assigned as many functions and powers as is possible consistent with political and economic unity and the defence of the country.

In this connection it must he remembered that from the administrative points of view those services, which are scattered throughout the country and require the active cooperation of the people, should be entrusted to the charge of the authorities of the constituent units. It should also be remembered that the legislative and executive aspects of a problem are closely related and the cooperation between the executive and the legislative authorities contributes to the social good. Hence, the executive and legislative Jurisdiction over a subject should as far as possible be entrusted to the same organisation, central or provincial. Experience has, however, proved that certain problems, which by their nature deserve to be in charge of constituent units, require uniform regulation in some of their aspects. This is secured through the system of concurrent

powers. It, however, deserves to be remembered that the list of concurrent powers should not be very large lest the authorities of the units may be left with no option but to function mostly as executors of federal laws. Under the Indian Councils Act of 1861 the central and provincial legislative authorities had concurrent legislative Jurisdiction over matters of provincial and local importance. With the result that in course of time central laws covered a wide field and the provincial legislative authorities found increasingly difficult to function. And so in 1892 the British Parliament had to empower the provincial legislative authorities to amend, modify and repeal central laws with the previous consent of the central authority. As the Constituent Assembly does not seem inclined to confer similar power on the legislative authority of the constituent unit with respect to federal laws concerning questions of concurrent Jurisdiction, it may be feared that in course of time the entire field of concurrent Jurisdiction will be covered by federal laws and the legislative authority of the constituent units over that field will be considerably restricted and become almost negligible.

ADEQUATE FINANCIAL RESOURCES TO THE UNITS

Various constituent units shall be in charge of many departments of national reconstruction which shall need vast financial resources. They must obviously be provided with independent sources of revenue, sufficient to yield funds necessary to discharge their responsibilities. The Constituent Assembly has failed to do so. Most of the items of taxation assigned to the provinces are of municipal character and will have to be allocated to local bodies. Such items of taxation as will be available for provincial purposes will not yield reve-

nues sufficient to meet the growing needs of the provincial government. The framers of the constitution also seem to be conscious of it. But instead of allocating some more items of taxation to provinces, they wish to empower the federal authority to extend financial assistance to provincial authorities. Thus, the financial requirements of the provinces are to be met by grants-in-aid from the federation. The system of grants-in-aid is not altogether tabooed in federations. In the U.S.A., Canada and certain other federal states federal authorities are allowed to help constituent units with grants for specific purposes. But in none of these federations the constituent units have to depend upon the financial help of federal authorities for their normal work. But in India under the proposed constitution, federal grants will form a substantial part of provincial finances. Without these grants provincial authorities may not be able to run their administration. This is sure to cripple their autonomy, specially when federal authorities are allowed by the constitution full freedom to determine conditions of their grants. The federal authority may starve the provincial organisations, veto their projects through refusal of supplies necessary for their execution, compel them to yield to their will and thus determine the nature of the activities of the provincial authorities.

The centralisation of financial resources is not sound even financially. It will be difficult for the federal authority to make an equitable distribution of funds among various constituent units. The attempt will not result in economy. It will only lead to manipulated financial programmes, clumsy compromises and financial irresponsibility. The federal authority will be required to meet all sorts of demands and accused of parsimony and unfair treatment. It will be difficult for

the federal authority to resist even unreasonable demands of important provinces and assess equitably needs of different units. The attempt of the British Government in India to administer Indian finances through the central authority miserably failed in the ninteenth century. "The distribution of income degenerated into something like a scramble in which the most violent of the provincial governments had advantage with very little attention to reason." While in certain provinces important services were starved, in others public money was spent on less urgent items. The centralisation of finances will lead to bitter controversy among various constituent units and the federal authority will not be able to resolve it satisfactorily. Who knows even the federal government may be tempted to use the power of distribution of funds to win over the support of certain key provinces. Even in the U. S. A. the system of federal subsidies to States has been used to provide a "sop" to some special interests.

All this clearly indicates that the financial arrangements, suggested by the Union Powers Committee, are wholly unsatisfactory. The provinces should be assigned some more independent sources of revenue so that they may discharge duties assigned to them satisfactorily. Provincial authorities should be enabled to have a share in growing commercial and industrial prosperity which they can legitimately claim, responsible as they will be for the maintenance of law and order in commercial and industrial centres and for the development of industries in their respective provinces. Agriculturists are sure to grudge expenditure on industrial development if its costs will have to be borne by them and the provincial authorities are not allowed to tax industries, whose development they promoted, with a view to recouping the cost of development.

RESIDUARY POWERS

The Constituent Assembly has decided to assign residuary powers to the federation. This is, no doubt, in conformity with the general public opinion of nationalist India. But a careful examination of the question will reveal that the exclusive jurisdiction of the federation over residuary powers is unscientific. Residuary functions are those as could not be enumerated simply because they could not be foreseen by the framers of the constitution. But such functions may as well be of local as of national importance. Such matters of local importance as could not even be foreseen by the framers of the constitution can hardly be such as may attract the attention of, and be dealt with properly by, federal authorities. Even in Canada where federal authorities are granted jurisdiction over residuary powers, provincial authorities are also allowed to deal with residuary functions of local importance, with the result that in Canada the law courts are often required to adjudicate whether the residuary matter is of local importance and hence under the exclusive jurisdiction of the provincial authority or vice versa. In Canada confusion is caused by the system of exclusive jurisdictions of the federal and provincial authorities over residuary matters of national and local importance respectively. Law courts had often to reverse their earlier decisions on the plea that a residuary matter which was previously of local importance had assumed national importance and had, thus, ceased to be under the jurisdiction of provincial authorities and that, therefore, the provincial law, which was previously declared valid, had ceased to be operative and must yield to the national law. Such decisions have lowered the prestige of law courts for independence and have tended to drag them in the politics of the country. To avoid this the best

way is to place residuary matters under the concurrent jurisdiction of the federation and constituent units. This will enable the authorities of the constituent units to deal with residuary matters to the extent and so long as the federal authority does not regard such matters as of national importance and deal with them as such.

Chapter VII

COORDINATION AMONG AUTHORITIES

The federal polity is based on dual principles of autonomy and coordination. The constituent units are autonomous within their own spheres but their autonomy is not absolute. They are integral parts of a single body politic and their autonomy is, therefore, naturally equated to the organic unity of the state and hence coordinate in character.

It is to be regretted that the Constituent Assembly has not yet paid sufficient attention to the question of coordination of various units amongst themselves and with the federal authority. It is hoped that it will pay due attention to the problem when the draft constitution is considered in detail in the form of a Bill.

On the recommendations of the Fundamental Rights Sub-Committee the Constituent Assembly has decided to incorporate the following propositions :—

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

"Final civil judgment delivered in any unit shall be extended throughout the Union subject to such conditions as may be imposed by the law of the Union."

These decisions of the Constituent Assembly deserve endorsement but are not sufficient by themselves to secure necessary coordination among various authorities.

It is necessary to lay down the following provisions also:—

1. "All disputes between different constitutional authorities shall be settled peacefully without resort to violence.

"If and in so far as a dispute between the federation, provinces and States involves any question (whether of law or fact) on which the existence or extent of a legal right depends, it shall be referred to and decided by the Supreme Court of India in its original jurisdiction.

"Disputes of non-justiciable character shall be settled by a Board, composed of the Chief Justice of India, the President of the Indian Public Service Commission and the Auditor-General of India and two other experts coopted by them.

2. "A person charged in a unit with a crime, who shall flee from justice and be found in another unit, shall, on demand of the executive authority of the unit from which he fled, be delivered up to be removed to the unit having jurisdiction of the crime.

3. "Every province and federated State shall make provision for the enforcement of the orders of the federation as well as for the detention in its prison of persons accused or convicted of offences against the laws of the federation, and for the punishment of persons convicted of such offence.

4. "The executive authority of every province and federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that province or State, and not to impede or prejudice the exercise of the executive authority of the federation.

5. "The units, whether provinces or federated States, shall have no power to enter into separate alliances and treaties of political character amongst them-

selves, provided that with the consent of the federal authority

"(a) a number of federated States may combine together to form a sub-federation in accordance with the provisions of this constitution, or

"(b) a federated State may attach itself with a province for certain specified purposes in accordance with the provisions of this constitution.

6. "The units may form legislative and administrative conventions amongst themselves. Such conventions shall be communicated to the executive authority of the federation, which shall have the power to prevent their execution if they contain anything contrary to the federation or to the rights and interests of the other provinces and federated States.

"Such conventions may be adhered to by other provinces and federated States.

7. "The federal authority, in consultation with the governments of the units concerned, may appoint an Inter-State Commission for the purposes of–

"(a) investigating and discussing subjects in which some or all of the units, or the federation and one or more of the units, have a common interest, or

"(b) making recommendations upon any such subject, and, in particular, recommendations for the better coordination of the policy and action with respect to that subject.

8. "It shall be lawful for two or more units, with the consent of the federal authority,

"(a) to set up permanent or *ad hoc* committees for the purposes of investigating and discussing and making recommendations upon a subject or subjects of common interest,

"(b) to set up joint administration for, or to determine common policy and action with respect

to, matters of common interest.

9. (1) "The units shall be obliged to take whatever measures are necessary within their autonomous sphere of action for the execution of treaties; if a unit does not comply with this obligation in due time, the federation shall be vested with the power to take such measures and specially to enact necessary laws.

(2) "Likewise, the federation, when carrying out treaties with foreign states, shall have the right of supervision even in regard to such matters as come within the autonomous sphere of action of the units. In this case the federation shall have the same rights over against the units as in matters of indirect federal administration."

These provisions are obviously necessary and need no explanation. It may, however, be pointed out that in the U. S. A. all legislative and administrative conventions require the consent of the Congress, its federal legislative authority. In our opinion the federal authority must not be forced to pronounce upon the merits of, or to be a party to, a particular agreement or compact made on matters with which it is not directly connected. It must confine its interference in the affair to the extent it is essential for the maintenance of social unity. This can be and has been well secured by the provision of the Swiss Constitution, which has been adopted in our suggestion. Even in the U. S. A. it has been held by the courts that there is a variety of subjects of ordinary commercial nature about which several States may enter into agreement with one another without the necessity of obtaining the consent of the Congress. The consent of the federal authority must, however, be necessary for the establisment of joint administrative boards by units.

The Constituent Assembly has rightly decided that the executive authority of the Ruler of a federated

State shall continue to be exercised in that State with respect to federal subjects, unless otherwise provided by the appropriate federal authority. It is, however, necessary to add that "the appropriate federal authority shall have power to satisfy himself, by inspection or otherwise, that the federal subjects are properly administered by the Government of the federated State and to issue necessary directions to secure proper administration."

With a view to securing amity among various units it is also necessary to enact the following provisions, which form part of other federal constitutions :—

(1) "No preference shall be given by any regulation of commerce or revenue by a unit to one unit over another.

"Nor shall the federation, by any law of trade or commerce, give preference to one unit or any part thereof over another unit or part thereof.

" Subject to regulations by the law of federation, trade, commerce and intercourse among the units and between the citizens shall be free,

"Provided that in case of disparity in taxation a unit will be free to impose on goods imported from other units such taxes as might result in imposing on them the same burden of taxation as is imposed on the goods produced in the unit."

IMMUNITY OF INSTRUMENTALITY.

In the United States of America the courts have held that the salaries of a public servant belonging to one organisation cannot be taxed by the other, as the tax on the salary will interfere in the instrumentality of the organisation concerned[1]. Similar opinion was for some time held by the law courts in Australia. But

1. Mc. Culloch V. State of Maryland. 4 Wheat 316

in 1920 the High Court of Australia withdrew the immunity from taxation from the salaries of the officials of one organisation by the other.[1] In Canada even provincial authorities are allowed to tax the salaries of the Dominion[2]. The question may lead to unnecessary *litigation* in India. It is, therefore, necessary to lay down provisions with respect to it in the constitution.

It may be prescribed that

(1) "A unit shall not, without the consent of the federal Legislature, impose any tax on the property of the federation used for administrative purposes, nor shall the federation impose any tax on the property of the unit used for administrative purposes.

(2) "Both the federation and the units shall have the power to tax public servants of the units and the federation respectively as citizens through general laws of taxation.

"Any discrimination by one organisation against the salary of a public servant of another organisation shall be void."

1. Amalgamated Society of Engineers V Adelaide Steamship Co. Ltd. 28 C. L. R. 129.

2. Abbott V City of St John (1908) 40 S. C. R. 597; Webb V Outrum (1917) A. C. 81; Toronto V Morson (1917) C. S. R. 227.

Chapter VIII

DEMOCRATIC SYSTEM

The Constituent Assembly has tried to provide a democratic system of government both to the federation and to the provinces. But it has so far been silent on the question of the nature of political authority of federated States. The rulers of States claim autonomy in internal affairs and it seems leaders of the Constituent Assembly are inclined to allow princes full freedom to determine the constitutional structure of their States.

In a federal state units are no doubt largely autonomous within their assigned sphere of activity. A federal polity never grants absolute internal autonomy to the units. They are required to function within the framework of the federal constitution and are bound both constitutionally and legally to observe principles of government determined by the federal constitution. In all democratic federal states the units are required by the federal constitution to have republican or democratic governments and to respect the fundamental rights of the people as determined by the constitution. In some federal states, such as Canada, Australia, the U. S. S. R., the structure of the government of the units is also determined by, and forms an integral part of, the federal constitution.

The Constituent Assembly has, therefore, rightly decided to determine the structure of the government of the provinces and incorporate it in the federal constitution. But there is no valid constitutional reason to treat federated States differently. As units of the Indian federal republic they are on par with the provinces. The fundamental principles of their governmental system must also be determined by the Constituent Assembly

and form an integral part of the constitution of the Indian Republic. This is specially necessary because most of the States are at present autocratically governed and their rulers are hardly inclined to establish a democratic system of government.

It is obvious that Indian democracy cannot put up with princely autocracy. The two are incompatible and cannot be welded together in a single body politic even of a federal character. Princely autocracy will be an anachronism in democratic India.It will be impossible for the people of the States to be governed autocratically by the princes and to discharge duties of democratic citizenship with respect to federal matters.

Unless autocracy kills their manhood completely, their democratic spirit will revolt and overthrow autocracy. The conflict between autocracy and democratic forces are to continue unless the former is liquidated and democratic authority is established in different States. The democratically organised federal authority will not be justified in lending its support to autocratic authorities of the federated States on the plea of assistance to constituent units in maintaining law and order. Nor will it be possible for responsible provincial governments to outlaw all revolutionary activities for democratic freedom in Indian States. Provincial territories are bound to be used by the leaders of the freedom movement as base of operation; and many residents of different provinces are sure to sympathise with, and participate in, the struggle. All this is sure to cause serious constitutional complications and administrative difficulties unprecedented in the history of federal states of the world. The authorities of federated States are bound to accuse rebels of crimes and press provincial authorities that these rebel-criminals be arrested and handed over. Revolutionary activities against an established authority of a

constituent unit within the territories of another constituent unit, unchecked by the authorities of the latter, will be considered by the princes of federated States to be unfriendly, nay positively hostile, and subversive of amity between different constituent units. It must also be remembered that the continuance of the autocratic regime of the princes will retard the progress of a large section of the citizens of the Indian Republic.

It is, therefore, absolutely necessary to lay down in the constitution of the Indian Republic that

"(1) The constitution of federated States shall be of democratic character.

"(2) The resources and the legislative and executive authority of the federal government shall under no circumstances be used against the freedom movement of the federated States."

It is also necessary to settle the fundamentals of the constitution of Indian States in the main body of the federal constitution.

Chapter IX

REPRESENTATION

The Constituent Assembly has rightly decided to extend franchise to all adults of both the sexes who do not suffer from certain physical and mental disabilities. The right of franchise could not be equated to property or sex. None of them can claim any validity to abrogate or qualify it. Neither wisdom nor social responsibility can be measured by property or sex. Nor is the interest in the activities of the state confined to the propertied classes. Producing masses are vitally interested in the state and its activities. They have, as a matter of fact, a greater stake in the state than the propertied classes and must have full right to influence and determine the policy and decision of the state.

The Constituent Assembly proposes to grant franchise to citizens who have attained the age of at least twenty one years. In Bulgaria, Yugoslavia and the U. S. S. R. the franchise is extended to citizens of eighteen years in age. It will surely be desirable to allow the citizens of the Indian Republic to exercise the right of franchise at the completion of eighteen years. If for certain reasons it may not be possible to do so at the commencement of the new constitution, it may be laid down in the constitution that "on the first January 1955 citizens who have completed the age of eighteen years shall have right of franchise."

The Constituent Assembly has also rightly decided against communal representation through separate electorates. The communal representation proved a curse to Indian society. It narrowed the vision of the people, eclipsed the real political and economic problems, fed communal prejudices and accentuated communal differ-

ences. It confused religion with politics, fomented religious bitterness and ultimately disrupted the political unity of India. Separate communal representation is no protection to minority. Indeed, the minority community loses a chance of protection in the degree in which communal feelings substitute civic consciousness and the majority of the representatives become wholly independent of the votes of the minority community.

The Constituent Assembly has decided in favour of joint electorates with reservation of seats for minorities on population basis for a period of ten years. The reservation of seats for a period of ten years can be accepted only as a step towards complete separation between religion and politics. The confusion between the two has caused untold miseries and hardships on the people of India; and the only way to save India from chaos is to divorce politics from religion and develop civic consciousness and spirit through vigorous activities of fully democratic state on secular basis. To ensure the divorce between the two it is necessary to prohibit the formation of political parties on religious and communal basis and to outlaw the use of religious institutions for political purposes. As the enjoyment of civil and political rights must be independent of religious belief, the reservation of seats must not be extended beyond ten years and all possible efforts must be made to secularise politics within that period completely.

The Constituent Assembly seems inclined to favour the single member constituency system to the system of proportional representation. The single member constituency system has a merit of simplicity. It provides the smallest possible constituencies and largely simplifies the work both of the voter as well as that of the candidate. It favours two party system and

tends to integrate interests and views before differences are dramatised in elections. This process of integration contributes to the efficiency of the legislature.

But the system of single member constituencies fails to provide adequate representation of the people on the legislature. A substantial section of citizens is always without any direct representation. As elections are mainly confined to contested constituencies, quite a large number of citizens do not have even any opportunity to express their opinions on public questions through ordinary constitutional process. They do not come in direct contact with public affairs even during the elections. This tends to inhibit their interest in the activities of the state, and is bound to stand in the way of the political education of the masses in India. The constituencies do not represent any civic homogeneity. They are highly artificial and play no part in the daily civic life of the people. Their artificial character combined with the importance of the change of the party loyalty of a small percentage of voters has constantly led the party in power to manipulate the formation of constituencies in their own interests. This manipulation has naturally been the source of great irritation, and has tended to inhibit the interest of honest citizens from civic life. The system also exaggerates regional differences in public opinion. Only one aspect of the public opinion of many regions is represented in the legislature. The views of the members of a party living in different regions cannot exactly be the same. The agreement on broad principles of policy does not necessarily imply identity of views on particular problems before the legislature. In India because of the marked differences in social conditions of its different parts variations in the views of a party on regional basis is highly probable. The impact of views

and interests alters their character. Hence, the policy and programme of a party in the legislature will be imperfect in the degree in which it will fail to integrate the views and interests of certain regions because of the absence of any member in the party from such regions. Nor does the system ensure that the results of elections will conform with general public opinion. Majority of ten thousands does not count more than that of ten. Hence, even when elections are fought only by two parties, the strength of the parties in the legislature does not in general bear proportion to votes actually cast. In fact, the party that has polled the minority of votes may secure the majority of seats or may remain altogether unrepresented in the legislature. In case there are more than two parties, the results of elections can by chance alone correspond with general public opinion. Not only small minorities are in constant danger of being swept away, but the chances of minority rule are very great. The fate of a party does not depend merely upon the comparative strength of its programme and policies, but might adversely be affected by such weakness or policy of another minority party as is specially favourable to the third party. Under the single member constituency system slight change in votes may have disproportionate effect on the composition of the legislature. The change may not necessarily be the result of the real drift of public opinion. The former might be the result of certain minor issues or that of ordinary manipulation of certain group of voters. The system, thus, not only puts premium on such spectacular issues as Zinovieff letter, but also increases the political importance of organised cliques with enough votes to hold the balance of power in crucial districts. In India political parties might be tempted

to manipulate the influence of small communal groups or of some influential persons in well contested constituencies. In constituencies where two communities are prominent, communal feelings might be aroused and the votes of smaller communities might be manipulated by the candidate belonging to major communities. The constant return of a candidate of one community alone against the wishes of certain other prominent communities might cause irritation and sense of injustice. Thus, under the single member constituency system there is a danger of limited political education of the masses as well as that of the manipulation of communal groups and territorial limits of constituencies. Such manipulation, combined with disproportionate strength of the parties and the absence of representatives of certain regions in the party in power, might cause great irritation and sense of injustice. The system, which has its own marked advantages, might work but does not ensure success.

