



THE INDIAN
FEDERATION AND THE STATES.

BY

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WITH A

FOREWORD

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FOREWORD.

The subject matter of the book is the topic of the day. The readers, I am sure, daily come across with some kind of matter or other regarding the all absorbing topic of Indian Federation in almost every paper. But the matter supplied is ill-digested one and only hap-hazard. One seldom meets with any considered and thought out contribution on the subject. Mr. Arora is to be congratulated for his able and comprehensive contribution to the subject, and there is no doubt that the hand book is well timed and will be read over with great interest all over the country.

The subject has been dealt with in a comprehensive, way purely from the point of view of Constitutional Law, and is free from any look or touch of any agitation. The writer has confined himself to and has dealt with, only those problems that are likely to arise in course of association of Native States with the future Indian Federation, and the questions have been dealt with purely from the point of view of Constitutional Law. There is no attempt made to interfere with, or discuss any subjects of the so-called internal politics; and the book possesses a value of academic interest. The Rulers of the States will find the book very useful in offering constitutional solutions for the various problems.

I do not propose to mention here the various problems that have been discussed in the book, but I cannot help mentioning a few of them that stand out very prominently, and appear to me to be somewhat original. Mr. Arora thinks that coming into existence of new pacts with the States is necessary for the States that join the Federation. In fact, he is of opinion that it is the only constitutional and legal way in which the States can join the Federation. I am not an authority on law, and can not pronounce any opinion. All that I can say is that the opinion of a lawyer of Mr. Arora's eminence is entitled to respect, and even if another or contrary view be possible, he should be given an opportunity to press his point of view as the advantages to States are obvious, if a revision of the old treaties can be secured in any way. . . . If the view put forward by Mr. Arora eventually prevails in the end, he would be entitled to a great gratitude at the hands of the States for having brought the subject betimes to their notice. However, there is one line of argument in his discussion of the subject, which has appealed to me most. While discussing what he calls the "Safeguards" for the States in the Constitution, he points out that the transfer of the subjects to the Central Government can only be effected in two ways. Either by a provi-

sion in the Act of Parliament or by a pact between the different units of the Federation. Carrying his argument further, he says that in case of any breakdown of the central machinery of Government now to be introduced, the Parliament of Great Britain and Ireland will be entitled to change the form of Government now being introduced with the consent of the States by a further Act of the Parliament without any reference to the States if the right of the Parliament be conceded to legislate and determine the functions of the Federal Government of India, composed of British India and the Native States. He argues that such a course will spell the doom of the sovereignty and the independence of the States, and will have catastrophic results. Mr. Arora is, therefore, of opinion that the States can only join the Federation by fresh pacts, or by revision of the old treaties. The question deserves the attention of the Rulers of the States.

Another important matter to which Mr. Arora has invited the attention of the States, especially the numerous minor states, is the question of organisation among the states for purposes of representation in the Federal Legislature, Federal Executive, Federal Finance and Federal Judiciary. One who reads this

chapter of his book, will agree with me that his solution of "Federations within Federation" contains more than what meets the eye. I can only invite the attention of the States, specially the minor ones, to this subject if they are anxious to secure a representation, and maintain their status intact.

I can not help mentioning here and supporting his complaint of inadequacy of publicity in case of States. Mr. Arora thinks, and I think rightly, that the plans of the States are being hatched in secrecy; and such a course increases all the more the already existing suspicion of the state subjects against the government of the States. I entirely agree with Mr. Arora when he says that the question of the association of the States with the Indian Federation raises a crop of interesting problems, which will interest the average subject of the States to a great extent, if he is taken in confidence and arouse the instinct of patriotism in him, and divert his attention from his mischievous course, which he is following at present. Will the Rulers accept his sound advice? I would also lend my weight to his suggestion and request their Highnesses to consider the advisability of starting efficient publicity departments in their respective States under the control of experts.

The book has received additional value by an annexure at the end, containing brief outlines of the Constitutions of the various Federal Governments in existence in the world. This feature of the book has enhanced the utility and educative value of the book and will be much appreciated.

