United States of America, I think the scheme entirely falls short of the necessities of a Federal Government. In Australia, under Section 75, the Australian High Court has jurisdiction in all matters (1) arising under any treaty, (2) affecting the consuls or other representatives of other countries, (3) in which the Commonwealth or a person suing or being sued on behalf of the Commonwealth is a party, (4) between States or between residents of different States, or between a State and resident of another State, and (5) in which a writ of mandamus or prohibition or injunction is sought against an officer of the Commonwealth. According to Section 76, it can also have jurisdiction with regard to matters (1) arising under the constitution or involving its interpretation, (2) arising under any laws made by the Parliament, (3) of admiralty and maritime jurisdiction, and (4) relating to the same subject matter claimed under the laws of different States. Turning to the Constitution of the United States, Article 3(2), the judicial power of the United States is said to extend (1) to all cases in law and equity arising under the constitution, the laws of the United States, treaties made or which shall be made under their authority ; (2) to all causes affecting ambassadors or other public ministers and consuls; (3) to all cases of admiralty and maritime jurisdiction ; (4) to controversies to which the United States shall be a party ; (5) to controversies between two or more States; (6) to controversies between a State and a citizen of another State (which of course subsequently has been abrogated by the eleventh amendment of the constitution); (7) to controversies between citizens of different States ; (8) to controversies between citizens of the same State claiming lands under grants of different States ; and (9) to controversies between a State or the citizens thereof and foreign States' citizens or subjects. My submission therefore is that, if this Federal Court is going to be federal in the real sense of the word—that is to say, if it is going to cover all cases of dispute between Units of the Federation or between citizens of the different Units—then the list must be revised and must be brought into conformity with the federal jurisdiction that has been given in countries like Australia or the United States.

Now, the next point that I wish to submit, Lord Chancellor, is this—that although India is going to be a federal country, yet India cannot be satisfied with the extent of jurisdiction which the Federal Courts in countries like Australia and the United States have at present. There are certain peculiar circumstances about India which do not obtain in those countries. Consequently, my submission is that the federal jurisdiction of the Federal Court in India must not only be in conformity with the federal jurisdiction of the Federal Courts in Australia and the United States, but it must have federal jurisdiction in matters relating to fundamental rights and the minority safeguards.

Chairman: Will you refer me to the fundamental rights clause in the U.S.A. Constitution ?

Dr. Ambedkar: Yes, I will.

Chairman: Just tell me where it is, if you do not mind. I know it so well, but at the moment I cannot put my hand on it.

Dr. *Ambedkar:* I am sorry. I have not got it.

Chairman: I was thinking of the clause which began about the privileges and immunities of free citizens in the various States—about the people of each Province and State having free ingress and egress, and that sort of thing. However, we will not waste our time because I cannot put my hand on it at the moment. Section 2 of Article IV is the one I was thinking of.

Dr. Ambedkar: My submission is this — that whatever may be the manner in which we define the fundamental rights, or whatever may be the manner in which we define minority rights, the important problem is to see that they are properly safeguarded. My reasons are these. The Federal Constitution which we are going to have is not going to be, with all the protests that some of us are making, a perfect Federation. We shall have probably a Federation between British India, with all the popular and representative institutions, and the Indian States with no popular and representative institutions in them. I am only imagining. Probably the results may be otherwise ; and, if so, nobody will be more happy than myself. But we shall have this situation, namely, that of a federation between a democracy and an autocracy; and we shall have, as I say, within British India, a government not of political majorities, but a government in the main of communal majorities. My view, therefore, is that the question of the protection of fundamental rights, and the question of the protection of minority rights, assume far greater importance in India than it can assume in any other constitution; and the duty absolutely to guarantee the fundamental rights, whatever they are, and the minority rights, whatever they are, becomes paramount. The best way of doing this seems to me to be to endow the Federal Court with a jurisdiction to hear matters arising out of them. That is my submission. Everywhere, whether a question arises regarding fundamental rights or minority safeguards, whether in British India or in a Native State, the Federal Court must have jurisdiction to hear them.

Chairman: Would you include cases of commercial discrimination ?

Dr. Ambedkar: Yes. If we all agree that it should be a fundamental right that there shall be no commercial discrimination, then it should come within the jurisdiction of the Federal Court, so much with regard to the jurisdiction of the Federal Court.