As an alternative to the single constituency system, proportional representation with single transferable vote is most favoured by political thinkers. This system obviates largely the defects of the single constituency system. But the former can hardly be termed proportional in its strict sense, as no scientific method has yet been devised for selecting the particular votes which are to be transferred proportionately to the candidates. The process of the elimination of the candidate at the bottom is to an extent arbitrary. It favours the candidate, who has the largest preferential support of the voters, who have given their first vote to the candidate in the bottom of the list. The system of proportional transference of such votes of the successful candidates, as have not been counted before their quota is completed, has a merit of simplicity but no scientific

justification. It is also reasonable to hope that a candidate does not secure a seat in the legislature mainly on the basis of the permutation and combination of the preferential votes. Such persons can scarcely command the confidence of the constituents in spite of their remote preferential votes. He is sure to be mediocre with negative rather than positive merits. Proportional representation is also too complicated for India. No combination of colours or signs can ever secure intelligent voting of illiterate voters. It is also very doubtful if the bulk of the illiterate Indian voters are capable of making a number of choices on preferential basis with some intelligence. It will also not be very easy task to count proportional votes of big multiple seat constituencies of India.

The system of multiple constituencies with cumulative votes will suit India most. Under this system the strength of parties in the legislature will in general correspond with votes cast. The legislature will not distort but represent real public opinion. Big constituencies with multiple seats will tend to discourage disproportionate influence of small cliques. Slight change in public opinion will not cause disproportionate influence on the composition of the legislature. As influence will in general correspond with the change in opinion, such minor issues as appeal only to a certain group will not have very disproportionate influence on public policy. Nor will the regional differences in public opinion be over-exaggerated in the legislature. The presence of members of every region in a party will secure wider experience and better integration of programme and policy. Size of constituencies will surely tend to diminish the chance of personal touch between the candidates and the voters. But in India this personal touch is impossible even in the case of

single member constituencies. Under the multiple constituency system the overwhelming majority of voters will have the satisfaction of having returned such persons to the legislature for whom they voted. This is very essential not only for the proper political education of the masses in India, but also for the maintenance of their interest in the activities of the state. There is bound to be more lively interest throughout the country in elections. The system increases the chances of the representation of every constituency by members of more than one party. This ensures better political education of the people even between elections. Political parties will have chance of nominating persons of different communities from every constituency. This will tend to diminish the chances of friction between different communities during the elections. The political parties will, then, be able to press more vigorously the real political and economic issues before the people. As the selection of candidates and members will not be in the hands of the central organisation of the party, the latter will not be overwhelmed with pressure for favours as is the case in the general list system. But the influence of parties will not tend to diminish. It always increases with the size of the constituency. Nor will this be a great evil to India. Indian masses need to be politically organised. Without it they can neither have sense of civic responsibility nor rise above petty communal feelings. The multiple constituencies might also correspond with some local civic unit. This will not only avoid manipulation but also secure better civic homogeneity in election, and will surely be of immense value in building civic life.

Chapter X

BICAMERALISM

The Constituent Assembly has decided in favour of bicameralism. The federal legislature is to consist of the Federal Assembly and the Council of State. While the Federal Assembly is to be elected directly by the people on population basis through adult franchise, the Council of State is to be elected indirectly by elected members of the legislatures of constituent units not exactly on population basis. With the consent of the representatives of the province, concerned, an upper house, known as the Legislative Council, can also be established in certain provinces. It is recommended by the Provincial Constitution Committee that half of the Legislative Council should consist of persons elected on functional basis, one third of its members should be elected by the Provincial Legislative Assembly and one-sixth nominated by the executive.

There was a time when constitutionalists regarded the bicameral legislature as an essential feature of federal polity. It was maintained that while the lower house should represent the people as citizens of the federal state, the upper house should represent various constituent units as collective entities. Equality of representation for different units in the upper house was also regarded as necessary. A federal polity was considered by these constitutionalists to be a compromise between separation and unity. They held that when people wanted union and not unity the federation came into being.

These ideas are no more accepted as true by constitutional thinkers. They maintain that a federal polity

may be the result of a compromise between centripetal and centrifugal tendencies, a compromise between unity and separation, but a federal constitution may also be determined as an administrative necessity by a big democratic state. In their opinion equal representation of different constituent units of widely different dimensions is neither just nor possible. In the words of Charles Beard, it "results in gross violation of the democratic theory that human beings, not geographical units, should be the basis of representation"[1]. It is a legacy of confederation in some federations and a recognition of a multinational character of the Union of Soviet Socialist Republics. Indeed, in many federations the rule of equality of representation for constituent units is not adhered to. As pointed out by Prof. Laski, "no safeguard necessary to the units of a federation requires the protective armour of a second chamber."[2] All the requisite protection is secured (a) by the terms of the original distribution of powers embodied in the constitution, and (b) by the right to judicial review possessed by the courts. In all federal states the party system operates alike in both the chambers of the legislature. Members of the second chamber are elected on party tickets, as well as work and vote under party discipline in much the same way as members of their respective parties in the lower chamber. The relative strength of national parties in the two chambers no doubt often differs, but this difference only promotes confusion and deadlock. Neither it is wise to entrust the protection of national and regional interests to two different chambers of the federal legislature, nor have second chambers justified their special claims to custodianship of regional in-

1. Beard : American Government and Politics 9th ed. p. 93
2. Laski : Grammar of Polities, p. 334

terests. Members of both the chambers have reacted to national and regional issues in much the same way.

The principle of representation of constituent units as political entities through nomination by the local executive or election by the legislature of the units is also not accepted by modern thinkers as valid. The system of nomination is undemocratic while that of indirect election pernicious. In the words of Prof. Laski, "of all methods of maximising corruption, indirect election is the worst".[1] In the United States of America the system of indirect election tended to mix up federal politics with state politics at the time of the election of the members of the State Legislatures. Sometimes when a vacancy in a senatorship approached, the aspirants put themselves before the people of the State, and at the election for the members of State Legislatures candidates for seats in that legislature were required to declare for which aspirant to senatorship they would, if elected, give their votes. Sometimes, the aspirant, who was of course a leading state politician, went on the stump in the interest of those candidates for the legislature who were prepared to support him and urged his own claim while urging theirs.[2] Under this system "the State Legislatures were sometimes bought outright by senatorial aspirants."[3] All this compelled a majority of State Legislatures to demand that senators be chosen by direct popular vote, and the change was duly introduced after considerable opposition by senators.

Both in Australia and the United States of America members of the upper chamber are elected by popular

1. Laski : Grammar of Politics p. 330.
2. Bryce : American Commonwealth, Vol. I. p. 101.
3. Beard : Op. Cit. p. 96.

vote, each State forming a single constituency for election purposes. This system has also not worked well. In both the countries seats are captured by the majority parties, and the minority party of each State even if it commands the support of the majority of voters in certain areas remains unrepresented.

All this clearly indicates that the system of representation of constituent units as collective entities is not democratic, nor an essential feature of federal polity, nor a sound method of representation. There is, then, no reason why India should adopt it for organising a second chamber. Indian provinces are obviously too big to form a single constituency for the purpose of electing members of a second chamber. The system of indirect election, as suggested by the Constituent Assembly, is not likely to yield better results in India than it did in the U. S. A.

The advocates of bi-cameralism may nevertheless insist on the second chamber on the grounds that it will serve as a revising chamber and act as a check to hasty legislation and legislative despotism. A careful study of the problem will, however, reveal that no second chamber has so far satisfactorily discharged the function of a revising chamber. As pointed out by Prof. Laski, "most criticism in second chamber will merely repeat arguments already advanced in the first. What it has to say will not, except by accident, possess any special quality of expertise. It will tap no sources of knowledge or opinion not already in contact with the first."[1]

The kind of check provided by a second chamber is not the most desirable form available. Necessary delay is always secured by the slowness with which a great organisation like a political party is persuaded to accept a novelty. The process of legislation

1. Laski : Op. Cit. p. 332.

is sufficiently dilatory and no further delay is needed to prevent hasty legislation. In India what is needed is speed and not check in the reconstruction of economic, social and cultural life of the people. The danger lies more in delay and checks than in speed.

As pointed out by Sieyes, "the law is the will of the people; the people cannot at the same time have two different wills on the same subjects; therefore, the legislative body which represents the people ought to be essentially one. Where there are two chambers, discord and division will be inevitable and the will of the people will be paralysed by inaction".

All this clearly proves that the legislatures should be unicameral. A small committee of technical experts may, however, be appointed, to which legislative measures may be referred for opinion on drafting after discussions at the report stage and the opinion of which may be taken into consideration by the legislature before a Bill is finally passed. This may enable the legislature to correct mistakes in drafting. An Economic Council should of course be organised on functional basis with a view to advising the legislature on socio-political and socio-economic legislative projects. The Economic Council can surely render better expert advice to the legislature than the Council of State proposed by the Constituent Assembly.

There is less justification for the second chamber in provinces and States than in the federation. The process of nomination is pernicious and undemocratic. Half of the seats reserved for functional representation are likely to be assigned to associations of the monied classes such as industrialists and commercial magnates and proprietors of landed property. The Legislative Council is, thus, likely to be less democratic than the Legislative Assembly. An Economic Council composed

of experts and representatives of functional groups will be able to tender expert advice without in any way affecting adversely the supreme authority of popularly elected legislature. It must be remembered that even Montague, the ex-secretary of state for India and liberal Indian statesmen, such as Sir C. Y. Chintamani, were opposed to the idea of a second chamber in a province.

Attempt is being made by the rulers of Indian States to establish a second chamber composed of nominated persons and representatives of the propertied classes with a view to check-mating the growth of democracy in the States. Such an attempt must be resisted and unicameral legislature must be insisted upon.

Chapter XI

THE EXECUTIVE AUTHORITY

The Constituent Assembly has rightly decided to organise the executive authority on the system of parliamentary responsible government. "It makes parliament the focus of government so that the ultimate sovereign, by direct control of parliament, can without an elaborate constitutional machinery control the whole conduct of the state."[1] It also ensures co-ordination between the executive and the legislature, the relation of which must be intimate and continuous. Under the presidential system ,which has rightly been rejected by the Constituent Assembly, "the mechinery of the state is not unified within itself,"[2] "the executive acts in awkward independence,"[3] and "the onus of coordination is thrown back on a constitutional device which responds far less freely to the changing conditions of government and the movements of the popular will"[4].

It is, however, to be regretted that the Constituent Assembly wishes to vitiate the system of responsible government by the grant of discretionary powers to Governors of the provinces with respect to many matters, the most important of which is with regard to the grave menace to the peace and tranquility of the province or any part thereof.

The Provincial Constitution Committee suggests as follows :—

"(i) In the exercise of his responsibilities, the

1. MacIver: The Modern State, p. 374.
2. Ibid.
3 Ibid. p. 375.
4. Ibid

Governor shall have the following special responsibility, namely, the prevention of any grave menace to peace and tranquility of the province or any part thereof.

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

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

Thus, discretionary authority is obviously modelled on special powers conferred on provincial Governors under the Government of India Act of 1935. With this difference that while under the Act of 1935 the question of 'grave menace to the peace and tranquility of the province or part thereof' was placed under his individual judgement, the Provincial Constitution Committee proposed to place it under his discretionary authority. Under the Act of 1935 the two special authorities differed in this respect that while the Governor had independent charge of matters placed under his discretionary authority and could deal with them at his will with or without consultation with his ministers; matters with regard to which he could exercise his individual judgement were under dual responsibility of the Governor and his ministers, were expected to be dealt with in normal course by ministers, and the power of individual judgement could not be exercised by the Governor except after consultations and discussions with ministers. So it comes to this that while under the Act of 1935 the problem of 'grave menace to peace and tranquility' was under the charge of ministers whose advice could be ignored, if necessary, and steps could be taken with

respect to it by the Governor according to his judgement; under the proposed constitution the Governor will have independent charge of the problem and may do what he likes even without consulting his ministers. It is but obvious that the problem of 'grave menace to peace and tranquility' is an integral part of the problem of 'the maintenance of peace and order', and the two must be dealt with by the same authority. The separation of the two is sure to cause confusion and no responsible government is possible if the Governor is allowed to deal with the problem of 'grave menace to peace' independent of responsible ministers and encroach upon their authority, whenever he deems proper, on the plea of grave menace to peace and tranquility.

It must also be remembered in this connection that the connotation of 'grave menace to peace and tranquility' is not as restricted as seems to be assumed by members of the Constituent Assembly. Its scope is limited neither to occasions of violent disturbances nor to the menace which may arise from subversive movements or activities tending to crimes or violence. Nor is its scope confined to the department of law and order. "Terrorism, subversive movements, and crimes of violence, are no doubt among the graver menaces to the peace or tranquility of a province; but they do not by any means exhaust the cases in which such a menace may occur"[1]. Besides the department of law and order, "there are many other branches of administration in which ill-advised measures may give rise to a menace to the peace and tranquility of the province, and we can readily conceive circumstances

1. Joint Committee on Indian Constitutional Reforms Vol. I. (Part I) Report p. 44.
2. Ibid.

in connection with land revenue or public health, to mention no others, which might well have this effect."[1] If this interpretation of the Joint Parliamentary Committes is accepted as valid by the judiciary, the Governor can obviously interfere in affairs of many departments on the plea of grave menace to peace or tranquility of the province. If by chance it is also decided by the Constituent Assembly that the scope of his discretionary authority will be determined by the Governor and his interpretation with respect to his power cannot be questioned in a law court, the Governor will be in a position to establish his virtual dictatorship in all matters of vital importance. A grave constitutional tussle between the Governor and the responsible ministers will anyhow be inevitable in either case.

The Joint Parliamentary Committee emphasised "the vital importance in India of a strong executive"[1] and held that "the only way of strengthening the provincial executive in India is to confer adequate discretionary powers on the Governor."[2] The statement is obviously as extraordinary as the Governor's special powers. Indian provinces no doubt need a strong executive authority. But under the system of responsible government the strength of the executive consists in its internal unity and its harmony with the legislature and the electorate. The Governor's discretionary authority, on the other hand, is sure to undermine both unity and harmony and hence the strength of the executive.

The Constituent Assembly was not satisfied with the provision suggested by the Provincial Constitution Committee and much against the decision of the joint

1. Ibid p. 62.
2. Ibid. p. 64.

meetings of the Provincial Constitution and the Union Constitution Committees passed Mr. Munshi's amendment which runs as follows :—

"Whenever the Governor of a province is satisfied in his discretion that a grave situation has arisen which threatens the peace and tranquility of the province and that it is not possible to carry on the government of the province with the advice of the ministers in accordance with provisions of section 9, he may by proclamation assume to himself all or any of the powers vested in or exercisable by any provincial body or authority and any such proclamation will contain such incidental and consequential provision as may appeal to him to be necessary or desirable for giving effect to the objects of proclamation including the provisions for suspending in whole or in part the operation of this act relating to any provincial body or authority; provided that nothing in this subsection shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court or to suspend either in whole or in part the operation of any provision of this Act relating to High Courts.

"The proclamation shall be forthwith communicated by the Governor to the President of the Union who may thereupon take such action as he considers appropriate under his emergency powers. The proclamation shall cease to operate at the expiration of two weeks unless revoked earlier by the Governor himself or by the President."

Dr. H. N. Kunzru and Pt. Govind Ballabh Pant rightly opposed the grant of such dictatorial powers to Governors. Pt. Kunzru rightly said, "Mr. Munshi's amendment would practically reintroduce section 93 of the Government of India Act of 1935 in the future provincial constitution. The British Govern-

ment had to provide for these special powers for Governors because they were afraid that Indian Ministers would use their power as to bring about deadlock and make the maintenance of law and order impossible. But surely the future provincial constitution of free India could not proceed on the assumption that the Governor would continue to be the central figure." Pt. Pant pointed out that under the scheme already approved by the Assembly, the Governor would be kept aloof from the entire sphere of administration. And he rightly maintained that to ask the Governor "to but in at the most delicate moment when those in charge of the administration found themselves unequal to it would be to create confusion worse confounded". The dictatorial discretionary authority, instead of strengthening the executive, will cripple it at a critical moment. It will lead to a conflict of authority between the Governor and the ministry and there is no reason to believe that he will be able to face ministerial resistance and rally to his support the loyalty of the Services and necessry cooperation of the public. It is hardly correct to presume that under the system of responsible government the Governor will be of a higher calibre and command greater confidence and support of the people and the Services than the Prime Minister and will be able to deal with the crisis more competently than the ministry. Pt. Kunzru rightly questioned the wisdom in allowing "one man to sit in judgement over the collective views of the ministry", and rightly maintained that "if the will of a provincial ministry is to be overruled, it should be overruled not by a single man, the Governor, but by the Union President and the Federal Government who would enjoy a more important position in the eyes of the public than a provincial ministry".

In a free democratic state all problems of the

government should be tackled in a way consistent with democracy. In all federal states the maintenance of internal peace is primarily a responsibility of the authorities of the constituent units. But the federal authority has nowhere been absolved of all responsibility with respect to the maintenance of peace. It is its duty to help the authorities of the constituent units and even to take over temporarily the entire responsibility of maintaining peace in an area, when the authorities of the constituent unit failed to do so. But in a democratic federal state, the federal authority is not allowed to supercede completely the duly constituted authority of a constituent unit. Nor has a federal constitution ever authorised a Governor, even though he is elected by the people directly, to supercede the constitution, to assume all legislative, executive and financial powers of the Government and rule over a constituent unit dictatorially through ordinances promulgated by him with or without the consent of the federal authority.

The constitution must, therefore, lay down as follows :—

"The units shall be autonomous in their administration.

"The executive authority of the federation may help with armed forces the Government of a unit at its request in the restoration of public order.

"If public safety and order be seriously disturbed in any part of the federation and the Government of the unit concerned fails to restore public order, the President of the federation may take necessary measures to restore public safety and order if necessary with the help of armed forces. Under such circumstances all authoritites of the unit concerned shall assist and obey the instructions of the executive authority of the federation and its duly authorised agents. Under such

circumstances the federal authority may also suspend the provision of the constitution concerning freedom of speech, association and assembly and inviolability of person, home and correspondence in the manner and to the extent determined by the Federal Law and enforce such of these provisions as are determined by the Federal Law for such occasions.

"The President of the federation must immediately communicate to the Federal Legislature all measures taken under this section of the constitution.

"The executive authority of the federation shall not lend its support to the rulers of the federated States for the purpose of suppressing the freedom movement of the people of the States."

Chapter XII

THE JUDICIARY

The judiciary is 'the cement of society' and a balance-wheel of the whole social system. It is a pivot of constitutional government and protector of citizens' rights and liberties. It can function as such only when it is separated from and made independent of the executive and the legislature, neither of which can function as a law court efficiently and impartially. However fit the legislature may be to express public opinion and pass general laws, it is incapable of dealing with individual cases. It is too much under the influence of fluctuating public opinion, momentary emotions and party machines to dispense justice impartially. Its organisation as well as its temper is out of accord with the judicial spirit. Its members are essentially rather advocates than judges. Nor can the executive be trusted to impart justice impartially. Every authority, however exalted, has a tendency to increase its powers. It cannot, therefore, be expected to be an impartial judge of its own activities. No authority can perform the function of a judge as well as that of a party. Nor can it be expected to refuse to utilise its influence over the judiciary in its own favour or for a particular cause in which it is greatly interested. The executive throughout the world has yielded to temptations and utilised its influence for its own ends even at the cost of justice. The complete control of the executive over the judiciary has endangered the individual liberty and often proved a step towards dictatorship. In India the union of the judicial and executive powers in the same office, specially in criminal cases, has undoubtedly resulted in "miscarriages of

justice",[1] which has tended "to shake the confidence of the people in the administration of justice itself".[2] Even judges of High Courts, recruited from the Indian Civil Service, often failed to maintain impartial judicial attitude in cases pertaining to offences of political character.

