

REPORT OF THE FRANCHISE COMMISSION 1963

An Analysis

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MINISTRY OF LAW
GOVERNMENT OF PAKISTAN

PREFACE

In pursuance of the recommendations made by the Constitution Commission, the President appointed a Franchise Commission on August 4, 1962. The Commission presented its Report to the President on February 12, 1963.

As the opinion of Members of the Commission was divided on certain major issues, the Law Ministry thought it expedient to set up a Special Committee to examine the recommendations of the Franchise Commission keeping in view the socio-economic and administrative requirements of the country and to analyse the various issues dispassionately. The Committee was assisted by some experts in the field of law, political science and administration.

Three of the studies prepared by these experts are appended to the Special Committee's Report presented in these pages. An introductory summary of the findings of the Special Committee is also included. These documents provide an analysis of various aspects of the Franchise question, and may serve to clarify the major issues involved.

Rawalpindi,
Dated 16-1-1964.

Ministry of Law,
Government of Pakistan.

**REPORT OF THE SPECIAL COMMITTEE
SUMMARY OF FINDINGS**

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REPORT OF THE SPECIAL COMMITTEE SUMMARY OF FINDINGS

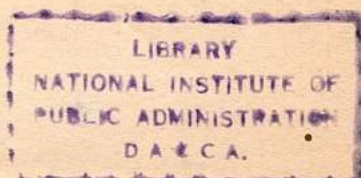
The Committee was required to examine the recommendations made by the Franchise Commission of Pakistan and to provide detailed answers to the questions incorporated in Annexure I of this Report.

2. The direction given to the Committee was that the major issues involved should be closely and dispassionately examined and the pros and cons of each issue clearly brought out to enable Government to take appropriate decisions.

3. The Committee has endeavoured to submit a comprehensive and objective Report on each question.

4. Before dealing with individual questions, the Committee attempted to identify the present requirements of the country. The Committee felt that whatever electoral system was adopted by Government it must satisfy the following requirements:—

- (1) The country needs a strong and stable Government capable of promoting and maintaining national unity;
 - (2) The country needs an Executive armed with sufficient authority and powers to ensure the optimum and effective utilization of all national resources with a view to advancing the welfare of the people; and
 - (3) The country needs a system of representative Government responsive to public opinion. (Para 11).
5. The Committee further felt that, in the light of the objectives mentioned above, any electoral system, in its actual working should ensure that:—
- (1) The voter should be able to understand the question put to him.
 - (2) He should be capable of giving an intelligent answer.
 - (3) He should have reasonable opportunity to acquaint himself with his representative.
 - (4) He should be able to maintain reasonable contact with his



representative. (Para 12). In determining the merits and demerits of different electoral systems the Committee kept in view the requirements mentioned above.

6. The Committee considered the merits and demerits of the systems of universal adult franchise, selective franchise, direct, and indirect elections in the light of the Franchise Commission's Report and the Constitution Commission's Report.

Franchise

7. On the issue of Franchise, the Committee has found that the Franchise Commission's view that universal adult suffrage is a condition precedent to democracy, is not borne out by history. (Paras 1-7).

Right of Vote

8. The Franchise Commission appeared to have treated the right of vote as a natural right available to every citizen—a theory on which modern political thinkers have differences of opinion. The Committee believes that to be effective, a system of franchise must take into full account and correspond to the special conditions and requirements of a country. (Paras 8-13).

9. The Committee noted that the issue of Franchise has been finally settled under Article 157 of the Constitution according to which the right of universal adult franchise had been conferred on the people.

A deliberate attempt appears to have been made by certain sections to misrepresent the issue and create among the people a wholly erroneous impression that the adult population of the country has been denied the right of Franchise. The Committee feels that this impression needs to be corrected. People must be told that what is under consideration is not the right of Franchise but the mechanism according to which this right should be exercised namely whether the casting of vote should be on a direct or an indirect basis.

Direct Elections

10. The Franchise Commission have advanced the concept that participation of the people can be secured only through direct voting based on universal adult suffrage. The Committee, however, has not been able to subscribe to this concept, as it believes that participation essentially implies understanding of a programme of work and devotion to a cause rather than physical involvement in an electioneering process. (Paras 14-17).

11. The Committee considered the various alternatives available to Government for establishing a suitable system of franchise and elections for the President as well as the Legislatures. These alternatives are:—

- (1) A system of direct elections based on universal adult franchise.
- (2) A system of indirect elections based on universal adult franchise.
- (3) A system of direct elections based on franchise restricted by certain specified educational and/or property qualifications.
- (4) A system of indirect elections based on franchise restricted by certain specified educational and/or property qualifications.

12. The Committee felt that any system of franchise under which the Chief Executive was elected on a basis different from the one prescribed for election to the Legislature would tend to create unnecessary tension between the Chief Executive and the Legislature. The mode of election for the Chief Executive should, therefore, be the same as that for the Legislatures. (Paras 19-20).

13. The Franchise Commission's arguments in support of universal adult suffrage are that:—

- (a) It is valuable political right that ensures equality of all citizens;
- (b) It alone can enable the Legislatures to represent the people as a whole with whom, in a democracy, the ultimate authority rests;
- (c) It will offer opportunities of political education to them;
- (d) It will enable the list of voters to be prepared more easily and at less expense;
- (e) The percentage of literacy being 19.2, literacy qualification would reduce the number of voters considerably and discriminate against the rural areas where illiteracy generally prevails; and
- (f) Illiteracy should not be a bar, as a literate person may have less political consciousness than an illiterate one. (Paras 21-22).

14. The Committee, however, felt that the Commission's arguments are based on certain assumptions which lose validity on closer examination.

- (a) If, for example, the principle of equality were to be accepted in its totality, every citizen, including those below the age of 21 years, should have the right of vote.
- (b) No legislature in the world represents the people as a whole. The electors form only a portion of the total population.
- (c) Universal suffrage becomes politically meaningful only in the context of universal education.
- (d) The preparation of electoral rolls on the basis of universal

adult franchise is not necessarily less expensive than on the basis of selective franchise.

- (e) An illiterate voter may be able to distinguish between a trustworthy and an untrustworthy candidate, but his wisdom will be no avail to him in judging the merit of a political programme.
- (f) In our conditions of mass illiteracy, low standard of living, imperfect political understanding, the need for having a stable Government must take precedence over all other considerations. (Para 23).

15. The arguments of the Franchise Commission in favour of direct elections are as follows:—

- (1) Since the Reforms of 1919 and before the present Constitution, the people have had experience of direct elections including those to local bodies;
- (2) That direct elections provide a sense of participation and a means of political education to the people; and
- (3) That there is less corruption in direct elections. (Paras 24-25).

16. The Committee, however, felt that whereas before Independence, direct elections seemed to have little merit in view of the extremely limited proportion of population which enjoyed the right of Franchise, elections to the Provincial Legislatures after Independence had to be viewed in the light of the report of Electoral Reforms Commission 1955 which described these election as “a farce, a mockery and a fraud upon the electorate”. A view was expressed before the Committee by a member, who had experience of the 1954 direct elections in East Pakistan, that it was the right of direct voting exercised without any understanding of the issues involved and in an atmosphere charged with emotion that had nearly undermined the very basis and existence of the country.

The so-called sense of participation of the people can be purely illusory in the absence of proper education.

In comparing the system of direct and indirect elections, corruption in all its forms has to be taken into account and the corruption of the mind, in a direct system, poses a more serious threat than material corruption. (Paras 26-32).

17. Further disadvantages of the system of direct elections, in the opinion of the Committee, are:—

- (a) that the voter loses all contact with the successful candidate after election and consequently loses all interest in the functioning of Parliament or Government;
- (b) that an uneducated electorate is influenced readily by issues

dominated by local sectarian and parochial considerations. (Para 33).

Indirect Elections

18. Points in favour of indirect system of elections are:

- (a) that members of an electoral college represent higher average ability compared to an electorate of 80 per cent illiterate persons;
- (b) that members of an electoral college can exercise their vote with a sense of greater responsibility and are more amenable to party discipline; and
- (c) that they have more intimate knowledge of the candidate than a primary voter. (Para 34).

19. Arguments against an indirect system of elections are;

- (1) that these elections provide an opportunity to the ruling Party to remain perpetually in power.
- (2) that members of an electoral college can be tempted by attractive offers and subjected to pressure by vested interests.
- (3) that an area of tension is created between members of the Legislature and members of the electoral college.
- (4) that opinion at home would be opposed to indirect elections, and that unfriendly opinion abroad would use this as a propaganda weapon against Pakistan. (Para 35).

20. The Committee, however, believes that opinion in the country is not fully informed on the system of indirect elections and that the Government should take a bold line in establishing an electoral system best suited to the requirements of the people and the country regardless of criticism at home and abroad. (Para 36).

21. Until such time as majority of the people become literate, any election based on direct voting would be an unreliable index of responsible public opinion and will provide an opportunity to unpatriotic and hostile elements to create confusion and arrest the progress of the country. The indirect system alone permits the requisite contact between the voter and the voted.

The task of making a political judgment to support or oppose a political programme should be left to persons elected at the primary stage to electoral college.

The Committee feels that the size of the electoral college should be large enough to enjoy the confidence of the primary voter. (Paras 36-47).

22. Article 157 of the present Constitution provides that, subject to legal fitness, any citizen who is not less than 21 years of age "shall

be entitled to be enrolled on the electoral roll, for the electoral unit." The concept of universal adult franchise has thus been recognized in clear terms. (Paras 37-38). In the light of Article 157 of the Constitution, the issue of restrictive franchise, based on educational or property qualification would, therefore, appear to be somewhat academic. The Committee has, however, examined the pros and cons of this issue for purposes of record. (Paras 48-53).

Conclusions

23. The Committee's conclusions on the issue of franchise and method of elections may be summed up as follows:—

- (1) Universal adult suffrage has been conferred on the people under Article 157 of the present Constitution.
- (2) Considering the conditions prevalent in the country, this right should be exercised on an indirect basis.
- (3) The electoral college should be sufficiently broad-based.
- (4) The indirect system should be visualised as an intermediate stage. The objective must remain direct universal adult franchise. This objective can be achieved only after adequate facilities for proper education of the people have come into existence. (Para 54).

24. Size of Constituencies: (Paras 55-61).

25. Cost of Election to the Government and the Candidates: (Paras 62-70).

26. Effect on Basic Democracies: The experiment of Basic Democracies has given a new dimension and a new purpose to the mass of our people who, hitherto, had been more or less silent spectators of a series of political dramas which were played at their expense for providing profitable roles to a few self-seeking politicians. It would, therefore, be unwise to cut Basic Democracies a drift from the main stream of political and constitutional activity and circumscribe their functions merely to local government. (Paras 71-73).

27. Referendum under Article 24 of the Constitution: (Paras 74-77).

28. Malpractices in Direct and Indirect System: (Paras 78-84).

29. Elections in Tribal Areas—Jirgas appear to be the only feasible method: (Paras 85-88).

30. Time required for preparation of electoral rolls: (Paras 89-94).

31. Constitutional amendments required to be made: (Paras 95-96).

32. In the pages which follow the Committee has given detailed answers to the questions contained in the Questionnaire at Annexure I.

**TEXT OF THE REPORT OF THE
SPECIAL COMMITTEE**

[Note:—The references to the recommendations of the Franchise Commission pertain to the findings of the Majority Report of the Commission.]