The next point that I wish to touch upon is with regard to the enforcement of the decisions of the Federal Court. The note which you have been kind enough to circulate, Lord Chancellor, does not suggest any legal measures for the enforcement of the decisions of the Federal Court. The matter, I understand, is to be left to the different States and to the different Provinces ; and you rather give us the admonition that we must not distrust the *bona fides* of the Provinces or the States, and that we must assume that they will faithfully abide by the decisions of the Federal Court and

give effect to them. Now, Lord Chancellor, I feel that we ought to follow the maxim which John Stuart Mill laid down, that if all men were good there would be no necessity for making laws ; but that we are obliged to make laws because we know that certain people are bad. So I rather take the view that the matter should not be left in this undecided manner and I say this, that I am strengthened in the attitude that I take up by the experience of the Supreme Court in the United States. If you will pardon me, I propose to draw the attention of the Committee to the history regarding the enforcement of the judgments of the Supreme Court. I should like first of all to draw your attention to the case of Chisholm *v*. Georgia, decided in 1793. The Supreme Court, under the federal jurisdiction which it had, granted a decree in favour of Mr. Chisholm for the recovery of a certain debt against the State of Georgia. But, as history shows, the State of Georgia rose in arms against the Supreme Court, and refused to honour the decree on the ground that it was an affront to a sovereign State ; and the judgment of the United States Supreme Court remained in abeyance — it was not executed. So much so that it was this attitude of the State of Georgia which led to the eleventh amendment, which took away the federal jurisdiction given to the Supreme Court of the United States as between a State and a citizen of another State. Another illustration is the case of Virginia *v*. West Virginia. After the Civil War there was a partition of the old State of Virginia into two States, Virginia and West Virginia. This occurred in 1861, and, as n part of this agreement, West Virginia agreed to pay a just proportion of the Public Debt incurred by the parent State prior to January 1st, 1861. This obligation was reaffirmed in the eighth article of the West Virginia Constitution. For forty years, Virginia did all in her power to induce, by friendly negotiation. West Virginia to settle the claim. All this Droved unavailing, and. in 1906, Virginia took the matter to the Supreme Court of the United States. West Virginia proved most obstructive, and first of all refused to submit to the jurisdiction of the Supreme Court. It took objection from 1906 to 1911 merely to the jurisdiction of the Supreme Court. Then, when the Supreme Court decided that it had jurisdiction, the Supreme Court appointed a Master to go into the accounts and to prepare a report. A report was prepared, and then again West Virginia took some three years in challenging that report. After that she asked for time for her Legislature to consider whether the obligation should be honoured. That dragged matters on until 1913. Then she asked for time to file a supplementary written statement after the report had been made and objections over-ruled. In 1915, all methods of obstruction having failed, the Court pronounced judgment. For four years. West Virginia refused to look at the judgment, but in 1919 she was persuaded to honour the debt.

Mr. Jinnah: Assuming that difficulty do exist, what do you suggest ?

Dr. Ambedkar: My suggestion is this. I must tell you that my feelings on the subject are really rather high ; and I do say this, that for a long

time to come there will be communalism and there will be provincialism, and I am not at all certain that, in all this turmoil of communalism, the judgments of the Supreme Court or the Federal Court — whichever you like to call it — are not likely to be flouted. As a member speaking for a minority, and as a member speaking for a minority which at present has no rights and which is claiming rights and which meets with opposition in every centres, I am not at all certain that a Provincial Government, backed by a communal majority in the Council, will readily consent to give effect to judgments and to decrees which may not be palatable to its own interests. This is my position. I take a very serious view of the matter and I do say that. Therefore, My Lord, I would suggest that we ought to make provision in the constitution that judgments and decisions of the Supreme Court shall have effect given to them, and I suggest that we should follow and adopt the provisions that are entered in the Australian Constitution. First of all, Sections 118 and 51, paragraph 25, of the Australian Constitution provide, of course, that faith and credit shall be given to all laws. That of course is nothing. It is found also in the Constitution of the United States. Then, with regard to the execution of decrees, you have in the Australian Constitution, under paragraph 34, power given to the Federal Legislature to legislate about matters which are incidental to other powers which are given to it. Then you have certain specific powers given in the Australian Constitution to the Central Government, for the enforcement of decrees and decisions. There is first of all Section 51, paragraph 24, whereby provision is made for inter-State service and execution of judgments as between States, the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the Courts of the States. That is one thing. Then you have Section 78 in the Australian Constitution —

Chairman: " The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power."

