

India. That, I submit, is something which is without justice and without equity in it, and it is something to which I, for myself, can never consent. The only right thing and the only proper thing, would be that the voting strength of such Princes as would be willing to come into the Federation should be confined to the particular quota of votes that will be assigned to them under the arrangements proposed by Sir Mirza Ismail. If a single Prince comes in, and if he has one representative, he will be entitled to one vote. If groups of Princes come in, and under the system proposed by Sir Mirza Ismail the group has got two votes assigned to it, the group will have to come as a group and will not have the power to exercise more than its two votes. The other arrangement would be one to which I, at least, would be unable to give my consent.

Thirtieth Sitting—25th September 1931

HEAD 4

(Distribution of Financial Resources between the Federation and its Units)

**Dr. Ambedkar:* I attach a very great deal of importance to the point which has been raised by Sir Muhammad Shafi. I hope that you will provide us with an opportunity, at least later on, to discuss this question—whether this recommendation made by the Federal Structure Sub-Committee of the division of subjects into “Central” and Federal should be incorporated in the Constitution. Another point which I would suggest for your consideration is whether it would not be proper first to consider that subject, and then to refer this matter to the Finance Sub-Committee, or whether you should have the Finance Sub-Committee and then consider this matter afterwards. That is a matter for your consideration. I should have thought that it would be much better for us to come to some conclusion, one way or the other, whether we retain this dichotomous division in the constitution, or whether we had not better hand over those subjects to the Sub-Committee for consideration.

Thirty-fourth Sitting—14th October 1931

HEAD 4

(Distribution of Financial Resources between the Federation and its Units)

Discussion on the Report of the Federal Finance Sub-Committee

†Dr. Ambedkar: My Lord Chancellor, we have heard the debate that has been going on for the last two days on the Report of the Finance Sub-Committee, and I am afraid that the debate has become somewhat wearisome and tiresome. I should not have intervened in this debate at all if I had

^{*}Proceedings of the Federal Structure Committee and Minorities Committee, Vol. I, p. 418.

[†]*Ibid.*, pp. 529-34.

not found myself in disagreement with the majority of the recommendations made by the Sub-Committee.

The first problem with which the Sub-Committee has dealt is the problem of the division of resources between the Federal Government and the Units ; and, in making the recommendation which the Sub-Committee has made, it has proceeded upon certain principles applying to the division of resources as between the Federal Government and the Units. Those principles are referred to in paragraph 8 of the Report, and there it is suggested that a proper system of allocation of revenues between the Federal Government and the Units would be that "indirect" taxes should go to the Federal Government and "direct" taxes should go to the Units. Now, that is a principle to which I venture to take exception : and the first thing that I would say is this, that this is something which has no foundation in precedent at all. I have examined with much care the constitutions of most of the Federal Governments, and I find that there is no authority for the principle which has been enunciated in paragraph 8 of the Finance Sub-Committee's Report. Take, for instance, the Constitution of Canada, Section 91 and Section 92. There the scheme laid down is that the Provincial Governments in Canada are restricted to what are called "direct" taxes, but the Central Government is not restricted to "indirect" taxation. The liberty of the Central Government to have either a "direct" tax or an " indirect" tax is kept intact in Canada. If you take the Australian Constitution, Sections 86, 69 and 90, you will see that the same result is arrived at, although by a different method. These sections provide that the States shall not levy Customs and Excise. Of course, from that it does not follow that the Central Government in Australia can levy only Customs and Excise. There again the liberty of the Central Government in Australia to levy "direct" taxation is preserved intact. The Sub-Committee has made a reference to the fact that the system which it described in paragraph 8 of the Report prevailed in the United States until the 16th Amendment to the Constitution was passed in 1913. I beg respectfully to submit that that is an error. The United States Constitution, even as its very inception, never laid any limitation upon the power of the Central Government in the United States to levy " direct" taxation. If you refer to Article I, Section 2, of the United States Constitution, you will find distinct provisions stating that the Central Government in the United States shall have liberty to levy "direct" taxation. The only limitation that was put upon the authority of the Central Government in the United States to levy "direct" taxation, was that "direct" taxation, if levied at all, was to be apportioned amongst the various States according to population. The only provision that was made by the amendment of 1913 was that this limitation upon "direct" taxation on the part of the Central Government—namely, apportionment according to population—was abolished. But the right existed from the very start. Not only so, but it was exercised in 1864 by the United States,