Before I conclude, I would refer to the Chapter of 'Safeguards' in the book. The word by itself has not a happy association; but by 'Safeguards', Mr. Arora only means the provisions that should be made in the constitution to protect and keep intact the sovereign and independent status of the Native States. The chapter deserves to be read and digested carefully. The points raised by Mr. Arora are well thought out, and carefully expressed. I would specially invite attention to his remarks under headings 'Financial Adjustment', where Mr. Arora has raised the question of the scrutiny of the past expenses incurred at the dictation of the Paramount Power; under 'Rule of Law', where the necessity of some tribunal for adjudicating the differences or disputes between the States and the Government

of India, has been pointed out; under 'In case of Breakdown' where it has been pointed out that powers delegated to the Centre should automatically revert to the States in case of any breakdown; under 'Power of Veto', where it is contended how the exercise of such a right by a third power will amount to interference with the internal sovereignty of the States. All these points deserve to be carefully considered.

Mr. Arora has also in his book discussed and pleaded for the necessity for the States of securing the good will of the British India at this time. I agree with him, and join him in his plea, and in my opinion no better advice could have been offered to the Rulers of the States.

I thank Mr. Arora for having asked me to write Foreword to his excellent treatise. Mr. Arora is a valuable contributor to the local paper: "Jayaji Pratap", and his recent series on the "Laws of Gwalior" have rightly brought him into prominence. I could not refuse his request, and this is my only apology.

V. N. KAUL

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India today stands on the eve of a great constitutional change and the eyes of all the world are watching this evolution with great eagerness, sympathy and interest. It is also practically settled that the form which the future Government of India is going to assume will be a sort of Federation with which the Indian States have also agreed to associate themselves.

There is no hard and fast constitution laid down for a Federal Government, nor are there any cut and dried principles which a Federal Government must follow. The ultimate form which the future Federal Constitution of India will take will be the result of the mutual compromise, deliberation and settlement arrived at between the different parties concerned in the affair.

It is admitted on all hands, including Mahatma Gandhi and the British Government, that the contribution made by the Indian Princes and States to the evolution and maturity of the idea of Federation is really invaluable and great. This demonstrates

beyond doubt and in a striking manner the freedom loving instincts of the various rulers of the Indian States and their patriotism and love for their motherland. It can be safely asserted that but for the response and the readiness with which the Indian Princes accepted the idea of Federation, the recent history of India would have been written in a different way and perhaps the sacrifices, although already very great, which India would have been called upon to bear would have known no parallel in the history of the world. The fervour with which the Indian Princes espoused the cause of the National India and the way in which they refused to associate in any way with or to participate in the future constitution of India unless responsibility was conceded in the Centre are matters of recent history. The subjects of the States may well feel proud of the achievements of their rulers.

But the picture is far from being complete yet and the most difficult and arduous task still remains to be done and in the words of Lord Irwin—"the loom is only set out. Skill and patience of high order will be needed on the part of all to weave the threads aright and to work into a pattern of wise and durable design the many intricacies of texture in the fabric."

I propose to make an humble attempt in these few lines to examine the situation that has been evolved by negotiations and deliberation so far from the point of view of Constitutional Law with regards to the participation of the Indian States in the scheme and try to present and explain the extremely difficult and the delicate nature of the task still ahead. The situation requires a very tactful and patient handling when any single false step may entail consequences of gravest importance to the future well being of the States. I shall try to briefly discuss the various problems that are likely to arise in course of maturity and ultimate completion of the scheme.

History.

The conception of Federation as the future government of India in close association with the Indian States is not a new idea and has been in the air for a very long time. About thirteen years ago Mr. Montagu and Lord Chelmsford wrote :—

“Looking ahead to the future we can picture to ourselves only as presenting the external semblance of some sort of federation. The provinces will ultimately become self-governing units, held together by the central government which will deal solely with matters of common concern to all of them. But the

matters common to the British Provinces are also to a great extent those in which the Native States are interested. The gradual concentration of the Government of India upon such matters will therefore make it easier for the States, while retaining the autonomy which they cherish in internal matters, to enter into closer association with the Central Government if they wish to do."

Since Mr. Montagu wrote the above the idea has not been lying dormant but has constantly been revolving in the minds of and engaging the serious attention of both British statesmen and the Indian Princes. The Maharaja of Bikanir in the course of an important speech he delivered in 1929 said that the Princes:—

"have openly given expression to the belief that the ultimate solution of the Indian problem and the ultimate goal—whenever the circumstances are favourable and the time is ripe for it—is Federation which word has no terrors for the Princes and Government of States."

We also find that the idea of a Federal India was vividly present in the mind of the Butler Committee when they were engaged in their labours. The Committee also wrote:—

"We have left the door open to closer union. There is nothing in our proposals to prevent the adoption of

some form of federal union as the two Indias of the present draw nearer to one another in the future. There is nothing in our proposals to prevent a big State or group of States from entering now or at any time into closer union with British India."