Dr. Ambedkar: Yes, that is one; and as Your Lordship knows, by the Judicature Act, 1903, Part 9, the Federal Legislature in Australia has made definite provision as to how judgments and decrees shall be executed against the States. Then you have Section 120 of the Australian Constitution—

> "Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences and the Parliament of the Commonwealth may make laws to give effect to this provision."

I therefore submit that some specific power ought to be conferred upon the Federal Legislature whereby it can enforce the decisions of the Federal. Court.

Chairman: What sort of sanction are you thinking of ?

Dr. Ambedkar: I do not know what they would do ; but my submission is that the matter should not be left hanging in the air in this fashion. I was going to show Your Lordship, from certain extracts I have made, that judgments of the Supreme Court of the United States have been absolutely worthless by reason of the fact that they were obsessed by the fact that their judgments may not be executed but may be flouted. In one case, for instance, in the case of a Governor of Ohio State, they did make an order that a certain fugitive offender who had gone into the State of Ohio should be delivered by the Governor. The Governor refused to do so. Then the State of Kentucky asked for a writ of mandamus. The Court said : The Constitution does not give us power to execute our judgment; therefore we shall not give a writ of mandamus. That was so, although they had given a decision that the Governor was bound to deliver the fugitive. I could cite hundreds of cases in which the Supreme Court of the United States has refused to give relief simply because it was oppressed by the feeling that its judgments might not be enforced. Unless we have some sort of provision of this sort, I cannot see how the situation will be rendered safe.

Chairman: What sort of legislation ? Are you suggesting, for instance, that, if judgment was given against Bengal, you should put a bailiff into Bengal in some way ?

Dr. Ambedkar: I mean what I find in Section 78, that in the execution of civil decrees the Treasurer or the person who is in charge of the Treasury shall be bound to pay.

Chairman: Supposing he does not, what happens ?

Dr. Ambedkar: I suppose they will haul him up for contempt.

Sir Maneckjee Dadabhoy: Where will he be tried ?

Dr. Ambedkar: By the Federal Court, wherever it states.

Mr. Iyengur: Who is to execute the warrant of contempt ?

Dr. Ambedkar: The Federal Government by its own officers. I want the Federal Government to have that power. This was one of the implied powers in the United States ; and under Section 120 of the Australian Constitution, the Federal Government has the power to detain offenders against the federal law. Supposing a federal law was passed and a certain citizen of a State abrogated it and the Supreme Court passed judgment against him, and the feeling of the State was so great that they would not keep the man in jail, I suppose, under the power given in Section 120, the Federal Government would have its own prisons. If the Federal Government is to see that justice is done in all matters, it must have the power to see that judgments are executed. How it will do that is a matter beyond me to say now. All I say is that power should be given in the constitution to the Federal Government to see that judgments and decisions are made effective throughout India. It is not necessary for me to repeat that, if the remedy fails, the right also fails.

Mr. Jayakar: If a state of racial or communal warfare should prevail,

no remedy can be devised which may not become futile.

Dr. Ambedkar: It is not for me to answer that. I will take my own case. Suppose, in the Bombay Presidency, we have a Nasik Satyagraha, and suppose we have a fundamental right, which I claim in the first part of this Memorandum which I have submitted, namely, the right to enter the temple. Suppose the magistrate passes an order saying that we are creating a breach of the peace, and that, unless we desist from doing it, we shall be imprisoned. Suppose we go to the Federal Court under the jurisdiction which I say the Federal Court ought to have, and the Federal Court says that the magistrate was wrong. Suppose we come back to the Home Member for the execution of the order. The Home Member, if he is depended on the majority of the orthodox people, will say "I cannot do it," I want the Central Government to have some power to make its laws effective under such conditions.

Mr. Jinnah: I think there is a great deal of force in what you are saying— that in order to execute a decree or a warrant it must be backed up in the first instance by the Police, and, in the second instance, the final authority is the Military. How would you expect the member of your Federal Government in charge to execute that decree or warrant unless he had resort to the Military ?

Dr. Ambedkar: He may have. I am not putting any limitation upon him. I would give him the power that he thinks will be necessary for the purpose. It may come to that. I do not deny it; but what I say is this, that if you want to make sure of the protection of the people under the fundamental rights or under the minority rights, whatever they are, then I say the power must be vested, and for all purposes I say that the power must be vested in the Federal Government, to see that the decisions of the Federal Court are executed.