All this led the Indian National Congress to demand the separation of the judiciary from the executive. The demand was not conceded by the British Government for obvious reasons of imperialistic character. But there is no reason why in democratic India we should not establish an independent judiciary free from the control and influence of the executive.

It is, therefore, to be regretted that the Constituent Assembly has failed to secure the separation of judicial and executive functions to which the Congress is pledged since its inception. The Provincial Constitution Committee has recommended that the present constitution of the High Courts shall be adopted *mutatis mutandis*. It means that at least one third of the judges of the High Courts will continue to be recruited from amongst members of the Civil Service and that the High Courts will have no jurisdiction over revenue cases. There is no reason why civil servants, members of administrative bureaucracy, be judges of High Courts and the revenue cases be continued to be adjudicated by revenue officers. It is necessary to guarantee through the constitution the separation of the executive and the judicial authorities.

For the purpose the following provisions may be laid down in the constitution :—

"Judicial power shall be separated from the administrative in all instances.

1. Sir William macby : cf. Decentralisation Commission Report. p. 177.
2. Ibid.

"Judges shall not be required to exercise any executive function or power. They may, however, be entrusted with investigations of quasi-judicial character.

"Judges shall be independent in the exercise of the functions of their office and shall be bound only by the law."

The question of the appointment of judges is an important and at the same time a difficult one. They may be chosen by the legislature, by popular election, or by the appointment of the executive. The legislative choice presents "too many occasions and too many temptations for intrigue, party prejudice, and local interest to secure a judiciary best calculated to promote the ends of justice".[1] Popularly elected judiciary has always been the worst of all. Popular elections lower the character of the judiciary, tend to make a politician of the judge, and subject the judicial mind to a strain which it is not always able to resist. The fittest men are likely to have "too much reservedness of manners and severity of morals to secure an election resting on universal suffrage".[2] Nor are the masses of voters fitted to choose a judge wisely and impartially. Even the executive has failed to choose judges impartially. Appointments have in many cases been made on party considerations and personal favours. It is, therefore, generally recognised that while people's courts may be established at the lowest ladder, judges of lower courts should be appointed by the executive authorities on the recommendation of the Public Service Commission and judges of the Supreme and High Courts should be appointed by the executive authorities on the advice of jurists with or without concurrence of the legislature.

For the independence of the Indian judiciary it is

1. Kent : Commentaries Vol. I. p. 292.
2. Ibid.

necessary that both the executive and the legislature should have the least influence over its internal administration. The future prospects of the judges must be independent of them. Both the efficiency and dignity of the office require that the bench must be intellectually and socially at least at par with the bar. To attract capable persons to the judiciary it is also necessary that the judges must have a status and position at least equal to other public officials. They must also be sure that in case they work honestly and efficiently they shall not have to seek other careers. This will also eliminate natural temptation to use their judicial positions for their future non-judicial careers.

The constitution must, therefore, lay down as follows:—

(1) "The Chief Justice of the Supreme Court shall be appointed by the President of the Indian Republic with the concurrence of two third majority of the Federal Legislature and the other judges of the Supreme Court shall be appointed by the President in consultation with its Chief Justice.

"The Chief Justice of a High Court shall be appointed by the President in consultation with the constitutional head of the unit and the Chief Justice of the Supreme Court.

"Other judges of a High Court shall be appointed by the President in consultation with the constitutional head of the unit, the Chief Justice of the High Court and the Chief Justice of the Supreme Court.

(2) "Judges and Chief Justices of the Supreme Court and High Courts shall hold office until sixty five years of age,

provided that

"(a) A judge may by resignation under his hand

addressed to the President of the Indian Republic resign his office, and

"(b) A judge may be removed from his office by the President on the ground of infirmity of mind or body or wilful neglect of duty, or improper exercise of judicial functions or conviction for any infamous offence, if the removal is recommended by the Supreme Court, on reference being made to them by the President.

"(3) The judges of the Supreme Court and of the several High Courts shall be entitled to such salaries and allowances and to such rights in respect of leave and pensions as may be determined by law

provided that

"(a) the salaries of the judges of High Courts shall not be less than those of the ministers of units concerned and the salaries of the judges of the Supreme Court shall not be less than those of the ministers of the federation,

"(b) neither the salary of a judge nor his rights in respect of leave or absence or pension shall be varied to his disadvantage after his appointment.

"(4) Each of the High Courts shall have superintendence over all courts for the time being subject to its appeallate jurisdiction.

"(5) Judges of the lower courts except those of the people's courts shall be appointed by the executive authority of the unit concerned on the recommendation of Public Service Commission, while their promotion and transfers shall be determined by the executive authority of the unit concerned on the recommendation of the Chief Justice of the High Court concerned."

Chapter XIII

PUBLIC SERVICES

Administration must be amenable to public opinion and subject to public scrutiny and control. It must function in harmony with the general sense of the community and should function in close cooperation with accredited representatives of the people who are to embody the needs of the community in policies and programmes, bring out constant fresh mind to the problem of administration, to break the rigidity of outlook to which the professional mind is too prone, and prevent administration from corruption and stagnation. But the task of elected representatives "is one of supervision, adjustment, control, rather than of actual operation "[1] and "the whole difference between efficient and inefficient administration lies in the creative use of officials by elected persons",[2] who are collectively supreme in the control of administration. But elected representatives should never be allowed to interfere individually in the operation of administration. Individual interference tends to blur responsibility, affect adversely the morale of public servants, introduce undesirable influence in administration, and lowers in many ways the standards of public life.

The constitution must, therefore, definitely lay down :

"Members of the Legislature shall not address to public authorities requests in the personal interests of individuals."

Administration must be not only amenable to public opinion, but also honest, impartial, efficient and econo-

1. White : Public Administration. p. 182.
2. Laski : Grammar of Politics. p. 425.

mical. While the first quality is ensured through the collective direction and control of elected persons, the second requires proper departmental organisation as well as the efficiency and good morale in public servants. "Morale is a spirit which expresses itself in enthusiasm loyalty, cooperation to duty, pride in the service".[1] Its growth is promoted by the sentiment of justice, fairplay, and 'square deal'. The sense of justice is sustained and promoted by the recruitment on merit basis, the security of tenure, equal pay for equal work, recognition of meritorious services, and absence of advancement of favourites on grounds other than merit. All this can be secured to public services only through a permanent Public Service Commission, free from the influence and pressure of politicians and political parties.

The Constituent Assembly has, therefore, rightly decided to provide for the establishment of Public Service Commissions both for the federation and units. It is hoped that the constitution will allow two or more units to establish one common Public Service Commission and authorise the Public Service Commission of one unit to serve the needs of other units with necessary permission of executive authorities concerned.

The constitution must also definitely lay down that "to ensure full justice to citizens and efficient service to the state, unauthorised intervention and any kind of pressure, through letters of recommendation or otherwise, of ministers, members of the legislature and other officials and citizens over chairman and members of the Public Service Commission individually or collectively in the matter of appointment of public servants is forbidden.

1. White : Op. Cit. p. 237.

Chapter XIV

ABORIGINALS AND TRIBAL PEOPLES

The tribal peoples are backward both economically and politically. Their contacts with the rest of India are very limited. The tribal areas were excluded from the normal jurisdiction of the provincial admininistration and continued to be governed in the old imperialistic fashion by political officers. The growth of social contacts was hindered in so many ways. While Indian welfare workers were discouraged, foreign missions were afforded facilities for work amongst them. Foreign missions systematically tried to denationalise them with the result that today in certain provinces a number of educated persons amongst the tribal peoples are engaged in disruptive activities. While in Bihar they wish to have a separate Jharkhund, in Assam they wish to keep tribal areas independent of the Indian Republic. This spirit of separatism is, however, disapproved by many amongst the tribal peoples. They are conscious of their economic and political interdependence with the rest of India and wish closer relations. They regard tribal peoples as an integral part of India and hope that the people of India will not only help them in their amelioration, cultural, economic and political, but also treat with consideration their culture and traditions.

It is obvious that Indian democracy cannot, consistent with its own principles, deny to the tribal peoples the benefit of democratic administration. The tribal areas cannot be allowed to be administered autocratically by political officers as excluded or partially excluded areas. Nor can the tribal peoples be refused rights of citizensnip as nationals of India. Tribal peoples

should be regarded as an integral part of the Indian nation and they should be entitled to all the rights of Indian citizenship equally with other citizens of India. The tribal areas should for administrative purposes form part of the units, the provinces or federated States, to which they geographically belong. The authorities of the governments of both the units and federation should extend to those areas and they should be responsible to the tribal peoples concerned on par with other citizens of India. The tribal peoples should have equal right of representation on the legislatures of the unit and the federation and equal right of participation in the political life of the country.

Tribal peoples are culturally, economically and politically too backward to stand free competition on terms of equality with other citizens of India. Equality of rights and status will not, therefore, ensure these tribal peoples protection from exploitation or equal progress in all spheres—social, cultural, political and economic. The state will have to provide them special protection against exploitation and special facilities for development. Tribal peoples are to be assimilated and developed culturally. But cultural assimilation and development will have to be carefully planned. Enthusiasts often tried to secure cultural assimilation through the imposition of a cultural pattern which they considered to be national in character. But these efforts not only failed to achieve the objectives but also in most cases retarded cultural progress of tribal peoples. Imposition generates inhibition and hatred against the cultural patterns and tend to uproot the people culturally. Enthusiasts must remember that cultural progress and assimilation are possible only through cultural fusion and adaptation. Difference will have to be made between adoption and adaptation. While the wholesale

adoption of a cultural pattern is unnatural, cultural adaptation is the law of life and progress. Adaptation to environments, physical and social, is a constant process and cultural adaptation through contacts of persons to different cultural patterns goes on both consciously and unconsciously. It cannot be stopped though it may be retarded through social inhibitions. Fusion and not destruction is the law of cultural progress. Culture progresses through fusion of cultures and adaptation to environments. Cultural progress requires a creative synthesis of vital elements of indigenous cultural forces of the world in consonance with vital social and economic needs. The tribal peoples can, thus, be neither left alone to lead a stagnant life nor allowed to be hustled and coerced to new ways of life. Their economic and social life will have to be protected from exploitation and encroachments, their cutlural autonomy will have to be respected, and they will nave to be helped and encouraged to adapt their ways of life to their vital social, cultural and economic needs and forge a greater national unity with the people of India. Progress is, thus, not to be imposed upon tribal peoples but to be realised and achieved by them through their own constructive cooperative efforts with necessary encouragement and assistance of the state and advanced sections of the Indian nation.

The constitution of the Indian Republic must, therefore, provide as follows :

"1. The tribal areas shall politically form part of the units, the provinces or federated States, to which they geographically belong and shall be democratically administered as integral parts of the Indian Republic and the units concerned.

"2. The tribal peoples shall enjoy all the rights of citizenship of the Indian Republic and shall enjoy equal

right of representation on legislatures of the federation and units concerned and equal opportunities of participation in the political life of the country.

"3. Special laws shall be passed by the Federal Legislature to restrict and limit immigration to tribal areas with a view to protecting tribal peoples from the evil consequences of unchecked migration.

"4. Special laws shall be passed by the legislatures of the units with regard to transfer of land and transaction of business in tribal areas with a view to protecting tribal peoples from economic exploitation and evil consequences of unequal free competition and contracts.

"5. Tribal areas shall be treated as autonomous territories within constituent units and shall be granted wide administrative, economic and cultural autonomy to be enjoyed through autonomous district and regional councils.

"6. Autonomous district and regional councils shall have, besides usual municipal functions, powers of legislation and administration over

"(i) social matters, such as marriage and domestic relations, inheritance of property, primary and secondary education, public relief and charities, betting and gambling, intoxicating liquors and drugs, tribal institutions,

"(ii) economic matters, such as agriculture and the settlement of land, preservation and development of forests, fisheries, cottage industries, wholesale or retail business, money lending, production and supply of foodstuffs, poisons and dangerous drugs, irrigation and canal, weights and measures

"7. Autonomous councils shall recognise and establish people's courts to adjudicate non-cognisable criminal offences and civil suits concerning laws of autonomous councils.

"8. Tribal peoples shall be encouraged and preferred

in local services.

9. "Wherever possible tribal peoples shall be imparted education at the primary stage through the medium of their mother tongue. They shall, however, be taught the official language of the unit and the script of that language shall be adopted as the script of the tribal language

10. "The federal authority shall appoint a tribal commission consisting of (a) the representatives of district councils, one for each council, (b) five persons elected by the Federal Legislature, and (c) a non-official chairman and a permanent secretary appointed by the President of the federation. The commission shall have power to advise the federal government with regard to (a) the disbursement of money granted by the Federal Legislature for the advancement of the tribal peoples, (b) the adaptation of federal and provincial laws for tribal areas with a view to protecting the communal life and autonomy of the tribal peoples, (c) such other measures as may be determined for the advancement of the welfare of the tribal peoples.

"The tribal commission may also be entrusted with the direction, control and supervision of the work and departments organised for the advancement of the welfare of the tribal peoples."

PART II

A DRAFT CONSTITUTION

OF

INDIAN REPUBLIC.

DRAFT CONSTITUTION OF THE REPUBLIC OF INDIA.

Preamble :

We, the people of India, having solemnly resolved to form a Sovereign Democratic Republic and to establish Democratic Socialist Order, wherein social justice will prevail and all citizens will lead comfortable, free and cultured life, and enjoy equality of status and opportunity and liberty of thought, expression, faith and worship, do hereby, through our chosen representatives assembled in the Constituent Assembly, adopt, enact, and give to ourselves this Constitution.

Chapter I

THE STATE

1. The state known as India shall be a Sovereign Democratic Federal Republic.

The authority emanates from and belongs to the people and shall be exercised by and through different institutions and officials as provided by or under this Constitution.

2. Save as otherwise provided by or under this Constitution the territories included for the time being in Schedule I shall be subject to the jurisdiction of the Republic.

3. New territories, States and Provinces may be incorporated in the Republic by a Federal Law.

4. The territory of the Republic forms a uniform currency, economic and customs zone.

5. Territories, which do not form part of the Republic, may by treaty or agreement be included with-

in its currency, economic and customs zone or its administrative jurisdiction.

6. The Federal Legislature may by an Act, with the consent of the Legislature of the Province or Provinces concerned and the Legislature or any other duly constituted authority of the Federated State affected thereby,

(a) create a new Administrative or Federating Unit ;

(b) increase the area of any Unit ;

(c) diminish the area of any Unit ;

(d) alter the boundaries of any Unit ;

(e) create a Sub-Federation or Union for specific purposes ;

(f) attach a Unit or Sub-Unit to another Unit or Sub-Unit for specific purposes ;

(g) amalgamate a number of small Units or Sub-Units into an administrative zone or district ;

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

7. Governor's Provinces, Sub-Federations, and such Federated States as do not form part of any Sub-Federation shall constitute the Federating Units of the Republic and will hereafter be mentioned in this Constitution as Units.

The Federating Units of the Sub-Federation will be recognised and mentioned in this Constitution as Sub-Units.

8. The Sub-Federations aud Federated States as do not form part of any Sub-Federation shall be on par with the Governor's Provinces in all constitutional matters except to the extent otherwise provided in this Constitution.

9. Notwithstanding anything in the Constitution

such States as are too small to constitute separate administrative authority shall have, until they are amalgamated singly or jointly with an adjoining province, district or Federated State or welded together to form a Federating Unit of a Sub-Federation, such administrative system as may be approved by the President of the Federation in consultation with the duly constituted authorities of the State concerned.

10. Territories which do not form part of any Federating Unit of the Republic shall form Administrative Units to be directly administered by the Federal Authoritiy. With respect to these Administrative Units the Federal Authorities shall exercise all powers of Government in the manner laid down in this Constitution and prescribed by the Federal Laws.

Chapter II

CITIZENSHIP

11. The Republic shall have a single uniform citizenship with common and equal rights, privileges and responsibilities.

12. At the date of the commencement of the Constitution :

(A) Every person domiciled in the territories subject to the jurisdiction of the Republic

(a) who has been ordinarily resident in those territories for not less than five years immediately preceding that date; or

(b) who, or whose parents, or either of whose parents, was or were born in India;

shall be a citizen of the Republic, unless he

(i) is a citizen of another state; or (ii) has migrated to a territory outside the jurisdiction of the Republic.

(B) Every person

(a) who is excluded from citizenship under sub-section A (i) , or A (ii) ; or

(b) who, or whose parents, or either of whose parents, was or were born in the Peninsula of India, and who was domiciled in a territory outside the jurisdiction of the Republic but migrated to a territory within the jurisdiction of the Republic for permanent residence before the commencement of the Constitution

shall acquire the citizenship of the Republic, provided that he, or in case he is a minor his guardian on his behalf, intimates to the Federal Government, in the manner prescribed by law, that he wishes to be a citizen of the Republic and to reside permanently in a territory within the jurisdiction of the Republic.

(C) Every person who or whose ancestors was or were born in India and who is domiciled outside the Peninsula of India and has not acquired the citizenship of another state shall be a citizen of the Republic.

13. Subject to a Federal Law, which may be passed to avoid double citizenship, every person born, after the commencement of this Constitution,

(a) of parents, at least one of whom was at the time of that person's birth a citizen of the Republic; or

(b) in the territories of the Republic or on board a ship of the Republic, unless that person is a child of an alien who because of diplomatic immunity or otherwise was not subject to the jurisdiction of the Republic at the time of that person's birth

shall be a citizen of the Republic.

14. Citizenship may also be acquired in accordance with a law of naturalisation which may be passed for the purpose by the Federal Legislature.

15. Citizenship acquired by or under this Cons-

titution may be lost on such conditions as may be determined by a Federal Law. Such conditions shall not discriminate against a citizen on ground of his religion or community.

16. Allegiance to the Republic shall be the supreme duty of a citizen.

17. Every citizen shall obey the law, serve the interest of national unity, defend the country and carry the national burden in proportion to his means according to the provisions of law.

Any advocacy of communal, racial, or national exclusiveness, or hatred, or contempt shall be an offence.

Chapter III

JUSTICIABLE FUNDAMENTAL RIGHTS

GENERAL

18. All citizens are equal before the law and enjoy equal rights regardless of nationality, race, community, creed, or sex.

19. There shall be no discrimination against a citizen on any ground of religion, race, caste or sex in regard to

(a) access to trading establishments, including public restaurants, hotels and places of public entertainments ;

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

(c) possession of property, exercising or carrying on any occupation, trade, business or profession within the Republic;

provided that nothing in this clause shall prevent

the state from making any special provision for women and children.

20. (a) There shall be equality of opportunity for all citizens in matters of employment under the state.

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

(c) Nothing in this clause shall affect the operation of a law which prescribes that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominationai institution or a member of the governing body thereof shall be a member of that particular religion or denomination.

21. "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law.

22. (a) Privileges or discriminations based on birth, caste, or property are abolished and shall not be recognised by any public authority.

(b) No titles shall be conferred by the Republic except what may be necessary to designate an office or profession or to indicate academic distinctions or attainments.

(c) No citizen of the Republic shall accept any title from any foreign state.

23. Notwithstanding anything contained in the foregoing sections, special facilities may be provided for aboriginal tribes and other backward communities for their economic and cultural advancement and with regard to their share in public services.

RIGHTS OF FREEDOM

24. (a) All citizens of the Republic shall enjoy freedom of movement throughout the whole of the

Republic. Every citizen shall have the right to sojourn and settle in any place he pleases. Restrictions may, however, be imposed by or under a Federal Law for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace.

(b) Every citizen shall have in every Unit of the Republic equal civil rights and duties with the citizens of that Unit.