TEXT OF THE REPORT OF THE SPECIAL COMMITTEE

Question I. What are the points in favour of and against

- (a) the indirect system incorporated in the present Constitution;
- (b) the direct system of universal adult franchise;
- (c) the system of selective franchise based on educational and property qualifications;
- (d) the compromise formula that elections to the legislatures should be based on universal adult franchise, while election to the office of President be held through Basic Democracies?

What are the conditions (political, social and economic) obtaining in our country which should influence the decision one way or the other?

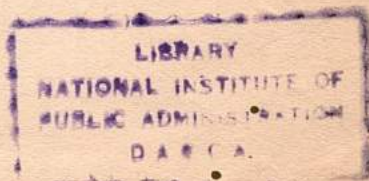
The Committee examined the Franchise Commission's Report and the Constitution Commission's Report, and, in the light of these Reports considered the merits and demerits of:—

- (a) the system of universal adult franchise;
- (b) the system of selective franchise; and
- (c) the systems of direct and indirect voting.

Franchise

2. Before attempting to answer the question of Franchise in detail, the Committee thought it necessary to analyse the historical and philosophical background of the problems of Franchise. This analysis has revealed that the popular view that democracy cannot exist without unrestricted adult franchise suffers from lack of historical knowledge and adequate appreciation of the realities of political administration. The Committee has found that the thinking contained in the majority report of the Franchise Commission is largely dominated by this popular view.

3. The Commission have discussed the development of constitutional Government in India during the British rule and come to the con-



clusion that, with the inauguration of the provincial autonomy in 1937, all persons aged 21 or above became entitled to vote if they possessed any of the prescribed minimum qualifications. According to the Commission, this gradual extension of Franchise was inherent in the establishment of democratic institutions in the country.

4. The Committee noted that the Commission have failed to mention the fact that at the time of the transfer of power in 1947, only 3 per cent of the population exercised the right of franchise in the elections to the Central Legislature and only 14 per cent of the population exercised this right in the elections to the Provincial Legislatures.

5. Apart from the inaccuracies in the narration of constitutional developments during the British rule, the Franchise Commission have taken it for granted that the line of Franchise development identified by them up to the year 1947 should have continued to proceed along the route prescribed by British thinkers.

6. The Commission has been indifferent to the fact that Independence represented a sharp break with the past. The political demands and requirements prior to 1947 were different from the requirements of an independent country. From about 1880 onwards, the principal objective in constitution-making was for the Indians to gain control of the Legislature from where a fight for freedom could be waged against the Executive appointed and controlled by a foreign power. During the British days, the Executive drew inspiration from sources different from the ones drawn upon by the Legislature. The Executive, under the British rule, served as an instrument of foreign control and people got accustomed to the idea that their interests were safe only in the hands of the Legislature.

7. The constitutional position underwent a change in 1947, and the need for bringing about some adjustment and co-ordination in popular thinking and the constitutional and legal requirements of a free and sovereign country should have been appreciated.

Right of Vote

8. Another assumption, basic to the thinking of the Franchise Commission, needs consideration. The Commission have treated the right of vote as a natural right available to every citizen. Modern political thinkers are divided on this concept. The four principal theories on the subject are:

- (1) Suffrage is an essential attribute of citizenship.
(This started in the days of ancient city States of the Greeks and the Romans and is prevalent in some States even now).
- (2) Suffrage is a privilege dependent on the status of the individual in society (Prevalent in all feudal societies). •

(3) Suffrage is a natural right based on the concept of the sovereignty of the people.

(Prevalent in certain constitutional regimes).

(4) Franchise is an office or a function of Government and the electorate is an organ of the State.

(Prevalent among many of the modern political thinkers).

9. The argument in favour of the theory mentioned last is that "the right of voting is obviously a right created by the law (whether special constitutional law or ordinary law) and cannot intelligibly be represented as a right prior to and independent of law. A constitution may be thought of as existing in order that individuals may have security and liberty, but cannot logically be regarded as existing in order that certain persons may have votes. On whom the suffrage shall be conferred is a matter not to be settled 'a priori' but by reference to the particular circumstances of the country". (Ritchie).

10. The Franchise Commission correctly describes this right as a "very valuable political right". The basic issue however is—which the Commission have not dealt with—whether the right is a natural right which cannot be circumscribed by any legal or constitutional limitations or it is a legal right in the nature of an office or function which is conferred by the State upon such persons as are believed to be most capable of exercising it for the public good.

11. To be effective, a system of franchise must take into full account the special conditions and requirements of a country. According to the Committee, the requirements of the country, in its present conditions, may be generally described as follows:—

(1) to have a strong and stable Government capable of promoting and maintaining national unity;

(2) to have an Executive armed with sufficient authority and powers to ensure the optimum and effective utilization of all national resources with a view to advancing the welfare of the people; and

(3) to have a system of representative Government responsive to public opinion.

12. The Committee felt that in determining the system of franchise these objectives must be kept in view. In working out the mechanics of a system of franchise according to the above objectives, the following requirements should be taken into account:—

(1) The voter should be able to understand the question put to him.

(2) He should be capable of giving an intelligent answer.

(3) He should have reasonable opportunity to acquaint himself

with his representative.

- (4) He should be able to maintain close contact with his representative.

13. All these requirements have one end in view—to ensure the positive and complete participation of the people in the affairs of the State.

System of Elections

14. The Franchise Commission have recommended that participation of the people can be secured only through direct elections based on universal adult suffrage. People get a sense of actual participation by seeing their representatives in Parliament instead of only at the primary stage of an Electoral College.

15. The Committee could not subscribe to this view. It could not understand how a person in a constituency, consisting of 2 to 3 lakhs of voters, would ever get the opportunity to acquaint himself with his representative, except perhaps to see him perched behind a loud speaker during an election meeting.

16. The idea that direct elections ensure participation of the people is based on the impression that since everyone, who has a vote (or an inclination to vote) jumps on some bandwagon on the election day, he can claim to have participated in the affairs of the State. Whereas, the Committee believes that participation essentially implies understanding of a programme of work and devotion to a cause rather than physical attendance at a public meeting.

17. Finally, the Commission were impressed by the argument that direct elections, based on universal adult franchise, would provide growing opportunities of political education to the people. Whereas, the Committee felt that the history of Franchise showed that universal franchise followed universal education.

18. In the light of the foregoing, the Committee considered the various alternatives available to Government for establishing a suitable system of franchise and elections for the President as well as the Legislatures.

19. These alternatives may be summed up as follows:—

- (1) A system of direct elections based on universal adult franchise.
- (2) A system of indirect elections based on universal adult franchise.
- (3) A system of direct elections based on franchise restricted by certain specified educational and/or property qualifications.
- (4) A system of indirect elections based on franchise restricted by certain specified educational and/or property qualifications. •

20. The Committee felt that any system of franchise under which the Chief Executive was elected on a basis different from the one prescribed for election to the Legislature would tend to create unnecessary tension between the Chief Executive and the Legislature. The mode of election for the Chief Executive should, therefore, be the same as that for the Legislatures.

21. The four alternatives mentioned above are examined below:—

Alternative I

22. The Franchise Commission gave the following arguments in support of universal adult franchise:—

- (1) It is a valuable political right of all citizens and it distinguishes the status of a citizen from that of a foreigner.
- (2) Denial of franchise to some citizens will offend against the principle of equality of all citizens and the basic concept that, in a democracy, the ultimate authority rests with the people.
- (3) It would be repugnant to the preamble of the Constitution which states that "The State shall exercise its power and authority through representatives chosen by the people". (Here, "people" does not exclude the illiterate or the poor).
- (4) Consistent with the principle of people's ultimate authority in a democracy, the legislatures are to represent the people as a whole and this can be achieved only by means of universal adult suffrage.
- (5) Universal adult franchise will offer opportunities of political education to people and will thereby facilitate the development of political parties on sound lines.
- (6) The list of voters can be more easily prepared, at less expense, in the case of adult franchise than in that of restricted franchise which would require assessment of the voting qualifications of the electors.
- (7) If literacy qualification is imposed, the number of voters would be reduced considerably, the percentage of literacy being 19.2 according to the 1961 census. In any case, cent per cent literacy would not be attained in Pakistan before the end of another two centuries.
- (8) Illiteracy should not be a bar as a literate man may have no political education where as an illiterate person, depending on his environment and experience, may have sufficient political consciousness and wisdom to cast an intelligent vote. Illiterate people of areas in which referendums

were held in 1947, showed more political sagacity by supporting the creation of Pakistan than certain literate persons who opposed it.

- (9) The percentage of literacy in urban areas, being much higher than that in rural areas, the condition of literacy for franchise would discriminate against the rural areas.
23. On closer examination, the arguments advanced by the Commission would be met as follows:—

- (1) The right of vote does not always distinguish a citizen from a foreigner. A Commonwealth citizen can vote in the United Kingdom if he is present on the registration day even though he may not be a citizen of the United Kingdom and the Colonies.
- (2) If the principle of equality were to be accepted in its totality, every citizen, including those below the age of 21 years, should have the right of vote. The legal requirement is 'fitness to vote' and so long as this concept is applied without discrimination no inequity or violation of any principles of equality is involved.
- (3) "Chosen" by the "people" does not mean chosen by *all the people*. It means chosen by the people who are capable of making a choice.
- (4) No legislature in the world represents the people as a whole. The electors form only a portion of the total population. Quite often the elected candidate represents a minority of the population and a political party, enjoying a majority in the legislature, represents a minority section of the population.
- (5) Universal adult franchise is not a substitute for political education. The assumption made by the Franchise Commission that the exercise of the right of vote will provide growing opportunities for political education of the people, has no basis in history. Universal suffrage becomes politically meaningful only in the context of universal education. The argument of the Commission, in the words of Bryce, means, "The tool will give the workman the skill."

Legislatures exist not only to reflect public opinion, but also to create proper conditions for the functioning of a good and stable Government. In our conditions of mass illiteracy, low standards of living, imperfect political understanding, the need for having a stable Government must take precedence over other considerations. Under our conditions, a Government dependent on direct expression of opi-

nion by a mass of illiterate electorate cannot possibly function effectively. Weak and incompetent governments returned by an illiterate people swayed into voting by gusts of passions, have often paved the way for dictatorship, resulting in the very loss of the democratic right to election and representation.

- (6) The Commission's assumption that the cost of the preparation of electoral rolls on the basis of universal adult suffrage would be less than that on the basis of selective franchise, would appear to be incorrect. Enquiries regarding property or education can be conducted in a simple and economical manner. The printing of rolls on a selective basis would, in any case, be less expensive than rolls prepared on the basis of universal adult suffrage.
- (7) The argument of the Commission emphasises the need for education. It does not prove the case for adult franchise.
- (8) The Commission would seem to be putting a premium on illiteracy. Some prominent political leaders have also been at pains to show that an illiterate and uneducated man may give a more intelligent opinion than an educated man. The question is not what an 'exceptional' person may do. The question is who is more likely to cast his vote intelligently and with a sense of responsibility, an educated person or an uneducated person? An illiterate citizen may well be able to distinguish between a trustworthy and an untrustworthy man, but his wisdom will be of no avail to him in judging the merits of a political programme.

Full advantage of the wisdom of an illiterate man can be taken only under a system of election where he is required to choose between man and man, leaving it to his representatives (who should be men possessing higher average ability) to choose between one programme and another.