and also in 1894. The only country which had for some time a system, which was in accordance with the proposition enunciated by the Committee, was Switzerland. There the Central Government was entirely dependent upon "indirect" sources, while the Cantons had the power to levy "direct" taxation. But I do not suppose that any member of this Committee would really be so bold as to draw a moral from the experience of Switzerland for the purposes of the Indian Federation. There would be no purpose in comparing, if I may say so, chalk with cheese. And, even there, the Swiss Constitution had to give up this system in 1915 and permit the Central Government to levy "direct" taxation on the citizens of the State. Consequently, in so far as this proposition is going to serve as a direction to the Expert Committee that is to be appointed, I am unable to give my concurrence to it.

Coming now to the actual division of resources proposed by the Sub-Committee in paragraph 10, of course, the only test that would be applied to this allocation is the test of adequacy. Is the allocation made in paragraph 10 such as to give both to the Central Government and to the Units the necessary adequacy of revenue ? Now, it is not possible to examine the scheme by that test, because—without meaning any offence to the Sub-Committee—the Report is absolutely bare of the necessary Budget Estimates that one would have to have before oneself in order to say whether the allocation is adequate or not. The division seems to have been based on the assumption that the welfare functions are largely Provincial, and that therefore the Provinces must get expanding sources of revenue. That, of course, is true in the main ; but, in so providing, it seems to me they have denied to the Federal Government both adequacy and elasticity in its fiscal system.

Take the revenue side of the proposals as contained in paragraph 10 of the Report of the Sub-Committee. You have first of all Customs as a source of revenue. Now, there are various factors on which the Customs revenue would be dependent. First of all, it would be dependent upon trade prosperity or trade depression. In times of depression it is obvious that exports would be reduced, and also the consuming power of the people, and to that extent imports would also be reduced ; and that would mean a direct reduction in the Customs revenue. Secondly, this source of revenue is largely dependent upon the particular kind of tariff policy that will be pursued in times to come. It may be that there may come into power in India a party which may believe in absolute protection, creating a dead wall against any imports of any sort from outside that are likely to compete with industry and products at home. If that happens—if imports are shut out by a policy of extreme protectionism—that would cut at the root of the Customs revenue. If, on the other hand, there comes a party in power which believes in free trade and no protection, that again will make the Customs revenue a very bare and slender source for the Federal Government to depend on.

And now, let us take the second source of revenue for the Federal Government—Opium. According to the Government of India's Despatch, I find the

Government of India say that we shall lose all our revenue on Opium exports, which amounts to about 2 crores, but shall still retain a small sum of 10 or 15 lakhs from the sale of medical Opium. That shows how meagre is this source of revenue for the Federal Government.

The third source of revenue which has been assigned to the Federal Government by the Sub-Committee is the Salt-tax. Now, as we all know, this source has been a matter of contention and has been dragged into the vortex of Indian politics; and, if the Congress Party had its way, this tax would vanish altogether. Now, apart from the question of whether the Congress would succeed in removing the tax altogether, it is absolutely certain that this tax, which is so intimately bound up with the standard of living of the ordinary masses of the people in India, can never be depended on to give a very large source of revenue to the Federal Government.

Lastly, you have the Corporation tax, which is suggested by the Sub-Committee as a source of revenue for the Federal Government. I am informed that its yield is somewhere about 3 crores, so that obviously it is at the present moment a source of very small dimensions. It seems to me that, if we agree that industrialisation is a very important thing for the prosperity of India, and if we further agree that, for industrialisation, the incorporation of capital is also necessary, then I am afraid that we cannot increase this tax to any very large extent, for fear of penalising incorporation.

