where definitely it is said : "Imposition and administration of taxes on income other than agricultural income or the income of corporations, but subject to the power of the provinces to impose surcharges" under the exclusively Federal heads.

Lord Eustace Percy: I do not think that exhausts it because all the evidence we have received, and all the evidence I ever heard in India was violently opposed to Provincial surcharges.

Dr. B. R. Ambedkar: That was the view of the business people, I am sure.

Lord Eustace Percy: It was the opinion of every single Indian to whom I had the opportunity of putting questions.

Dr. B. R. Ambedkar: No, indeed, they were not.

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8537. *Lord Rankeillour:* May I ask a question arising out of Dr. Ambedkar's. I think it is of some importance. With regard to the consent of the Governor-General, surely all Federal taxation will be subject to the consent of the Governor-General. It can only be on his initiation, and a resolution such as we have here, that any tax can be considered ?

Sir Samuel Hoare: Yes, but I think Lord Rankeillour really is confusing the two positions. There is the general constitutional position under which money votes originate with the initiative of the Crown. That position, of course, stands. I was contemplating the other position in which the Governor-General intervenes under some special obligation in the Indian Constitution.

8538. *Lord Rankeillour:* I felt sure that was the meaning, but the actual answer given to Dr. Ambedkar would seem to suggest that under paragraph 141 the Federal Legislature would have the power to act without the Governor-General's previous recommendation.

Mr. M. R. Jayakar: May I ask Lord Rankeillour's attention to Proposal 45, which deals with this question. "A recommendation of the Governor-General will be required for any proposal in either Chamber of the Federal Legislature for the imposition of taxation."

Lord Rankeillour: Yes, so I thought. I quite agree.

Dr. B. R. Ambedkar: That relates to the special power of the Governor-General, and that is made so because the taxes contemplated in paragraph 138 are not to go to the Central fisc, but they are to be distributed amongst the Provinces.

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†8575. *Dr. B. R. Ambedkar:* My Lord Chairman, may I just intervene for a moment for the purpose of asking for information, not for raising any controversy. The Committee knows that there is a certain amount of difference of opinion on the expression "existing and accruing rights". The Civil Service takes one view, the Law Officers of the Crown take another view, and I believe this Committee will have to give some sort of opinion

†Minutes of Evidence, Vol II-B, 28th July 1933, p. 1010.

upon that subject before the clause is drafted. I find exactly the same expression "existing and accruing rights" used in the South African Constitution of 1909, and I wonder whether it would not be possible for Your Lordship and the Secretary of State to obtain the Memorandum from the Dominions Office to find out exactly how that clause has been acted upon, and interpreted by the South African Government ?

Sir Samuel Hoare: I will certainly look into that suggestion. In any case, it is a question which we must deal with when we come to the Services. It is not quite the same question though that Sir Purshotamdas put to us.

8576. *Dr. B. R. Ambedkar:* No ; that is why I said I did not want to raise any controversy. I am simply asking for information as to whether that would not be possible as a sort of comparative view ?

Sir Samuel Hoare : Yes.

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†8633. *Dr. B. R. Ambedkar:* I would like to ask one question about the statement made by Sir Akbar Hydari on the application of paragraph 141. You said yesterday, Secretary of State, in making your brief observations on that statement that you were glad that the States bad accepted, at a certain point, to bear the burden of the Federal Government ?

Sir Samuel Hoare: Yes.

8634. *Dr. B. R. Ambedkar:* What I would like to know is this — you can give the answer now, or, if you like to refer to it later I have no objection— whether you agree that the stage which has been described by Sir Akbar Hydari is the stage at which the States should begin to bear the burden of the Federation ? He has, as you know, described certain stages through which the Federal finance must go before the States could be called upon to bear their share ?

Sir Samuel Hoare: Yes.

8635. *Sir Akbar Hydari:* Additional burden ?

Sir Samuel Hoare: There are really three burdens. There was first of all the burden of indirect taxation that they undertake from the start; secondly, there was the burden of the Corporation Tax, or the equivalent of the Corporation Tax that they undertake after a definite terms of years ; and, thirdly, there was the surtax that they undertake in the event of an emergency.

8636. *Dr. B. R. Ambedkar:* I thought he laid down certain conditions ?

Sir Samuel Hoare: He laid down certain conditions — Sir Akbar will correct me if I am wrong for the third of these burdens, namely, the surtax.

8637. *Dr. B. R. Ambedkar:* I wanted to know whether you agree that those were the appropriate conditions under which the Federation will resolve to surcharge ?

Sir Samuel Hoare: I think so. I do not want to tie myself down to the exact words, but I think, generally, that seems to me to be a fair basis of an arrangement.

†Minutes of Evidence, Vol. II-B, 28th July 1933, pp. 1018-20.

8638. *Dr. B. R. Ambedkar:* The next question I want to put to you, arising out of that, is this : that if that position is maintained or even the position as it is under Proposal 141 is maintained, would it not be the fact that the Federation will have to carry on its finances entirely on the basis of indirect taxation ?

Sir Samuel Hoare: Not entirely on the basis of indirect taxation.

8639. *Dr. B. R. Ambedkar:* To a very large extent ?

Sir Samuel Hoare: Obviously, to a large extent. Indirect taxation will then, as it does now, play a very prominent part in the Indian revenue.

8640. *Dr. B. R. Ambedkar:* What I want to put to you is this, Sir Samuel Hoare, that it will be more so under the Federation than it is now, for the simple reason that the British Indians would not consent to direct taxation, because the States will not consent, and, consequently both of them would rather go in for indirect taxation, to be borne by both apart, rather than agree to direct taxation, which would be borne by British India alone. From that point of view indirect taxation would be more and more forced upon them than is now the case ?

Sir Samuel Hoare: From the other point of view, I can imagine the States very often on the side of the less indirect taxation.

8641. *Dr. B. R. Ambedkar:* That is because they do not have their finger in the pie now. Would it be the same thing afterwards when, if they are opposed to indirect taxation they have to bear the brunt of the taxation ?