The general acceptance of the Federal idea finds an echo and support in the Simon Commission Report as well. The Report says :—

"We are, therefore, following what has become a generally accepted view, when we express our own belief that the essential unity of Greater India will one day be expressed in some form of federal association but that the evolution will be slow and cannot be rashly pressed."

No body knew then, much less Sir John Simon, that what appeared to him then to be a distant dream and a work of gradual evolution full of delicate, thorny and almost insurmountable problems, will be accomplished so soon by the far-sightedness, statesmanship and untiring zeal of the Indian Princes, British and Indian statesmen and long before his own report was published or even before the ink with which he wrote his report was dried on the paper.

What is Federation ?

I have already stated that there is no hard and fast line of constitution laid down for a Federal Government

and the constitutions of the various Federal Governments now in existence differ in material aspects from each other. Each constitution has been adopted with a view to meet the particular conditions and special needs of the states or people forming part of the particular federal union. What form the future Federal Government of India will eventually take depends upon the solution of the various problems and conditions existing in the country. The heterogeneous character of the units to be federally associated, the 'Minority' problem and last but not the least the 'Safeguards' that are to be provided in the constitution represent the special problems of India perhaps peculiar to this country. In my opinion the application of the Federal idea to India will not and cannot follow any known pattern, for the circumstances are unique.

But still it is necessary to study the constitutions of the various Federal Governments in existence in the world at present to find out the essential and common features underlying and forming the basis of all such constitutions. It will also be necessary to apply those tests to the future constitution that is granted to India to find out if the constitution that has been framed contains or not the substance of a Federal constitution or something else is being passed out to us under that name.

The history of the world reveals that the idea of federation exists in the world since a very long time and is not the outcome of the present day civilisation. The earliest trace of this form of government is found in the Greek history when Aetolian and Achaean Confederacies were formed in Greece in the century following the death of Alexander. When Macedonian ambition raised up a military empire on their own frontier stronger and far more dangerous than any empire that existed before, the statesmen of Greece found the necessity of establishing a confederation for the safety of their autonomous governments. Of the unions which followed, the two most celebrated were the Aetolian League and the Confederacy of Achaean's already mentioned above.

The constitution of the Aetolian league, though democratic, included an aristocratic or privileged class. It was a league of districts with chief of hill tribes and leading citizens attending the annual assemblies at Thermus and might not inaptly be compared to the present Swiss Confederacy of city and forest cantons.

The Achaean league differed from that of the Aetolians in being one of cities. Upwards of seventy cities, while still controlling their own local affairs,

were by this means associated under one federal government. The federal capital was Aegium and each city sent deputies annually when later on a system of meeting by rotation in the principal cities—a procedure originating in jealousy, was introduced and it proved talbnniiev ae source of weakness.

The study of the earliest form of federation that existed in the world shows that it was a union of sovereign states brought about for mutual aid and protection and for the promotion of interests common to all.

Since the existence of the old Greek Confederacies in the world, the idea has developed in modern times and found its completion in the different forms of Federal constitution as now existing in Switzerland, United States of America and Canada. I shall offer a brief detailed survey of the constitutions of the above three Governments at the proper place to see how they can help us to evolve a constitution for our country but I wish to stress here a few essential and common features that underlie or form the basis of and are found in the constitution of all the three Governments to enable us to form a rough idea of the system of federation.

It will occupy a very large space even if I briefly narrate the circumstances that happened in the three above countries that led to the evolution and ultimate completion of a Federal form of Government in those countries. I think it is not necessary to repeat the old history known to all.

When we study the histories of the above three countries, we find that at certain stage of their history the various independant states or society of people existing or residing in the country were impelled, either by motives of common interest or common defence, which may be due to internecine warfare or the fear of some common foe, endangering the independant existence of all or any, or for certain other common considerations as the case may be, to gather round a newly created common centre and to invest that common Centre with certain powers by divesting themselves of those powers to be exercised by that common Centre in the common interest of all the parties so meeting in a manner decided by the common consent of all units. This, in essence, is the common feature underlying or forming the basis of the Federal constitutions as existing at present in Switzerland or United States of America or Canada howsoever widely divergent the constitution of those countries be from

each other in the matter of details how the constitution of the common Centre is framed, or how is it to function, or what constitutes the common interest, or what is the quantum or the nature of powers with which the Centre is invested or the component units have divested themselves with, or how the Executive, Legislative, and Judicial machinery of the entire constitution is to work or where the residuary powers are to reside.