The Commission's reference to the 1947 referendum does not take into account the fact that in the establishment of Pakistan, it were the educated Muslims, in the services and outside, and the Muslim students who played the most significant role under the leadership of the Quaid-i-Azam. The issue of Pakistan was presented to the masses as an emotional and a religious issue and they reacted accordingly.

- (9) This argument relates to an administrative problem which

can be resolved by a fair and reasonable delimitation of constituencies.

Alternative II

24. This alternative has the same basis of Franchise as the first alternative, but differs in the manner in which the right of franchise is exercised. Under the first, the vote is exercised directly for elections to the Legislature and to the office of the Chief Executive. Under this alternative, the vote is exercised in an indirect manner through an Electoral College.

25. The arguments of the Franchise Commission in favour of direct franchise are, in brief, as follows:—

- (1) Since the Reforms of 1919, elections in all territorial constituencies, irrespective of the extent of franchise, have been held on a direct basis.
- (2) With the coming into operation of the Government of India Act 1935, all elections to the Provincial Legislatures were direct except to a small extent in the upper chambers of some of the Provinces.
- (3) After 1947, and before the present Constitution, one general election was held in each Province of Pakistan; the election in each case was not only direct, but was on the basis of universal adult suffrage.
- (4) The mode of election to various Local Bodies has always been direct.
- (5) Direct elections provide a sense of participation to the people.
- (6) Direct elections provide a means of political education for the people.
- (7) Direct elections help in building up strong political parties.
- (8) There is less corruption in direct elections.

26. The first two arguments of the Commission for direct elections would seem to have little merit in view of the extremely limited franchise which was available to the people.

27. The reference to Provincial elections in Pakistan has to be studied in the light of the various reports available on the mode and conduct of those elections. Each one of these reports is a condemnation of the system of direct franchise in our present conditions. These elections were "a farce, a mockery and a fraud upon the electorate" (Electoral Reforms Commission 1955).

28. The precedent of elections to local bodies has no relevance to universal adult suffrage. Under any indirect system, the first elec-

tion has to be direct. This, however, does not mean that every election must be direct.

29. The so-called sense of participation can be purely illusory when there is little understanding of the issues involved in an election. There is the well-known case of a voter who was patiently awaiting his turn at a polling booth in East Pakistan in 1954. When asked "What are you doing here?", he answered: "I have come to see Bogra Shab".

30. As has been discussed earlier, the relationship between political education and universal suffrage has not been correctly appreciated by the Commission.

31. There is no historical evidence to support the Commission's assertion that direct elections help in building up strong political parties. Normally political parties come into existence first and the right of universal franchise is secured later.

32. It is customary to regard corruption as something limited to the acceptance of money or material gains. The corruption of the mind, under a system of direct elections, poses a more serious threat. In comparing the direct and the indirect system, corruption in all its forms has to be taken into account. There is overwhelming evidence that the exercise of direct vote, under a system of universal suffrage in conditions of extreme illiteracy, has been subject to far greater corruption of the mind and emotions than under an indirect system.

33. The following further disadvantages of the system of direct elections through universal adult suffrage, in conditions similar to our, need to be considered:—

(1) The voter imagines that he is sending a representative to the Legislature who will look after his interest. In fact he loses all contact with the successful candidate after the election, and gradually loses all interest in the functioning of Parliament or Government.

(2) At the time of elections, the issues more readily and easily acceptable to an uneducated mind, acquire undue importance. Inevitably these issues are dominated by local, sectarian and parochial considerations which are presented to an illiterate mass of people as 'slogans'.

(3) The constituencies are so large that the voter has no direct knowledge of the candidate.

34. The main points in favour of the indirect system are:—

(1) Members of an electoral college represent higher average

ability, compared to members of an electorate composed of 80 per cent illiterate persons.

- (2) Members of an electoral college have greater opportunity of exercising their vote with a sense of responsibility.
- (3) Members of an electoral college are less likely to be swept away by a gust of passion.
- (4) Members of an electoral college are more likely to be amenable to party discipline.
- (5) Members of an electoral college have closer and more intimate knowledge of the candidate than the primary voter.

35. The main arguments against the indirect system are:—

- (1) It is a political contrivance to keep the ruling party perpetually in power.
- (2) Members of an electoral college can be lured by attractive offers or subjected to pressure by vested interests.
- (3) An area of tension is created between the members of the Legislature and members of the electoral college after the election as both try to control available patronage.
- (4) Opinion at home will be opposed to an indirect system of voting.
- (5) Unfriendly opinion abroad will use this as a propaganda weapon to show that Pakistan is following a retrograde system of voting.

36. With regard to the last two objections, the Committee felt that opinion in the country was not fully informed on the subject, and it was the responsibility of the Government to take a bold line in establishing an electoral system best suited to the requirements of the people regardless of criticism at home. Unfriendly opinion abroad must also be faced, because there were hostile countries interested in pushing Pakistan into a system of elections which would provide them with opportunities for exploitation.

37. The alternatives discussed above are, however, governed by Article 157 of the present Constitution which reads as follows:—

“Except as provided by law, any citizen—

- (a) who is not less than 21 years of age;
- (b) who is not of unsound mind; and
- (c) who is a resident of, or who is deemed by law to be a resident of an electoral unit, shall be entitled to be enrolled on the electoral roll for that electoral unit.”

38. The concept of universal adult franchise has been recognized in clear terms and whatever its merits and demerits in our

present-day conditions, this must be accepted as a fact of life.

39. The Committee was of the view that while the ultimate objective of any democratic system must remain direct elections on the basis of universal adult franchise, the achievement of this objective was dependent entirely on the education of the people. Until such time as majority of the people became literate, any election based on direct vote would be an unreliable index of responsible public opinion.

40. The Committee felt that the mass of the people could be reasonably relied upon to make a correct choice of their individual representatives on the basis of personal knowledge. This would necessitate the holding of primary elections in sufficiently well-defined and small areas where people have adequate opportunity of knowing one another.

41. The task of making a political judgment to support or oppose a political programme must not be entrusted to a people not adequately informed and educated. This task should be left to persons elected at the primary stage, who can be reasonably expected to have a comparatively mature mind and a good measure of intelligence.

42. An indirect system of election alone permits the requisite contact between the voter and the voted, and allows that wisdom, which knows no distinction between literate and illiterate, to come into play.

43. At the primary level, citizens can judge the capability of the candidates, the more so when local government responsibilities are placed in their hands. To vote for an undesirable candidate under such a system would mean denying oneself the advantage of an efficiently run Union. The practical necessity of choosing trustworthy representatives becomes increasingly obvious. One election may not be enough, but, in course of time, wisdom will dictate to the primary voter to choose the most trustworthy among his neighbours if he has to have pure water, a well run school, a proper dispensary and use-worthy roads.

44. The result would be that at the secondary level, the electoral college would gradually be filled with trustworthy people who have had experience of dealing with practical problems. They would be better informed about the issues which the Assemblies and the Executives have to contend with.

45. The Franchise Commission advocate a system of direct elections in the belief that strong and well disciplined political parties will soon emerge and the voter will be educated and guided

by these parties. There is little evidence to justify such a belief.

46. The Committee felt that the size of the Electoral College should be large enough to enjoy the confidence of the primary voter.

47. The Committee considered whether the intelligentsia could be associated with the Electoral College on the basis of its educational qualities. The Committee was of the opinion that it would be undesirable to give weightage to the educated classes. Firstly, there was the question of a large number of Government servants who would receive preferential treatment under such a system. Secondly, it would create an area of misunderstanding between the educated people and the illiterate primary voter. Much of the present frustration among the intelligentsia was due to the fact that they had not taken the last elections to the Basic Democracies seriously. At the next elections, this frustration should largely disappear.

Alternative Nos. III & IV

48. These alternatives are ruled out by Article 157 of the Constitution.

49. However, for purposes of record the Committee considered the arguments for and against educational and property qualifications.

50. The principal argument in favour of educational qualification, is that without proper education, a voter cannot understand the election issues and the full value of his vote.

51. The argument against the imposition of educational qualifications runs as follows. It is the responsibility of the State to educate the people. If a Government fails to discharge this responsibility the people cannot be deprived of their right to change the Government. If the right to change the Government is restricted to only those who are educated, the Government acquires a vested interest in illiteracy.

52. The argument in favour of property qualifications is that only such people as have a stake in the country should have the right to vote.

53. The answer is that every citizen has a stake in his country. Each one of them pays some tax, direct or indirect, and love of the motherland is not a privilege limited to those who own some property or pay some tax.

Conclusions

54. The following conclusions are therefore, suggested.

- (1) Universal adult suffrage has been conferred on the people under Article 157 of the present Constitution.

- (2) Considering the conditions prevalent in the country this right should be exercised on an indirect basis.
- (3) The electoral college should be sufficiently broadbased.
- (4) The indirect system should be visualised as an intermediate stage. The objective must remain direct universal adult franchise. This objective can be achieved only after adequate facilities for proper education of the people have come into existence. According to John Stuart Mill, "*Universal teaching must precede universal enfranchisement. None but those in whom 'a priori' theory has silenced commonsense will maintain that power over others, over the whole community, should be imparted to people who have not acquired the commonest and most essential requisites for taking care of themselves, for pursuing intelligently in their own interests and those of the persons most nearly allied to them.*"

Since the Constitution has conceded universal enfranchisement, the only means available to the country to ensure its proper exercise is through the establishment of electoral colleges.

- (5) The demand for direct franchise is often raised by people who have either not studied the subject or have little interest in the problems of the country.

II. Size of Constituencies

55. Question II (a): The majority of Franchise Commission has recommended that elections to the office of the President, the National Assembly, and the Provincial Legislative Assemblies should be held according to the universal adult franchise. What would be the number of such voters in East Pakistan?

January 1964 (21 years and over)

Total	...	4,51,05,692.
40 per cent of total population		(Population 10, 04, 68, 496).
East	...	2, 41, 63, 656
West	...	2, 09, 42, 036

56. Question II (b): What would be the number of voters, if the voting age is raised to 25 years?

January 1964 (25 years and above)

Total	...	3, 91, 77, 903
East	...	2, 09, 20, 931
West	...	1, 82, 56, 972



57. Question II (c): What would be the number of voters if the right of vote is restricted to such citizens as have attained the age of 21 and are, in addition, required to have passed the matriculation, middle or primary examination?

Matriculate (21 years) and above)

January 1964	...	6,20,878
Educated: 21 years and over — January 1964.		
East	...	50,00,000
West	...	40,00,000,
Educated: 25 years and over — January 1964.		
East	...	40,00,000
West	...	30,00,000,

58. Question II (d): The Constitution Commission recommends restricted franchise. If property qualification is introduced for franchise, what should be the extent of property tax, rent, rates, cesses, etc. separately for urban area and for rural area?

(e) What would be the number of voters based on such property qualification?

59. The replies furnished by the Provincial Finance Secretaries are at Annexure III.

60. Question II (f): In the case of direct franchise, particularly when based on educational or property qualification, would any special measures be required to ensure parity in representation between East and West Pakistan?

61. The constituencies, whatever be the extent and basis of franchise or the method of election, will have to be distributed equally in East and West Pakistan.

III. Cost of Election to the Government and the Candidates

62. Question III (a): What would be the cost of election by direct method to the office of President and to the three legislatures if the election is based on universal adult franchise?

(b) What would be the cost of such election if it is direct to the legislatures but indirect to the office of President?