Mr. Jinnah: It is not only that the power should be invested, but there must be an instrument in their hands to enforce that power.

Dr. Ambedkar: Under this they will have the instrument.

Mr. Jinnah: Power may be vested in the Federal Government, but that power can only be enforced if you have the instrument to enforce it.

Dr. Ambedkar: The Army.

Mr. Jinnah: Quite right; and therefore what the Lord Chancellor has suggested is — and I think you have omitted to take notice of that — that, in the last resort, it will be the Crown who will be responsible for the enforcement of decrees and orders of the Federal Court. And it is stated there that the Crown will be responsible, because I understand upto the present moment that the position is this, that Defence is going to be a Crown subject. Am I right, Lord Chancellor ?

Chairman: Yes. That is the point.

Dr. Ambedkar: But the point I am making is this, that if you are dividing functions between the Federal Government on the one hand and the Provincial

Government on the other hand, then if you do not give the Federal Government the power, legislative or otherwise, to give effect to the decisions of the Supreme Court, it would not be able to do it. That is my submission.

Mr. Jayakar: But, at the same time, the difficulty will not end there. I mean, in the state of communal feeling which you are imagining, the difficulty will not end there.

Dr. Ambedkar: I quite agree that far more drastic measures will probably have to be adopted, and, as we know, in the Swiss Confederation even the military is used—at least, the power is given to the Swiss Federal Government to use the military for enforcing the judgment of the Federal Court in Switzerland. I do not wish to prescribe what means should be adopted, but what I say is this. The difficulty which arose in the United States, that the Federal Government had no power.

Chairman: I quite follow. Therefore, they would not take responsibility.

Dr. Ambedkar: Yes. That ought not to be the situation in India.

Lord Lothian: Is not there this distinction in America that the Federal Authority is able to proceed as long as it is against an individual; but this very question came up in the Convention, and they decided that the Federal Government could not proceed against a State, because one State can only proceed against another by an act of war, and they, therefore, did leave it to the good sense of the community to bring pressure on the State to fulfil the obligations. You can provide upto a certain point in dealing with the individual, but you cannot provide within a Federation for the proceeding of the Federal Government against a State Government except by embodying an act of war as part of your constitutional procedure; and that nobody will do. That is your difficulty.

Dr. Ambedkar: Well. I do not know; but, as I say, in the United States also the President has the power to use the military for suppressing rebellion.

Lord Lothian: And that becomes an act of war, and that has happened in the past

Dr. Ambedkar: That provision is embodied in the United States Constitution.

Mr. Jayakar: But, surely, the choice will lie between civil war and federal loyalty?

Dr. Ambedkar: That I perfectly realise. I am not denying the point that you are making. What I say is this, that we should not have the position that we have in the United States—that although there is a Federal Court there for the purpose of deciding disputes arising out of federal jurisdiction, there is no power in the Federal Government to make those decisions effective. What I mean is that our Federal Government or Federal Legislature should have such a power in the way in which the Australian has it.

Mr. Jinnah: The distinction is this, that in the United States the Federal Government is in charge and control of the military. You assume that your

Federal Government which you are proposing should take over the control and responsibility for the military at once.

Dr. Ambedkar: Well, if not now, later on.

Mr. Jinnah: What is to happen in the meantime ?

Dr. Ambedkar: As I said, that is another matter. The necessity for the employment of the military may not arise.

Mr. Jayakar: You will have to go to the Crown to ask for military help.

Dr. Ambedkar: Yes.

Mr. Jayakar: The Crown is the ultimate military authority.

Dr. Ambedkar: I do not think that takes away the point that I am making. The power ought to be given to the Federal Legislature. In the United States of America, people have been hanged by the States, although a writ of error has been issued by the Supreme Court.

Chairman: I have heard it said, with regard to English Common Law, that it is no use pulling up a plant repeatedly to have a look at the roots and to see whether it is growing. English Common Law will not stand that sort of thing, and you will find that no code of law will. You are putting very interesting legal conundrums; but the short answer is that anybody can make a thing unworkable, and it is no good always diving into the foundations to see if the foundations are all right. You must trust a good deal to the good sense of the people. It took about nineteen years in the Virginia case for people to come to a proper view. You may find that that may happen in your case. There may be these difficulties at first; but when you begin to work together, you will find a great many of them disappear. You cannot dig down to the foundations of your house every three weeks to see whether they are in order. You must trust people a little.