25. The citizens are guaranteed, consistent with other provisions of the Constitution and public order and morality,

(a) freedom of speech and expression ;

(b) freedom of the press ;

(c) freedom to assemble peacefully without arms;

(d) freedom to form associations and unions ;

(e) secrecy of postal, telegraphic and telephonic communications.

26. No person shall be deprived of his life or liberty, nor shall his dwellings be entered, save with due process of law.

27. Traffic in human beings and forced labour in any form, including *begar* and involuntary service, except as a punishment of crime whereof the party shall have been duly convicted, are hereby prohibited and any contravention of this prohibition shall be an offence, provided that the state may impose, in accordance with law, compulsory service for public purposes without any distinction on grounds of race, religion, caste, or class.

RIGHTS REGARDING AUTONOMY,

28. The state is secular and all religious confessions are equal before the law.

29. The enjoyment of civil and political rights as well as eligibility for public offices shall be indepen-

dent of religious belief.

No citizen shall be deprived of his public right by the change of his religion.

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

Explanation :

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

(2.) Nothing in this article shall affect the operation of any existing law or preclude the state from making any law

(a) regulating any economic, financial, political or other secular activities that may be associated with religious practice ;

(b) for the purpose of social welfare and reform and for throwing Hindu religious institutions of public character to any class or section of Hindus.

31. Every religious denomination or section thereof shall have the right

(a) to manage its own affairs in matters of religion;

(b) to own, acquire and maintain property, moveable and immoveable, in accordance with law ; and

(c) to establish and maintain institutions for religious and charitable purposes.

The state shall, however, have power to enact laws in regard to charitable endowments and to supervise and control their administration in accordance with law.

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

33. No citizen may be compelled to be present at

any religious act or ceremony or take part in religious exercise, or to use any form of religious oath, or to disclose his religious conviction unless his rights and duties are dependent thereon. Nor shall any religious instruction be imparted in state educational institution.

34. The use of religious institutions for political purposes and the existence of political organisation on religious basis is forbidden.

CULTURAL AND EDUCATIONAL RIGHTS

35. In all educational and cultural institutions efforts shall be made to develop moral integrity, civic sentiments and sense of public responsibility.

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

(ii) No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the state

37. (i) Linguistic minorities shall have the right to establish, manage and control educational institutions and cultural associations for the promotion of the study and knowledge of their language and literature, as well as for imparting general education to their children at primary and pre-primary stages through the medium of their own languages.

(ii) In districts and towns in which a linguistic minority forms a considerable proportion of the population the state shall establish primary educational institutions for imparting general education to the children of the linguistic minority concerned through their language.

(iii) At the secondary stage students belonging to linguistic minorities shall be afforded facilities for learning their language and literature as a secondary subject.

(iv) Facilities may be provided to the children of linguistic minorities, if the authorities of the Unit concerned or of the Federation may deem proper, for acquiring general or professional education at the secondary stage through the medium of their own language.

(v) Provisions shall, however, be made for teaching the official language of the province as a compulsory secondary subject to all such students belonging to linguistic minorities as are being educated at primary and secondary stages through the medium of their own language.

38. (i) The state shall not, while providing state aid to schools, discriminate against schools under the management of minorities.

(ii) In state aided schools religious instruction and attendance in religious worship shall not be compulsorily imposed on students, and persons of all denominations and communities shall be admitted.

39. Private schools organised as a substitute for public schools shall be subject to state regulations, supervision and control and shall have to satisfy educational and academic standards and follow general curricula prescribed by the state.

40. Denominational and communal educational institutions are forbidden except for the purposes of the study of religion and oriental learning.

41. The state shall endeavour to encourage educational movement amongst workers and provide special facilities to the workers' organisations for the establishment of workers' educational institutions.

ECONOMIC RIGHTS

42. (a) The property of the entire people is the mainstay of the state in the development of the national economy.

(b) The administration and disposal of the property of the entire people are determined by law.

(c) Private property and private enterprises are guaranteed to the extent they are consistent with the general interests of the Republic and its toiling masses.

(d) Private property and economic enterprises as well as their inheritance may be taxed, regulated, limited, acquired and requisitioned, expropriated or socialised but only in accordance with the law. It will be determined by law in which cases and to what extent the owner shall be compensated.

(e) Expropriation over against the Federated States, Provinces, Sub-Federations, municipalities and associations serving the public welfare may take place only upon the payment of compensation.

43. All the intermediaries between the state and the tillers of the soil are abolished. Cultivators shall receive such title to the land as may be determined by the Legislature of the Unit concerned, which may also determine the compensation, if any, which should be paid to the landlords and other intermediaries.

44. (a) To ensure protection against economic exploitation and the development of organisational initiative amongst them, peasants and workers are guaranteed the right to unite into public organisations, trade unions, *kisan sabhas*, co-operative societies as well as social, cultural and technical associations.

(b) The state shall encourage them in their organisational activities.

(c) All agreements between employers and employees which attempt to limit this freedom or seek to hinder

its exercise shall be illegal.

45. (a) Private enterprisers shall have freedom of negotiation and organisation in business affairs subject to such regulations as the Legislature may deem necessary in social interests.

(b) Private monopolies such as trusts, cartels, syndicates and the like are forbidden.

46. (a) Citizens engaged in intellectual pursuits are assured freedom in their organisational and intellectual activities.

(b) The state shall endeavour to assist science and arts with a view to developing the people's culture and prosperity.

(c) Proprietary rights in works of authorship and inventions shall be recognised and protected by law. The right may, however, be limited and regulated by law, whenever and to the extent the Legislature may deem fit, with a view to protecting social interests and promoting people's culture and prosperity.

47. No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment. Nor shall women be employed at night, in mines or in industries detrimental to health.

MISCELLANEOUS

48. (i) No person shall be convicted of the crime except for violation of a law in force at the time of the commission of the act charged as an offence; nor be subjected to a penalty greater than that which might have been inflicted at the time of the commission of the offence; nor be tried except by a competent court and in accordance with the prescribed law.

(ii) No person shall be punished for the same offence more than once, nor be compelled in any

criminal case to be a witness against himself.

(iii) No person, if within the reach of the state authorities, may be tried without being given a lawful hearing and duly invited to defend himself.

(iv) No citizen shall be deprived by any Statute or order of access to the court for the purpose of demanding reparation of injury or damages.

49. Every citizen has the right directly or without anyone's approval to bring complaint to the law court against official persons and the Governmental or self-governing bodies for illegal acts which they may commit against him in their official capacity. Special provisions may be prescribed by law for Heads of Governments, Ministers, Judges and soldiers under colours.

50. The establishment of the extraordinary tribunals shall not be permitted save only such Military Tribunals as may be authorised by law for dealing with military offences against military law.

The jurisdiction of Military Tribunals shall not be extended to, or exercised over, the civil population save in time of war or armed rebellion, and for acts committed in times of war or armed rebellion, and in accordance with regulations to be prescribed by law. Such jurisdiction shall not be exercised in any area in which all ordinary law courts are open or capable of being held, and no person shall be removed from one area to another for the purpose of creating such jurisdiction.

51. A member of the armed forces of India not on active service shall not be tried by any Court-Martial or other Military Tribunal for an offence cognisable by ordinary law courts, unless such offence shall have been brought expressly within the jurisdiction of Courts-Martial or other Military Tribunals by any code of Federal Law for the enforcement of military discipline.

52. The Federal Legislature may by law determine to what extent any right guaranteed in this Chapter shall in their application to the members of the armed forces charged with the maintenance of public order be restricted or abrogated so as to ensure the proper discharge of their duties and maintenance of discipline among them.

53. (a) The right to move the Supreme Court and other law courts by appropriate proceedings for the enforcement of the rights provided in this Chapter of the Constitution is guaranteed.

(b) The Supreme Court and High Courts shall have power to issue directions or orders in the nature of the writs of habeas corpus, mandamus, prohibition, qua warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Chapter.

(c) The rights guaranteed by this clause shall not be suspended except as otherwise provided by this Constitution.

54 The Federal Legislature shall, as soon as may be after the commencement of this Constitution, make laws to give effect to those provisions of this Chapter which require some legislation and to prescribe punishment for those acts which are declared to be offence in this Chapter and are not already punishable.

55. (a) All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Chapter, shall, to the extent of such inconsistency, be void.

(b) The state shall not make any law which takes away or abridges the rights conferred by this Chapter and any law made in contravention of this clause shall, to the extent of the contravention, be void :

Provided that nothing in this clause shall prevent the state from making any law for the removal of any inequality, disparity, disadvantage or discrimination arising out of an existing law.

(c) In this clause, the expression "law" includes any ordinance, order, bye-law, rule, regulation, notification custom or usage having the force of law in the territory of India or any part thereof.

Chapter IV

DIRECTIVE PRINCIPLES OF THE STATE POLICY

56. The state shall endeavour to promote the welfare, prosperity and progress of the people by establishing and maintaining democratic socialist order wherein social justice will prevail and all will lead decent, free and cultured life. For the aforesaid objective the state, in particular, shall direct its policy towards securing—

(i) the economic development of the country in accordance with a general economic plan, relying on the state and co-operative sector while achieving a general control over the private economic sector ;

(ii) the transfer to public ownership important means of communication and credit and exchange, mineral resources and the resources of natural power and such other large scale economic enterprises as are matured for socialisation ;

(iii) the municipalisation of public utilities ;

(iv) the encouragement of the organisation of agriculture and small scale industries on co-operative basis ;

(v) the organisation of the facilities of cheap credit on co-operative basis ;

(vi) the control of private enterprises and of the free operation of competition with a view to securing to the people maximum satisfaction of the needs along with decent service conditions to workers and preventing the waste and misuse of material resources as well as the concentration of their ownership and control in a few individuals ;

(vii) the abolition of unemployment and the provision of adequate means of livelihood to all the citizens ;

(viii) the protection of the strength and health of the workers against exploitation and of their childhood and youth against moral and material abandonment ;

(ix) the provision for just and humane conditions of work, maternity relief and old age sickness, disablement and other undeserved want ;

(x) the improvement of public health and standard of living of its people ;

(xi) the promotion of cultural and economic advancement of the people through universal free and compulsory primary education for all children up to the age of 14 and free vocational and technical training for industrial workers in factories and farms.

These directive principles of the state policy shall form the basis for the direction and the limit of legislation and administration of the Federation and the Units.

57. Statutory Planning Commissions and Economic Councils shall be established by the Legislatures of the Federation and Units.

The Economic Councils shall be so organised on functional basis as to provide representation to experts and all important groups of economic importance and shall be authorised to divide themselves into sections and work section-wise, as well as to hold general sessions.

The Economic Councils shall have the power to

advise the Governments and Legislatures on socio-economic and socio-political matters and may investigate, examine, and plan legislative measures and administrative schemes on socio-economic and socio-political matters for the consideration of the Legislature and the Government.

All legislative measures on socio-economic and socio-political matters, which are introduced into the Legislature by the Government or any member, shall be referred to the Economic Council for its consideration and report which shall be duly taken into consideration by the Legislature along with the measures concerned.

58. It shall be a primary duty of the state to promote self-government in industry and encourage workers' creative and constructive participation in the management and development of industries. For these purposes the state shall, in particular, provide for the establishment of workers' councils composed of delegates of workers of all types engaged in the undertaking concerned with powers to co-operate with the management in—

(a) the improvement of the collective working and living conditions of the personnel as well as the regulations which govern them ;

(b) the organisation, administration and general running of the undertaking ;

(c) the organisation and supervision of welfare activities for the benefit of workers in undertakings concerned.

59. The Federation shall endeavour to promote the political unity of India through peaceful, democratic and diplomatic processes.

60. The Federation, in co-operation with other states, shall endeavour to promote international peace, security and progress and for the purpose shall in

particular work for—

(a) the prescription of open, just and honourable relations among nations ;

(b) the development of international law on democratic lines and the firm establishment of its understandings as the actual rule of conduct amongst Governments ;

(c) the peaceful settlement of international disputes and democratic organisation of peace ;

(d) the promotion of political and economic emancipation and cultural advancement of the oppressed and backward peoples ;

(e) the international regulation of the legal status of workers with a view to ensuring a universal minimum of social rights to the entire working class of the world ;

(f) the promotion of social, cultural and economic progress of humanity through constructive co-operation amongst the nations of the world.

Chapter V

INTERNATIONAL RELATIONS

61. At the commencement of this Constitution, India's membership of the British Commonwealth shall terminate.

62. The President of the Federation shall represent the Republic in international relations. In the name of the Republic he will make alliances and other treaties with foreign powers. He will accredit and receive diplomatic representatives. He will be guided in his activities in foreign matters by the advice of the Foreign Minister and the Federal Council of Ministers.

63. Declaration of war and conclusion of peace

shall be made by Federal Law.

64. Alliances and treaties with foreign states which relate to subjects of legislation shall require the consent of the Federal Legislature.

65. (i) The Units shall be obliged to take whatever measures are necessary within their autonomous sphere of action for the execution of treaties; if a Unit does not comply with this obligation in due time, the Federation shall be vested with the powers to take such measures, and specially to enact necessary laws

(ii) Likewise, the Federation, when carrying out treaties with foreign states, shall have the right of supervision even in regard to such matters as come within the autonomous sphere of action of the Units. In this case the Federation shall have the same rights even against the Units as in matters of indirect Federal Administration.

66. It shall be the duty of the Federation to protect its citizens against foreign countries.

67. The Federal Authorities may afford assylum to foreign citizens for their struggle for national liberation or for defending the interest of the working people.

68. No person holding any office of profit or trust under the state shall, without the consent of the Federal Government, accept any presents, emoluments, offices or title of any kind from any foreign state.

69. The Federal Government may by an agreement with any Indian State, not specified for the time being in the First Schedule, undertake any executive, legislative or judicial functions vested in that state; but every such agreement shall be subject to, and governed by, Law relating to the exercise for foreign jurisdiction for the time being in force.

Explanation—In this clause, the expression "Indian

State" means any territory, not beiug part of the territory of India, which the President recognised as being such a State.

Chapter VI

DISTRIBUTION OF FUNCTIONS.

70. The Federation shall have power of exclusive legislation with respect to subjects enumerated in the "Federal List" in Schedule II.

71. The Federation and the Units shall have concurrent powers of legislation with respect to subjects enumerated in the "Concurrent List" in Schedule II.

72. The Units shall have exclusive power of legislation in respect to subjects so enumerated in "Units List" in Schedule II.

73. The Federation and the Units shall have powers of concurrent legislation over residuary functions.

74. The Federation shall have full executive authority over all functions and subjects which are placed under its exclusive legislative jurisdiction.

75. The Units shall have full executive authority over all subjects and functions which are not placed under the exclusive jurisdiction of the Federation, provided that the Federation shall have power (a) to place any residuary subject under its executive authority, and (b) to determine fundamental administrative principles with respect to subjects over which the Federation has power of concurrent legislation.

76. The Federated States and other Sub-Units which form part of a Sub-Federation shall have police powers, shall be responsible for the maintenance of law and order and shall have full legislative, executive and financial jurisdiction over subjects placed by thisConstitution

under the excluisve legislative jurisdiction of the Units, except the Public Service Commission, the Audit Department, and the High Court, provided that by an agreement amongst Sub-Units, endorsed by a Federal Law, some other subjects placed under the exclusive charge of the Units under this Constitution may be assigned to the exclusive or concurrent jurisdiction of the Sub-Federation.

77. (a) The Sub-Federation shall be in charge of the Public Service Commission, the Audit Department and the High Court and matters placed under its jurisdiction by agreement, and along with the Federation, but to the exclusion of the Units, shall have powers of concurrent legislation over all subjects placed by this Constitution under the concurrent legislative jurisdiction of the Federation and the Units, provided that Sub-Units shall also have power of concurrent legislation over residuary subjects.

(b) The Executive Authority over the subjects of concurrent jurisdiction shall be shared by the Sub-Federation and Sub-Units as may be determined by an agreement amongst them endorsed by a Federal Law.

78. (a) With respect to Federated States attached to a Provincial Unit, the powers of the Provincial Units shall be such as may be determined by an agreement amongst them endorsed by a Federal Law.

(b) The people of the Federated State attached to a Provincial Unit shall have right to send its representatives to the Provincial Legislature concerned in proportion to its population. Such representatives shall be entitled to take part in the deliberations of the Provincial Legislature in respect to such matters as are assigned to the Provincial Unit by the Federated State.

79. Within the sphere of concurrent legislation the Units or Sub-Federations shall have the power of

legislation, as long as and in so far as the Federation does not make use of its power of legislation.

Chapter VII

RELATION BETWEEN THE FEDERATION AND UNITS

80. When a valid law or order of a Unit or Sub-Federation is inconsistent with a valid law or order of the Federation, the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid.

81. In case of doubt as to the incompatibility or validity of a law or order, the competent authority of the Federation, the Unit or the Sub-Unit may request a decision from the Supreme Court of India in accordance with the more specific requirements of a Federal Law.

82. (a) All disputes between the Federation, the Units and Sub-Units shall be settled peacefully without resort to violence.

(b) If and in so far as a dispute between the Federation, Units and Sub-Units involves any question (whether of law or fact) on which the existence or extent of a legal right depends, it shall be referred to and decided by the Supreme Court of India in its original jurisdiction.

(c) Disputes of non-justiciable character between the Federation, Units or Sub-Units shall be settled by a Board, composed of the Chief Justice of India, the President of the Indian Public Service Commission and the Auditor-General of India and two other experts coopted by them.

83. Full faith and credit shall be given, throughout the Republic, to the laws, the public acts and records and the judicial proceedings of various Units and

Sub-Units and orders of one of them shall be enforced by the other. The manner in which and the conditions under which such acts, records and proceedings shall be proved and the effect thereof determined shall be as provided by a Federal Law.

84. A person charged in a Unit or Sub-Unit with a crime, who shall fly from justice and be found in another Unit or Sub-Unit shall on demand of the Executive Authority of the Unit or Sub-Unit from which he fled, be delivered up to be removed to the Unit or Sub-Unit having jurisdiction of the crime.

85. Every Unit and Sub-Unit shall make provision for the enforcement of the orders of the Federation as well as for the detention in its prison of persons accused or convicted of offences against the laws of the Federation, and for the punishment of persons convicted of such offence.

86. The Executive Authority of every Unit and Sub-Unit shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Unit or Sub-Unit and not to impede or prejudice the exercise of the Executive Authority of the Federation.

87. The Executive Authority of the Federation may give directions to the Governments of the Units and the Sub-Units as to the manner in which latter's executive power and authority should be exercised in relation to any matter which affects the administration of a federal subject.

88. (a) The Federal Legislature in legislating for an exclusively federal subject may devolve upon the Government of a Unit or a Sub-Unit or upon any officer of that Government the exercise on behalf of the Federal Government of any function in relation to that subject.

(b) The Executive Authority of the Government of a

Federated State shall continue to be exercisable in that State with respect to federal subjects, unless otherwise provided by the appropriate Federal Authority.

(c) The appropriate Federal Authority shall have power to satisfy himself, by inspection or otherwise, that the exclusively federal subjects are properly administered by the Government of the Unit, Sub-Unit or State and to issue necessary directions to secure proper administration.

89. The Federation may, if it deems it necessary to acquire any land situated in any Unit or a Sub-Unit for any purpose connected with a matter with respect to which the Federal Legislature has power to make laws, require the Unit or the Sub-Unit to acquire the land on behalf, and at the expense, of the Federation or, if the land belongs to the Unit or the Sub-Unit, to transfer it to the Federation on such terms as may be agreed, or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India.

90. Where powers and duties have been conferred or imposed upon a Unit or Sub-Unit or officers or authorities thereof within the sphere of exclusive jurisdiction of the Federation, these shall be paid by the Federation to the Unit or Sub-Unit such sum as may be agreed or in default of agreement as may be determined by an arbitrator appointed by the Chief Justice of India in respect of any extra costs of administration incurred by the Unit or Sub-Unit in connection with the exercise of those powers and duties.

91. The Units, whether Provinces or Federated States, shall have no power to enter into separate alliances and treaties of political character amongst themselves, provided that with the consent of the Federal Legislature—

(a) a number of Federated States may combine to-

gether to form a Sub-Federation in accordance with the provisions of this Constitution ;

(b) a Federated State may attach itself with a Province for certain specified purposes in accordance with the provisions of this Constitution.