(c) What would be the cost of such election by direct method on the basis of restricted franchise subject to

(i) educational qualification and

(ii) property qualification?

(d) What would be the cost if the present indirect system is continued?

63. The estimates prepared by the Administrators' Committee are as follows:

(a) Preparation of rolls	...	Rs. 2	Crores
(b) Direct election to National and			•

Provincial Assemblies (simultaneous)	...	Rs. 1.75	crores
(c) Election of President (Direct)	...	Rs. 1.50	crores
(d) Conduct of Primary elections	...	Rs. 30	lakhs
(e) Polls for Assemblies (Indirect)	...	Rs. 15	lakhs
(f) Poll for President (Indirect)	...	Rs. 10	lakhs

64. Thus the total cost for each kind of election would be as follows:

Direct (President, National & Provincial Assemblies) (a)+(b)+(c)	...	Rs. 5.25	Crores
Direct (National Assembly and Provincial Assemblies, simultaneous) and indirect for President (a)+(b)+(d)+(f)	...	Rs. 4.15	Crores
Indirect for all (a)+(d)+(e)+(f)	...	Rs. 2.55	Crores

Note:

65. Under (d) above, it is assumed that the primary election will be held as simply as the B.D. elections of 1959.

In a restricted franchise, the only difference will be a proportionate reduction of cost for the printing of the rolls.

If the age limit were to be raised to 25 years, the reduction in cost may be of the order of about 10 per cent i.e., from Rs. 2 crores to about Rs. 1.75 crores. This reduction will be counter-balanced by the increased cost of the preparation of the rolls as the staff will be required to work for a longer period in order to be able to eliminate those persons who do not satisfy the prescribed qualifications.

66. In estimating the expenses likely to be incurred by candidates in elections the Committee took the following items into account:—

- (1) Publicity;
- (2) Travelling expenses of candidates;
- (3) Expenses of election agents;
- (4) Expenses of workers;
- (5) Expenses on meetings.

67. The Committee noted that under Section 89 (i) of the Representation of the People's Act 1957 a ceiling of Rs. 4/- per voter was fixed for elections expenses. The Committee adopted this as a safe basis for calculating the expenditure of candidates. The average size of a constituency works out as follows:

National Assembly	...	2,80,000	voters.
Provincial Assemblies	...	1,40,000	voters.

Expenditure per candidate works out to Rs. 70,000 and Rs. 35,000 for the National and Provincial Assembly elections respectively.

68. Assuming that on an average 4 candidates will contest elections per constituency for the National Assembly, there would be

600 candidates for the present 50 seats. For the two Provincial Assemblies the number of candidates would be 1,800 on an average of 6 candidates per constituency.

69. The total expenditure would thus come to:

National Assembly	...	4,20,00,000.
Provincial Assemblies	...	6,30,00,000.
Total		10,50,00,000

70. These estimates do not include items of expenditure which are not recognised by law.

Future of Basic Democracies

71. **Question IV (a): What would be the effect on Basic Democracies, if any, if the elections are not held through them?**

72. The Constitution Commission's objection to the proposal that Basic Democracies should form the Electoral College for the election of representatives to the three Assemblies and to the office of President, is based on the assumption that an average Basic Democrat may not be "capable of judging between the various candidates who stand for Presidency and for membership of the legislatures".

Nevertheless, the Constitution Commission has conceded that the system of Basic Democracies "would be a great help in educating the general mass of people in the art of managing their own affairs by coordinated effort". "The Basic Democracies system", the Commission adds, "is of considerable importance and very useful as far as local government is concerned".

An analysis of the result of last elections held under Basic Democracies system shows that, by any large, a new class of leadership is emerging. Among the successful candidates, in West Pakistan, 12 per cent were well educated, 58 per cent had read upto the 9th Class and only 30 per cent were illiterate. In East Pakistan, 11 per cent were well educated, 87 per cent had studied upto Matriculation, and only 2 per cent were illiterate. In Karachi, 90 per cent of the people's representatives were literate. The elected Councillors came mostly from the middle and lower middle-class. Farmers constituted about 22 per cent of the elected representatives in East Pakistan. In West Pakistan, nearly 60 per cent of the elected persons came from middle-class families.

73. The experiment of Basic Democracies has given a new dimension and new purpose to the mass of our people who, hitherto, had been more or less silent spectators of a series of political dramas which were played at their expense for providing profitable roles to a few self-seeking politicians. It would, therefore, be unwise to

cut Basic Democracies adrift from the main stream of political and constitutional activity and circumscribe their functions merely to local government. The experiment of Basic Democracies has been successful not only at home, but has also been recognised abroad as a positive contribution to the evolution of democracy suited to the requirements of developing countries.

74. Question IV (b): Article 24 of the Constitution provides that if, at any time, a conflict with respect to any matter arises between the President and the National Assembly, the President may cause the matter to be referred to a referendum which shall be conducted among the members of the Electoral College. How is this constitutional provision to be reconciled with the system of direct election or with the compromise formula of direct election to the legislatures but indirect one to the office of President?

75. The basis for referendum in such an event will disappear. The Franchise Commission has suggested that the referendum in such a case may be to the larger of the two electorates. This is obviously not a practical proposition.

76. It has also to be remembered that if the President is elected on an indirect basis and the Assemblies are elected on the basis of direct election, the latter will claim more representative character and this may weaken the position of the Chief Executive.

77. Under the Constitution, the President is also empowered to dissolve the Legislature under certain circumstances. If the Legislature is elected direct on the basis of universal adult suffrage and the President is elected through an Electoral College, it will be impossible for the President to dissolve a Legislature claiming the support of the people and acting in accordance with their mandate.

78. Question IV (c): What would be the difference in degree of malpractice (particularly in respect of polling of women's votes) corruption, influence and inducement between the system of direct and indirect election?

79. The most important factor to be kept in view is that under our present conditions many candidates, who are otherwise suitable, do not offer themselves for election as they are unwilling to expose themselves to a Mass Test. They do not find any basis of communication with large groups of illiterate voters. On the contrary, if they were required to compete for an elective office on the basis of an Electoral College, they would be prepared to come forward to serve the country. Under a direct system, the country loses the service of a number of patriotic and respectable persons who cannot play to the gallery.

80. The confusion and chaos in direct elections is much more than under an indirect system of voting.

81. The Committee felt that possibilities of corruption existed under either system and it was possible for the administration to reduce the chances of corruption.

82. The Committee observed that whether elections are held under a direct or an indirect system, the ruling Party can always exert pressure on the Administration to create conditions favourable to the Party's candidates. A point of view in the Committee was that, in an indirect system, owing to manageable number of voters, administrative machinery can be subject to greater strain by a Ruling Party than in a system of direct elections. Another view-point was, however, that pressure can be brought to bear upon the Administration even in a system of direct elections, as has been the experience during the General Elections held in West Pakistan in the past.

83. Possibilities of other malpractices like impersonation are decidedly more in the case of direct elections where the Polling Officers have to deal with a large number of voters in each constituency.

84. For women voters, indirect elections are safer and more disciplined.

85. Question IV (d): What is the most practicable system of elections in the Tribal Areas?

86. Difficulties

(1) Census figures of actual population are not available. Estimates have been made on a rough basis, as house to house enumeration could not be done.

(2) The unsettled nature of the population makes territorial delimitation impossible. Territorial units, as strictly required under the Constitution, cannot therefore be established.

(3) Even the B. D. Order has not so far been extended to these areas.

(4) Preparation of voters' list can be done only through Jirgas.

(5) Tribes and territories are not co-terminous. Tribal customs do not allow of direct adult suffrage elections.

87. The Franchise Commission has suggested that, "the constitutional provisions with regard to the formation of electoral units and the method of holding elections, should be relaxed in the case of Tribal Areas, and the Election Commission should be empowered by

law to make such arrangements in these matters in the said areas as it may deem fit and proper". [(xviii) of para 27, and para 25 of the main Report].

88. Whatever the other arrangements, tribal delimitations and elections through Jirgas appear to be the only feasible method.

V. Time

89. **Question V (a): What would be the time taken in holding elections according to the four systems mentioned above, namely, indirect elections through Basic Democracies, direct elections based on universal adult franchise, direct elections based on educational and property qualifications, and direct elections to the three legislatures but indirect elections to the office of President?**

90. **Question V (b): Can any of election be combined considering all the factors that obtain in our country?**

91. Time required for rolls:—

Preparation	...	6 months.
Revision	...	6 months.
Printing	...	6 months.
Total		18 months.

92. In the meantime, preparations can be made for holding the various elections:

Time required for B. D. polls	...	3 months
Time required for election to Assemblies	...	3 months
Time required for the election of the President	...	2 months

93. B. D. elections have to be completed between December, 1964 and February, 1965, the Assembly elections between Feb. 7th & May 24th, 1965, and the Presidential election between April 9th & July 24th, 1965.

(Art. 165, 168 and 226, of the Constitution).

94. Time available, for the preparation etc. of the rolls to be used in the elections, has, therefore, to be counted backwards from February 7, 1965.

VI. Legal

95. **Question VI: What would be the constitutional amendments required for the various alternatives?**

96. This will be decided by the Law Ministry after decisions have been taken on the recommendations of the Franchise Commission.

ANNEXURE I

QUESTIONNAIRE

I. Franchise

What are the points in favour and against

- (a) the indirect system incorporated in our present Constitution;
- (b) the direct system of universal adult franchise;
- (c) the system of selective franchise based on educational and property qualifications;
- (d) the compromise formula that elections to the legislatures should be based on universal adult franchise while election to the office of the President is held through the Basic Democracy?

What are the conditions (political, social and economic) obtaining in our country which should influence the decision one way or the other?

II. Size of Constituencies

- (a) The majority report of Franchise Commission has recommended that elections to the office of the President, the National Assembly, and the Provincial Legislative Assemblies should be held according to the universal adult franchises. What would be the number of such voters in East Pakistan and West Pakistan?
- (b) What would be the number of voters, if the voting age is raised to 25 years?
- (c) What would be the number of voters if the right of vote is restricted to such citizens as have attained the age of 21 and are, in addition, required to have passed the matriculation, middle or primary examination?
- (d) The Constitution Commission recommends restricted franchise. If property qualification is introduced for franchise what should be the extent of property tax, rent, rates, cesses etc., separately for urban area and for rural area?

- (e) What would be the number of voters based on such property qualification?
- (f) In the case of direct franchise, particularly when based on educational or property qualification, would any special measures be required to ensure parity in representation between East and West Pakistan?

III. Cost of Election to the Government and the Candidates

- (a) What would be the cost of election by direct method to the office of the President and to the three legislatures if the election is based on universal adult franchise?
- (b) What would be the cost of such election if it is direct to the legislatures but indirect to the office of the President?
- (c) What would be the cost of such election by direct method on the basis of restricted franchise subject to (i) educational qualification and (ii) property qualification?
- (d) What would be the cost if the present indirect system is continued?

IV. General

- (a) What would be the effect on Basic Democracies, if any, if the elections are not held through them?
- (b) Article 24 of the Constitution provides that if, at any time, a conflict with respect to any matter arises between the President and the National Assembly, the President may cause the matter to be referred to a referendum which shall be conducted among the members of the electoral college. How is this constitutional provision to be reconciled with the system of direct election or with the compromise formula of direct elections to the legislatures but indirect one to the office of the President.
- (c) What would be the difference in degree of malpractice (particularly in respect of polling of women's votes) corruption, influence and inducement between the system of direct and indirect election?
- (d) What is the most practicable system of elections in the Tribal Areas?