Dr. Ambedkar: My only reply is that we must see we do not lay our foundations on sand.

Coming to the third part of the subject, namely, the organisation of the Federal Court, I do not really want to say much on this because I agree with a great deal that has already been said. I should like, however, to make one observation, namely, that we should follow in this matter the Australian model, in so far as by that we should not only be able to get a Federal Court of Appeal for federal matters, but also a Supreme Court of Appeal for India as a whole, as they have done in Australia, whereby the Federal Court not only hears appeals from Courts which exercise federal jurisdiction but also hears appeals from Courts in matters which are outside the federal jurisdiction.

I would particularly point out that the Federal Legislature of India should be left free to invest the Courts in Indian States with federal jurisdiction, so that it may be able to utilise the agency of the State Courts in the Indian States. Federal jurisdiction should not be delegated merely to the High Courts of the Provinces, but certain selected State Courts, which to the knowledge of the Federal Legislature are functioning efficiently, may also

be selected as agencies for the exercise of federal jurisdiction in certain matters. The result of that, I think, will be very important. It will first of all raise the dignity of the State Courts; and, secondly, it will link up the State Courts with the whole judicial system in India, and will make our Federation a real Federation.

Mr. Jayakar: An appeal must lie to the Supreme Court, the Federal Court?

Dr. Ambedkar: I am coming to that. In that connection, what I would suggest is that the State Courts should consent to send their appeals to the Federal Supreme Court even in matters not affecting federal jurisdiction. If they do not, I suggest that we should keep the same open-door policy which has been adopted in the Australian Constitution. In the Australian Constitution, provision is made that the Federal Court or the High Court of Australia shall not be prevented from hearing appeals from the States' Courts. I would like to have that provision introduced into our constitution. Further, although we may not make it obligatory upon the States' Courts to send their appeals to the Federal Court, we should prevent the Federal High Court from hearing appeals in case the States subsequently decide to give appellate jurisdiction to the Federal Court from their decisions. As I say, I would again follow the model of the Australian Constitution by giving to the States the right to regulate the right of appeal from their Courts to the Federal Courts. They may not give the same rights of appeal as there maybe from British Provinces; they regulate it if they like.

Then there is just one thing I would like to say. That is with regard to the relation of the High Court to the Federal Government. At present the Indian High Courts are Provincial both for finance and for administration, except the High Court of Calcutta, which is, of course, Provincial for finance but Central for administration. Sir Tej Bahadur Sapru yesterday made the suggestion that the Indian High Courts should be Central for administration in all Provinces, and for financial purposes should be Provincial. As regards the suggestion by Sir Tej Bahadur Sapru that they should be Central for administration, I entirely agree with him ; but my reasons are somewhat different, and I should like to state them. He said there was a certain amount of nervousness on the part of Judges of the Indian Provinces that they are likely to be subjected to local political pressure, and that they would, therefore, like to be lifted from the local politics to the control of the Federal Central Government. Now, I do not think the High Courts in any country, for the matter of that, where there is representative democracy and responsible Government can be free from the influence of politics or the influence of party politicians.

Sir Tej Bahadur Sapru: I thought the theory of the law is that the English Courts are outside party politics.

Dr. Ambedkar: There are certain judicial posts in this country which are looked upon as political appointments, but that is another matter. Now, the

consideration I would like to place before this Committee is this. We are admitting to this Federation some 562 Indian States.

Mr. Jinnah : Are you ?

Dr. Ambedkar: I suppose that is the scheme ; at least that is the ideal we have placed before ourselves that all the Native States will come into this Federation. I think there is no dispute on this point, that a great many of the States, which will be part of the Indian Federation, are financially not strong enough to maintain a competent judiciary. I know of a case in the Bombay Presidency—I am citing a case with which I am acquainted. In Bombay there is a small Native State, the administration of which is run by a lady. In that State, so far as I know, there is only one officer. He acts as a Civil Judge ; he also acts as a Magistrate ; he also acts as a Sessions Judge. From him appeals go to the head of the State, and she is helped by the Diwan who is, so far as I know, a retired revenue official. Most complicated cases come before this tribunal, which is called, so to say, the Privy Council of that State ; and judgments are being given today by a Court so constituted. Now, I do not blame anybody for that. The point is that such a State is so small that it simply has not got sufficient revenue to maintain a competent Court.