Sir Samuel Hoare: Dr. Ambedkar will also remember in this triangle of forces that the Provinces will have an interest in direct taxation, as they have a share in it.

8642. *Dr. B. R. Ambedkar:* Yes, that may be so, but the Province also will see that the Federation is not entirely a charge on Indian Revenue raised in British India. It is a pure matter of speculation, but I want to pay attention to what would be the drift of the finance under the Federation. If I may say so, the Federation would entirely have to build a tariff wall round itself in order to carry on ?

Sir Samuel Hoare: Dr. Ambedkar says it is a subject of speculation. I am inclined to agree with him, but I am not inclined, having assumed it is a subject of speculation, then to prophesy exactly what is going to happen.

8643. *Dr. B. R. Ambedkar:* I will leave it at that. The next question I would like to ask of Sir Samuel Hoare arising out of the same proposal, 141, is this : You said that the States will contribute an equivalent amount to the Federal Revenues on a sum to be assessed on a prescribed basis. Of course, you have explained this morning how the word "prescribed" is used, and I am not going to ask you any questions upon that, but what I would like to ask you is this. Is there any provision made in the White Paper to see that the sum assessed on this prescribed basis, which becomes payable by a particular State, will be ultimately paid to the Federation ?

Sir Samuel Hoare: It would then mean a default, would it not, on the part of a State ?

8644. *Dr. B. R. Ambedkar:* Yes, supposing the State does not pay. I am assuming only one case now, for the moment ?

Sir Samuel Hoare: The Viceroy then, I assume, could intervene.

8645. *Dr. B. R. Ambedkar:* The Viceroy, as you know, is outside the Federal Constitution ?

Sir Samuel Hoare: If Dr. Ambedkar will look at paragraph 129, he will see there : "The Governor-General will be empowered in his discretion to issue general instructions to the Government of any State-Member of the Federation for the purpose of ensuring that the Federal obligations of that State are duly fulfilled."

8646. *Dr. B. R. Ambedkar:* Yes. What I want to say is this. Paragraph 129, if I may make the distinction, only gives the Governor-General the power to give a direction. It does not give the Governor-General the power to take remedial measures, if the directions are not obeyed ?

Sir Samuel Hoare: The Act nowhere provides explicit sanctions in situations of that kind either for the Provinces or for the States.

8647. *Dr. B. R. Ambedkar:* For the Provinces it does, because the Governor has a special responsibility to see that the orders of the Governor-General are carried out and obeyed, and to that extent he will be directly under the control of the Governor-General, and so provision does there exist, so far as the relations between the Provinces and the' Centre are concerned, that his orders will be carried out ?

Sir Samuel Hoare: 1 think there is just the same sanction. Is there not, with the Governor-General and the States ?

8648. *Dr. B. R. Ambedkar:* No, if I may say so, as you explained on the Memorandum on the Instrument of Instructions if he disobeyed, the Governor could be recalled. There is no such provision in the relations between the States and the Centre ?

Sir Samuel Hoare: In each case the responsibility is the responsibility of the Governor-General at his discretion, that is to say, subject to his instructions from here.

Dr. B. R. Ambedkar: But my point is that just as the Governor would be subject to the power of the Governor-General with respect to the administration of the Province, the ruler of a State is not subject to the directions of the Governor-General beyond, I suppose, the administration of such matters which appertain to the Federation; that is with the Viceroy.

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8650. *Dr. B. R. Ambedkar:* But, as you said, the paramountcy will be assigned to the Viceroy, and not to the Governor-General ?

Sir Samuel Hoare: Yes, but nevertheless the result will be the same.

Mr. Zafrulla Khan: The Governor-General will formally make a request to the Viceroy and the Viceroy will thereupon act.

Dr. B. R. Ambedkar: May I ask another question arising out of the same ? There is another aspect of it. It is assumed that the States that would be liable to make this contribution would be solvent at the time when the contribution is called for. Is there any provision in the White Paper to see that the Governor-General whose finances would, to some extent, be dependent upon these contributions coming from the Indian States, has power to see that these contributories will be solvent on the days when the contributions fall due ?

Rao Bahadur Sir Kishnama Chari: What is the provision with regard to the Provinces ? Is there any such provision with regard to the Provinces ?

Dr. B. R. Ambedkar: Yes, the Governor can certify that a certain amount is due to the Federation and shall be paid, and it will be paid.

Mr. Zafrulla Khan: May I recall a suggestion I made during the preliminary discussions here that the Viceroy might ask the States who are units of the Federation to submit for his information every audited copies of their accounts ?

8651. *Dr. B. R. Ambedkar:* There is one more point, and I think the Secretary of State may give a combined answer. If you will refer to paragraph 146 dealing with the borrowing powers you will see there it is provided that the Federation may borrow upon the security of Federal revenues. The contributions to be made under Proposal 141 will be part of the Federal revenues which will be the security for the loans which the Federation will raise. Do you think it would sufficiently add to the credit of the Federation if part of the revenues which the Federation can call upon in order to give security for the Federal loans are left in this uncertain state both as to capacity to pay and the willingness to pay ?

Sir Samuel Hoare: I would have thought really that the contingency Dr. Ambedkar is contemplating is a contingency that is not very likely to arise often, and that, if it does arise, it is not the kind of contingency that is going substantially to alter the credit of the Federation. After all, these amounts taken altogether are very small amounts.

8652. *Dr. B. R. Ambedkar:* I do not know what they would be ?

Sir Samuel Hoare: And in the event of a single default.

8653. *Dr. B. R. Ambedkar:* I hope they will not be very small ?

Sir Samuel Hoare: I cannot imagine that that would make much difference to the credit of India.

Sir Akbar Hydari: Is not the financial position of the States, through the exercise of paramountcy, in a much better condition than that of the Provinces through the exercise of the special responsibilities of the Governor ?

Dr. B. R. Ambedkar: I thought the statement made by Sir Mirza Ismail yesterday disclosed a most pathetic state of affairs.