This is what I feel regarding the revenue side of the Budget. Coming to the expenditure side, the Sub-Committee has proceeded upon the view that the Government at the Centre will have very little to do except to defend. I do not agree that that can be the view of the function of any government in modern times. There was a time in history when people thought that the proper function of a government was to provide for nothing but anarchy plus the constable; but I think we have changed. We believe that the government must provide the constable, but it must also provide welfare. It seems to me—this is my personal view, the view of other members may be different—that the Government at the Centre, for some time at any rate, will have to take upon itself certain welfare functions which to my mind are peculiar to India. I think, and I am going to propose elsewhere, that the Government at the Centre should take upon itself the burden of securing and helping, to some extent at any rate, the welfare of what we call the Depressed Classes. I want that the problem of the Depressed Classes, and the problem of removing Untouchability, should not hereafter be looked upon as a purely Local or Provincial problem. I want that it should be looked upon as a national problem in which the whole of India is interested. I want the Government at the Centre to take upon itself the duty of bringing the jungle tribes, which number probably as many as the Depressed Classes themselves, within the pale of civilisation. I want that Government to take

upon itself certain functions in respect of what are called the "backward tracts". In other words, my submission is that the Government at the Centre should take at least such welfare functions upon itself as will guarantee what I call the minimum of civilised life to every individual and to every community.

Then, again, there may be such afflictions as may affect the whole of India, or as may affect a particular Province and which yet may not be within the competence of that particular Province to deal with. Take, for instance, the curse of malaria. In some Provinces, it is a small malady. In some Provinces, I am told that it is eating into the vitals of the people. The Province may not be sufficiently strong, economically or financially speaking, to eradicate it. It may have to be treated as a national problem, and to that extent the national government will have to take a welfare function upon itself.

Again, the Sub-Committee does not seem to have taken into account the fact that, for certain peculiar reasons, apart from reasons which would be common to all the provinces, the Federal Government may have to give certain subventions, for instance, subventions to the North-West Frontier Province, for the peculiar burdens it may have to bear by reason of its special connection with Imperial problems. Similarly, new Provinces may come into being, and, in order that they may be sustained, the Federal Government may have to give them subventions.

Now, it seems to me that, if you take a broad view of the expenditure side, as I have tried to explain, and compare it with the revenue side as is proposed in this Sub-Committee's Report, it should not be at all an exaggeration if I said that the fiscal system which is adumbrated for the purposes of the Federal Government will be such as will enable it to keep its nose just above the water in ordinary times: and even that may not be so. What is absolutely certain is that, with any gust of adverse wind, it will sink.

Now, take the provisions suggested by the Sub-Committee in paragraph 21 regarding emergency—I ought to say grave emergency. Now, the recommendation made by the Sub-Committee is that the Federal Government should have power to call for contributions from all the Units of the Federation. The question that arises in my mind is, is this a safe and a sure method? Is this a method which would be a dependable method in all circumstances? As regards the willingness of the Provinces to pay contributions in a grave emergency to the Federal Government, a view was expressed yesterday by an esteemed colleague. He said that, if the Provinces were to help the Federal Government in a grave emergency with contributions, then the Provinces should have the discretion in determining whether an emergency has arisen or not. Now, I do not think that that is a view that will be accepted by all; but that view is surely indicative of

one thing—namely, that the Provinces will not be willing co-operators in meeting the deficit of the Federal Government in an emergency that may arise. Could the States be depended upon to meet their share of the contribution in an emergency? I have raised that question, but I do not know that I should give the answer. In any case it seems to me that it is not a dependable method. As to the solvency of the Provinces, we can be more or less certain. About the solvency of the States in an emergency, for emergency purposes, I, for one, could not be certain of that. Therefore, My Lord Chancellor, my conclusion is that, for the purposes of adequacy, for purposes of elasticity and emergency, the best course would be to widen and broaden the basis of the financial system of the Federal Government. Therefore, my proposal would be that the Income-tax should be treated as a common source of revenue both for the Federal Government and for the Provincial Governments, so that each Government will have the inherent right and authority to tap that source, whenever there is any necessity for it, without having to depend upon such contributions as are contemplated in paragraph 21.