Then there is another consideration, namely, that we may, even with respect to British India", go on creating new Provinces so small that they, again, may not be in a position to maintain, financially speaking, a High Court. The case happens even today. The Province of Assam cannot maintain a High Court. It shares a High Court with the Presidency of Bengal. My submission is this—that if we can improve matters in such a way as to help all these Native States which are small and financially weak to maintain a proper judiciary by allowing to utilise these High Courts which are now functioning in British India for the purpose of administering civil and criminal justice among their subjects, such a plan ought to be welcome. The fact is that, so long as a Provincial High Court is being entirely controlled by a Provincial Government, the States, which have no share in the control of the affairs of the Province, will not care to use the services of the High Court. If, on the other hand, the Provincial High Courts were made a Central subject, where all these States would undoubtedly be represented either directly or indirectly, then there would be more inducement—certainly much less objection on their part—to utilise these High Courts for the purpose of adjudication of civil and criminal disputes among their subjects. The result would be that we would considerably improve the judicial administration in the Native States, which are going to be a part of the future Government of India, without in any sense impairing the efficiency of the Provincial High Courts. On that ground, I suggest that the Provincial High Courts may, for the purposes of administration and also for purposes of finance, be made a Central subject. One of the reasons why the High Court of Calcutta is Central for administration is because it is not a Court exclusively for the

Presidency of Bengal. It is a Court which is a joint Court for the Presidency of Bengal and for the Province of Assam. It was for this reason that the Simon Commission recommended that the system should continue and be extended to other Provinces. That is the reason why I think this suggestion ought to be welcome.

That is all I have to say on this subject of the Federal Court.

Forty-fourth Sitting—2nd November 1931

Discussion on the Draft Third Report

**Dr. Ambedkar:* I should like to draw your attention to the last four lines of the paragraph. After stating, in the beginning, the recommendations of the Sub-Committee in paragraph 34 of their Second Report, Your Lordship stated :

> "We make no recommendation here relating to the first four of these interests, since the decision on this point is one for the Minorities Sub-Committee."

I do not think that Your Lordship means that the Committee is indifferent to the representation of those interests, nor, I think, does the opinion expressed in paragraph 34 of the Second Report mean this. What you mean is that you "cannot make any recommendation as to the extent or method of representation. I should therefore be obliged if you would amend the passage by adding, after the word "recommendation", the words—

> "as regards the extent or method of their representations."

Mrs. Subbarayan: You may remember that I spoke at one of our sittings on the possibility of securing some special provision for the representation of women in the Legislature, and suggested that the consideration of this matter should be deferred until the Minorities Committee published their Report. But, lest the point be overlooked, I should respectfully suggest that some reference to it be made here, and that the following words be added in line 9 of paragraph 28 ; after the word "interests", insert the words—

> "or to the representation of women in the Legislature."

Chairman: I am much obliged—I am sorry that we left it out—and I am also much obliged to Dr. Ambedkar. We will put in both those amendments. That was an oversight.

Mrs. Subbarayan: On a previous occasion, while recognising the valuable work done by many of the nominated members in the past on the Legislatures, I objected to nomination in the new constitution on principle. I feel that I object to it all the more when I find that the two Chambers may have co-equal powers. I quite agree with the Report that the services of persons of the elder statesman type are most valuable ; but I am also convinced that the system of nomination is unwise and undemocratic, and. therefore, that it will be better if the services of such persons too are secured

*Proceedings of the Federal Structure Committee and Minorities Committee, Vol. 1, pp. 882-83.

through some system of election. If there is a system of nomination, I cannot help thinking that the whole object of this clause may be frustrated. and that the Ministry may only think of strengthening its own party in the Upper Chamber. Apart from this general objection, I would ask that, in paragraph 32, lines 7, 10, 19 and 22, the word "persons" be substituted for the word "men".

Chairman: I quite agree, Mrs. Subbarayan. In England we actually held, until about five years ago, that a woman was not a "person".

Mrs. Subbarayan: Perhaps they meant that she was something better !

Mr. Zafrullah Khan: In our General Clauses Act, it says that, whenever "man" is used, it includes "woman".