(c) a Federated State may hand over to the jurisdiction of Federal or provincial authorities functions vested in the State.

92. (a) The Federal Government or the Provincial Government may by an agreement with a Federated State and with the consent of the Federal Legislature uudertake any executive, legislative or judicial functions vested in that State.

(b) In case of such an agreement the jurisdiction of the authorities of the Federation or the Provinces, as the case may be, shall extend to any matter specified in that behalf in such an agreement.

93. (a) The Units may form the legislative and administrative conventions amongst themselves, such conventions shall be communicated to the Executive Authority of the Federation, which shall have the power to prevent their execution if they contain anything contrary to the laws of the Federation or to the rights and interests of other Provinces and Federated States.

(b) Such conventions may be adhered to by other Provinces, Sub-Federations and Federated States.

94. (a) No preference shall be given by any regulation of commerce or revenue by a Unit or Sub-Unit to one Unit or Sub-Unit or part thereof over another.

(a) Nor shall the Federation or Sub-Federation, by any law of trade or commerce, give preference to one Unit, Sub-Unit or any part thereof over another Unit, Sub-Unit or part thereof.

95. Subject to regulation by the law of the Federation, trade, commerce and intercourse among the Units

and Sub-Units and between the citizens shall be free;

Provided that in case of disparity in taxation a Unit or Sub-Unit will be free to impose on goods imported from other Units and Sub-Units such taxes as might result in imposing on them the same burden of taxation as is imposed on the goods produced in the Unit or Sub-Unit concerned.

96. A Unit or Sub-Unit shall not, without the consent of the Federal Legislature, impose any tax on the property of the Federation used for administrative purposes, nor shall the Federation impose any tax on the property of the Unit used for administrative purposes.

97. (a) Both the Federation and the Units shall have the power to tax public servants of the Units and the Federation respectively as citizens through general laws of taxation.

(b) Any discrimination by one organisation (the Federation, Unit or Sub-Unit) against the salary of a public servant of another organisation shall be void.

98. The Federal Legislature, with the consent of the two-thirds of its members present and voting, may grant financial assistance to a Unit or Units in general as a bloc grant or on such terms and conditions as the Federal Legislature thinks fit.

99. (a) The Federal Government may, subject to such conditions, if any, as it may think fit to impose, make loans to Units or Sub-Units, or give guarantees for loans raised by any such Unit or Sub-Unit, and any sum required for the purpose of making such loans shall be charged on the revenues of India.

(b) The Unit or the Sub-Unit may not without the consent of the Federal Government raise any loan if there is still outstanding any part of a loan advanced or guaranteed by the Federal Government under sub-clause (a), or the Unit or Sub-Unit proposes to raise any

loan outside the Republic.

(c) A consent under this clause may be granted subject to such conditions, if any, as the Federal Government may think fit to impose.

100. The Federal Government, in consultation with the Governments of the Units concerned, may appoint an Inter-State Commission for the purposes of—

(a) investigating and discussing subjects in which some or all of the Units, or the Federation and one or more of the Units, have a common interest; or

(b) making recommendations upon any such subject, and, in particular, recommendations for the better co-ordination of the policy and action with respect to that subject.

101. It shall be lawful for two or more Units with the consent of the Federal Authority—

(a) to set up permanent or *ad hoc* committees for the purposes of investigating and discussing and making recommendations upon a subject or subjects of common interests;

(b) to set up joint administration for, or determine common policy and action with respect to, matters of common interest.

102. (a) The Units shall be autonomous in their administration.

(b) The Units shall assist Sub-Units, whenever necessary, in the maintenance of public safety and order.

(c) The Executive Authority of the Federation may help with armed forces the Government of a Unit or Sub-Unit at the request of the Government of the Unit in the restoration of public order.

(d) If public safety and order be seriously disturbed in any part of the Republic and the Government of the Unit concerned fails to restore public order, the President of the Federation may take necessary measures to

restore public safety and order if necessary with the armed forces. Under such circumstances all authorities of the Unit concerned shall assist and obey the instructions of the Executive Authority of the Federation and its duly authorised agents.

(e) If public safety and order be seriously disturbed the Executive Authority of the Federation may also suspend the provision of the Constitution concerning freedom of speech, association and assembly and inviolability of person, home and correspondence in the manner and to the extent determined by the Federal Law and enforce such of the provisions as are determined by the Federal Law for such occasions.

(f) The Executive Authority must immediately communicate to the Federal Legislature all measures taken under this clause of the Constitution.

(g) The Executive Authority of the Federation shall not lend its support to the Rulers of the Federated States for the purpose of suppressing the freedom movement of the people of States.

103. (a) The Federal Government shall be responsible for the protection of every Unit against external invasion and violence.

(b) It shall be the duty of the Governments of Units and Sub-Units to assist the Federal Government in the mobilisation of manpower and resources of the country for the purposes of defence and to maintain communications needed for the purposes of defence.

(c) Whenever a grave emergency exists, whereby the security of India is threatened by war, the Federal Legislature shall have the power to make laws for the Unit so affected or a part thereof even with respect to matters assigned to the exclusive charge of the Unit.

Under such circumstances it shall be the duty of all authorities and officials of Units and Sub-Units concerned to co-operate with, and obey instructions of, the Federal Authority, issued for the purposes of the defence of the Republic or a part thereof.

The President of the Federation may also take over the charge of the administration of such parts of the Units or Sub-Units as are required for the purposes of the defence of the Republic.

Chapter VIII

THE LEGISLATIVE AUTHORITY

GENERAL

104. The Federation as well as Units and Sub-Units including Federated States shall have a democratic constitution.

105. All legislative powers assigned by or under this Constitution to the Federation, Units, or Sub-Units shall be vested in the Legislatures of the Federation, Units, or Sub-Units respectively.

106. All Legislatures shall be uni-cameral and be elected on the basis of adult, equal, direct and secret suffrage.

107. (a) Every citizen who is not less than twenty-one years of age, has been a resident in the constituency for at least six months and is not otherwise disqualified under this Constitution shall be entitled to be registered as a voter at elections of Legislatures.

(b) On the 1st. January, 1955 franchise shall be extended to citizens who are not less than eighteen years of age and are not otherwise disqualified under this Constitution.

108. A person shall be disqualified for being a voter

(a) if he is of unsound mind and stands so declared by a competent court;

(b) if he is serving a sentence of transportation or of imprisonment for a criminal offence involving moral turpitude;

(c) if he has been convicted of an offence, or found to have been guilty, of corrupt or illegal practice, relating to elections of a Legislature within five years of the election concerned.

109. Every qualified voter who is more than twenty five years of age before the first of January of the year of the election, shall be eligible for election, provided that he does not suffer from any disqualification specified in the Constitution.

110. (1) A voter shall be disqualified from being elected or from being a Member of the Legislature—

(a) if he holds any office of profit under any Government in India, other than an office declared by the Constitution or law not to disqualify its holder;

(b) if he is an undischarged insolvent ;

(c) if he has committed any offence or resorted to an illegal or corrupt practice with respect to elections within eight years of the election concerned;

(d) if he is convicted of treason to the state.

(e) if he is under an acknowledgement of allegiance or adherence to a foreign power or is a citizen or a subject of a foreign power.

(2) A person holding the office of a Minister or a Parliamentary Secretary responsible to a Legislature shall not be disqualified under this Clause from being elected to any Legislature, provided that a Minister or a Parliamentary Secretary can be a Member of that Legislature alone to which he is responsible.

111. A citizen who is registered as a voter on the

electoral roll of a constituency in a Unit shall be entitled to be a candidate for the membership of the Legislature of the Federation and the Unit from any constituency of the Unit concerned.

112. The Legislatures shall have power to frame Electoral Laws which may determine all such matters with regard to elections as are not determined by the Constitution.

113. (a) The Federal Legislature shall consist of not more then five hundred Members.

(b) The Legislatures of the Units shall consist of not less than fifty and not more than three hundred Members.

(c) The Legislatures of the Sub-Units shall consist of not less than thirty and not more than one hundred Members.

(b) The number of Members shall be fixed from time to time by Electoral Laws which shall be passed for the purpose by various Legislatures with respect to their elections.

(e) The Electoral Laws shall also provide for the delimitation of territorial constituencies and for the purpose Units, Sub-Units and Centrally Administered Areas may be divided and grouped. The ratio of population per each member shall, so far as practicable, be the same throughout India in case of the Federal Legislature and throughout a Unit or a Sub-Unit in case of the Legislature of the Unit or the Sub-Unit concerned.

114. The superintendence, direction and control of elections to the Legislatures held under this Constitution including the appointment of Election Tribunals for decision of doubts and disputes arising out of, or in connection with, such elections shall be vested in a Commission, which shall be appointed by the President of the

Federation in case of the elections of the Federal Legislature, and the Heads of the Units in case of the elections of the Legislatures of the Units and Sub-Units.

115. The Legislatures will be elected for a term of four years under the system of cumulative votes in multi-member constituencies and unless sooner dissolved shall continue for four years from the date appointed for its first meeting and shall automatically be dissolved after the expiration ot the said period.

116. The Legislatures may, before the expiration of its terms, decree its own dissolution. It may also be dissolved by the Head of the Government (the President of the Federation in case of the Federal Legislature, the Governor of a Province in case of a Provincial Legislature, the Ruler of the State in case of a State Legislature, Rajpramukh in case of the Legislature of a Sub-Federation and Administrator in case of the Legislature of a Sub-Unit) on the advice of the Council of Ministers, supported by a requisition signed by at least one-third of the Members of the Legislature concerned.

117. (a) A new election must be held not later than the sixtieth day after the expiration of the term, or the dissolution, of the Legislature.

118. The Legislature shall assemble for its first meeting not later than the thirtieth day after the election.

119. No person shall at the same time be a Member of more than one Legislature.

120. A Member of the Legislature can resign his membership at any time.

121. At their first sitting, Members of the Legislature shall take the prescribed oath. Refusal to take this oath or the making of any reservation thereto shall disqualify a person from membership of the Legislature.

POWERS OF THE LEGISLATURE

122. Each Legislature shall have the power of legislation within the limits prescribed by the Constitution. It shall also have authority to sanction the budget of revenues and expenditure and control public finances ; to enquire into administration and discuss matters of public importance ; as well as to adopt proclamations and resolutions and determine principles according to which state affairs shall be administered. It may censure the Government or one of its members for maladministration and impeach before the Supreme Court of India by two-thirds majority of votes cast the President of the Federation or the Head of the Unit or Sub-Unit concerned for acts of treason, breach of the Constitution, bribery or other high crimes or misdemeanours.

123. Members of the Legislature shall not address to public authorities requests in the personal interest of individuals.

PRIVILEGES AND IMMUNITIES OF MEMBERS

124 Subject to the rules and standing orders regulating the procedure of the Legislature concerned, there shall be freedom of speech in the Legislature.

125. A Member of the Legislature shall not be subject to any civil or criminal liability for the exercise of their functions as Members. For the statements made in the Legislature, Members shall be responsible only to the disciplinary rules of the Legislature.

126. Members of the Legislature shall have the right to refuse to give testimony in regard to matters confided to them as Members of the Legislature, even after they cease to be Members. In the trial of cases of attempting to corrupt a Member, testimony cannot be refused.

127. (a) No Member of the Legislature may, without the consent of the Legislature of which he is a Member, be subjected to arrest during the session for a penal offence unless he is apprehended in the commission of the act.

(b) Consent of the Legislature is required for every other restriction of personal liberty which obstructs a member in the exercise of his duty during the session.

(c) Every criminal proceeding against a Member of the Legislature and every arrest or other restriction on his personal liberty shall, on demand of the Legislature to which the Member belongs, be deferred for the duration of the Session.

128. Members of the Legislatures shall have a right to remuneration as specified by law.

OFFICERS OF THE LEGISLATURES

129. (a) Each Legislature shall elect from amongst its own members its own Speaker and Deputy Speaker.

(b) They shall be paid such salaries and allowances as may be fixed by the Legislature concerned by law.

130. (a) A Member elected as the Speaker or the Deputy Speaker may at any time resign his office and shall vacate his office in case a vote of no-confidence against him is passed by the Legislature concerned after at least fourteen days notice.

(b) He shall also vacate his office if he ceases to be a Member of the Legislature concerned, provided that in case of the dissolution of the Legislature he shall hold his office until immediately before the first meeting of the Legislature after the dissolution.

131. The Speaker and in his absence the Deputy Speaker shall—

(a) preside over and conduct the deliberations of the Legislature ;

(b) exercise powers of administration, discipline and police within the building of the Legislature;

(c) discharge such other duties and exercise such other powers as are assigned to him by or under this Constitution, or the Rules of Procedure of the Legislature concerned.

132. In the absence of both the Speaker and the Deputy Speaker the powers and duties of the Speaker shall be exercised by such Member of the Legislature and in such manner as are determined by or under the Rules of Procedure.

133. No officer or other Member of the Legislature in whom powers are vested by or under this Constitution for regulating procedure of the conduct of business, or for maintaining order in the Legislature, shall be subject to the jurisdiction of any courts in respect of the exercise by him of those powers.

GENERAL PROCEDURE

134. (a) The President of the Federation in case of the Federal Legislature and the Head of the Unit or the Sub-Unit concerned in case of the Legislature of the Unit or the Sub-Unit shall summon the Legislature at least twice in a year, once in January and thereafter in July.

(b) He may summon the Legislature for extraordinary sessions whenever he may deem it necessarry. If at least forty percent of the Members of a Legislature apply to the Prime Minister stating the object for summoning it, the President of the Federation in case of the Federal Legislature and the Head of the Unit or the Sub-Unit in case of the Legislature of the Unit or the Sub-Unit concerned shall summon the Legislature within a fortnight from the date of such application. Should he fail to do so, the Speaker of the Legislature concerned shall

summon the Legislature within the following fortnight.

135, The Legislature may be adjourned or prorogued by the Speaker of the Legislature whenever he deems fit.

136. (a) The sittings of the Legislature shall be public.

(b) On demand of the Presiding Officer or of one-fifth of the Members present the public shall be excluded, if the Legislature so resolves by a two-thirds majority of votes cast.

137. True and accurate reports of the proceedings at the public sittings of the Legislatures are privileged matters.

138. The Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature shall be valid notwithstanding that it is discovered subsequently that some person, who was not entitled so to do, sat or voted or otherwise took part in the proceedings.

139. The quorum shall be ten members or one-sixth of the total number of Members, whichever is greater.

140. If at any time during a meeting of the Legislature there is no quorum, it shall be the duty of the Presiding Officer to adjourn the Legislature or to suspend the meeting until there is a quorum.

141. (a) Save as provided in this Constitution, all questions in the Legislature shall be determined by a majority of votes of the Members present and voting.

(b) The Presiding Officer shall not vote in the first instance but shall have and exercise a casting vote in case of equality of votes.

142. No discussion shall take place in the Legislature with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

143. The validity of any proceeding in the Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

144. (a) The Head of the Government may address the Legislature and for that purpose require the attendance of Members.

(b) The Head of the Government may send messages to the Legislature with respect to a Bill pending in the Legislature or otherwise, and the Legislature to which any message is so sent shall with all convenient despatch consider any matters required by the message to be taken into consideration.

145. Each Legislature shall determine its own Rules of Procedure, consistent with the Constitution, for conducting its business.

LEGISLATIVE PROCEDURE

146. Bills of legislation shall be introduced by the Ministry or by Members of the Legislature.

147. (1) A Bill making provision—

(a) for imposing, abolishing, remitting, altering or regulating any tax ; or

(b) for regulating the borrowing of money, or giving any guarantee by the Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Government; or

(c) for declaring any expenditure to be expenditure charged on the public revenues, or for increasing the amount of any such expenditure

shall be deemed as a money Bill and shall not be introduced or moved except on the recommendation of the Government.

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or

other pecuniary penalties, or for the demand and payment of fees for licenses or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration, or regulation of tax by any local authority or body for local purposes.

(3) In case of dispute whether a Bill is a money Bill or not, the decision of the Speaker, or in his absence of the Deputy Speaker, shall be final.

147. All politico–social and politico--economic Bills of fundamental importance shall be referred to the Economic Council concerned for its consideration and report, before they are discussed in detail and passed by the Legislature. The Economic Council shall also have the right to initiate drafts of such Bills and refer them to the Legislature through the Ministry. The Economic Council shall report on Bills referred to it within a period of three months.

149. Before a Bill is finally passed by a Legislature it shall be referred to a technical expert who shall have the power to invite the attention of the Legislature to anomalies and technical difficulties which shall be taken into consideration by the Legislature before the Bill is finally passed.

150. (a) All Bills passed by the Federal Legislature shall be presented to the President of the Federation and those passed by the Legislature of a Unit or a Sub-Unit to the Head of the Unit or the Sub-Unit concerned for his assent. He shall have the right to return it with his comments or recommendations within a month of its presentation. The right can be exercised according to his individual judgment after consultations with the Prime Minister and the Minister concerned.

(b) When a Bill is so returned, the Legislature shall reconsider it accordingly and if the Bill is passed again by the Legislature with or without amendment

and presented to the President of the Federation or the Head of the Unit or the Sub-Unit, as the case may be, he shall not withhold his assent thereon.

151. The President of the Federation in case of Federal Bills and the Head of the Unit or the Sub-Unit concerned in case of Bills passed by the Legislature of a Unit or a Sub-Unit shall proclaim laws constitutionally enacted and shall publish them within a month in the official Gazette.

152. All laws, unless otherwise provided, shall be effective on the fourteenth day after the day of publication in the official Gazette.

153. Except as otherwise provided by law, the Ministry shall have the power to issue such general administrative regulations as are necessary for the execution of laws.

154. A Statutory Committee of 24 persons shall be elected annually on the principle of proportional representation through single transferable vote by every Legislature except that of a Sub-Unit. A member of the Government shall not be a member of the Standing Committee, but shall have power to attend its meetings and take part in its deliberations.

155. The Statutory Committee shall have the power—

(a) to scrutinize and sanction Ordinances framed by the Government under the authority of a law passed by the Legislature;

(b) to consider and pass, on the recommendation of the Government, emergency laws in the form of Ordinances on all matters of the immediate urgency in the intervals between Sessions of the Legislature;

(c) to discharge such other functions as may be assigned to it by the Legislature.

156. The Statutory Committee shall be accountable to the Legislature for its activities. Emergency laws shall

be laid before the Legislature concerned and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature unless earlier disapproved by the Legislature, or withdrawn by the Government.

157. The Rules of Procedure of the Legislature shall determine the procedure of the Statutory Committee.

FINANCIAL MATTERS

158. The financial management of revenue--producing enterprises of the Government shall be regulated by law.

159. Government taxes and general government income shall be regulated by law.

160. The procurement of funds upon credit as well as the assumption of any liability by the Republic may be undertaken only by the authority of law.

161. Public money shall be disbursed according to the provisions of the Constitution or the grants sanctioned by the Legislature.

162. (1) No demand for a grant shall be made except on the recommendation of the Government.

(2) A Bill which, if enacted and brought into operation, would involve expenditure from the revenue of the Federation, Unit or Sub-Unit shall not be passed by the Legislature unless the consideration of the Bill is recommended by the Government concerned.

163. The President of the Federation and the Heads of the Units and the Sub-Units shall in respect of every financial year cause to be laid before the Legislature a budget of the estimated receipts and expenditure of the Government.

164. The Legislature shall have the power to discuss the budget, to assent, or to refuse to assent, to a demand, or to assent to a demand subject to a reduction of the amount specified therein. The budget must be passed

before the beginning of the fiscal year.

165. The grants shall as a rule be voted for one year; in special cases they may be voted for a longer period.

166. So much of the estimates as relates to expenditure declared by or under the Constitution as expenditure charged upon the revenues of the Federation, the Unit or the Sub-Unit shall not be submitted to the vote of the Legislature. But nothing in this Clause shall be construed as preventing the discussion in the Legislature of those estimates.

167. The following expenditure shall be expenditure charged on the revenues of the Federation, the Unit or the Sub-Unit :—

(a) Debt charges for which the Federation,the Unit or the Sub-Unit is liable including interest, sinking fund charges and other expenditure relating to the raising of loans and the service and reduction of debt.