Sir Akbar Hydari : It was still a balanced budget by which he could pay up his tribute all right.

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†11,297. *Dr. B. R. Ambedkar:* My Lord Chairman, I would like to point out to the Secretary of State that the expression which we find in the Government of India Act—"existing and accruing rights"—is an expression which is also found in the South African Constitution Act. I was wondering whether it would not be possible for us to get a statement from the Dominion Office to find out exactly how that expression has been acted upon in South Africa ?

Sir Samuel Hoare : We made an inquiry upon this very point. Dr. Ambedkar, I think, did allude to it during the summer and I have asked the Dominion Office for the information. I have not yet got it, but I am told that the cases are separate and distinct. In the case of South Africa there is no promise of compensation at all.

Sir Manubhai N. Mehta: I think they have it in Australia as well.

11,298. *Dr. B. R. Ambedkar:* I simply wanted to know how the expression, "accruing rights", had been interpreted in South Africa by the South African Government. The expression is exactly the same ?

Sir Samuel Hoare: I will see if I can get it. I asked about South Africa and Australia as well.

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‡11,438. *Dr. B. R. Ambedkar:* There is nothing to prevent a Public Service Commission being appointed for one province or for two provinces ?

Sir Samuel Hoare: No ; we do make provision for that purpose.

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§11,526. *Dr. B. R. Ambedkar:* Might I intervene just for a moment to point out that the result to which Sir Malcolm Hailey has referred, namely, the denudation of the services of the local element, as soon as they are transferred to ministerial control is largely due to the fact that this transfer has also been accompanied by a reduction in the scale of salary. When a service has become provincialised the Minister has adopted a lower scale of salary than was obtainable formerly, and, consequently, the smaller scale of salary has not attracted European candidates ?

Sir Samuel Hoare: Yes ; they have substituted, in other words, 'Imperial' for 'Provincial' services.

Dr. B. R. Ambedkar: It is the salary that has made the difference—not the transfer.

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¶11,669. *Dr. B. R. Ambedkar:* Might I make a suggestion for consideration on this matter ? Instead of giving the right outright to the new entrant would it not be better for the Secretary of State to retain a discretion in his own hands which he may exercise in a genuine case where a man wants to

†Minutes of Evidence, Vol. II-B, 3rd October 1933, p. 1032.

‡*Ibid.,* p. 1056.

§*Ibid.*, p. 1058.

¶*Ibid.,* p. 1072.

retire because he has really been suffering under the new conditions, and does not really want to take advantage of this rule ?

Sir Samuel Hoare: We can consider a suggestion of that kind. 1 assume Dr. Ambedkar's suggestion refers to the new entrants ?

11,670. *Dr. B. R. Ambedkar:* Yes, I am talking of the new entrants. In that case the Secretary of State may retain in his own hands a certain amount of discretion which he may exercise in favour of a man who has genuinely proved to the Secretary of State and his advisers that the reasons of his retirement is discontent and dissatisfaction with the new conditions ?

Sir Samuel Hoare: I should like to consider a suggestion of that kind. The doubt that is in my mind is whether the mere fact that there is this discretion will take away the assurance from the mind of the parent, or the university, or the school from which the young man is coming, but I will consider it.

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†12,025. *Dr. B. R. Ambedkar:* I want to ask one question, Sir Samuel, on these provisions in general. The ultimate purpose of these previous sanction rules would also of course be achieved by the power of veto—the subsequent power of veto which the Viceroy, and the Governors have got; so, from that point of view, there is really not much to be gained by these provisions. I mean although the Viceroy may give his previous sanction he is not thereby bound to adopt the Bill when it is finally passed; he has the power of veto. So, from that point of view, there is not much to be gained by the rules of previous sanction, which could not ultimately be gained by the power of veto ?

Sir Samuel Hoare : I am not sure that I should agree with Dr. Ambedkar. The veto is a sanction of a somewhat different kind. It seems to me it is a bigger and more serious sanction. It comes after the Legislature has formally pledged itself to certain proposals ; I think therefore it is a more serious sanction.

12,026. *Dr. B. R. Ambedkar:* Apart from all that, so far as the main object is to prevent anything affecting adversely the special responsibilities of the Viceroy, the veto is an effective measure ?

Sir Samuel Hoare: I was just coming to that second consideration. The veto has a long history behind it, and judged by British experience generally, the veto becomes more and more in course of time something in the nature of a constitutional formality.

12,027. *Dr. B. R. Ambedkar:* But what I wanted to say was this. So far as I am able to judge the only distinction that one could draw between the effect of a previous sanction rule and ultimate veto is that the one, namely, the previous sanction, prevents discussion, while the veto does not. Is that not so ?

Sir Samuel Hoare: It is a difference.

†Minutes of Evidence, Vol. II-B, 5th October 1933, pp. 1118-19.

12,028. *Dr. B. R. Ambedkar:* That is a difference. Now, what I want to point out to you, Sir Samuel Hoare, is this : Surely if discussion is to be prevented because it is going to attack the special responsibility of the Viceroy, you will bear in mind that this previous sanction rule certainly cannot operate to prevent discussion, either in the Press or on the public platform outside the Legislature, and cannot even prevent a public demonstration on an issue that would legitimately be brought under a previous sanction rule, so the only thing really that would happen under this is that while the public and the Press may be free to agitate and to demonstrate on a matter covered by the previous sanction rule, the only body that would be muzzled would be the Legislature ?

Sir Samuel Hoare : That is one way of putting it; it is Dr. Ambedkar's way of putting it.

12,029. *Dr. B. R. Ambedkar:* Is it not a fair way of putting it ? Surely the Viceroy's previous sanction powers are not going to be so widely extended in their operation as to cover the prevention of any discussion of a matter subject to previous sanction, either in the Press or in public meetings, or anywhere else ?