Mr. Iyengar: I desire to associate myself with what my friend, Mrs. Subbarayan, has said as regards nominated members. I also agree that it is very useful to have these elder statesmen in the Upper Chamber; but surely, if these elder statesmen are really wanted by the country, it would certainly be possible for them to come in by some constituency or other. I think the principle of nomination is vicious and we should get rid of it altogether.

Dr. Ambedkar: I should like to associate myself with what has fallen from Mrs. Subbarayan.

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†*Chairman:* We will say "should be adopted as a model for candidates for the Upper Chamber, taking into account any special provisions that may be required for women".

Dr. Ambedkar: I find considerable difficulty in subscribing to this part of paragraph 34—the Council of State qualifications taken as a model. It seems to me that it will entirely block the representation of the Depressed Classes.

Chairman: We must not do that.

Dr. Ambedkar: Liberty should also be given to the Franchise Committee to take this into consideration in framing their model rules.

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‡*Dr. Ambedkar:* I should like to say that the Committee should also consider the necessity of endowing the Central Government with powers to finance itself in emergency matters directly and independently, rather than be dependent upon contributions from the Provinces and States.

Lord Peel: All these points, of course, were considered from every point of view, and this was the result of a compromise between the different views. That is really all I can say on it at the present moment, I think.

Mr. Joshi: Lord Chancellor, I agree with Dr. Ambedkar's view.

Dr. Ambedkar: Lord Chancellor, I should also like to say that the fact-finding Committee, in apportioning the burden of the Federal Legislature

†Proceedings of the Federal Structure Committee and Minorities Committee, Vol. I, p. 886.

‡*Ibid.,* pp. 899-900.

between British Provinces and Indian States, ought to consider the principle of equity of contribution as between the two.

Chairman: Lord Peel no doubt will consider that. I wish you would mention that again, if you would not mind, when we come to the full Conference.

Forty-fifth Sitting—4th November 1931

†*Chairman :* Now, that is the Report on which I want your comments. Will you kindly go back now to paragraph 52 ?

Dr. Ambedkar: May I just say this with regard to paragraph 52? Your Lordship will remember that, while we were discussing the jurisdiction of the Federal Court, I raised the point that the Court, besides having the jurisdiction to interpret the constitution and to see that neither the Provincial Governments nor the Federal Government intervene in the sphere of the other, should also have the jurisdiction to deal with matters arising out of the fundamental rights or the minority rights. I think I was supported in that also by Mr. Jayakar, and also, if I am right, by Mr. Sastri. Perhaps a note might be made to that effect in this paragraph.

Chairman; I am obliged to Dr. Ambedkar, but I am happy to be able to reassure him in this way—that when they are in the constitution, they will naturally fall within the domain of the Federal Court's interpretation.

Mr. *Jayakar:* That is included in the word "constitutional"

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‡*Chairman:* Now paragraph 62.

Dr. Ambedkar: I did not think there was unanimity regarding the location of the Court at Delhi. I should have liked that this matter should be investigated by some committee.

Mr. Jayakar: I made tine suggestion that it should be at a central place somewhere, not Delhi, but some place where the Court could work for the whole of the year, the climate being suitable for working during the whole year.

Mr. Zafrullah Khan: All sorts, of suggestions were made from different quarters, but I do not think that any single place had as much support as Delhi.

Chairman: Now, please, paragraphs 63 and 64.

Forty-sixth Sitting—16th November 1931

Discussion on Future Procedure

§*Dr. Ambedkar:* I should like to know what view Sir Tej Bahadur Sapru

†Proceedings of the Federal Structure Committee and Minorities Committee, Vol. I, p. 908.

‡*Ibid.,* p. 922.

§ *Ibid.,* p. 979.

has regarding the relationship which should subsist between the Army Member and the Commander-in-Chief. Would the Commander-in-Chief be merely the head of the department under the control and supervision of the Minister or Member or would you give him certain powers with which the Army Member would not have the right to interfere ?

Sir Tej Bahadur Sapru: I am not prepared to go into details, but as I conceive the position of the Army Member he will deal with general questions of policy, financial and otherwise, but he will have no power to deal with technical or administrative matters relating to the Army and, if he is wise, even if he has such power he will not exercise it. I have no personal knowledge of the matter, but I appeal to my British colleagues here to say what exactly the position in England is with regard to the Army. The Secretary of State for War has probably no power to interfere with the internal discipline of the Army but deals with big questions of policy. I cannot forget one period of your Army history, the period of the -Duke of Cambridge.