(b) Any sum required to satisfy a judgment, decree or award of any court or arbitral tribunal.

(c) The emoluments and allowances of the Heads of the Federation, the Units and the Sub-Units, the Speaker and the Deputy Speaker of the Legislature, and Judges of the Supreme Court and High Courts.

(d) Any other expenditure declared by this Constitution or by the Legislature to be so charged.

168. Within a fiscal year the Head of the Government may cause to be laid before the Legislature a supplementary demand of expenditure, which shall be considered by the Legislature and may be granted, refused, or assented to, subject to a reduction of the amount specified therein.

169. The annual accounts, examined and approved by the audit, shall along with the audit report, be submitted to, and considered by, the Legislature.

Chapter IX

THE EXECUTIVE AUTHORITY

HEADS OF GOVERNMENTS

170. (a) The executive authority of the Federation, Provinces, Sub-Federations and Federated States shall be vested in the President (Rashtrapati) of the Republic, Governors of the Provinces, Rajpramukhs of Sub-Federation and Rulers of the States respectively.

(b) The executive authority of a Sub-Unit which is not a Federated State shall be vested in the Administrator of the Sub-Unit.

(c) The President of the Republic will be known as and is referred to in the Constitution as the Head of the Federation or the Republic.

(d) Governors of Provinces, Rajpramukhs of Sub-Federations and Rulers of such Federated States as do not form part of any Sub-Federation shall be known and is referred to in this Constitution as Heads of Units.

(e) Administrators of the Sub-Units, and Rulers of such Federated States as form part of the Sub-Federation shall be known as and is referred to in this constitution as Heads of the Sub-Units.

(f) All these officers are also referred to in this Constitution as Heads or Constitutional Heads of Government.

171. The President of the Republic shall be elected by means of a single transferable vote by an electoral college composed of the Members of the Federal Legislature and an equal number of persons elected by the Legislatures of the Units on population basis under the system of single transferable vote.

172. The Governor of a Province and a Rajpramukh of a Sub-Federation shall be elected by means of a single transferable vote by an electoral college com-

posed of the members of the Legislature of the Unit concerned and representatives of the Province or Sub-Federation concerned on the Federal Legislature.

173. The Administrator of a Sub-Unit shall be elected by means of a single transferable vote by an electoral college composed of the members of the Legislature of the Sub-Unit and representatives of the Sub-Unit concerned on the Legislature of the Sub-Federation.

174. The President, Governors, Rajpramukhs and Administrators shall be elected for a term of five years.

175. In case of vacancy by death, or resignation or for any other reason, a new President, Governor, Rajpramukh and Administrator, as the case may be, shall be elected within a month for the full term of five years.

176. Every citizen who has completed the age of thirty five years and is qualified for election as a member of the Legislature shall be entitled to be the President of the Republic, or the Governor of a Province, the Rajpramukh of a Sub Federation or the Administrator of a Sub-Unit.

177. The Heads of the Federation, the Units and the Sub-Units shall not at the same time be members of a Legislature and shall not hold any other office or position of emoluments or participate in the governing or controlling bodies of societies and associations which work for profit.

178. (a) In the event of the absence of the President or Governor or Rajpramukh or Administrator or of his death, resignation, removal from office, or incapacity or failure to exercise and perform the powers and functions of his office or at any time at which the office of the President, the Governor, the Rajpramukh or the Administrator may become vacant, his functions shall be discharged by the Speaker of the Legislature of the Federation or the Unit or the Sub-

Unit, as the case may be, pending the resumption of duties or the election of a new President or Governor or Rajpramukh or Administrator.

(b) On such occasions and during such periods the Speaker of the Legislature shall not attend sessions of the Legislature and the Deputy Speaker concerned shall discharge the duties of the Speaker of the Legislature.

(c) On such occasions and during such periods the Speaker will have all the powers and immunities of the Head of the Federation or the Unit or the Sub-Unit concerned, as the case may be.

179. The constitutional powers of the Rulers of States are hereditory in direct descendants, natural and legitimate, and the order of succession shall be determined by the customary law of the State concerned; unless a Federal Law passed at the request of two-thirds majority of Members of the Legislature of the State concerned determines otherwise either with respect to succession or continuance of the Monarchy.

180. The Ruler attains majority upon the completion of his twenty first year.

181. (a) During the Ruler's minority or his physical incapacity to discharge his duties, the heir presumptive to the throne, if he be 21 years of age or more shall be regent of full right. In default the regent shall be elected by the Legislature of the State, convened within a month by the Ministers.

(b) Unless a Regent is appointed under this Clause, the Speaker of the Legislature of the State concerned shall act as the Regent.

182. No one shall be elected more than twice as the President of the Federation or the Governor of the Province or the Rajpramukh of the Sub-Federation or the Administrator of the Sub-Unit.

All doubts and disputes arising out of or in con-

nection with the election of the President of the Federation, the Governor of the Province or the Rajpramukh of the Sub-Federation shall be enquired into and decided by the Supreme Court whose decision shall be final.

183. The President of the Federation and Heads of the various Units and Sub-Units shall have official residence and shall receive such emoluments and allowances as may be determined by law passed by the Legislatures of the Federation and the Units and Sub-Units concerned respectively.

184. The Heads of the Federation, Units and Sub-Units on assumption of office shall make an affirmation before the Legislature to the effect that they shall abide by the Constitution and laws, shall fulfill their duties conscientiously and impartially and shall advance the people's interests.

POWERS.

185. The President of the Republic shall represent the Republic in its relations with other states and as such

(a) negotiate and ratify international treaties;

(b) receive and appoint diplomatic representatives;

(c) declare the existence of a state of war, or declare war with the consent of the Federal Legislature and lay before the Federal Legislature for approval peace treaties which have been concluded.

He shall also have the supreme command of the armed forces of the Republic.

186. The Heads of the Federation, Units and Sub-Units shall have the power—

(a) to grant pardon as well as donations and pensions in special cases on the recommendations of the Government;

(b) to return with comment in his individual Judgment any law enacted by the Legislature after

consultation with his Ministers;

(c) to sign all laws enacted by the Legislatures and all Ordinanecs passed by the Statutory Committee of 24;

(d) to summon and dissolve the Legislature;

(e) to report verbally or in writing to the Legislature on the state of public affairs and to recommend for consideration measures which he deems necessary and useful;

(f) to appoint and dismiss Cabinet Ministers and other state officials;

(g) to represent the Government as its Constitutional Head on all ceremonial occasions;

(h) to demand from the Government or its individual members reports or information or to call them to conference and hold discussions with them on any matter in their jurisdiction;

(i) to discharge all such other duties as are entrusted to him by the Constitution or law or devolves on him by virtue of his position as the Constitutional Head of the Government.

187. The Heads of the Federation, Units and Sub-Units shall exercise their functions in accordance with the provisions of the Constitution and laws on the advice of their Ministers unless otherwise specifically authorised by the Constitution. The question whether any, and if so what, advice was tendered by Ministers shall not be inquired into any court.

188. All orders and decrees of the Heads of the Government, including those concerning the armed forces, except those to be issued on the advice of some other authority require for their validity the countersignature of a Minister. Responsibility is accepted by the act of countersignature.

189. The Heads of the Federation, Units and Sub-

Units may be prosecuted for high treason and breach of the Constitution but shall not otherwise be answerable at law in the exercise of his functions. The Government shall be responsible for all his official utterances and acts, other than what he is required to do on the advice of some other authority.

190. (1) All governmental and executive powers, in so far as it does not explicitly appertain to the Head of the Federation or the Unit or the Sub-Unit according to the Constitution or the laws shall be exercised by the Council of Ministers unless assigned to some specific authority.

(2) Nothing in this Clause shall be deemed to—

(a) transfer to the charge of the Council of Ministers directy any functions conferred by any existing law on any authority subordinate to the Council of Ministers.

(b) prevent the Legislature concerned from conferring by law functions on any authority subordinate to the Council of Minister.

THE COUNCIL OF MINISTERS

191. The Prime Minister, and on his recommendation other Ministers, shall be appointed by the Constitutional Head of the Government.

192. No person shall be appointed as a Minister unless he is a citizen of the Indian Republic by birth or naturalisation, is at least 25 years of age and is eligible for being a Member of the Legislature.

193. A Minister who for any period of six consecutive months is not a Member of the Legislature shall cease to be a Minister.

194. In a Federated State a citizen of Indian Republic may be appointed and continue to function as a Minister, even though he is neither born in the State nor a resident of the State nor a Member of the State Legis-

lature, provided that the State Legislature approves such an appoinment by a majority of votes cast.

195. The salaries of the Ministers shall be such, as the Legislature concerned may from time to time by a law determine, provided that the salaries shall not vary during his term of office.

196. The Ministers, on assumption of office, shall take an oath of secrecy and to perform their duties impartially for the public welfare and in accordance with the Constitution and law.

197. The Ministers shall not hold any other office or position of emoluments or participate in the governing or controlling bodies of societies and associations which work for profit.

198. Ministers shall collectively constitute the Government and form a Council of Ministers, which shall be presided over by the Prime Minister.

199. The Council of Ministers shall make rules for the transaction of the business of the Government and for the allocation of the said business.

200. The Council of Ministers may contain one or more Ministers without portfolio.

201. The meetings of the Council of Ministers shall be secret.

202. (a) Ministers who are not members of the Legislature shall have no deliberative vote in the Legislature, but they shall have admission to the Legislature and are entitled to be heard when they are so requested.

(b) The Legislature shall also have the right to demand their presence.

203. (a) The Ministers shall be collectively responsible to the Legislature for the general policy of the Government and individually for affairs under their personal charge.

(b) They shall hold office so long as they command

the confidence of the Legislature. Within a month of the formation of a new Council of Ministers it must seek the confidence of the Legislature.

204. (a) Ministers must resign if and when the Legislature withdraws its confidence by an express resolution.

(b) The Prime Minister may, however, choose to appeal to the electorate and seek their confidence and for the purpose request the Head of the Federation, the Unit or the Sub-Unit, as the case may be, for the dissolution of the Legislature as provided in the Constitution.

205. When the Prime Minister decides to resign his office, all other Ministers will tender their resignations along with him.

206. (a) The Ministry or an individual Minister will be relieved of office by the Head of the Government in cases prescribed by law or upon their request.

(b) A Minister shall resign if and when required to do so by the Prime Minister.

207. In the event of a resignation of the entire Ministry the resigning Ministers shall carry on current business until it is taken over by the new Ministers. This rule may also apply to individual Ministers.

208. (a) Parliamentary Secretaries, chosen from amongst Members of the Legislatures, may be assigned to the Ministers to assist them in their departmental and parliamentary duties.

(b) They shall transact such business as may be allocated to them under rules framed for the purpose by the Council of Ministers.

209. (a) The Parliamentary Secretary shall be subordinate to the Minister and shall be bound by his instructions.

(b) The Parliamentary Secretary shall be relieved of his duties and office upon his request or the resignation of the Ministry or on an express resolution of the with-

drawl of confidence by the Legislature. He shall resign if and when required to do so by the Prime minister.

Chapter X
THE JUDICIAL AUTHORITY
GENERAL

210. The judicial power shall be exercised and justice administered in accordance with law in the public law courts duly established under the Constitution or by any other law.

211. (a) The judicial power shall be separated from the administration in all instances.

(b) Judges shall not be required to exercise any executive function or power. They may, however, be entrusted with investigations of quasi-judicial character.

212. (a) Judges shall be independent in the exercise of the functions of the office and shall be bound only by the law.

(b) On the assumption of office Judges shall be required to pledge themselves to abide by law and administer justice impartially and according to their conscience.

213. Except Judges of Panchayat Courts no Judge can be a member of any representative body or a political party or a communal organisation or hold, except in cases foreseen in the law, any other paid engagement.

214. The organisation, jurisdiction and procedure of the law courts shall be prescribed by law in full conformity with the Constitution.

215. (a) The law declared by the Supreme Court of India shall, so far as applicable, be recognised as binding on, and shall be followed by, all Courts.

(b) The law declared by the Privy Council of the British Commonwealth prior to the promulgation of

this Constitution shall be binding on and followed by all courts other than the Supreme Court to the extent it is not inconsistent with the law declared by the Supreme Court.

JURISDICTION

216. The Judicial power shall extend to the question of the validity of any law, Regulation, Ordinance, order, or decree.

217. The enforcement of fundamental rights and other provisions of the Constitution shall be the sacred duty of the law courts, specially that of the Supreme Court, and it shall be discharged regardless of all considerations when proceedings are instituted by any interested party.

218. (a) The Supreme Court of India shall, with such exceptions and subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the High Courts of the Provinces, Sub-Federations and the Federated States and any other court exercising Federal Jurisdiction independent of the High Court.

(b) The exceptions and regulations shall not prevent the Supreme Court from hearing appeals (i) in cases which involve substantial questions of law as to the interpretation of the Constitution or the Federal Law, (ii) against judgments, decrees, orders and sentences of any Justice or Justices exercising the original jurisdiction of the High Court; (iii) in any other matter in which at the enactment of the Indian Independence Act of 1947 an appeal lay to the Privy Council.

(c) The decision of the Supreme Court shall be final and conclusive and shall not be capable of being reviewed by any authority—executive, legislative, or judicial.

219. The Supreme Court of India, shall, to the ex-

clusion of any other court, have the original and final jurisdiction in any dispute between the Federation and a Unit or between one Unit and another, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

220. The Supreme Court of India shall have the jurisdiction to decide finally upon all matters arising out of international law or treaties including extradition between the Republic and a foreign state. If the Federal Law so prescribes or the President of the Federation so desires, the matter may be taken into cognisance by the Supreme Court in the first instance.

221. (a) If at any time it appears to the President of the Federation that a question of law has arisen or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration, and the Court may, after such hearing as it thinks fit, report to the President thereon.

(b) No report shall be made save in accordance with an opinion delivered in open court with concurrence of a majority of the Judges present at the hearing of the case, but nothing in the Clause shall be deemed to prevent a judge, who does not concur, from delivering a dissenting opinion.

222. The Supreme Court and the High Court shall be courts of records and shall also have all such powers and authority (including power to appoint clerks and other ministerial officers and power to make rules and orders for regulating the practice, production of any document, the investigation or punishment of any contempt of court or the enforcement of its decrees), as may be deemed necessary for the administration of

justice placed under their jurisdiction.

223. The High Courts of Units shall have such jurisdiction, original and appellate including admirality jurisdiction in respect of offence committed on the high seas, and all such powers and authority over or in relation to the administration of justice as are or may hereafter be vested in those courts by law.

224. The Supreme Court and High Courts shall have the power to issue directions or orders in the nature of the writ of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them for any purposes including the enforcement of fundamental rights conferred by this Constitution.

225. The Federal Legislature may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

226. The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any case or matter pending before it. And any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by the Federal Legislature.

227. Subject to the provisions of any law made in this behalf by the Federal Legislature the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose or securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt to itself.

228. If the High court is satisfied that the case pending in a court sobordinate to it involves a substantial question of law as to the interpretation of this Constitution it may withdraw the case to itself and dispose of the same.

229. Subject to the provisions of law a High Court may direct the transfer of any suit or appeal from any subordinate Court to any other Court of similar or superior jurisdiction or withdraw such suit or appeal from any such Court to itself.

230. (a) Each of the High Courts shall have superintendence over all courts for the time being subject to its appellate jurisdiction. Subject to the provisions of law the High Court may make and issue general rules and prescribe forms for regulating the practice, proceedings and other business of such courts.

(b) Nothing in this clause shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

231. All authorities, civil aud judicial, in the territory of India shall act in aid of the Supreme Court and the High Court.

JUDGES OF SUPREME AND HIGH COURTS

232. The Supreme Court as will as a High Court shall consist of Chief Jùstice aud such other Judges as the President may from time to time deem necessary to appoint, provided that the Judges so appointed shall at no time exceed in number such maximum as is fixed by the Federal Legislature.

233. (a) The Chief Justice of the Supreme Court shall be appointed by the President of the Federation subject to confirmation by two-thirds majority of the Federal Legislature and the other Judges of the Supreme

Court shall be appointed by the President in consultation with its Chief Justice.

(b) The Chief Justice of a High Court shall be appointed by the President on the advice of the Chief Justice of the Supreme Court in consultation with the Head of the Unit.

(c) Other Judges of a High Court shall be appointed by the President on the advice of the Chief Justice of the Supreme Court in consultation with the Head of the Unit and the Chief Justice of the High Court concerned.

234. A person shall not be qualified for appointment as a Judge of the Supreme Court or any High Court unless he possesses a high legal qualification and has either—

(a) been for at least ten years an advocate of a High Court or the Supreme Court or two or more such Courts in succession ; or

(b) held for at least seven years a judicial office (in the post of a Judge of a High Court for the appointment of a Judge of the Supreme Court and that of a District or Sessions Judge for the appointment of the Judge of a High Court.)

Explanation : For the purpose of this Clause—

(a) in computing the period during which a person has been an advocate of a High Court or the Supreme Court there shall be included any period during which a person held judicial office after he became an advocate.

(b) in computing the period during which a person has held judicial office there shall be included any period during which he has been an advocate of any High Court, the Federal Court or the Supreme Court.

235. Judges and Chief Justices of the Supreme Court and High Courts shall hold office until sixty-five

years of age, provided that—

(a) a Judge may by resignation under his hand addressed to the President of the Federation resign his office;

(b) a Judge may be removed from his office by the President on the ground of infirmity of mind or body or wilful neglect of duty, or improper exercise of judicial functions or conviction for any infamous offence, if the removal is recommended by the Supreme Court, on reference being made to them by the President.

236. When the office of Chief Justice of India or of a High Court is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

237. (i) If at any time there may not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice may, after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sitting of the Court as an adhoc Judge of a High Court, to be nominated by the Chief Justice of India.

(ii) It shall be the duty of the Judge, who has been so nominated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges and shall discharge the duties of a Judge of the Supreme Court.

238. Notwithstanding anything contained in this Chapter, the Chief Justice of India may at any time, subject to the provisions of this Clause, request any person who has held the office of a Judge of the

Supreme Court or of the Federal Court to sit and act as a Judge of the Supreme Court and every such person so requested shall, while so sitting and acting, have all the jurisdiction, powers, privileges of, but shall not otherwise be deemed to be, a Judge of that Court:

Provided that nothing in this Clause shall he deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents to do.

239. If and when neccessary, temporary and Additional Judges may be appointed to High Courts by the President on the advice of the Chief Justice of India in consultation with the Head of the Unit and the Chief Justice of the High Court concerned. Temporary Judges may be appointed from amongst retired Judges of High Courts, if possible. The appointment of additional Judges shall require the confirmation by the two-thirds majority of the Federal Legislature.

240. The Judges of the Supreme Court and of the several High Courts shall be entitled to such salaries and allowances and to such rights in respect of leave and pensions as may be determined by law :

Provided that--

(a) the salaries of the Judges of High Courts shall not be less than those of the Ministers of Units concerned and the salaries of the Judges of the Supreme Court shall not be less than those of the Ministers of the Federation;

(b) neither the salary of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

141. No person who has held office as a Judge of a High Court or a Supreme Court shall plead or act in any court or before any authority within the territory of India.

HIGH COURTS

242. The Legislature of a Unit may by law constitute a High Court for the Unit or any part thereof or reconstitute in like manner any High Court for that Unit or any part thereof or where there are two High Courts in the Unit amalgamate those Courts.

243. The Federal Legislature may by law, if satisfied that an agreement in that behalf has been made between the Governments of Units concerned, extend the jurisdiction of a High Court in any Province to any area not forming part of that Province or to the whole of any other Province or a Federated State.

(b) In such case the High Court's jurisdiction in relation to any area or areas outside the Province in which it has its principal seat shall be determined by the Legislature that has power to make laws with respect to that area or areas.

244. (a) With the consent of the President of the Federation and agreement among Governments concerned a common High Court with jurisdiction commonly agreed upon amongst Legislatures of Units concerned may be established for a number of Units.

(b) A law for the purpose may be passed by the Federal Legislature, if so requested by the Legislatures of the Units concerned.

245. (a) The administrative expenses of the Supreme Court shall be a charge on the revenues of the Federation, those of High Courts upon the revenues of the Unit concerned.