Sir Samuel Hoare: I think these certainly will be discussion of that kind. None the less, I do think there is a difference between discussion in the Legislature, and the comparatively irresponsible discussion outside. Secondly, this sanction of the previous consent has been in operation for some time and it was accepted generally as a Part of the New Constitution at each of the Round Table Conferences. Thirdly, if Dr. Ambedkar will look at the categories set out in paragraph 119 he will see that for each of them there is a considerable demand for some kind of special precautions. For instance, if he will take the question of religious rights and usages ; there he must have noticed the very strong feeling that certain sections of the orthodox Hindus have upon the subject. He does not agree with them ; he thinks they are all wrong. At the same time, they do hold these views very strongly, and they would like questions of that kind excluded from the Indian Legislature altogether. Now, we have attempted to adopt a midway attitude between the two points of view and so on. With each of those categories I could make a similar defence, that there is a considerable body of opinion asking for some special precautions in these directions.

12,030. *Dr. B. R. Ambedkar:* What I was trying to drive at was this that while a member of the Legislative Council and a member of the Legislative Assembly may be free to discuss these matters outside in public, they will not be free to discuss them when they come inside the Legislative House. That is the only difference you are making by this previous sanction rule ?

Sir Samuel Hoare: They can have resolutions, but that is substantially the case.

12,031. *Dr. B. R. Ambedkar:* Now I just want to make one suggestion with regard to the point raised by Mr. Jayakar regarding the use of the

expression "religion and religious usages", because that is a thing in which I am so vitally concerned. I am just making the suggestion whether it would not be sufficient to use the expression "articles of faith" rather than the phrase "religion and religious usages" ?

Sir Samuel Hoare: I would have thought that articles of faith would have occasioned almost the same kind of controversy.

12,032. *Sir Hari Singh Gour:* More so ?

Sir Samuel Hoare: And the trouble of a new phrase of that sort, I would have thought, would have concentrated upon it more varieties of interpretation even than the old phrase.

12,033. *Dr. B. R. Ambedkar:* I suggest that as far as possible the word "usage" ought to be avoided ?

Sir Samuel Hoare: I will take note of what Dr. Ambedkar has said.

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†12,751. *Lord Rankeillour:* Secretary of State, on that would not it be possible for the Central Government to carry out the contemplated orders arising out of Federal legislation and to charge the Province with the cost ?

Sir Samuel Hoare: There is no machinery for getting the money.

12,752. *Lord Rankeillour:* But the money for the Provinces comes through the Central Exchequer, does it not ?

Sir Samuel Hoare: Income Tax would.

Dr. B. R. Ambedkar: I think the answer to Sir Austen Chamberlain's question may be given somewhat in this form. So far as the concurrent legislation is concerned, it is, I think, laid down in one of the paragraphs of the White Paper that any law in the concurrent field passed by the Federal Legislature will override a similar law passed by the Provincial Government. Consequently, if there was a conflict of law passed in the concurrent field between a law passed by the Centre and one passed by the Province, *ipso facto,* by the provisions of the White Paper itself the Federal Law will have an overriding force as against the Provincial Law.

Sir Austen Chamberlain: That is so. That is the point that I put earlier to the Secretary of State.

Dr. B. R. Ambedkar: That is I think the position so far as the legislation is concerned.

Sir Austen Chamberlain: So I understand.

Dr. B. R. Ambedkar: So far as administration is concerned, I think the position will be that the Federal Executive will have the authority to issue directions and instructions to the Provincial Government through the Provincial Governors with regard to the administration of a concurrent law passed by the Federal Legislature, and the Governors, I think, would be bound to obey them.

Marquess of Reading: That is exactly the point upon which the Secretary of State has given an answer in the negative.

†Minutes of Evidence, Vol. II-B, 10th October 1933, p. 1130.

Sir Hari Singh Gour: There would be the penal clause that he who runs an unauthorised paper will be punished.

Dr. B. R. Ambedkar: Might I give another example which comes to my mind ? Supposing for instance in a state of emergency the Central Government passes a Press Act under which provision is made that no paper may be started unless it deposits a certain amount of security. Now that sort of legislation is not going to affect any particular private individual. Supposing there is a paper in a particular province which is helping the Government of the day—a Party paper. Supposing that paper is influencing the Press Act passed by the Central Legislature, and supposing on account of that affiliation between the particular newspaper journal and the Government of the Province, the Government refuses to take any action against that particular paper, what is the position ? Surely no individual is affected in this particular case ?

Sir Hari Singh Gour: There would be the penal clause that he who runs an unauthorised paper will be punished.

Dr. B. R. Ambedkar: That is exactly the point.

Sir Austen Chamberlain: And has to have the information and all the machinery for reaching the Government.

Dr. B. R. Ambedkar: If he charges a particular officer to carry on the prosecution and the local government pays the expenses of that prosecution and does not make provision for it in the budget, what is to happen ?

Sir Samuel Hoare: I see all those difficulties. At the same time I cannot help seeing the difficulties on the other side. The case mentioned by Dr. Ambedkar is essentially a case of law and order, and law and order is a provincial subject and interest. The interest of the Federation is the interest of uniformity, but that does not affect the fact that primarily that case is a provincial case. If the argument suggested in Dr. Ambedkar's question and in Sir Austen Chamberlain's question, too, if I may say so, is pressed to its logical conclusion, it really does mean that the Federation will control the law and order in the Provinces, and that is directly contrary to the principles as at present drafted in the White Paper.

Dr. B. R. Ambedkar: I beg your pardon. My point is this, if I may submit it; either you must make law and order a purely provincial matter, a provincial concern which the Centre has nothing to do with, and then, of course, you can have the argument which you urged just now, but if you make it a matter of concurrent legislation, then I think the Federation must be in the position to see that the law is corrected.

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†13,129. *Dr. B. R. Ambedkar:* Secretary of State, I just want to draw your attention to the present position of the concurrent field under the Government of India Act. I am anxious to do so because it was suggested to you that under the present Government of India Act only certain subjects or parts of certain subjects are made subject to the Central Legislature.

†Minutes of Evidence, Vol. II-B, 12th October 1933, pp. 1178-81.