Now, while I am dealing with this, I should like also to make certain observations as to the method of sharing this Income-tax. Before I do so, let me enunciate two propositions. The first is that in any allocation that we may ultimately agree upon between the Federal Government and the Units—I am speaking particularly of the Provinces of British India—we should so contrive matters that the Provincial finance shall be a self-contained system not dependent upon doles or upon contributions. Secondly, I should so contrive the Provincial system of finance that it would not be destructive of that sense of responsibility which every Executive must feel towards its Legislature.

Chairman: Do I rightly interpret your remarks, that it would be most important to get all the Provincial matters into order as soon as possible? I quite agree with your laying down a canon with regard to Provincial finance, and I gather you mean that all these Provincial questions should be settled as soon as possible.

Dr. Ambedkar: They should be. My submission, following these two propositions, is that I would not approve of such a division of the Income-tax as would permit the Federal Government to fix the rate of taxation and to divide the yield between the Provinces, and itself. I would allocate the basis of taxation, one base to the Federal Government, and another to the Provincial Government. I want the system recommended by the Taxation Enquiry Committee introduced so far as the division of the Income-tax is concerned. I should allocate “personal income” to the Provinces, and the rest of it to the Federal Government, and the rate on “personal income” should be fixed by each Province, and not by the Federal Government, according to its own necessity.

Thirty-fifth Sitting—15th October 1931**HEAD 4***(Distribution of Financial Resources between the Federation and its Units)***Discussion on the Report of the Federal Finance Sub-Committee**

**Dr. Ambedkar:* My Lord Chancellor, yesterday I pointed out that the fiscal system devised by the Sub-Committee for the Federal Government appeared to me to be inadequate and inelastic, that it was not equal to the strain which was likely to be put upon it by reason of any emergency, and that it was necessary therefore to alter the allocation of the revenues proposed by the Sub-Committee by making the Income-tax a common source of revenue for both. I also said that, in devising a scheme of allocation of resources, two propositions ought to be kept in mind. One was that the system of finance, whether Federal or Provincial, should be autonomous and self-sufficing; and, secondly, that it must not impair the sense of responsibility which the Executive must bear towards the Legislature. It will be obvious that those subventions or contributions are inconsistent with an autonomous and self-contained system of finance. They are bound to impair the sense of responsibility in the Executive towards the Legislature, and they are likely to make the Legislature indifferent to the Executive. Power to refuse supplies and power to refuse appropriation of supplies already secured from outside, are not equally efficacious methods of controlling the Executive and bringing it into conformity with the wishes of the Legislature. From this point of view, the problem of dividing sources of revenue becomes of immense importance. You may divide them in such a manner that the division will make each authority autonomous and self-sufficient, or you may divide them in such a manner that the fiscal system resulting therefrom would not be autonomous and could not be self-sufficient without adjustment by means of subventions and contributions.

In suggesting the particular method of dealing with the Income-tax as a joint head of revenue I have been guided largely by these considerations. There are two conceivable ways of dealing with the Income-tax as a joint source of revenue. First, you may adopt the method of what is called segregation of the source and division of the yield; and, secondly, you may adopt the method of appointment or partition of the source and division of the yield. Under the first method, the fixing of the rate will be within the exclusive jurisdiction of one of the two authorities, and naturally of the Federal Government. The Provincial Authority will only be a sleeping partner entitled to receive a share in the total yield of the tax. Under the second, both will have equal jurisdiction to fix their respective rates of Income-tax. A Province will fix its own Income-tax rate, to be operative within the Province; the Federation will fix an Income-tax rate, to be operative throughout the Units of the Federation. On the basis that the administration and the collection of

*Proceedings of the Federal Structure Committee and Minorities Committee, Vol. I, pp. 534-40.

the Income-tax shall continue to be a Federal subject of administration, my view is that the second method ought to be adopted as the means of allocating the revenue. This would not be very different from the system which prevails in France, Belgium and various other European countries. Under this scheme there will be two Income-tax rates : (1) a Federal rate, fixed by the Federal Government from time to time according to its needs ; (2) a Provincial rate, fixed by the Provincial Governments from time to time according to the financial requirements of each. The tax as a whole will continue, as now, to be administered and collected by the Federal Government.