(b) When a High Court serves a number of Units, its expenses shall be shared by all of them in proportion to be determined by mutual agreement or in default by an arbitrator to be appointed by the Chief Justice of India.

Chapter XI

DIRECTLY ADMINISTERED AREAS

246. (a) Such Indian Territories of the Republic as do not form part of the Territories of a Unit, shall be directly administered by the Federal Government through Chief Commissioners.

(b) The Chief Commissioner will be the head of the administration of the territory concerned and will be bound by order and directions, and work under the control and supervision, of the Federal Government.

247. A General Council elected on the basis of the adult franchise shall be established for each such territory by a Federal Law.

248. The General Council shall have power—

(a) to discuss and pass the budget of revenue and expenditure and to examine the audited report of accounts;

(b) to make representations to the Federal Government and tender advice to the Chief Commissioner on all matters concerning the local administration of the territory;

(c) to exercise along with the Federal Legislature the power of concurrent legislation with respect to subjects placed under the exclusive or concurrent jurisdiction of the Units under this Constitution.

249. Bills or Budgets passed by the General Council shall not be operative unless assented to or approved by the President of the Republic. He shall have the power to refer them back to the General Council for its reconsideration, to assent or withhold his assent from a Bill, or to approve the Budget in its entirety or with such modifications as he may deem fit.

250. An Executive Council of four to seven, as

determined by a Federal Law, shall be elected by the General Council every year.

251. (a) The administration shall be carried on by the Chief Commissioner in association with the Executive Council in a manner determined by or under a Federal Law.

(b) The Executive Council will transact such other business as is delegated to it by the General Council with the approval of the President of the Republic or assigned to it by a Federal Law or Federal Executive Order.

252. Any Federated State whose Ruler has ceded full and exclusive authority, jurisdiction and powers for and in relations to the governance of the State to the Federal Government shall be administered in all respects as if the State were for the time being Centrally Administered Area, and accordingly all the provisions of this Constitution relating to such an Area shall apply to such State.

Chapter XII

ABORIGINAL TRIBES AND TRIBAL AREAS

253. The Tribal Areas shall politically form part of the Units to which they geographically belong and shall be democratically administered as integral parts of the Indian Republic and the Units concerned.

254. The Tribal Peoples shall enjoy fully all the rights of citizenship of the Indian Republic and shall enjoy equal right of representation on Legislatures of the Federation and Units concerned and equal opportunities of participation in the political life of the country.

255. Special laws shall be passed by the Federal Legislature to restrict and limit immigration to Tribal Areas with a view to protecting Tribal Peoples from

the evil consequences of unchecked migration.

256. Special laws shall be passed by the Legislatures of the Units with regard to transfer of land and transaction of business in Tribal Areas with a view to protecting Tribal Peoples from economic exploitation and evil consequences of unequal free competition and contracts.

257. Tribal Areas shall be treated as autonomous territories within Units and shall be granted wide administrative, economic and cultural autonomy to be enjoyed through Autonomous District and Regional Councils.

258. Autonomous District and Regional Councils shall have, besides usual municipal functions, powers of legislation and administration over —

(i) social matters of Tribal Peoples such as marriage and domestic relations, inheritance of property, primary and secondary education, public relief and charities, betting and gambling, intoxicating liquors and drugs, tribal institutions;

(ii) economic matters such as agriculture and settlement of land, preservation and development of forests, fisheries, cottage industries, wholesale or retail business, money lending, production and supply of foodstuffs, poisons and dangerous drugs, irrigation and canals, weights and measures.

259. Autonomous Councils shall recognise and establish people's courts to adjudicate non-cognisable criminal offences and civil suits concerning laws of the tribes and regulations of Autonomous Councils.

260. Tribal Peoples shall be encouraged and preferred in local services.

261. The President of the Federation shall appoint a Tribal Commission which shall consist of

(a) representatives of Autonomous Regional Councils one for each Council;

(b) five persons elected by the Federal Legislature;

(c) a non-official Chairman and a permanent Secretary appointed by the President of the Federation.

The Chairman and the Secretary as well as the members shall be paid such remuneration and allowances as may be determined by Federal Law.

262. (1) The Tribal Commission shall have power to advise the Federal Government with regard to —

(a) the disbursement of money granted by the Federal Legislature for the advancement of the Tribal Peoples;

(b) the adaptation of Federal and Provincial Laws for the Tribal Areas with a view to protecting the communal life and economy of the Tribal Peoples.

(c) such other meausres as may be determined for the advancement of the welfare of the Tribal Peoples.

(2) The Tribal Commission may also tender advice to the Governments of Units on any matter intended for the protection of the interests of Tribal Peoples.

(3) The Federal Government, if it so chooses, may also entrust to the Commission the direction, control and supervision of the department and activities organised for the advancement or the welfare of the Tribal Peoples.

263. As soon as may be after the commencement of this Constitution, Tribes Advisory Councils shall be established in such Units and Sub-Units, the population of which contains a substantial number of Tribal Peoples.

264. The Tribes Advisory Councils shall have the power to advise the Government of the Units on all matters pertaining to the administration of Tribal Areas, if any, and the welfare of the Tribal People in the Unit or Sub-Unit.

265. The Constitution of the Regional and District Autonomous Councils as well as that of the Tribes

Advisory Councils shall be determined by Law by the Legislature of the Unit or the Sub-Unit concerned; provided that at least three-fourths of the members of these Councils shall be from amongst Tribal Peoples.

266. The Legislatures shall have power to provide for the adaptation of laws to the Tribal Peoples and Areas. Such laws may empower the Head of the Government to make necessary exceptions, modifications and adaptations in laws, if so advised by the Tribal Commission or the Tribes Advisory Council.

267. Out of the revenues of the Federation such Capital and recurring sums shall be paid to a Unit or a Sub-Unit as grants-in-aid as may be necessary to enable that Unit or Sub-Unit to meet the costs of such schemes of development as may be undertaken by the Unit or Sub-Unit with the approval of the Federal Government for the purpose of promoting the welfare of the tribes in that Unit or Sub-Unit or raising the level of administration of the Tribal Area in that Unit or Sub-Unit to that of the administration of the rest of the areas of that Unit or Sub-Unit.

Chapter XIII

PUBLIC SERVICE COMMISSION

268. (1) Subject to the provisions of this Clause there shall be a Public Service Commission for the Federation and a Public Service Commission for each Unit.

(2) Two or more Units may agree—

(a) that there shall be one Public Service Commission for that group of Units; or

(b) that the Public Service Commission of one Unit shall serve the needs of all other Units of the group;

and any such agreement may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of the agreement and shall, in the case of an agreement that there shall be one Commission for a group of Units, specify by what authorities the functions of the Governor concerning the Public Service Commission shall be discharged.

(3) The Public Service Commission for the Federation if requested so to do by the Head of a Unit may, with the approval of the President of the Federation agree to serve all or any needs of the Unit.

269. The Chairman and other Members of a Public Service Commission shall be appointed, in the case of the Federal Commission by the President of the Federation, and in the case of a Commission of a Unit by the Head of the Unit concerned, subject to confirmation by two-thirds majority of the Legislature concerned.

270. (a) The Chairman and other Members of the Public Service Commission shall not be members of any general representative body and shall not have been Members of the Federal Ministry or any Ministry of any Unit or Sub-Unit within the last five years of the date of appointment.

(b) The Chairman or other Members of the Public Service Commission shall not hold any other office or participate in governing or controlling bodies of societies and associations which work for profit. Nor shall they be a member of any political party or a communal organisation or any such organisation the membership of which may in any way affect adversely their reputation for impartiality or integrity.

271. The service conditions of the Chairman and other Members of the Public Service Commission

including those of the staff shall be determined by the Legislatures concerned from time to time provided that neither the salary nor the rights in respect of absence, pension, or age of retirement shall be varied in disadvantage to person after his appointment.

272. The Chairman and other Members of Public Service Commission shall only be removed from office in a like manner and on the like grounds as the Judge of a High Court.

273. The staff of the Public Service Commission shall constitute an independent service and be entitled to rights and privileges with respect to pay, leave, allowances etc. guaranteed and prescribed by law to service of the same grade, status and character.

274. The Chairman and other Members of the Public Service Commission shall make an affirmation of justice and impartiality.

275. To ensure full justice to citizens and efficient service to the state, intervention and any kind of pressure, through letters of recommendations or otherwise, of Ministers, Members of the Legislature and other officials and citizens over Chairman and Members of the Public Service Commission, individually or collectively, in the matter of appointment of public servants, is forbidden.

276. Subject to the provisions of the Constitution the Public Service Commission of the Federation or a Unit shall—

(a) Conduct examinations for appointments to Civil Services of the Federation and those of the Units and Sub-Units respectively ;

(b) advise the Government on any matter referred to them under Clause (277) or any other matter which the President of the Federation or the Head of the Unit or Sub-Unit, as the case may be, may refer to them ;

(c) discharge such other functions as may be provided for by a Law by the appropriate Legislature.

277. Subject to the Laws of the appropriate Legislature a Public Service Commission shall be consulted by the Government concerned—

(a) on all matters relating to the methods and principles to be followed in the recriutment, promotions and transfers of Civil Servants ;

(b) on all disciplinary matters affecting a person serving under the Government concerned including memorials or petitions to such matters,

(c) on any monetary claim by or in respect of a person who is serving or has served the Government concerned in a civil capacity.

278. Subject to the provisions of this Constitution Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services, and to posts in connection with the affairs, of the Federation, any Unit or Sub-Unit.

279. No person who is a member of any Civil Service or holds any Civil post in connection with the affairs of the Government of the Federation, the Unit or Sub-Unit shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this Clause shall not apply—

(a) Where a person is dismissed, removed, reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ; or

(b) Where an authority empowered to dismiss a person or remove him or reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause.

280. The expenses of the Public Service Commission of the Federation or of a Unit including any salaries, allowances and pensions payable to, or in respect of, the members or staff of the Commission shall be charged on the Revenues of the Federation or a Unit as the case may be.

(a) When the Public Service Commission of one Government serves the needs of the other Government there shall be charged on and paid out of the Revenues of the other Government in respect of the expenses or pensions as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

(b) When the Public Servic Commission serves the needs of another Unit, its expenses shall be charged on the Revenues of all Units in such proportion as may be agreed or as may in default of agreement be determined by an arbitrator to be appointed by Chief Justice of India.

Chapter XIV

FINANCIAL ADMINISTRATION

281. All revenues or money raised or received by the Executive Authority of the Federation and various Units and Sub-units for general administrative purposes shall form consolidated Revenue Funds of the Federation and various Units and Sub-Units respectively and shall be appropriated for the purposes of the Federation and various Units and Sub-Units in the manner and under conditions prescribed by the Constitution or Law or determined by the Budget passed by the Legislature concerned.

282. The income, accounts of expenditure and bal-

ances of economic enterprises shall be kept separate from Consolidated Revenue Funds as well as from general revenue accounts and balances.

283. Independent audits shall be organised, under the control and supervision of the Auditors-General of the Federation and various Units, to examine the accounts of income and expenditure of each and every agency of the Government concerned including those of economic enterprises with which the Government of the Federation or the Unit is connected. The audit shall include the examination of the expenditure of the endowments, foundations and other institutions administered by an agency of the Government.

284. The Auditors-General of the Federation and the various Units shall be appointed by the President of the Federation and the Heads of the Units respectively subject to confirmation by a two-thirds majority of the Legislature concerned.

285. The Auditors-General shall have the same status as the Presidents of the Public Service Commissions and shall only be removed from office in a like manner and on the like grounds as a member of the Public Service Commission or the Judge of a High Court.

286. The conditions of service of the Auditors-General shall be prescribed by law, provided that neither the salary nor his right in respect of leave of absence, pension or age of retirement shall be varied in his disadvantage after his appointment.

287. The Auditors-General shall not be members of any general representative body and shall not have been a Member of the Federal Ministry or any Ministry of any Unit or Sub-Unit within the last five years at the date of the appointment.

288. No member of the Audit Department may take part in the direction or administration of enterprises

which must render an account to the Government, except enterprises, the exclusive objects of which is the advancement of humanitarian endeavours.

289. The personnel of the Audit Department shall constitute an independent service. They shall be recruited through the Public Service Commissions and entitled to rights and privileges, with respect to pay, leave, allowance etc. guaranteed and prescribed by law to services of the same grade, status and character.

290. Two or more Units may agree—

(a) that there shall be one Audit Department for that group of Units ;

(b) that the Audit Department for a particular Unit shall serve the needs of the other Units party to the agreement, and any such agreement may contain such incidental consequential provisions as may appear necessary or desirable for giving effect to the purpose of the agreement and shall, in the case of an agreement that there shall be one common Audit Department, specify what Heads of the Units and the Legislature are to discharge the functions of the Head of the Unit with respect to the Audit Department.

291. The accounts of the Federation and the Units shall be kept in such forms as the Auditors-General of the Federation and various Units respectively, with the approval of the Heads of the Federation and the Units concerned, prescribe. The Auditor-General of the Federation may advise the Governments of the Units with regard to the methods and principles in accordance with which any account of the Units ought to be kept, and the Heads of the Unit concerned may prefer to follow the advice of the Auditor-General of India.

292. The Auditor-General shall draft the balance sheet of the budget and forward the same with the Audit Report to the Legislature through the Government,

which may prepare and submit to the Legislature its note of explanation along with the audited balance sheet and the Audit Report.

293. The expenses of the Audit Department of the Federation or a Unit including any salaries, allowances and pensions payable to or in respect of the members or staff of the Department shall be charged on the Revenues of the Federation or appropriate Unit as the case may be.

(a) When the Audit Department of one Government serves the needs of the other Government there shall be charged on and paid out of the Revenues of the other Government in respect of the expenses or pensions as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

(b) When an Audit Department serves the needs of another Unit, its expenses shall be charged on the Revenues of all Units in such proportion as may be agreed or as may in default of agreement be determined by an arbitrator to be appointed by Chief Justice of India.

Chapter XV.

PROPERTY, CONTRACTS, LIABILITIES AND SUITS

294. As from the commencement of the Constitution, the Federal Government of India and the Government of each Province shall respectively be successors of the Government of the Dominion of India and of the corresponding Governor's Province as regards all property, assets and liabilities subject to any adjustment made or to be made by reason of the creation before the commencement of the constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab, or by rea-

son of the merger of States, the creation of Sub-Federations and the federating of the States.

295. As from the commencement of this Constitution the Governments of Sub-Federations, the Federated States and Sub-Units shall respectively be the successors of the Governments of the corresponding Sub-Federations, Federated States and other Sub-Units as regards all assets, liabilities and property subject to any adjustment made or to be made by reason of terms of agreements which merged and amalgamated various States and created and established Sub-Federations and Administrators' Sub-Units and federated them and Federated States with the Dominion of India.

296. Any property in India accrued to the Republic by escheat or lapse or as bona vacantia for want of a rightful owner, shall, if it is property situate in a Unit or Sub-Unit, vest in the Republic for the purposes of the Government of that Unit or Sub-Unit and shall in any other case vest in the Republic for the purposes of the Government of the Federation.

297. The Executive Authority of the Federation, Units and Sub-Units shall extend, subject to any Act of the appropriate Legislature, to raise, receive and keep in its custody "Revenues" and accounts of the Federation, the Unit and the Sub-Unit respectively and to defray out of these Revenues expenditure incurred for the purposes of the Government concerned, to take loans upon the security of such Revenues as well as to hold grant, sell, dispose or mortgage any property vested in the Republic for the purposes of the Government of the Federation, Unit or Sub-Unit. It also extends to the purchase or acquisition of property on behalf of the Republic for those purposes respectively and to the making of contracts.

298. All contracts made in the exercise of the Exe-

cutive Authority of the Federation, a Unit or Sub-Unit shall be expressed to be made by the Head of the Government concerned and all such contracts and assurances of property made in the exercise of that Authority shall be executed on behalf of the Head of the Government concerned by such persons and in such manners as he may direct or authorise. Neither the Head of the Government concerned nor any person acting on behalf of them shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution.

299. The Federation, a Unit or Sub-Unit may sue or be sued by the name of the Federation, the Unit or the Sub-Unit concerned.

Chapter XVI

AMENDMENTS

300. This Constitution of the Republic of India may be amended by a law of the Federal Legislature adopted by a majority of not less than two-thirds of the votes cast in two different sessions at the interval of at least three months. Provided that the provisions of this Constitution to the extent they relate to the Constitution of the Units or Sub-Units may be amended by a Federal Law passed by a majority of the total membership of the Federal Legislature in case the amendment concerned is desired by the Legislature on the Unit or Sub-Unit concerned with two-thirds majority of votes cast.

301. This Constitution of the Republic is its fundamental law and commands the supreme allegiance of public authorities and the people of India. A law or order which in any way contravenes any provision of

this Constitution shall be invalid and stand abrogated to the extent of such inconsistency and contravention.

Chapter XVII

TRANSITORY PROVISIONS

302. Until the Federal Legislature has been duly constituted and summoned under this Constitution, the Constituent Assembly shall itself exercise all powers and discharge all the duties of the Federal Legislature.

303. Until the Provincial Legislatures have been duly constituted and summoned under this Constitution, the Provincial Legislative Assemblies as they would exist at the commencement of the Constitution shall exercise all the powers of the Provincial Legislatures.

304. Such persons as the Constituent Assembly shall have elected in this behalf shall be the provisional President of the Federation until a President has been duly elected under this Constitution.

305. Such persons as the Provincial Legislative Assembly shall have elected in this behalf shall be the provisional Governor of the Province until a Governor has been duly elected under this Constitution.

306. Such persons as shall have been appointed in this behalf by the provisional President shall be deemed to form the first Council of Ministers of the Federation under this Constitution and retain offices as long as they command the confidcence of the Constituent Assembly.

307. Such persons as shall have been appointed in this behalf by the provisional Governor shall be deemed to form the first Council of Ministers of the Province under this Constitution and retain office so long as they command the confidence of the Provincial Legislature concerned.

308. Until the system of Government is reorganised in Sub-Federations and Federated States in accordance with this Constitution the Governments as they would exist in them at the commencement of this Constitution shall continue to administer the public affairs.

309. Until the Supreme Court is itself constituted under this Constitution, the Federal Court shall be deemed to be the Supreme Court and shall exercise all the functions of the Supreme Court. Provided that all cases and suits pending before the Federal Court and the Judicial Committee of the Privy Council at the date of the commencement of this Constitution shall stand removed to and be disposed of by the Supreme Court.

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

311. Existing taxes and duties shall continue to be levied until altered or repealed by a competent authority. The Budgets of expenditure in operation at the commencement of the Constitution shall be enforced until a new budget is passed or the period of operation of the old budget expires.

312. Subject to this Constitution, all laws, decrees, orders, instructions and rules validly in force in the territories of the Republic immediately before the commencement of the Constitution shall continue in force until altered or repealed or amended by a competent Legislature or other competent authorities.

313. (a) All laws, decrees and rules concerning matters in which the Federation or the Unit, according

to this Constitution has the exclusive power of legislation shall be deemed to be those of the Federation and the Units respectively within the meaning of this Constitution.

(b) Indian Laws and laws of the Units concerning matters in which the Federation and the Units, according to this Constitution, have concurrent power of legislation shall continue to be the Federal Laws and laws of various Units respectively within the meaning of this Constitution.

314 The President of the Federation may by order extend to Sub-Federations and Federated States such laws in force in British India before the commencement of this Constitution as deal with matters and subjects placed under the exclusive legislative jurisdiction of the Federation under this Constitution. Such laws may be extended with such adaptations and modifications as may be necessary to bring these laws in conformity with the provisions of this Constitution and shall be operative until altered or repealed or amended by the Federal Legislature or other competent authority.

315. With the concurrence of the Legislature concerned the President of the Federation in case of Federal and Indian laws and the Heads of various Units in cases of laws of their Units may by order provide that until repealed or amended by competent authority these laws in force before the commencement of the Constitution shall have effect as from a specified date subject to such adaptations and modifications as appear to him to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Constitution.

316. The transition to this Constitution shall be regulated by a special Constitutional Law, which shall become effective at the same time as this Constitution.