The point that I wish to draw your attention to is that, first of all, there are some Provincial subjects which are made specifically concurrent under Part II of Schedule I to the Devolution Rules ?

Sir Samuel Hoare: Yes.

13,130. *Dr. B. R. Ambedkar:* While subjects although they are made Provincial are controlled by the proviso that they are subject to the Central Legislature ?

Sir Samuel Hoare: Yes.

13,131. *Dr. B. R. Ambedkar:* I have made a computation that out of the 51 subjects which are included in Part II of the Schedule to the Devolution Rules, 14 are made expressly subjects to the Central Legislature, or to rules made by the Central Government or the Secretary of State. That is one thing. The second thing is this : That all Provincial matters are subject to concurrent jurisdiction by the Central Government under section 67, sub-clause (2) of the Government of India Act by previous sanction. Although any subject is regarded under Part II as a Provincial subject, it is none the less open to the Central Government to legislate upon the whole of that Central subject provided previous sanction is obtained from the Governor-General ?

Sir Samuel Hoare: Yes.

13,132. *Dr. B. R. Ambedkar:* On the side of the Provincial Government control is exercised by the Central Government on the concurrent field under section 80(*a*), whereby the local legislature of any Province may not with out the previous sanction of the Governor-General make or take into consideration any law for regulating any Central subject or regulating any Provincial subject which has been declared by rule or law as being subject to the Central expressly reserved to the Governor-General in Council by the law for the time being in force. That is the present position ?

Sir Samuel Hoare: Yes.

13,133. *Dr. B. R. Ambedkar:* That is practically all of the Provincial field as also the concurrent field provided the sanction of the Governor-General is obtained ?

Sir Samuel Hoare: Yes ; that is so.

13,134. *Dr. B. R. Ambedkar:* Now under the present proposals the whole thing is completely altered. I mean the concurrent power of the Central Legislature is proposed to be taken away in most of the matters ?

Sir Samuel Hoare: Except in the List 3, yes.

13,135. *Dr. B. R. Ambedkar:* I want next to draw your attention to List 3. I am sorry I lost my paper which I completed, but I think I am right in suggesting that a great many of the subjects included in List 3 are today either exclusively Central or concurrent ?

Sir Samuel Hoare: Yes ; I think it might be said that a number of them certainly are.

13,136. *Dr. B. R. Ambedkar:* Consequently it would be fair to suggest that under the present Government of India Act. Your Concurrent List has

always been treated as predominantly of All-India importance, under the Government of India Act as it is today, they being included either in the purely Central List or in the Concurrent List. My suggestion is that under the Government of India Act the field which is now concurrent was regarded in the Government of India Act as of All-India importance ?

Sir Samuel Hoare: Yes ; I think that generally is so. I think it is inevitable under a unitary form of Government.

13,137. *Dr. B. R. Ambedkar:* Quite so. My suggestion, therefore, Secretary of State, is this : That it would not be quite correct to say that a field of legislation which was under the Government of India Act regarded as of All-India importance is administratively to be hereafter regarded as purely provincial ?

Sir Samuel Hoare : No ; I should draw a great distinction between the conditions under a unitary form of Government and the conditions under a Federation in which the Provinces are autonomous. We are quite definitely changing the form of Indian Government from a highly centralised Government into a Federal Government.

13,138. *Dr. B. R. Ambedkar:* But I am only talking about the importance of the subject, a subject which, upto 1901, was regarded as of All-India importance, could not all of a sudden cease to be of All-India importance and become purely a local matter. I am aware that a great deal of concession has to be made for the new Provincial Government; the fact that the Government of India has upto now been regarded as more than of local importance has always to be recognised ?

Sir Samuel Hoare: I think it is very difficult to make such a comparison when it is admitted that the form of Government proposed is a very different type of Government. I think new conditions enter into the problem as soon as you move away from a unitary Government to a Government of Federation with autonomous Provinces.

13,139. *Dr. B. R. Ambedkar:* I will not press the point further, but I wanted to draw your attention to the fact that these subjects have hitherto been regarded as of more importance than purely Provincial subjects ?

Sir Samuel Hoare: I suppose, however, it would be fair to say that in most of them administration even under a highly centralised Government, has been Provincial.

13,140. *Dr. B. R. Ambedkar:* Yes ; subject to the control of the Centre ?

Sir Samuel Hoare: There again, I do not think that Dr. Ambedkar's comment upon my answer quite covers the whole field. It would not cover the transferred field in the Provinces.

13,141. *Dr. B. R. Ambedkar:* No ; that is so. Next, I want to draw your attention to Proposal 125 and to Section 45 of the Government of India Act. Section 45 of the Government of India Act is what is called the Obedience Clause, and lays down that a Provincial Government shall be under the superintendence or the control in all matters relating to the

Government and its Province and will also diligently and constantly inform the Government of India of its proceedings in all matters which ought in its opinion to be reported so as to give the required information. Now, what I would like to know from you, Secretary of State, is this. What is it that you wish to delete from the provisions and requirements of this Section 45 ? I see you do not want superintendence. That, of course, is obvious when the Provinces become autonomous. You want to retain direction only with regard to those matters which would be non-concurrent ?

Sir Samuel Hoare : Yes.

13,142. *Dr. B. R. Ambedkar:* And there is to be no control ? Now the question that I want to ask is this : Do you desire that the Central Government should be kept informed of what is happening under the field of Provincial administration, and do you desire that the Central Government should have the power to call for information will regard to the administration of any Provincial subject, so that it may inform itself of what is happening ?

Sir Samuel Hoare: No ; we do not have any such general intention. We assume that as soon as you set up a Federal Government you must then have a definite allocation of powers between the Federation and the units. In many respects, the clearer you keep that division, the less likely it is that responsibility should be blurred, and the less likely it is that there will be incessant between the two kinds of Government. Quite definitely, under our scheme—indeed, it is one of the basic principles of it—we now divide up these various duties between the Federation, the Provinces, and the Imperial Parliament.