V. Time

- (a) What would be the time taken in holding elections according to the four systems mentioned above, namely, indirect elections through Basic Democracies, direct elections based on universal adult franchise, direct elections based on educational and property qualifications, and direct elections to the three legislatures but indirect elections to the office of President.

(b) Can any of the election be combined considering all the factors that obtain in our country?

VI. Legal

What would be the constitutional amendments required for the various alternatives?

ANNEXURE II

EXTENT OF PROPERTY QUALIFICATIONS

[Answer to question No. II (d)]

The following two alternatives may be considered:

- (1) All persons owning property and paying any taxes thereon will be qualified to vote as follows:

Rural Areas: Persons owning land and paying land revenue to Government, in the case of West Pakistan or rent under the State Acquisition Act in the case of East Pakistan.

Urban Areas: Persons owning a moveable property and paying urban moveable property tax to Government in West Pakistan or property tax to Municipalities in the case of East Pakistan.

- (2) Persons owning property and paying tax above a certain minimum would be qualified to vote as follows:—

Rural Areas: Persons owning land and paying more than Rs. 5/- per annum as land revenue in the case of West Pakistan or rent in the case of East Pakistan.

Urban Areas: Persons owning a moveable property and paying Rs. 20/- per annum as urban moveable property tax to Government in West Pakistan or property tax to Municipalities in East Pakistan.

(e) The number of persons assessed to tax, who would be entitled to vote under the two formulas mentioned above, will be as follows:

Alternative I

	Rural	Urban	Total
West Pakistan	61,87,385	3,19,604	65,06,989
East Pakistan	1,00,00,000	2,00,000	1,03,00,000
Total	1,61,87,385	5,19,604	1,67,06,989

Alternative II

West Pakistan	33,00,000	3,00,000	36,00,000
East Pakistan	N.A.	N.A.	N.A.

Note I: All figures for East Pakistan are based on very rough calculations.

Note II: The figures of assesseees will include minors, who would be otherwise ineligible to vote.

APPENDIX A

COMMENTS ON THE MAJORITY REPORT OF THE FRANCHISE COMMISSION

by

A Professor of Political Science

The Majority Report of the Franchise Commission begins with a resume of the growth of franchise and its gradual extension alongside constitutional reforms during the British period. It justified this reference to constitutional development during the British period with the following words:

"A brief study of the growth of franchise and its gradual extension side by side with the constitutional development during and after the British rule in India, and a further study of the modes of election adopted for election of legislatures and other representative institutions during the period may be useful, for, the same would furnish a good background for a proper appreciation of the problems before the Commission".

The Majority Report describes, in great details, the main stages of the constitutional development in India since the passing of the Government of India Act, 1858 upto the time of transfer of power in 1947. But I am constrained to say that the account of the constitutional development as given in the Majority Report is, in certain cases, not borne out by the facts of history. The Commission's Report conveys the impression that the British Government was expanding franchise at a rapid pace with ultimate objectives of introducing a British Parliamentary System and universal adult franchise by direct elections. An impartial student of the constitutional development of the same period would, however, find it difficult to agree with this conclusion of the Majority Report. Let me, therefore, discuss in some detail the constitutional development that took place during the British period.

It was after the great political upheaval of 1857, which resulted in the dissolution of East India Company and assumption of direct control by the British Parliament through a Secretary of State, that the need was felt for the representation of Indian opinion in the Legislative Council. The Indian Legislative Council Act, 1861 made the first attempt to introduce an element of Indian opinion in the Governor-General's Council. It was, however, as Professor Coupland, a reputed scholar on constitutional development in British India, pointed out, by no means, a concession of representative government.

The Simon Commission of 1930 also made this point very clear by pointing out that it would be a mistake to think of the Legislative Councils established under the Act of 1861 as a "miniature parliament or as containing the germs of representative institutions". The next stage in the development of legislative bodies in British India took place in 1892 which, for the first time, though in a rudimentary way, introduced the element of election to the Indian Legislative Council. But they had not introduced any system of direct election nor the authors of these reforms had any doubt in their minds as to the limited character of these reforms. Lord Dufferin, who took the initiative in suggesting the reforms of 1892, observed: "Our scheme may be described as a plan for enlargement of our Provincial Councils, for the enhancement of their status, partial introduction into them of the elective principle From this it might be concluded that we are contemplating an approach, at all events, as far as the provinces are concerned to an English parliamentary government and an English constitutional system. Such a conclusion would be off the mark."

The Indian Council Act, 1892 was followed by a much bigger instalment of reforms in 1909, popularly known as Morley-Minto reforms. The Morley-Minto reforms of 1909 had increased the members of the legislatures, both Central and Provincial, and their scope. The authors of the reforms, however, recognised that, in view of the immense diversity of opinions and interests in India, the principle of territorial representation by direct method, which is the usual method of representation in a Western democratic State, was unsuitable for British India, divided by a number of races, castes and creeds with conflicting interests. They therefore, devised an electoral system based on indirect method.

Similarly the authors of the reforms of 1909 were emphatic in repudiating any idea that these reforms could lead directly or indirectly to the introduction of British Parliamentary system in India. Speaking in the House of Lords in December 1908, Lord Morley emphatically declared: "If I were attempting to set up a Parliamentary system in India, or if it could be said that this chapter of reforms will lead directly or necessarily to establish a parliamentary system in India, I for one would have nothing to do with it. A parliamentary system is not at all the goal to which I would, for one moment, aspire". It needs no further elucidation that the authors of these various reforms of the constitutional experiments during the British period had quite different objectives and plans than what has been suggested in the Majority Report.

In 1919, the British Government made certain experiments of parliamentary system, though in a very rudimentary manner, in British India. These reforms were embodied in the Montague-Chelmsford reforms of 1919. It is, no doubt, true that these reforms had introduced some features of direct election in British India so far as the election of members of the provincial and the lower house of the Central Legislatures were concerned. The system was given a trial in India from 1920 to 1936. When the scheme came up for review and appraisal, the late Mr. A. K. Fazlul Haq had no hesitation in declaring: "You can no more expect the representative institutions to flourish in their proper form in India than you can expect hot-house flower to blossom in the icy cold of the North". The reforms were also thoroughly examined by the Indian Statutory Commission known as the Simon Commission in 1928. The Majority Report has, in more than one place, referred to the recommendations and findings of the Simon Commission. But it has not taken note of some of the penetrating observations and remarks made by the Simon Commission with regard to the experiment of representative institutions as made under the Act of 1919, and as to the future prospects of representative institutions in the Indo-Pak sub-continent. The Majority Report mentions that the Simon Commission recommended "further reforms towards responsible Government". The Simon Commission made it clear that "the first essential for a correct understanding of the relation of the Central Government with the Central Legislature in India is to divest the minds of analogies drawn from the British Parliamentary System". It continued to say: "British Parliamentary system in India is a translation and even in the best translation the essential meaning is apt to be lost". It further pointed out that a mode of government must in fact be the expression of the political instincts of the people. The British system is not an easy one to imitate, for its success depends upon a number of factors which cannot be introduced into the provisions of a Statute. In other countries where a system of shifting groups obtained, the constitutional position of the government is in fact quite different from that of the Cabinet in the British system. The Simon Commission stated that "the British constitution is not a panacea which can be used in all times and in all places".

The actual working of democracy in Pakistan under the interim Constitution of 1947, as well as under the late Constitution of 1956, seems to have provided text-book demonstration of the correctness of the apprehensions and doubts expressed by the Simon Commission. I think it is better to keep in mind that a carbon copy of any

particular variety of democracy, whether British or American, cannot solve the problems and dilemmas of new democracies in Asia where socio-economic conditions are utterly different.

The Majority Report, after the completion of its resume, made the following observation: "With the introduction of provincial autonomy in 1937, voting qualifications based on property, education or taxes, were so liberally lowered that all persons aged 21 or above, whether male or female, literate or illiterate, rich or poor became entitled to vote if they possessed any of the prescribed minimum qualifications". The inference from this conclusion is that during the British period, franchise was expanding very rapidly towards the goal of universal suffrage. But what is more pertinent is as to what percentage of population enjoyed the right of franchise in the election to the Central or Provincial legislatures during the British period? The actual position was that in 1947, when the British Government transferred power to the people of Indo-Pak sub-continent, percentage of population who exercised the right of franchise in the election to the central legislature was only three and in case of provincial legislature the percentage of the total population who exercised the right of franchise was only 14.

Another fact which has to be pointed out about the constitutional development in British India is that real power in those days was exercised by the Executive—the Governor-General and the Governors, who were never elected, but were direct nominees of the British Government and responsible to that Government only. Therefore, my submission is that the account of the constitutional development as given in the Majority Report does not give the full picture of the position.

Turning to the post-Independence period, the Majority Report pointed out that the British Government transferred power to the chosen representatives of the people as elected in the Constituent Assembly. In actual fact, the Constituent Assembly which received power on behalf of the people, was elected indirectly by the Provincial Legislatures which themselves were elected on a strictly restricted franchise. The first Central Legislature after the Independence which was supposed to be a sovereign body, and which remained in power from 1947 to 1954, was never elected on a direct basis through any scheme of universal franchise.

The Majority Report points out that after Independence, provincial elections were held on the basis of direct universal franchise in West Punjab, NWFP, Sind and in East Pakistan. Note must, however, be taken of the results of the experiments of direct elections

on the basis of adult franchise in those provinces. The best account of these results could be found in the Electoral Reforms Commission of 1955, which was appointed by the Government of Pakistan in October 1955. This impartial Commission had no hesitation in telling that these elections were "a farce, a mockery and a fraud upon the electorate". It continues to say: "It was alleged that pocket constituencies were carved out to suit the convenience of particular politicians". It was maintained that persons on a large scale were purposely registered as bogus voters in the electoral rolls and made to vote under undue influence, coercion and inducements of all sorts. The Electoral Reforms Commission also pointed out that officials at the bidding of the party in power interfered in the free exercise of the ballot, and a host of tricks were played upon the electorate. Nomination papers of candidates opposed to the ruling party were not uncommonly rejected on flimsy and technical grounds". It was also pointed out to the Electoral Reforms Commission that electoral rolls prepared suffered badly both from exclusion of eligible voters and inclusion of invalid and bogus voters, and that impersonation at polling was widely practised. The cases of tampering with ballot boxes were also mentioned. It is no wonder, therefore, that these trials of direct elections were aptly termed as a "a fraud and a farce" on the electorate.

Turning to the elections of 1954 in East Pakistan on the basis of direct adult franchise, it was pointed out by the Election Commissioner that the programme presented to the voters was incapable of implementation and passions were inflamed. There was a campaign of hatred. A Minister in the Muslim League Ministry in East Pakistan told the Constitution Commission of 1961 that one of the points against him was that the Muslim League Government had imposed three taxes on a tree: one on the roots, second on the trunk and the third on the leaves. It is no use elaborating the virtues of a method of election without a realistic appraisal of the situation for which it is meant. About the 1954 elections in East Pakistan, the author of this note was told by an American correspondent, who travelled with the then Prime Minister (Mr. Mohammad Ali of Bogra), that he picked up three persons at an election meeting which was addressed by the Prime Minister, to ask a simple question—"who was the Prime Minister of Pakistan?" The answers were:

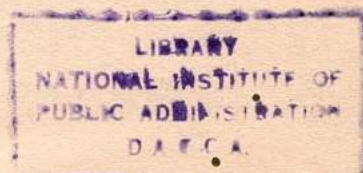
- (i) Jinnah Sahib,
- (ii) Khwaja Nazimuddin,
- (iii) Do not know.