The advantages of this plan are obvious. First, it will do away with the system of doles and contributions and will help to make the financial system of each Unit autonomous and self-sufficient. Secondly, it will maintain the sense of responsibility of the Executive by compelling it to obtain the consent of the Legislature for fixing its rate of Income-tax as a means of securing its supply. Thirdly—and this is very important, I think—one Province will not be taxed for the benefit of another. Under the other system of the segregation of the source, with its single Federal rate for all Provinces and a division of the yield, the amount raised in a Province will not necessarily be the same as its share in its distribution; some Provinces may be giving more and receiving less. For these Provinces, such a system will be nothing else but a disguised method of taxing one Province for the benefit of another.

Now, the only objection that can be taken to the method I am suggesting arises from those who insist upon a uniform rate of Income-tax as being necessary for trade and industry. Uniformity of rate is, of course, something which is very desirable ; but it is easy to exaggerate the importance of it. India is as large as Europe. There is no uniformity of Income-tax rate in Europe and yet trade and industry are going on as well as anywhere else. Why should it be otherwise in India ? Then again, those who insist upon uniformity in the rate of Income-tax have to explain how they can reconcile themselves to facts, such as they exist, regarding the Land tax in India. There is no uniformity there at all. On the contrary there is a bewildering variety of rates of Land tax. In no two Provinces are the rates the same, nor is the system of taxation in any two Provinces alike. This objection, therefore, must not prevail against the method of treating the Income-tax which I have suggested with a view—with due respect to members of the Sub-Committee—to improving the allocation they have recommended. It meets the needs of all concerned in normal as well as abnormal times.

There is one statement which I made yesterday which I would like to withdraw. I said that my plan was the plan recommended by the Taxation Enquiry Committee. That was a slip due to an error which had crept into the notes which I had made for this discussion. I ought to have said that they considered it; they did not recommend it, although they did not see any insuperable objection to it.

The next point relates to paragraph 12 of the Sub-Committee's Report, where the problem of "residual powers" of taxation is dealt with. The Sub-Committee has anticipated that the decision will be in favour of the residual powers being vested in the Provinces. They have made, on that basis, the recommendation that the power to levy unscheduled taxes should be in the hands of the Units. The Sub-Committee gives no reasons at all why it came to that conclusion, but there is a passage in paragraph 12 which states that the Sub-Committee sees constitutional objections to making any other recommendation than the one that they have made. From this it follows that the Sub-Committee's view is that, in any Federation, the residual powers of taxation must reside in the Units. Now, my submission is that this is not a necessary consequence of Federation at all. If you will refer to the Constitution of Canada, Section 91, paragraph 3, you will see that the powers of taxation given to the Central Government in Canada, which is admittedly a federal constitution, are not limited by any such proviso as enters into the recommendation of the Sub-Committee. The paragraph I have just mentioned is the widest possible that can be conceived. It gives the most unlimited power that any Central Government can have in matters of taxation. But perhaps it might be suggested that I have taken a wrong example because, under the Constitution of Canada, the residual powers are with the Central Government and not with the Units. Let me take another example where the residual powers are left to the Units, namely, Australia. There the residual powers of taxation are not given to the Units but are left to the Federal Government. The Australian Constitution, Section 51, paragraph (ii), says that the Central Government shall have the power of taxation, but so as not to discriminate between States or parts of States. Now, that language again is the widest possible language that can be conceived; and it is even suggested that that power is so wide that the Federal Government in Australia can be said to have the power of controlling the taxation system of the States. Let me refer you to the Commentary by Moore on 'the Commonwealth or Australia,' of the first edition, where this point is dealt with. This is what he says with respect to the extent of the power of taxation given to the Australian Federation :