13,143. *Mr. N. M. Joshi:* May I ask a supplementary question? As regards the point of information raised by Dr. Ambedkar, I want to ask you this: In some cases, the compilation of statistics relating to All-India will be valuable. Such, for instance, as figures of All-India as regards Education. At present, although education is a transferred subject, the Government of India issues an All-India Report. Will the future Government of India possess power to collect information as regards transferred and spend money upon the compilation of an All-India Report ?

Sir Samuel Hoare: Only within the specified Federal field ; anything outside the Federal field must be done by agreement.

Mr. N. M. Joshi: Education is not in the Federal field ?

Lord Eustace Percy: I am sure, Secretary of State, you are bearing in mind that in every Federation, for instance, in America, the research and statistical departments of the Federal Government go far beyond the Federal field.

13,144. *Mr. N. M. Joshi:* For instance, in America, they do publish an Educational Report for the Whole of the United States ?

Sir Samuel Hoare: Yes. If Lord Eustace will look now at Appendix VI List 1, he will see there that we have covered his point, that the Census and so on included in the Federal field, and there, I think, we must consider the

point of All-India statistics generally—statistics, that is to say, for the purpose of Federation.

13,145. *Lord Eustace Percy:* I do not understand quite why it is necessary to limit it in that way. There is no reason why a Federal Government should not publish information and why its information should be entirely confined to the Federal field. It is not so in any other Federation I have ever heard of ?

Sir Samuel Hoare: But, surely a Federal Government can only act for the purposes of Federation. A Federal Government has no *locus standi* outside the field of Federation.

13,146. *Lord Eustace Percy:* Of course, it cannot publish a report on the intellectual and moral progress of India if the Provincial Governments will not supply the information, I agree, but that hardly need be anticipated ?

Sir Samuel Hoare: I do not think there is any difference of opinion between Lord Eustace and myself; my comment was only directed towards keeping this kind of activity within reasonable limits. If a Federal Government constantly worried Provincial Governments for all sorts of information that had nothing to do with the Federal Government. Then, I can foresee constant difficulties arising between them.

13,147. *Dr. B. R. Ambedkar:* Might I give this instance which comes to my mind ? Supposing, for instance, in a particular Province, criminal proceedings are taken against a foreigner and reference is made by his Government to the Government of India with regard to the proceedings taken against this particular foreigner in a Province, and the Government of India needs information in order to deal with the subject. Would the Government of India be in a position to require the Provincial Government to furnish information with regard to that subject ?

Sir Samuel Hoare: Yes, and also to take action. It would come within the field of foreign affairs.

13,148. *Dr. B. R. Ambedkar:* I submit that law and order would be a transferred subject ?

Sir Samuel Hoare: That may be so, but foreign affairs have special reservation. This Clause 125, which you are discussing now, I think, would cover that. Foreign affairs is a Federal subject. Under the second paragraph of Clause 125 the Federal Government could give directions to the Provincial Government.

13,149. *Dr. B. R. Ambedkar:* I mean, you see the necessity of the Central Government obtaining such information as is necessary for its purpose ?

Sir Samuel Hoare: Certainly, and I accept the need.

13,150. *Dr. B. R. Ambedkar:* I thought I would draw your attention to it because I do not find the information in Proposal 125 ?

Sir Samuel Hoare: I think that presupposes obtaining the necessary information from the Provincial Government. It is intended to anyhow.

13,151. *Dr. B. R. Ambedkar:* Now, with regard to Proposal 114, there is a proviso tacked on to it that the concurrent power shall not be exercised so as to impose a financial burden. What I would like to know is this. If there is a dispute that a particular proposal does impose a financial burden, one party contending that it does not, another party contending that it does, now is this dispute to be resolved ? Largely and broadly, for instance, the Central Government proposes new service to be carried on by the new Provinces, one could draw the conclusion that such a thing would impose a financial burden, but there might be cases on the border-line where there might be a dispute ?

Sir Samuel Hoare: As the provisions stand at present, recourse would be to the Federal Court. That may not, however, be sufficiently comprehensive a method and, as I said the other day, we are considering the possibility of some kind of arbitral procedure to apply in cases that were not suited for settlement by the Federal Court.

13,152. *Mr. M. R. Jayakar:* It would fall at present under paragraph 155(i) ?

Sir Samuel Hoare: Yes, the Federal Court.

13,153. *Dr. B. R. Ambedkar:* There is just one more question I would like to ask you, Secretary of State, because I am not clear about it What I want to know is this : With regard to these administrative relations, first of all, is the Central Government bound to employ the Provincial Governments as its agents ?

Sir Samuel Hoare: Yes, in the concurrent field.

13,154. *Dr. B. R. Ambedkar:* It is bound to?

Sir Samuel Hoare: Yes.

13,155. *Dr. B. R. Ambedkar:* It cannot employ its own agents ?

Sir Samuel Hoare: It is our intention that the administration in the concurrent field should be Provincial.

13,156. *Dr. B. R. Ambedkar:* Subject to a question of whether its directions can be given or not—that is another matter ?

Sir Samuel Hoare: Yes.

13,157. *Dr. B. R. Ambedkar:* Then it would also follow that the Provincial Governments are bound to take up the work of the agency of the Central Government if they are called upon ?

Sir Samuel Hoare: Yes, under the Federal Law.

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†13,411. *Dr. B. R. Ambedkar:* Also the fact that the backward classes are included in the Communal Award by having a certain number of seats assigned to them. Would that not also bring them under the definition of "minorities" ? I mean if, as you said just now, the minorities would be those communities that are covered by and included in the Communal Award, I should imagine the Backward Classes also would be included in the Communal Award ?

† Minutes of Evidence, Vol. II-B, 17th October 1933. p. 1206.

Sir Samuel Hoare: I think after this discussion I had better look once again into this very difficult question of these comparatively small bodies of people scattered about outside the Excluded Areas, and perhaps Members of the Committee and the Delegates, will also think over the best way of meeting what appears to be a rather general desire.