It can be safely stated from a study of the official accounts of

the direct elections in the provinces, which were held in Pakistan after Independence, that the experiment had not proved successful in our country.

Another significant impression which the Majority Report carries is that all important actions after Independence were done in the name of the 'people'. It points out that the dissolution of the Constituent Assembly in 1954, framing of the 1956 Constitution and its subsequent abrogation, promulgation of the Martial Law and framing of the present Constitution were all taken in the name of the people, because the ultimate authority of Government vests with them. The Commission consequently implies that the present Constitution, by introducing the new method of election has challenged the basic assumption, namely, that the ultimate authority of Government vests in the people. To my mind, it appears that there is nothing inconsistent or contradictory to devise a new and more appropriate method of election in accordance with the socio-economic conditions of our society and the concept of popular sovereignty. To the implications of the Majority Report that the present Constitution has challenged the concept of popular sovereignty by introducing a new method of election, my submission here is that in modern democratic States, elections are inevitable and the periodic elections are the only means through which people can express their choice as to who shall govern them, but the method of election need be the same or identical in all situations and in all circumstances. On the contrary, the method of election has to be adjusted to the particular needs and requirements of a country for which it is meant. It is just like a vestment which has to be fitted to the body for which it is meant.

The next part of the Majority Report (pp. 16-21) is devoted to a discussion about the merits of universal franchise. It puts forward arguments in favour of adult franchise. To my mind, it appears, however, that all these arguments in favour of adult franchise are somewhat unnecessary because the present constitution is not based on any idea of restricted franchise. On the contrary, it has accepted the concept of universal franchise under Article 157, viz., "every citizen who has attained the age of 21, who is not of an unsound mind and is not disqualified by the laws of the land, is entitled to vote." The novelty of the Constitution of 1962 is that it provides a new and more efficacious method under which people can exercise the right of franchise as guaranteed to them under the new Constitution. There is no question of taking away the right from the people. The issue is to devise an appropriate method under which people can exercise this right. I would like to submit that it will be a grievous mistake if the electorate issues



are presented before the legislature or to the country in the form of universal versus restricted franchise, as put forward in the Majority Report. The issue is not like this: The problem before us is whether in view of the past experiences of direct election, as pointed out by the Electoral Reforms Commission of 1955 and other reports, we should give trial to a new method. The issue may be presented in the following form: Whether we should copy a method which might have been accepted in many of the Western countries or whether we should devise a more appropriate method for our country. Before I discuss this important problem which has been dealt with in the Majority Report in great detail, I would like to refer to one particular suggestion made in the Majority Report (vide page 17), namely that the Preamble of the present Constitution which declares that "the state would exercise its power and authority through the representatives chosen by the people" seems to have been violated by the electoral system of the present Constitution. It is difficult to find any basis for such a suggestion. The Preamble of the present Constitution, where it says that authority and power shall be exercised by the representatives chosen by the people, is not affected by the new method of election. In USA, the President is still, from a legal and constitutional point of view, elected through an indirect method of election, but nobody has claimed on that ground that the American Constitution has violated the democratic concept of people's right. The Charter of the United Nations also refers to "the people" but in no organ of the UN, people directly choose their representatives. They are chosen indirectly by the national governments. It is difficult to understand how an indirect method of election is necessarily inconsistent with the concept and idea of popular sovereignty or people's right.

Now I come to deal with the most important point of the Majority Report, i.e., the third part (pp. 21-23) which is devoted to discussion of the method of election—whether the election should be direct or indirect. This is the most crucial and important issue relating to the electoral system.

The Majority Report at first discussed the desirability of direct election for the members of the legislature and then argued for the same method for the office of President. While dealing with the desirability of the direct method, it has advanced a number of arguments. Let me analyse and examine each and every argument as put forward in the Majority Report.

(1) The first argument advanced by the authors of the Majority Report in favour of direct election is that "during the last 40 years people have become accustomed to the system of direct voting" and

they, therefore, think that this "long-standing" electoral system should not be reversed at this stage. My reply to this argument is that it is not correct to say that people of this sub-continent have been long accustomed to the direct method of election. While reviewing the constitutional development and expansion of franchise during the British period, I have already pointed out that upto 1947, when our people got independence only 3 per cent of the total population had the right of franchise for election of the members of the Central Legislature, and only 14 per cent of the population had the right of franchise in the case of election to the Provincial Legislature. The actual position is that up to the time of Independence, the people in general had no right of franchise. This has been pointed out in the Report on the First General Elections in India 1951-52, where it stated: "In every case, the franchise was a very limited one and was related to factors like taxation, property, literacy, community, etc. The result was that only a small percentage of the adult population of the country had the right to vote". After Independence, it is true that so far as provincial elections were concerned, the people had one experiment of direct election, but the Central Legislature in Pakistan was never elected by the method of direct election. The first and the second Constituent Assemblies, which acted as the National Assemblies of the country from 1947 to 1958, were never elected by the direct method of election. Therefore, it is not correct to say that the people have become accustomed to the direct method of election, at least so far as the National Assembly is concerned. It would, therefore, be not at all out of tune with any so called "long-standing" system to have our National Assembly elected by indirect method. On the contrary, this will be in accordance with the actual practice.

(2) The next argument of the Majority Report is that where there is a truly representative form of government, the members of the legislature and, in case of bicameral legislature, the members of the lower house are elected directly and, therefore, indirect method of election and representatives of government are incompatible. Here again, the actual practices even in the Western countries do not substantiate such a conclusion. Further, the process of the evolution of franchise in the Western countries was slow and in conformity with the socio-economic progress. In Britain, for instance, universal education preceded universal franchise. But in a country like Pakistan, universal suffrage is preceding universal education. In the Western countries, the transition from the restricted to the universal franchise was carried out in far less complicated situations. No one can fail to see the tremendous risks and uncertainties involved in a sudden expansion of

franchise. I may also add that when large expansion of franchise was made in Western countries, at the end of the 19th or the beginning of the 20th century, some system of indirect election was introduced in a number of countries as means of counter-acting or at least eliminating the possible dangers of sudden expansion of franchise. I would give here some examples of indirect election which prevailed in Western countries till recently. In Prussia and in a number of other German States, some form of indirect election prevailed till 1906. Norway, Sweden and Denmark had also introduced some form of indirect election. In France, the members of one house of the assembly were elected by indirect method, till the second Great World War. In USA, the indirect method of election was originally planned for the upper house and also for the chief executive, namely the President. In the Soviet Union, after the Revolution in 1918, a comprehensive system of indirect election was introduced. It was founded on a plan of basing the whole constitution not on the anonymous mass voting of huge constituencies, but on a large number of relatively small meetings of neighbours and associates in work at which there can be intimate discussion of the issues in which the people were interested and about which they had views of their own. The people could choose to represent their wishes through someone whom they actually knew. This method of election was justified as an art of representative government of greater value. It is, therefore, not correct to say that there cannot be any form of indirect election in a representative form of Government.

(3) According to the Majority Report, there cannot be a direct link between the electorate and the representative in an indirect election, and, therefore, they rejected the idea of indirect election. A closer and intimate contact between a representative and his constituency is, no doubt, regarded as one of the fundamentals of representative government; but can we expect a closer and intimate contact between a representative and his constituency of six lakhs of population and that too with inadequate means of communication that we have in our country? A representative should be conscious of the responsibility of those whom he represents and the voters should be able to influence actions and, if necessary, to call him to account. The relationship, which ought to have existed between a representative and his constituency, was very nicely described in the Report of the British Joint Parliamentary Committee on Indian Constitutional Reforms 1934, where it says: "It ought to be the happiness and glory of the representative to live in strictest union, closest correspondence and most unreserved communication with his constituents. Their wishes ought to

have great weight with him, their opinions high respect and their business his unremitted attention." We cannot foresee such relationship in our unwieldy rural constituencies. Here the position is that once elected, the representative has no inducement, even if he had the means, to nurse his constituency or to explain the course of events and the view he takes in regard to it. If he has put forward any political programme at the election, he may ignore it in the confidence that he will not be called to account. Nor for the next five years need he remember his dependence on popular favour; and the political education which is claimed from a closer relationship is not available. In our present state of affairs, a better relationship between the electorate and the representative can be expected only if voters can be grouped in a smaller unit and the final selection is made by members of an electoral college. Then only the representative can meet his electorate frequently and discuss various problems frankly. That will be the real introduction of political responsibility which is the aim of any democratic political order.

(4) The fourth argument in favour of direct election contained in the Majority Report is that two stages of election may become a mere formality and that the main objectives of the secondary election may be meaningless. In this connection they have cited the example of the American presidential election. Here I would suggest that the advantage of the two stages of election would be real if both parts of the election are performed with independence and honesty of purpose. It may become a mere formality, as pointed out in the Majority Report, if the two stages of election are not differentiated clearly and faithfully. Hence I would suggest that the two stages of election should not be held simultaneously and at least there should be an intervening period of six months between the primary election and the secondary election so that secondary electorate can exercise their right of selection in a calm atmosphere free from passion and excitement which is bound to arise at the time of the primary election. The Majority Report admits that election campaign in our country "degenerates into a campaign of hatred so as to inflame passion". The remedy suggested in the Majority Report against this danger is making of stringent laws disqualifying a candidate if he indulges in a campaign of hatred and makes false propaganda and misrepresentation; but nobody can fail to see the practical difficulties of enforcing such stringent laws as recommended by the Majority Report. This type of laws can hardly be enforced in our circumstances and the only remedy against such a danger is to divide our election into two stages as it has been done under the present system of

election. During the intervening period of six months, as suggested above, the members of the electoral college should be given facilities to understand and learn the national and international problems facing our country. If need be, there should be provision for instruction and lectures for the members of the electoral college during this period. This may be conducted impartially by the Election Commission without allowing any political party to interfere in this process of final selection. This alone can guarantee and ensure the best result from the secondary election.

(5) Another argument of the Majority Report against indirect form of election, is that it will increase corruption and that primary voters will be easily influenced by interested persons or they will vote through pressure, influence or inducement.