The special Constitutional Law shall be passed by the Constituent Assembly and can be modified and repealed by the Constituent Assembly and the Federal Assembly by a simple majority vote.

The special Constitutional Law may notwithstanding anything contained in this Constitution

(a) make provision for such salaries, allowances to various officials as are to be determined by law under this Constitution, so long as they are not so determined by the competent authority.

(b) make provision of rules, oaths, forms of affirmation etc. which are to be determined by law, the Legislature, or any executive authority so long they are not so determined by a competent authority.

(c) make such other provisions for the purpose of removing any unforeseen difficulties in bringing into operation this Constitution.

The special Constitutional Law shall cease to be operative after the expiration of three years from the commencement of this Constitution, provided that the special Constitutional Law or certain parts thereof may be repealed or become obsolete earlier.

317. This Constitution, unless otherwise provided by a declaration of the President of the Constituent Assembly, shall be effective on the 14th day of its publication in the official gazette.

318. On the day of the commencement of this Constitution the Indian Independence Act, 1947, and the Government of India Act 1935, including the India (Central Government and Legislature) Act 1946, and all other enactments amending or supplementing the Government of India Act, 1935 shall cease to have effect.

APPENDIX

GENERAL.

The first part of this book, which reviewed the decisions of the Constituent Assembly, was printed much before the Draft Constitution of India prepared by the Drafting Committee was made available to the public. The Review could, therefore, not take note of important changes and additions introduced by the Committee. They are reviewed in this Appendix.

The Committee has agreed with our criticism that because independence is usually implied in the word "Sovereign" so there is hardly any thing to be gained by adding the word "Independent". The Committee has, therefore, recommended that in the preamble India be declared a Sovereign Democratic Republic.

CITIZENSHIP.

The Committee has kept in view the requirements of the large number of displaced persons who have had to migrate to India within recent months and has provided for them a specially easy mode of acquiring domicile and thereby citizenship. Our criticism in the Review with regard to the citizenship provisions contemplated by the Constituent Assembly are to that extent redundant. We, however, feel that the clauses with respect to citizenship deserve to be redrafted on lines suggested by us in our Draft.

FUNDAMENTAL RIGHTS.

No fundamental change is made in Chapters pertaining to "Fundamental Rights" and "Directive Principles of the State Policy". Our criticism with respect to them therefore stands.

HIGH COURTS.

The Provincial Constitution Committee recommended that the present constitution of High Courts should be adopted *mutatis mutandis*. This recommendation was accepted by the Constituent Assembly. It led us to infer that the Assembly wished to provide in the new constitution for the appointment of civilians as judges of High Courts and for the exclusion of revenue cases from their original jurisdiction. We are, therefore, glad to note that both these provisions are omitted by the Drafting Committee in its Draft Constitution. It will now be possible for the provincial legislatures to confer on High Courts original or appellate jurisdiction over revenue cases. Nor will it be necessary to appoint civilians as judges of High Courts. But even under this Draft Constitution it will be possible for the Government to appoint civilian session judges as judges of High Courts and to appoint civilian judges of High Courts as judges of the Supreme Court. It would have been better if the appointment of such civilian session judges as have not attained high legal qualifications to the post of the judges of the High Courts had been made impossible. The appointment of civilian judges of High Courts as judges of Supreme Court will also not be desirable. It will, therefore, be proper to modify the Draft Constitution to make such exclusion. It does not guarantee the separation of the judicial and executive functions. Under the Draft Constitution revenue officers and district officers may continue to have jurisdiction over revenue and criminal cases respectively.

COMMUNAL REPRESENTATION.

The Draft Constitution of the Drafting Committee provides for the reservation of seats under the

system of joint electorates for Muslims, Scheduled Castes and Scheduled Tribes in all legislatures and for Christians of Bombay and Madres Presidencies in the lower chambers of the Federal, Bombay and Madras Legislatures. This is in accordance with recommendations of the Minorities Committee of the Constituent Assembly. Unless the system of proportional representation is introduced, the reservation of seats for minorities is unavoidable. But the system of reservation of seats can hardly claim to be so good as the system of proportional representation, while the former is a concession to our weakness, the latter is a well recognised democratic method of representation. Muslims constitute about one-eighth of the entire population of the Republic. So under the system of joint electorates with reservation of seats either Muslim candidates will have to seek the confidence of much larger number of voters than other candidates or seats will have to be reserved for Muslims in selected constituencies alone. Neither of the two is fair to Muslims or other minorities similarly situated. It is but obvious that minorities can exercise much greater influence over the election of a member under the system of proportional representation with cumulative votes than under the single vote system. Under the former members of a minority community may, if it finds it necessary, exert a cumulative influence over the election of a candidate. We, therefore, propose that the system of proportional, representation with cumulative votes be adopted instead of the system of the reservation of seats.

BICAMERALISM

The Drafting Committee has incorporated in its Draft Contitution the principle of bicameralism appro-

ved by the Constituent Assembly. It was suggested by the Constituent Assembly that one-half of the members of the Legislative Councils, the upper houses of the provinces, will be elected on functional basis. The Drafting Committee suggests that these members be chosen from five panels of candidates one of which shall be formed of the names of the representatives of universities in the province concerned and the remaining four shall respectively contain the names of persons having special knowledge or practical experience in respect of (a) literature, art and science, (b) agriculture, fisheries and allied subjects, (c) engineering and architecture, (d) public administration and social services. It is further suggested that each panel of candidates so constituted shall contain at least twice the members to be elected from such panels. The Committee talks of representatives of universities and it may therefore be presumed that this panel of representatives of universities shall consist of persons elected or appointed by university authorities. But the Committee does not suggest or indicates in what manner the names of persons on other four panels shall be included, whether the choice will be left to the Government or certain autonomous bodies organised by persons having special knowledge or practical experience in respect of specified subjects. If the panel is to be constituted by the government, persons elected by these panels are likely to be nominees or under the influence of the government. Even if they are to be constituted by autonomous bodies, persons elected by them can claim to represent only a section of middle class intelligentia. Elections so organised cannot claim to secure representation to the peopies on functional basis. Representation on functional basis to be real must provide for representation of organised bodies

of toiling masses such as trade unions, *Kisan Sabhas*, on the legislature.

The upper chamber is also proposed to be a permanent body. It is suggested that as nearly as may be one-third of its members should be elected every third year. In the United States of America the Senate is a permanent body and one-third of its members are elected every second year. Conservatives approve this procedure on the plea that it avoids the possibility of a sudden change in the composition of legislature. But democrats in general feel that the legislature so constituted fails to reflect the public opinion correctly. It is but obvious that the members of the Council of State chosen by a provincial legislature eight years ago is likely to represent the public opinion of the previous decade.

The Committee suggests that if a Bill passed by the lower house of the legislature is not passed by the upper chamber within six months, a joint sitting of both the houses may be summoned by the Governor, and the disputed questions may be determined in joint sitting by a majority of total number of members of both houses present and voting. This procedure would enable the legislature concerned to delay the enactment of a necessary law for six months and enable persons nominated by the government and chosen from a few persons to participate in the determination of disputed questions on par with representatives of the peoples elected on the basis of adult franchise. This is not democratic.

ELECTION OF THE PRESIDENT.

The Committee has accepted the idea of the Constituent Assembly that elected members of the legislatures of the units be associated with the members

of the federal legislature for electing the President of the Republic. It has suggested that as far as practicable there should be uniformity in the scale of representation of the different units at the election of the President and for the purpose of securing such uniformity has suggested a complex procedure of counting votes of members of different provincial legislatures. In our opinion the simplest procedure would be to require the legislature of each unit to elect delegates equal in number to seats assigned to the unit concerned in the federal assembly, as representation on federal legislative assembly is fixed on population basis. The required uniformity in the scale of representation of different units at the election of the President will be secured; and the members of the federal assembly will have as much voice as members of the provincial legislative assemblies in the election of the President.

ELECTION OF THE GOVERNOR.

Some members of the Committee have felt that the co-existence of a Governor elected by the people and a Chief-Minister responsible to the legislature might lead to a friction. The Committee has, therefore, suggested an alternative mode of appointing Governors. It is suggested that the Governor should be appointed by the President of the Republic from a panel of four candidates to be elected by the members of the provincial legislature in accordance with the system of proportional representation by means of a single transferable vote. The general popular election is not necessary for electing a constitutional head of the government, which a Governor will be under the system of responsible government. But the method of selection suggested in the alternative mode is decidedly defective. The President will act on the advice of the

Chief Minister of the Federal Government and in his choice the Chief Minister is likely to be influenced by party considerations. It is just possible that his party may be in a minority in the provincial legislature and he may be tempted to choose out of the panel a man of his party even though he may not be commanding the confidence of the majority of the legislature. Such a situation is not likely to promote harmony in the provincial government and may disturb the harmony which must exist between the federal and provincial authorities. The selection may be condemned by the majority party of the legislature as a partisan and may not be approved by the bulk of the people of the province. The Governor should in our opinion be elected by an electoral college composed of members of the provincial legislature and representatives of the province concerned on the federal legislature.

POWERS OF EXECUTIVE AUTHORITY

The executive is given wide powers to determine by regulations and order matters which deserve to be determined by law to be passed by the Legislature or deserve to be kept independent of the control of the executive. For example, the Heads of Governments are empowerd to make regulations specifying the matters in which either generally or in any particular class of cases or in any particular circumstances it shall not be necessary for a Public Service Commission to be consulted. The Federal Government is empowered to create or continue by its orders a local legislature or a Council of advisors for a centrally administered areas. All these matters deserve to be considered and determined by the legislature. The constitution of the popular bodies such as local legislature of centrally administered areas cannot be

allowed to be determined by an executive order in democracy. Nor can the executive be allowed to narrow down the scope of consultation with the Public Service Commisssion.

APPOINTMENT OF MINISTERS.

With respect to Fedral Ministry the Draft Constitution of the Drafting Commitee lays down that the Prime Minister shall be appointed by the President and the other ministers shall be appointed by the President on the advice of the Prime Minister. But with regard to Provincial Ministry it is provided in the Constitution that "theGovernors' ministers shall be appointed by him," and that "the functions of the Governor with respect to the appointment and dismissal of ministers shall be exercised by him in his discretion". This Draft Constitution no doubt requires the Governor to be guided by the "Instrument of Instructions", which instructs the Governor to select his other ministers in 'consultation with' the Chief Minister. But the Draft Constitution also makes it clear that "the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with such instructions. In plain words, while Federal ministers are proposed to be appointed by the President on the advice of the Federal Prime Minister; the provincial ministers are proposed to be appointed by the Governor in his discretion though in consultation with the Provincial Chief Minister. Obviously, the form chosen for the appointment of federal ministry is the correct constitutional form under the system of parliamentary responsible government and there is no valid reason to confer upon the Governor discretionary authority with regard to the appointment and

dismissal of ministers. Governors' discretionary powers under the Government of India Act 1935, enabled him once in April 1937 to appoint ministers who did not command the confidence of the majority of the provincial legislature. It may be said that this was possible because budgets had been passed by Governors for six months before the Act of 1935 was brought into operation. But in reply it may be pointed out that even under the Draft Constitution it will be possible for the Governor, once the annual budget is passed, to dismiss popular ministers in his discretion, appoint his own proteges as ministers in his discretion and allow those proteges to rule over the province for six months with the help of ordinances, which may be passed by him on the advice of his protege minister during the recess of the legislature. After six months when the legislature must meet under the Draft Constitution, these ministers will be faced with some difficulty. They may be censured and ordinances passed, during the recess, may be rejected by the legislature. An attempt may also be made to impeach the Governor but if the Governor is able to rally the support of a minority of 35% of members against impeachment, or if he manages to prorogue the legislature in his discretion prior to the consideration of the impeachment motion ; his protegies may contnue in office for another six months because thc Draft Constitution of the Drafting Committee does not require Ministers to resign in case they lose the confidence of the Legislature and definitely provides that they will hold office during Governor's pleasure. Of course at the end of the year such Ministers will have to resign because the Government can no more be carried on under the Constitution without securing the approval of the budget by the majority of the Members of the Legisla-

ture. It may be maintained that no Governor or members of the legislature will manipulate the provisions of the Constitution against the spirit of the Constitution with a view to establishing their dictatorship. But it must not be forgotten that between the two last Great Wars dictatorships, actual or virtual, were established in a number of countries in Europe through constitutional means, taking full advantage of certain loop holes in the constitution. It will not be wise to suppose that no Indian politician will ever care to manipulate provisions of the constitution in such a way as to establish his virtual dictatorship for a period of six months or more. To avoid the possibility of manipulation in favour of dictatorship it is necessary to discard the phraseology of the Government of India Act 1935 which was intended to retain the imperialistic hold over India. It must be definitely laid down in the Constitution that the ministers shall be appointed on the recommendation of the Chief Minister and that the Council of Ministers shall have the confidence of the legislature to seek within one month of their appointment and shall have to resign if and when they lose the confidence of the majority of the members of the legislature.

SUSPENSION OF THE CONSTITUTION

The Committee has not only retained emergency powers of the Governor to suspend for two weeks the provincial constitution and to exercise executive authority in his discretion. It has also empowered the President of the Republic to assume to himself all or any of the functions of the provincial government and to declare that the powers of the provincial legislature shall exclusively be exercised by the federal legislature. With the approval of the

federal legislature such a proclamation may remain in force for three years. The Committee also wishes that the President of the Republic be authorised to issue a proclamation of emergency if he is satisfied that grave emergency exists whereby the security of India is threatened whether by war or domestic violence. Such a proclamation may be made before the actual occurrence of war or of any such violence if the President is satisfied that there is imminent danger thereof. Such a proclamation will cease to operate at the expiration of six months unless before the expiration of that period it has been approved by the Federal Legislature. During the period of the operation of emergency the executive power of the Federal Authority shall extend to the giving of directions to any province as to the manner in which the executive power thereof is to be exercised, and the power of federal legislature to make laws with respect to any matter shall include power to make laws with respect to any matter and conferring powers upon any authority or agency of the Federal Government with respect to any matter. While a proclamation of emergency is in operation the term of the Federal Legislature may also be extended by the President for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the proclamation has ceased to operate.

There is no federal democratic constitution in the world which permits the Governor of a province to suspend the executive authority of responsible ministers or the legislative authority of the provincial legislature with a view to facing a grave menace to peace and tranquillity of the province. As pointed out in the Review, the emergency powers of the Governor will only lead to a conflict of authority between the Gover-

nor and the ministry and this conflict would create confusion worse confounded, specially, if the Governor is elected by the President out of a panel as suggested by the Drafting Committee and happens to belong to a party which is in minority in the provincial legislature and the province concerned. In that case the Governor is sure to be suspected and accused by the majority party of being actuated by party motives. There is no reason to believe that his judgment would be better than the collective views of the ministry, that he will be of a higher calibre and command greater confidence and support of the peoples and the services than the Prime Minister, the leader of the majority party in the provincial legislature.

There is no federal democratic constitution in the world which allows the federal authorities to suspend the executive and legislative authorities of the Unit for three years and to assume to themselves those powers assigned under the constitution to the units. To suppress domestic violence, the federal authority, may help the government of a unit with armed forces and may require all authorities of the unit concerned to cooperate, assist and obey the instructions of the federal executive authority and its duly authorised agents but it will hardly be justified to cause a constitutional crisis or to deprive the unit of its autonomy for three years. The power is too dictatorial in character to form part of a democratic constitution.

The President's powers with regard to proclamation of emergency are also very wide, not free from dangers to the very existence of democracy. The federal authority no doubt shall be responsible for the protection of every unit against external invasion and violence and may be invested with special powers to face them.

The federal legislature may, therefore, be empowered to make laws for units threatened by external invasion or violence or a part thereof even with respect to matters assigned to the exclusive charge of the units. Authorities and officials of units concerned may also be required to cooperate with and obey instructions of the federal authority issued for the security of India. The federal government may also be empowered to take over the charge of administration of such parts of the units as are required for the purpose of the defence of the Republic. But the federal executive authority should never be empowered with such wide powers as are proposed by the Drafting Committee. If its proposals are accepted it will be possible for the federal executive to reduce to subserviance the executive authorities of the units and to establish its dictatorship on the plea of threat of war or domestic violence. For the continuance of such dictatorship beyond six months the cooperation of the federal legislature would no doubt be needed. But if the federal legislature is prepared to approve the proclamation of emergency the period of the operation of proclamation might be extended to as much period as the federal authorities may choose and during this period the election of the new federal legislature may also be suspended by the President of the Republic. Hitler acquired dictatorship through constitutional means and with the consent of the legislature. It cannot, therefore, be said that the federal legislature of India wlll never permit the federal executive authority to establish dictatorship through the proclamation of emergency. Indeed, the federal legislature might be tempted to have a deal with the federal executive authority and allow the President to issue a proclamation of emergency so that the tenure of the federal legislature may be prolonged

and its jurisdiction may extend even to matters and over officers of the unit. It is not difficult for aspirants of dictatorship to create a panic and to so manipulate the situation that it may be possible for them to raise the plea of threat of war or domestic violence, specially when a proclamation of emergency is allowed before the actual occurrence of war or domestic violence.

UNIT SUBJUCTS

The Draft Constitution empowers the federal legislature to legislate with respect to a matter in the unit list in case the Council of State declares by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest for the federal legislature to do so. The Draft Constitution further provides that if an amendment of the Constitution seeks to make any change in any of the lists of federal, concurrent and unit powers, the amendment should not only be passed by two-thirds majorities of both houses of the legislature but should also be ratified by not less than one-half of the provincial legislatures and not less than one-third of the legislatures of the federated States. The two suggestions are hardly compatible. In our opinion, the procedure suggested for amending other provisions of the constitution should be sufficient for making any change or amendment in the lists of federal, unit and concurrent powers. The conversion of what is a provincial power into a federal or concurrent power without an amendment in the constitution would offer a premium for interference by the centre. Such a procedure may strike ultimately at the federal structure of the constitution itself.

CENTRALLY ADMINISTERED AREAS

18. The Drafting Committee has almost skipped over the question of the government of centrally administered areas. It provides for their administration by the President through a Chief Commissioner or a Lieutenant Governor or through the Governor of a province or the ruler of a neighbouring State. It also provides that the President may by order create or continue for such area a local legislature or a Council of advisers or both with such constitution, powers and functions in each case as may be specified in the order. In our opinion confusion will be caused if the Governor of a province or the Ruler of a neighbouring State are entrusted with the administration of centrally administered areas. It will not be possible for ministers of units on whose advice the Governors and Rulers will function to be responsible to two different masters, the provincial legislatures for the administration of the unit and the federal government for the administration of the centrally administered unit. Even if the federal government is not satisfied with the administration, it will not be possible for him to choose new sets of advisers to the Governor for the administration of centrally administered areas. The people of these areas must have the benefit of local legislature and council of advisers and their establishment should not be left to the sweet will of the federal government. We suggest that provisions with respect to them should be made in the Constitution on the lines recommended by us in our Draft.

TRIBAL AREAS

The Draft Constitution of the Drafting Committee has incorporated the report of the Sub-Committee, appointed for the purpose, in two of its schedules and

proposed that the administration of Scheduled Areas and tribes should be carried on in accordance with the principles laid down therein. Some of these principles are no doubt good. But one misses badly in one of the schedules the provision of Autonomous Regional and District Councils, provided for Scheduled Areas of Assam. These Councils are necessary in tribal areas in Behar, Orissa, Central Provinces, as a matter of fact in all regions in all Units inhabited by aboriginal tribes. Their establishment will enable aboriginal tribes to grow in a democratic fashion and will assure them their cultural and social autonomy, the desire for which has led them to demand a separate province of Jharkhand. It will also be good to incorporate the essential principles in the Act itself, as is done in our Draft.

INDIAN STATES

The Draft Constitution of the Drafting Committee continues to be defective with regard to provisions concerning Indian States. It has not assured democratic system of Government in Federated States. In many parts provisions with regard to Indian States are confusing and undemocratic. For example, unnecessarily a different procedure is prescribed for appeals from High Courts of Indian States to the Supreme Court. Now has it been indicated whether democratic institutions will be established in such States, the administration of which is handed over to the charge of the Federal Government. The constitution must empower the peoples of Federated States to establish with the consent of the Federal Legislature a republican regime in their respective states.

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