13,412. *Dr. B. R. Ambedkar:* Might I draw your attention, Secretary of State, to the peculiar position occupied by the Criminal Tribes. The Criminal Tribes are more or less scattered in 'the general population. I am speaking of the particular experience of Bombay ; I suppose it is so in other Provinces. Now in order to protect the Criminal Tribes, which are, as I say, scattered in the general mass of the population, there is, I think, a Government of India Act called the Criminal Tribes Act. I am giving an illustration in order to suggest a method of protecting them. That Act gives the Governors some powers to make regulations with regard to the movements of these people and their interests. Would it not be possible for the Governor under paragraph 108 to pass some such regulation affecting the mode of living or protection of these people, although they may be scattered ?

Sir Samuel Hoare: It would only be possible under these clauses in the Excluded and partially Excluded Areas.

13,413. *Dr. B. R. Ambedkar:* What I wish to put to you is this : Would it not be open, for instance, to the Governor under paragraph 108, once he has got a definition of a person belonging to a tribal area or an aboriginal class, to make certain legislation affecting him whether he stayed in the Excluded Area or whether he stayed in the population, as is the case with the Criminal Classes ? The legislation of the Criminal Classes affects the members of the particular tribe no matter where he stays ?

Sir Malcolm Hailey; The Criminal Tribes Act is no longer a Government of India Act They have become matters of Provincial Legislation. The Criminal Tribes Act gives to the Local Government not specifically to the Governor, power to control the movements, to register and restrict in various ways persons who fall within the definition of Criminal Tribes as notified by the Local Government Therefore it would be difficult to apply that analogy to the extension of the special protection of the scattered aboriginals or Backward Classes. In any case, that is a matter which the local Legislature could undertake now of its own initiative. My point was that it gives no special power to the Governor as apart from the Local Government

13,414. *Dr. B. R. Ambedkar:* But under paragraph 108 the Governor could, for instance, by notification classify people as belonging to aboriginal or Backward Areas, and then pass legislation affecting them, no matter where they stayed ?

Sir Samuel Hoare: I do not think he could do that under paragraph 108. Under paragraph 108 he could only deal with people living in the scheduled territory.

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†13,530. *Dr. B. R. Ambedkar:* I want to ask you one or two questions to clear up the financial side of this problem. I want to ask a question, first of all, with regard to financing what are called the partially excluded areas ?

Sir Samuel Hoare: Yes.

13,531. *Dr. B. R. Ambedkar:* I take it that there would be a common budget, the provincial budget, in which the moneys provided for the partially excluded area would also be included ?

Sir Samuel Hoare: Yes.

13,532. *Dr. B. R. Ambedkar:* In that case, the whole budget, of course, would be open to discussion by the Legislature ?

Sir Samuel Hoare: Yes, subject to paragraph 109.

13,533. *Dr. B. R. Ambedkar:* I am coming to that. It is only when the Governor exercises his special responsibility under paragraph 70 that they would go outside the purview of the Legislature ? Is not that so ?

Sir Samuel Hoare: Yes, and paragraph 109.

13,534. *Dr. B. R. Ambedkar:* But ordinarily they would be part of the provincial budget ?

Sir Samuel Hoare: Yes.

13,535. *Dr. B. R. Ambedkar:* I want to ask a similar question with regard to the wholly excluded areas. I find that the special responsibility of the Governor under paragraph 70(*f*), is confined to partially excluded areas only?

Sir Samuel Hoare: Yes.

13,536. *Dr. B. R. Ambedkar:* That means that for the administration of the wholly excluded areas the Governor could not draw upon the provincial funds?

Sir Samuel Hoare: Dr. Ambedkar's very acute mind has discovered a gap in the White Paper. That is so.

13,537. *Dr. B. R. Ambedkar:* He could not draw upon them ?

Sir Samuel Hoare: As drafted he could not draw upon the provincial funds. It is an omission that we propose to set right in any final draft.

13,538. *Dr. B. R. Ambedkar:* Another paragraph is 49 to which I also want to draw your attention in this connection. There sub-clause (v) says that the expenditure required for excluded areas shall be the special responsibility of the Governor-General ?

Sir Samuel Hoare: Yes.

13,539. *Dr. B. R. Ambedkar:* Do I take it that in the administration of the wholly excluded area the Governor, who presumably would be the agent of the Governor-General, would have to depend upon such moneys as may be supplied to him by the Governor-General in the exercise of his special responsibility ?

Sir Samuel Hoare: No; the Governor himself will ask for the money from the Province.

† Minutes of Evidence, Vol. II-B, 17th October 1933, p. 1218.

13,540. *Dr. B. R. Ambedkar:* So you do propose to amend the provision dealing with the special responsibilities of the Governor to enable him to draw upon provincial funds for the administration of the wholly excluded areas also ?

Sir Samuel Hoare: Yes.

Mr. M. R. Jayakar: Does it not now fall under paragraph 96, sub-paragraph (*b*) : "The Governor will cause a statement of the estimated revenues", etc., and then you have given power to specify separately those additional proposals (if any), whether under the votable or non-votable heads, which the Governor regards as necessary for the fulfilment of any of his "special responsibilities". Special responsibilities include expenditure to be spent on the partially excluded areas.

13,541. *Dr. B. R. Ambedkar:* I am talking about wholly excluded areas ?

Sir Samuel Hoare: The point Dr. Ambedkar has raised deals with totally Excluded Areas and, by an error in drafting (it is nothing more than that) it would appear that the Provincial Governor, while he could draw upon the provincial funds for partially Excluded Areas, could not draw upon the provincial funds for the totally Excluded Areas. That is an omission in drafting.