Whether in a particular country elections will be free or subject to pressure or influence depends not so much upon the method of election as on many other factors such as educational level of electorate, growth of political consciousness, etc. I have already pointed out that the elections held on the basis of adult franchise by direct method were termed by the Electoral Reforms Commission as "a farce, a mockery and fraud on the electorate". Hence it is not correct to say that only indirect method of election will be corrupt and subject to pressure or inducement. The Majority Report acknowledges that election under the new electoral system, as provided under the present constitution, has been fairer as compared to the past elections in Pakistan, although it has also pointed out that people were not much interested in the election of the Basic Democrats. I would like to quote here from the findings of the Election Report of the West Pakistan Basic Democracies in 1959-60, where it was clearly stated: "Malpractices were very few as compared with the previous elections. The total number of tendered and challenged votes was 13,487 only, which means that out of every 17,000 votes there was not more than one case of personation. This is one of the lowest figures of personation recorded at the polls." It was further pointed out that the nomination papers of candidates were not rejected on flimsy ground as it was done in the previous election under the direct method. The Report concluded that "the elections in their order of magnitude and performance were unprecedented in the history of Pakistan". Similar was the conclusion of the official findings of the elections of Basic Democracies in East Pakistan. In the face of these facts, it seems difficult to accept the observation of the Majority Report that the election under the indirect method will be necessarily corrupt and subject to pressure

or influence. Ways of democracy are slow. People need much preparation before they learn the ways of democracy, much experience and much education and even when they have learnt them, they need to exercise much vigilance and devotion in order to retain them. The fate of free election in Pakistan, as in many other parts of Asia and Africa, depends on the development of a strong and sound foundation among the people. This may be termed as infra-structure of democracy, which means that the movement for democracy must grow with education and economic improvement. Importance of democracy as a form of human relationship and a process permitting changes within a frame of stability should be appreciated. We may talk vaguely of democracy, but its ultimate success in new countries will come only with economic and educational progress, in the absence of which we have to ensure certain measures so that democracy may not pervert or bring instability and confusion. Lord Bryce, who gave some thought to the relation of democracy with the peasant, considered it important that the peasant should be in a position to "vote for someone he knew personally." This is impossible in a large area, but, as he rightly observed, "in a small unit people can know one another, learn to trust one another, reach a sound judgment on the affairs that directly concern them, fix responsibility and enforce it." (*vide* Bryce's "Modern Democracies" pp 554-55). With the present stage of our educational progress and political awakening, the millions of illiterates vote on question they cannot understand and often for people they know nothing about. Hopes are roused which cannot be fulfilled, the demagogue thrives and the rich man has strong pull over the one who is relatively poor, because such type of elections under a huge constituency involve colossal expenditure. On the contrary, if we have an electoral college, consisting of representatives of smaller units, this would facilitate the selection of the right type of representatives for a society like ours.

(6) The Majority Report doubts the inherent merits of the double system of election and goes to prove that the election under this method will not be made by "a body of persons of higher calibre, ability and sense of responsibility." According to the Majority Report, this argument though apparently attractive is not really sound and as a proof of this conclusion it points out that many illiterates or barely literates have been elected as Basic Democrats. This conclusion has been already challenged in the Minority Report of the Franchise Commission. This is also not confirmed by the finding of the Election Report of Basic Democracies. For instance, it has been

recorded in the Election Report that "as a result of election (i.e. Basic Democracies election) a new class of leaders belonging to the middle class has emerged which accords with general pattern of our society. After the Land Reforms, the election to Basic Democracies has proved a great leveller of different economic classes". The same report has also recorded that among the returned members the percentage of literacy is 86 in case of urban areas and 70 in case of rural areas. When it is realised that general percentage of literacy is 19.2 only, a percentage as high as 86 in urban areas and 70 in rural areas, is a very remarkable figure which shows a growing consciousness among the electors returning the literate or educated representative in preference to illiterates. I may also here quote a memorable passage from the great English political philosopher, John Stuart Mill, in his "Representative Government". He described the advantages of the indirect method of election for a situation like ours in the following words: "This contrivance (the method of indirect election) was probably intended as a slight impediment to the full sweep of popular feeling, giving the suffrage, and with it the complete ultimate power, to the many, but compelling them to exercise it through the agency of a comparatively few, who, it was supposed, would be less moved than the Demos by the gusts of popular passion; and as the electors, being already a selected body, might be expected to exceed in intellect and character the common level of their constituents, the choice made by them was thought likely to be more careful and enlightened, and would in any case be made under a greater feeling of responsibility than election by masses themselves".

A principal factor in favour of this type of election at the present stage of our political development is that it eliminates, to a great extent, the possible dangers and risks of sudden introduction of universal suffrage by conferring the ultimate choice to a body of select persons, possessing a higher average ability and a better sense of responsibility, and further, this new system of election would diminish the evils of party passions and struggle by removing the object of popular choice in stage and confining the functions of electorate to the choice of those upon whom the ultimate responsibility must rest. We can, therefore, under this new method, widen the basis of franchise without the risk and uncertainties involved in a sudden expansion of franchise as it took place in our country after Independence. It seems that all these important factors were not given due consideration in the Majority Report of the Franchise Commission.

(7) The Majority Report minimises the most important fact that whereas in the election of Basic Democracies as many as 70 per cent of the voters cast their votes, in the direct election the percentage was not more than 40. If we would wish to stress the political education of our illiterate voters the importance and significance of this high percentage of voting should not be minimised. After all, it is no use giving a right to people who are not in a position to exercise it in a particular method which may be theoretically more attractive or which proved successful in Western countries. On the other hand, we should devise means under which our voters can exercise the newly acquired right of franchise in a better way. Some scheme of indirect election is, therefore, vital to the establishment of democracy and its healthy development in our society. Any system of government, however mechanically perfect, will fail to take root in the midst of the masses of our people unless it is in some way grafted on the spontaneous grouping of the people themselves. This is exactly what is provided under the new method of election.

(8) Last, the Majority Report believes that election under the new method will be more costly. Here I have simply to refer to the note made by Mr. Akhter Husain, Chairman of the Election Commission and another member of the Franchise Commission, Mr. Hasan Ali, who have clearly stated that "indirect elections are not only administratively better manageable and comparatively inexpensive for government, but also less costly and troublesome for the candidates". It has been pointed out in their report that whereas the expenses of a particular candidate (who happened to be the member of the Franchise Commission) in 1954 election, held on the basis of direct election, ran into thousands of rupees, his total expenditure during the last election for National Assembly did not exceed a few hundred rupees.

After examining the arguments in favour of direct election for the members of National and Provincial Assemblies, the Majority Report recommends the same system of election for the President. At the same time, however, the Report recommends that the next election of the President should be held through indirect method as an interim measure. The Report has mentioned the difficulties of a nation-wide election for the office of President in the following words:—

"The country is divided into two parts, each being separated from the other by a foreign territory of over 1,000 miles. The means of communication between the Wings are hardly adequate. The

sea-route is long enough, and journey by land-route, apart from being time-consuming, is controlled by visa regulations of the Government of the intervening foreign territory. The air-journey between the two Wings, though quick, is very costly. Also the facilities for internal communication within the Wings themselves are inadequate; rather the communication facilities within the East Wing are very disappointing. There is no system of television, nor does any Broadcasting Corporation operate in the country. The only means of broadcasting is the radio system of limited capacity owned and controlled by Government. Therefore, facilities for broadcast of election programme by Presidential candidates may not be available. However, such facilities, if any, will be obviously very inadequate for projecting the candidates' views and programmes.... The question then naturally arises as to how a Presidential candidate will be able to contact the masses throughout the length and breadth of the country, project his views before them, and prove his fitness and suitability in order to obtain their support for his candidature. Left to himself, this is almost an impossible task for an individual candidate for the office of President". (pp. 31-32)

In consideration of all these difficulties, the Majority Report favours that the next Presidential election should be held on the basis of indirect election through an electoral college as provided under the present Constitution. But it strongly recommends that members of the National and Provincial Assemblies should be elected through the direct method of election. Here my main objection to the recommendation of the Franchise Commission is that it will undermine the power and position of the Chief Executive. The corner-stone of the new Constitution is the Presidency. This is based on the assumption that we require a strong and stable executive. Nobody can challenge this assumption. Now if we introduce direct election for the members of the legislature and indirect election for the office of President, the obvious result will be to undermine the prestige and power of the latter, because the members of the legislature will claim, with justification, that they are the direct choice of the people whereas the President is elected on a much narrow basis. This will be a most disastrous result and I, therefore, feel that this recommendation is not possible of being considered at this stage of our political development. This is my considered view that the entire problem of election, viz. whether people would prefer to exercise their right of franchise through an electoral college or directly, should be reviewed at least after the next election in 1965. We will be taking grave risk if we now disturb the political order

which has been set up after careful thinking and in accordance with the needs and requirements of our country. If the recommendations relating to the election of the members of the National and Provincial Assemblies are to be accepted, as it has been contended in the Minority Report of the Franchise Commission, I would submit that it will pose a great risk at this stage of our political development. Political expediency and expert opinion, however, always differ and I would, therefore, leave this question here but, I would hold that we should not disturb the basic structure, namely, the electoral system of the new political order, until the various socio-economic reforms undertaken are completed. And it is only then that we can consider the question of electorate in a calm and dispassionate manner.

As the Majority Report has already agreed that in the present circumstances, the next Presidential election should be held through an electoral college, my submission is that next election to the National Assembly should also be held in a similar method. We should not have two different methods of election for two organs of the national Government. If at all the concession to public opinion has to be made, the mode of election to the Provincial Assemblies may be changed.

Summary and Conclusions

My above analysis of the Majority Report of the Franchise Commission will reveal that it has dealt with the following three important matters:

(1) The constitutional development and growth of franchise during the British period. I have shown in my analysis that this account does not provide a complete picture. This has been substantiated by quotations from the authentic sources and official records of the period. The impression created by the Report is that the present Constitution has retarded the progress of constitutional development which began during the British period; but a careful analysis of the constitutional development and the growth of franchise during the period would prove that the findings of the Majority Report are not substantiated by the actual development and progress during the British period.

(2) The second part of the Majority Report discusses the desirability of universal suffrage. This part of the Report (pp. 16-21) seems to me to be unnecessary as the new Constitution has not challenged the idea of adult franchise, and there is nothing inconsistent with the Preamble of the new Constitution which declares that ultimate authority is vested with the people and the method of election as provided under the new Constitution. Significantly, this has also been conceded in the

Majority Report itself on p. 21 when it observes that "Universal adult franchise, having been conceded in the Constitution itself....".

(3) The most important part of the Majority Report is the third section, which deals with the method of election, i.e., whether we should have direct or indirect method of election. The Report has advanced a number of arguments in favour of direct election. I have examined these arguments in detail and find it difficult to subscribe to the view that method of election as provided under the present Constitution is undemocratic or unsuitable to our country at this stage of our political development and in the present state of our socio-economic conditions. It is true that in Western Democratic countries, the trend in recent years has been towards direct election and indirect method has been substituted in most of the cases by direct method. But does it imply that the method has no utility or significance for the new democracies in Asia? A constitutional adviser in an Asian country has to keep in mind that the machinery and pattern of democratic institutions in these countries cannot conform to an established Western model.

In Western countries, election today takes place on the assumption that every adult member of the State can read literature supplied to him at the time of election and that he has requisite sense and intelligence to understand problems peculiar to his country and broad world events. But no realistic and pragmatic approach to politics in an Asian country can afford to make such an assumption. The real situation in Pakistan, as in most of the other newly-independent countries in Asia and Africa, is that Western political institutions were imposed upon the people from above and that they did not grow from the bottom. Nowhere in Asia did they come as a result of deliberate choice among carefully considered alternatives, nor were the mass of its beneficiaries prepared for its arrival. Consequently, the forms and mechanism of democracy in the new countries of Asia must be different from those of the Western countries, where socio-economic conditions are utterly different. To the masses of the new countries, operation of Western democratic institutions represent confusion and the danger is that confusion attendant upon the development of a constitution results in political and economic instability, which hampers the growth of a country. One of the most difficult problems confronting new democracies is the complex and delicate task of adjusting their people to the alien political institutions which have been adopted in many cases by a stroke of pen and not by any process of gradualism in conformity with the real situation. Further, it is to be pointed out that in the West the transition from autocracy to democracy was a slow and gradual process

carried out in far less complicated conditions than those which confront the new democracies today.