"It has been seen that, on the establishment of the Commonwealth, the States are subject to the restriction, that they may not tax the property of the Commonwealth; that perhaps this extends to the 'instrumentalities of the Commonwealth' and that, on the establishment of uniform duties of customs, they may no longer impose duties of customs or excise, nor put any tax upon inter-State trade, commerce or intercourse. Further, discriminations injuriously affecting British subjects resident in other States are inoperative."

What follows is very important :

"Finally, it has been suggested that the Commonwealth Power to

make laws with respect to 'Taxation' may give very extensive powers of regulating taxation by the States."

This is a constitution where the residuary powers lie with the States; yet, in financial matters, the residuary powers are not with the States but with the Federal Government. Take the Constitution of the United States of America, Article I. There again, the residuary powers of legislation are with the States and not with the Federal Government, yet Section VIII of Article I of the United States Constitution provides :

"The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States ; but all duties, imposts and excises shall be uniform throughout the United States."

There again, you do not find any limitation whatever placed on the taxing powers of the Central Government in the United States. I therefore do not see any substantial reason, so far as constitutional law is concerned, for the kind of recommendation that the Sub-Committee has made.

My further submission, however, is that this question of whether the residuary powers of taxation should be with the Federal Government, or whether the residuary powers should be with the Provinces, is an entirely artificial question which has arisen in no other country. And the reason why it has arisen in India is because we have somehow introduced in our Devolution Rules of the present day a silly system—if I may be permitted to say so—of what are called schedules of taxation. This did not exist anywhere else and was never prescribed by any government or any constitutional authority that drafted a federal constitution. We are somehow not only dividing the spheres of taxation, but we are, by having these schedules, prescribing the particular method by which and the particular form in which, that power of taxation shall be exercised; I do not think that such a thing is at all necessary. First of all, it is going to stereotype the taxation system and is going to limit the ingenuity of future Chancellors of the Exchequer. I do not think that any Chancellor of the Exchequer would like to take upon himself the responsibility of managing a financial system in which his discretion was limited, not only in regard to his powers of taxation, but also in the choice of the particular taxes that he might levy.

My view, therefore, is that we should altogether delete from our constitution these schedules and simply divide the field of taxation by the method that is followed in other federal countries- by putting a simple limitation on the Provincial Governments that they shall not make use of Customs or such Excises as the Federal Government chooses to impose, and leave the rest of the field for both Governments to divide in the way they like. That is exactly what has been done, as I say, in other federal countries ; and I do not think, therefore, that it is at all necessary to introduce this principle of residuary powers of taxation in our constitution.

The next point I propose to deal with is the position of the States in Federal finance. When I turned to this part of the Report of the Sub-Committee, the first thing I naturally tried to find out was what head of revenue has the Federal Government gained from the States as an addition to its financial resources. I find that there is no additional resource given to the Federal Government by the States. As to Customs, it is obvious that this revenue was never the revenue of the States to which they had no claim, and under which, therefore, they have taken no additional burden upon themselves. As to Salt, it is a revenue the right to which is vested in the Indian Government and not in the States by reason of the purchase. As to Currency profits, they are due to the credit of British India. Regarding cash contributions and revenue of ceded territories, these have been the sources of the revenue of the Central Government, and would have been so even without Federation. It is obvious, therefore, that the States, by entering into the Federation, have surrendered nothing to which they can be said to have any rights. The only contribution that I see that they are making is in the form of a military force for the defence of India. Looking at the figure mentioned in the Report of the Committee which was appointed by the Government of India, I find that the total expenditure of this military force incurred by the States today is a paltry sum of 2 crores and 38 lakhs.