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†13,722. *Dr. B. R. Ambedkar:* Might I ask just one question arising out of the questions put by Mr. Joshi. I just want to draw the attention of the Secretary of State to a difficulty which I feel. Under paragraph 109 as drafted the distinction made between the Excluded Area and the partially Excluded Area is on the basis that in the partially Excluded Area discussion is possible or the Governor has the power to disallow it, while in the case of an Excluded Area, the Governor is prohibited from allowing any discussion. My difficutly is this : Yesterday, I think in answer to a question by Major Attlee, you stated, Secretary of State, that the contribution which the Centre was bound to make to Assam in order to cover the deficit arising out of the Excluded Area there was not to be an earmarked amount but was to be part of the general revenues of the Province of Assam. I suppose I am correct in saying that that was what you stated ?

Sir Samuel Hoare: I think I left the question somewhat open as to whether it should be a specific grant or whether it should be merged in the general grant.

13,723. *Dr. B. R. Ambedkar:* The impression that I formed was that you said you did not think that it would be an earmarked amount ?

Sir Samuel Hoare: No. I think what I said, or anyhow what I intended to say, was that in the figures that we had been discussing we had assumed that it would be part of the general fund, but as to whether that was the best way of dealing with it I had an open mind.

13,724. *Dr. B. R. Ambedkar:* Very well. I will take another aspect of the thing. In answer to a question which I put you stated that *so* far as the

† Minutes of Evidence, Vol. II-B, 18th October 1933, pp. 1223-24.

financing of the Excluded Area was concerned you were going to rectify the omission in the White Paper and allow the Governor of the Province to draw upon the general fund of the Province of Assam for the expenditure that he was likely to incur under the Excluded Area ?

Sir Samuel Hoare: Yes.

13,725. *Dr. B. R. Ambedkar:* The difficulty that I feel is this, that if the Governor is to have the power to draw money from the Provincial Fund of Assam in order to carry on that administration in the Excluded Area, is it consistent with this provision in paragraph 109 that the Legislature should be altogether prohibited from discussing the affairs of the Excluded Area which is supposed to provide that money ?

Sir Samuel Hoare: I think Dr. Ambedkar does raise a difficult case. It is not a case in which a very large sum is involved, for this reason, that by far the greater part of the expenditure upon the totally Excluded Area of Assam will be found from Federal funds, but I think it may be assumed that there will be a sum in addition to that needed.

13,726. *Dr. B. R. Ambedkar:* As you said yesterday, in all these areas where there will be partially Excluded Areas the Budget would be a common Budget, unless, of course, the Governor certified an extra amount under his extra responsibility, in which case the Budget as a whole would be placed before the Legislature and open to discussion. I do not see how the difficulty would be got over ?

Sir Samuel Hoare: We had considered the advantage in a case of that kind of proceeding, say, by a contract but get over a period of years. What I am anxious to avoid are frequent discussions.

13,727. *Dr. B. R. Ambedkar:* I suppose the purpose could be best served by having a common provision for both, prohibiting discussion and allowing the Governor the power to prohibit it or disallow it, whichever he thought necessary ?

Sir Samuel Hoare: It was pressed upon us very strongly by the people working in these tracts that there was a great advantage in excluding discussions in the case of the totally Excluded Areas, but I have always seen the difficulty of the expenditure in Assam from provincial funds. I think the Committee and the Delegates might consider whether supposing there was a contract budget for a period of years when the contract was renewed there might then be a discussion; but even that (I say it so that the Committee should know the whole position) is contrary to the views of a good many of the experts.

13,728. *Dr. B. R. Ambedkar:* But I suppose the purpose of the experts and the purpose that you have in view would be very well served by having this power of the Governor to allow a resolution and discussion ?

Sir Samuel Hoare: What we wanted to avoid was the Governor constantly having to refuse discussions of this kind. It would put him into a difficult position, and we do not. contemplate in the case of totally Excluded Areas that there would be discussions, and we do not want to take any action

that would appear to permit discussions that we think would be harmful to the area ; that is what it comes to.

Dr. B. R. Ambedkar: I was only suggesting that the Governor's power would be adequate protection against that That is all I ask.

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†13,923. *Dr. B. R. Ambedkar:* Might I ask one question on that point ? As I understand it in the concurrent field there will be an appeal to the Privy Council from the decisions of the High Court ?

Sir Samuel Hoare: Yes.

13,924. *Dr. B. R. Ambedkar:* What I do not understand is this, if there can be an appeal to the Privy Council in an issue arising out of an interpretation of the concurrent law in the concurrent field, what difficulty can there be in allowing such an appeal to the Federal Court ?

Sir Samuel Hoare: One of our reasons anyhow is that we do not want to flood the Federal Court with an enormous amount of work and the demand for a very large number of Judges at the beginning.

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‡14,373. *Dr. B. R. Ambedkar:* Secretary of State, I just want to ask one question about paragraph 155. This para 155 relates to exclusive original jurisdiction of the Federal Court. I do not understand the distinction that seems to be made there. I find on reading paragraph 155 that you make a distinction in the matter of the exclusive original jurisdiction of the Federal Court on the basis that where the parties to the dispute are as there mentioned in sub-clauses (*a*) and (*b*), the exclusive original jurisdiction is given to the Federal Court, but the Federal Court cannot have an exclusive original jurisdiction if the parties are private individuals. Now the question I would like to ask is this. The issue in both cases is the same, namely, the constitution issue involving the interpretation of the Constitution Act. What I do not understand is this. Why there should be this distinction in the matter of an exclusive original jurisdiction of the Federal Court based on parties when the issue is the same ?

Sir Samuel Hoare: I think this is what usually happens with Federal Courts that the original jurisdiction is jurisdiction between units, and it is in the appellate jurisdiction that the individual comes into it as of right

14,374. *Dr. B. R. Ambedkar:* I mean, if the intention is that where, for instance, the interpretation of the Constitution Act is involved, the matter should at once go to the Federal Court, then I think there can be no distinction made whether the parties are parties which are units of the Federation or of individuals ?

Sir Samuel Hoare: I would have thought that this was one of the necessary working conditions of a Federal Court. I think if it had original jurisdiction in individual cases as well it would be entirely swamped with cases.

† Minutes of Evidence, Vol. II-B, 19th October 1933, p. 1247.

‡ *Ibid.,* dated 20th October 1933, p. 1292.