The social order in these new countries is characterised by lack of integration. This is due in part to the ethnic, religious, social and cultural pluralism characteristic of the societies undergoing rapid changes. If there is any gallop poll in a country like Pakistan, most of the answers would probably be "do not know". The important thing in a democratic state is that there should be always opportunities for the people to participate, if they so desire, at all levels of government activity, but this participation depends upon the maturity of the people which involves self-discipline, trust, concern for others, and sense of responsibility. Because democracy trusts its citizens, it makes higher demand on them, on their reason, on their integrity, on their faith than does any other system.

We have, therefore, to devise a way in which democracy can be really made a success in a country like Pakistan and in the light of these considerations, as noted above, we have to devise an electorate system which is more suited for our people to exercise their right of franchise.

Lastly, the Majority Report discusses the desirability of indirect election for the office of President. Here, as I have shown clearly, the Report itself admits of practical and formidable difficulties in having a nation-wide Presidential election in our country and has suggested that the next election for the office of the President should be held indirectly as provided under the present Constitution.

APPENDIX B

A LAWYER'S VIEWS ON THE FRANCHISE COMMISSION'S REPORT

In their separate note, Mr. Akhter Husain and Mr. Hassan Ali have very clearly brought out the considerations in favour of indirect elections. (pp. 92—99 paras 3—18)

They have come to the conclusion that—"The Democratic concept of political equality is maintained in the system....." (p. 92, para 4). "Indirect elections are not only administratively better manageable.... but also less costly....." (p. 95, para 10).

"The development in the future.... may be..... towards indirect elections" (p. 95, para 11).

"The system of indirect elections has inherent merits and we have no doubts about its being an appropriate and efficacious instrument for a reliable representation of the people...." (p. 99, para 18).

In spite of this conclusion, they have recommended in favour of the direct system, for the reasons that: "A large number of politically minded people feel that just taking part in the election of the members of the Electoral College does not satisfy the people's sense of participation in the affairs of the country; that..... direct election.... is a symbol of the capacity of the people to look after their own affairs..... There is..... a strong prejudice.... against the indirect system, which has been worked up by politicians..... For the last forty years, elections to the legislatures have been held on the basis of direct voting..... A sudden break in practice or traditions need not be insisted upon....." (pp. 99-100, para 18).

The system of voting is *only* forty years old in this country. It was introduced experimentally from outside, and is not an indigenous growth. To talk in terms of "psychological preparedness of the people" for one thing in preference to another, or in terms of "traditions", is, in the circumstances, premature. The "politically minded people" may not be "psychologically prepared", for "so radical a change", in the "traditions", (meaning the outward forms of what is done in the West), but that does not mean that the majority of the individuals composing our masses, are now so steeped in the spirit of direct elections that psychologically they would feel violated if the theoretical control that vests in them through having chosen their representatives, were to be so re-adjusted that it became more real and perceptible at a more immediate but limited level and one step further removed at the level which is anyhow going to remain remote from them. The fear of displeasing "some politically minded people", is not a reason for a commission to make a recommendation contrary to its finding on merits. The commission is required to suggest which system would produce more accurate or less inaccurate results. Whether it pleases, or displeases the

majority of the people, is a question that can best be answered by the Assembly.

The reasons given in the Majority Report, for the recommendation in favour of direct elections, resolve themselves into four:—

- (i) Direct participation in elections gives satisfaction to the voter.
- (ii) Direct elections are a means of political education of the masses.
- (iii) Direct elections provide an effective means for the expression of the views of the voter, which is not the case with indirect elections.
- (iv) The development of franchise in the sub-continent has a direction which will be reversed if the indirect system is adopted.

Mr. Akhter Husain has carefully analysed each one of these aspects (pp. 92—99). It may further be examined whether point (ii) above is not at least equally applicable to the system of indirect elections. Campaigns for elections in the indirect system will raise issues, which though restricted in scope, would be more visibly connected with their lives and consequently more meaningful for the voters. Once they start on the road to political awareness, the horizons will widen as they proceed.

With regard to point (iii), the ultimate representative, chosen in either way, is, in both systems, equally the representative of the people. Whether he was chosen by them directly or through an intermediary, is a question of mechanics. It does not seem to have a bearing on the responsibility of the chosen representative, who may be equally responsible or irresponsible in either case.

Regarding the question whether, if the number of Presidential candidates is large, it should be for the outgoing or the incoming members of the legislature to eliminate from the field of contest, some of the Presidential candidates, the Commission has recommended that it should be the incoming and not the outgoing members. This recommendation appears to be largely based on the theoretical consideration that the incoming members being the latest choice of the people are to be preferred to those whose representative character has been exhausted and has not been renewed.

As against this theoretical consideration, may be kept in view the practical consideration that Presidential candidates may be tempted to make political bargains with those who have the power to eliminate them, and that there would be greater dangers in making such bargains with the incoming than with the out-going members.

APPENDIX C

SOME REFLECTIONS ON THE REPORT OF THE FRANCHISE COMMISSION

By An Administrator

Mass illiteracy and lack of political education are well-recognized hurdles in the way of adult franchise for elections to legislatures. Experience of elections held on that basis in our country has confirmed this axiom.

It is stated at the end of p. 34, that the list of adults in the country can be prepared more easily than the list of those possessing educational and property qualifications. This argument, cited in favour of adult franchise, overlooks the fact that the lists of adult population are much more voluminous and involve a door-to-door enquiry. Evidence of literacy and property is produced by the voter-applicant and so the work involved is much less.

The statement on p. 36, that in the general elections held in undivided India, the masses did not commit any mistake on any major issue, does not conform to the experience of those who stood for the elections or conducted them. The only major issue put to a section of the electorate was the one about opting for Pakistan. That issue was based on religious and emotional grounds which were well-understood by the masses. The same cannot be said of the economic and political issues which form the election plank of political parties in ordinary elections.

It is stated on p. 37, that elections on adult franchise basis were successful in both the Wings of Pakistan after 1947. This is certainly not correct of the elections held in the various provinces in the West wing. A few pages later (on p. 50), the Commission itself refers to the official report about these elections alleging that the officials interfered in them. That was only one of the many defects.

The statement on p. 38, about public servants having now gained experience of elections, as an argument in favour of adult franchise, is fallacious as the administrative machinery was always competent to handle general elections. The farcical nature of such elections was due to the illiteracy and lack of political education of the masses themselves.

The suggestion at the end of p. 41, that stringent laws are a remedy for keeping elections clean, overlooks the fact that such laws have always existed in the electoral legislation and the Pakistan Penal Code, but were of no avail.

It is stated on p. 42, that "the percentage of literacy in urban areas being much higher than that in rural areas, restriction of franchise by way of educational qualification will discriminate against rural areas in cases where constituencies cover both urban and rural areas". This discrimination would arise generally against rural areas and not only where a constituency covers urban and

rural areas as thought of by the Commission.

The argument on p. 45, that direct participation in elections serves *inter alia* to express the views of the voter on matters connected with the government and the administration of the country, is imaginary. The voter expresses his opinion only on the issues put to him during the election. In our country these issues are not even understood by the masses, and they actually vote on personal considerations: even members of the legislatures are free to cross and re-cross the floor of the house and to change their political alignments.

The objection taken on p. 47, that indirect elections would "virtually amount to direct election", inasmuch as those elected to the Basic Democracies on political party tickets would be bound by the orders of their political party, would seem to have little substance. That way all indirect elections eventually amount to direct elections.

The statement on p. 48, that at the time of the constitution of the Basic Democracies it was not known to the public that the elected member would elect the Assemblies and the President is not quite correct in view of the public announcements made in a Press note and subsequently by the President and others.

It is again incorrectly stated on the same page that "the people in general did not take much interest" in the election of members to the Basic Democracies. The Commission itself has stated a little later (p. 53), that as many as 70% of the voters cast their votes at these elections. This is perhaps the highest percentage in the history of elections in this country and shows the amount of interest taken.

At pages 49-50, it is argued that indirect elections are more corrupt because in the second round of elections, the electorate is small. Even under direct elections, corruption was well-known and quite prevalent, as no candidate was in a position to contact each and every one of his voters in the huge electorate. He used to get hold of the leading and influential people in each locality to secure the votes of their followers. But these leading men extorted their own price.

In any case, there might have been corruption on the part of individual candidates in the last elections. But in the direct election on the basis of adult franchise, when the electorate is large, the elections are more expensive and, therefore, large funds have to be found. That they lead to corruption on the official or government level (which is much worse than private corruption on the part of a candidate) is shown by a recent scandal in our neighbouring country, India, in which two Central Ministers (and one Provincial Minister) were involved. The scandal in England of selling titles to get funds for political purposes, including elections, is well-known, and became a public issue when Lloyd George was Prime Minister.

It is stated on p. 50, that "official interference in elections can always be

prevented". One would like to know how, if the government in power is inclined to interfere?

It is stated on p. 56, that the innovation of asking a candidate to provide his own ballot box "can no more be employed without facing public criticism". One did not hear any criticism against it in the last elections. So why incur heavy expenditure on such an assumption.

Talking about the objection of impersonations at direct elections, it is said on p. 58, that in the West Punjab General Elections of 1950-51, "there were only 646 cases of impersonation out of as many as 62,40,219 votes". That was the number detected. It is well-known that a large number of such cases go undetected.

The argument on p. 76, that the right of the members of the Assemblies to select the Presidential candidate would lead to bargaining between them, overlooks the fact that the Assemblies concerned would be the outgoing ones.

It is stated on p. 77, that in case the Presidential candidates are to be restricted in number, the screening should be by the in-coming Assemblies. This is much more objectionable than screening by the out-going Assemblies. Apart from the objections given by the Commission itself, a little earlier in their Report, which would apply with greater force, the resulting extension in the term of office of President—recommended by the Commission in the same connection—would, in course of time, throw the Presidential election more and more out of step with the Assembly election, so that their terms of office will get completely mixed up and disjointed.

On pages 78-79, it is recommended that the names of the Presidential candidates selected by the National Assembly should be known to the people before they elect members to the Basic Democracies so that they vote with their eye on which local candidate supports which Presidential candidate. This is not really necessary or even desirable. But how would it be possible if the Presidential candidates are screened by the in-coming Assemblies proposed by the Commission? It is more likely if the out-going Assemblies do it as at present.

It is argued on p. 80, that the cost of three elections (Assembly, President, and Basic Democracies) would be more than the two elections proposed by the Commission. Experience has shown that it is not possible to hold simultaneously the three elections to National Assembly, Provincial Assembly and the office of President. Thus we come to the same number of three separate elections i.e. (1) Presidential, (2) Assemblies, and (3) Basic Democracies. And the economic argument fails. The present indirect system is the cheapest, if the economics of the elections are to be an argument.

On p. 93, the advantage of the Basic Democracies bringing the various classes of people together has been mentioned by Mr. Akhter Husain. An additional advantage is that the Basic Democracies bring the administration

and the people together at all levels. The previous schizophrenia (split personality) of the country in this respect was responsible for the government being a stranger to its own people. Anything which would undermine the institution of Basic Democracies, which adult franchise would, should not be adopted lightly.

On p. 98, Mr. Akhter Husain refers to the malpractices committed in the Punjab elections of 1951. Reference should also be made to the gross irregularities and malpractices committed in the elections held in the former NWFP.

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