Another thing which I looked for in the Report was the comparative treatment accorded to the Provinces and the States in respect of the financial burdens of the Federation. When I saw this, I came to the conclusion that the Sub-Committee had thrown the principle of equality of burden to the winds. Just see how this inequality runs through the whole Report. First the Provinces are to bear both the "direct" as well as the "indirect" taxes of the Federal Government. The States are to bear only "indirect" taxes. The Committee does not even insist upon their accepting the Corporation tax. Not only are they not to bear "direct" taxes, but they are to be relieved of such "direct" taxes as they do bear at present, such as tributes and cash contributions. Secondly, the Provinces are prohibited from levying internal Customs, but the States are allowed to retain intact their right to levy those Customs, although it is admitted by the Sub-Committee that one of the objects of the Federation is to have freedom of commerce throughout the Federation, and although the Committee recognises that the continued maintenance of the right of the States to internal Customs is likely to impinge upon Federal receipts. Thirdly, the Provinces are required to pledge their revenues as a security for Federal loans ; but the States, although they are to be Units of Federation just as much as the Provinces, are to be free from the burden of this obligation.

One can quite understand the reasons for allowing the States the right to retain their internal Customs. One can see that, if they are compelled to take off internal Customs all at once, it will disarrange their financial stability. But one cannot understand why the Sub-Committee should have allowed the States the freedom from bearing direct burdens of the Federal

Government, nor can one understand the reasons which led the Sub-Committee to recommend that the States should not be required to pledge their revenues in support of Federal loans.

Now, Lord Chancellor, in ceremonial matters a discrimination between the Provinces and the States may be permitted. We may refuse to ourselves the honour of the salutes, and we may let the States have what they want in respect of that; but when it is a matter of the purse, I think we ought to follow the maxim that “business is business”. If British India is making a sacrifice in the interests of Federation, it has an equal right to call upon all the other Units to make equal sacrifices in the interests of Federation; and I therefore urge that the following amendments to this part of the Committee’s Report be made : —

- (1) That the States must accept the right of the Federal Government to “direct” taxation. Until this is done there should not be remission of cash contributions and no consideration of ceded territory.
- (2) A time limit should be fixed within which the States should be required to abolish their internal Customs by an appropriate change in their fiscal system which shall not injuriously affect the fiscal system of the Federal Government.
- (3) The States must be required to pledge their revenues as security for Federal loans.

That is all I have to say, Lord Chancellor, on this matter.

Thirty-eighth Sitting—22nd October 1931

HEAD 4

(Distribution of Financial Resources between the Federation and its Units)

Discussion on the Report of the Federal Finance Sub-Committee

**Dr. Ambedkar*: I should just like to say one thing. Lord Peel said just now that there was general agreement regarding the principles enunciated in the Report of the Federal Finance Sub-Committee. Now, whatever may be the view of the other members of the Federal Structure Committee, I should for myself like to make this reservation, that I certainly do not agree with the principles enunciated by the Federal Finance Sub-Committee ; and I should for myself like to say that I have no objection to the appointment of this Committee, provided it is distinctly understood that the Committee has a right to suggest alterations and amendments of the principles, in order that the future financial system for the Federal Government may be a sound system.

HEAD 8

(The Federal Court)

†*Dr. Ambedkar*: Lord Chancellor, it seems to me that, in considering the

*Proceedings of the Federal Structure Committee and Minorities Committee, Vol. I, p. 685.

†*Ibid.*, pp. 689-702.

establishment of a Federal Court in India, there are three questions with which we are mainly concerned. The first question is the jurisdiction of the Federal Court; the second, the enforcement of the judgments and decisions of the Federal Court; and the third, the organisation of the Federal Court. I propose to offer a few remarks on each of these heads, and the first head that I propose to take for consideration is the jurisdiction of the Federal Court.

It is an accepted proposition that one of the functions of the Federal Court is to interpret the Federal Constitution. The distinguishing feature of a Federal Government, as contrasted with a unitary system of government, is that there is, in a Federal Government, a division of functions which constitutes the essence of Federation. There are two spheres, one allotted legally to the Federal Government and another allotted to the State or the Provincial Government; and the important thing in a Federation is to see that the one does not interfere in the sphere of the other. In order to see that there is, of course, the evident necessity of a Federal Judicature which will keep the two governments restricted to the spheres allotted to them. That is one purpose for which a Federal Court is necessary. But it seems to me that there is also a second purpose which a Federal Court of Judicature must perform. The Federal Court of Judicature is also what may be called a Court of international justice. One of the objects which has led many national governments to form a Federation is to see that disputes between different governments and different units which before the formation of the Federation, used to be decided by diplomacy, or by war, failing diplomacy, should be decided by judicial decisions of a Federal Court, to which they are all subjects. That is the view taken by the Supreme Court of the United States of America itself; and, with your permission, I would just like to read a small paragraph from one of the judgments of the Supreme Court of the United States of America reported in *Louisiana v. Texas*, 176, U.S.

Chairman : What is the date of that ?

Dr. Ambedkar : 1900. This is what Mr. Justice Brown said regarding the function of the Supreme Court :

“In view of the solicitude which, from time immemorial States have manifested for the interests of their own citizens ; of the fact that wars are frequently waged by States in vindication of individual rights, of which the last War of Independence, the Opium War of 1840 between Great Britain and China, and the war which is now being carried on in South Africa between Great Britain and the Transval Republic, are notable examples ; of the further fact that treaties are entered into for the protection of individual rights, and that international tribunals are constantly being established for the settlement of rights of private parties—it would seem a strange anomaly if a State of this Union, which is prohibited by the Constitution from levying war upon another State, would not invoke the authority of this Court to raise an embargo which had been established by another State against its citizens and their

property. An embargo, though not an act of war, is frequently resorted to as a preliminary to a declaration of war, and may be treated in certain instances as a sufficient *casus belli*."

He goes on further to point out that there are many cases which may arise under a Federation which, in the event of the absence of Federation, would be decided by diplomacy or war; and the Federal Judicature, therefore, in order to prevent such a catastrophe, must make ample provision for a wide jurisdiction of the Federal Court which would enable it to give justice in all such cases. Taking that standpoint, Lord Chancellor, I think that the scheme which was adumbrated in the observations which you were kind enough to address to the Committee the other day, regarding the jurisdiction of the Federal Court, is somewhat inadequate, if you pardon my saying so.

According to the observations which you made the other day, the judicial power is to extend to matters arising between Units of the Federation, State *versus* State, Province *versus* State, and the Commonwealth of India *versus* a State or a Province. I do not know whether the word "State" is used to refer to an incorporated body or to the State in its position of trustee, guardian or representative of the citizens. But, apart from that, it seems to me that the Federal Judicature must make provision for matters arising between one Unit and a citizen of another Unit. Take this case. Assume, that an Indian State, which becomes a Unit of the Federation, borrows money through the contemplated Loans Board in the open market. Assume, further, that a resident of the Province of Bombay subscribes to that loan; and assume that the State fails to meet its obligation. What is the remedy? Under the scheme, I do not see any provision made for the Federal Judicature to take due cognizance of a matter of this sort. Take another illustration. We have what are called the ceded territories in the possession of the British Government. The States are demandants that these ceded territories shall be returned; or, if they are not returned, certain compensation shall be given to them. Suppose that in a ceded territory, the British Government has made a grant of land to a certain individual, and suppose that, after the rendition of the territory to the Indian State, the State Ruler also makes a grant of the same land to another individual. You have here a case where there is one subject matter of the same grant made by two different authorities to two different persons. What is the remedy for the adjudication of a dispute of this sort? Is the Federal Court going to take cognizance of it or not? Again, take the case of two persons between whom there is litigation, but who reside in different Units of the Federation. Which is the Court which is going to take cognizance of the case? These are some of the matters which, I find, are not provided for in the observations that you addressed to us the other day.

Comparing the constitution suggested in your scheme for a Federal Court in India with the jurisdiction of the Federal Courts in Australia and in the