We thus find that the essential features of a Federal Government are still the same as existed in the old Greek times and the changes introduced are confined to the working of the details of the constitution:

It will not be without interest here to study the conception of federation as presented by the various writers of Constitutional Law which coincides with the view arrived at by me by the study of the history of the various countries as mentioned above. Austin says :—

“In the case of a Composite State or supreme federal Government the several united governments of the several united societies are jointly sovereign in each of these several societies and also in the large society arising from the federal union. Or, since the political powers of the common or general government

were relinquished and conferred upon it by those several united governments, the nature of a Composite-State may be described more accurately thus. As compacted by the common government which they have concurred in creating and to which they have severally delegated portions of their sovereignties, the several governments of the several united societies are jointly sovereign in each and all."

In Encyclopaedia Britannica, we find :—

"The essential principle involved in federation is that it is a union of sovereign states. With a view to the common interests of all they agree to abrogate certain functions of sovereignty in their separate capacity, in order that these shall be jointly exercised for the common good by the body which they concurrently vest with such sovereign functions, but all other sovereign rights are reserved."

Thus the political powers of a common or general government, are merely those portions of their several sovereignties which the several united governments, as parties to the federal compact, have relinquished and conferred upon it. The fundamental characteristic of the Federal State consists in dualism of governmental organisation and the relation which a Provincial Gov-

ernment in a Federal State bears to the Central or Common Government is one of coordination and not of subordination. The Central and Provincial Governments are mutually independent within their several spheres.

Since there is a division of sovereign powers in a federal constitution between the central and provincial governments and each is supreme in its sphere, the establishment of some kind of machinery has been, by experience, found to be necessary to determine and decide if any party has exceeded the limits of power possessed by it and has not encroached upon the rights of the other. Thus the constitution of every federal government provides for the establishment of independent judicial tribunals which are called upon to adjudicate when any such question arises and their decision is binding upon both the parties. The judicial tribunals are quite independent of the two governments existing in a federal constitution and owe their allegiance to the constitution alone (as in the case of the United States) and if in making a law or issuing a particular command, the central government exceeds the united powers which it derives from the federal compact, all those various tribunals whether established under the authority of the Central or Provincial Gov^t

ments, are empowered and bound to disobey. Similarly if a Provincial Government enacts a law or issues a particular command, as exercising the sovereign powers which it has relinquished by the compact, all those tribunals are empowered and bound to disobey.

Thus the modern conception of a Federal Government in its complete form involves the establishment of a Federal Legislature and a Federal Finance—to exercise legislative powers over matters of common concern together with powers of imposing, spending or distributing or otherwise adjusting the federal taxes—a Federal Executive and a Federal Judiciary armed with requisite powers—to see that the functions assigned to the Central Government are properly carried out and administered and the powers are not unduly encroached.

Before proceeding further I think it necessary to summarise the essential ingredients of a Federal Government as gathered from the above historical and constitutional study of the matter. They are :—

- (i) The existence of several independent Sovereign States;
- (ii) A valid compact between the various Sovereign independent units wishing to join the Federation;

- (iii) Creation of a Central or National Government investing it with certain common sovereign powers delegated by the Sovereign units;
- (iv) Federal units divesting themselves of the sovereign powers delegated to the Central Government;
- (v) The Central Government possess only the powers that are granted to it by the Federal units and no more. It naturally follows and implies that all powers necessary for the due execution of the granted powers are all conceded;
- (vi) A dualism of Governmental organisations which are mutually independent within their several spheres. The relation which a Provincial Government bears to the Central or Common Government is that of co-ordination and not that of subordination;
- (vii) Residuary Powers residing in several federal units.
- (viii) Common sovereign rights granted to the Central Government are to be exercised in a uniform way in the common interest of a

in accordance with the common consent of all the units;

- (ix) The sanction behind the Central Government is the sanction of the United Governments and the allegiance offered to the Central Government is spontaneous on the part of the federal units.

Problems of India.

Having formed an idea, however rough, of the nature and conception of a Federal Government, let us now turn our attention to the conditions prevailing in India where the idea is going to be applied. I may at once mention here that I am studying and discussing the problem with special reference to the association of Indian States with the future Indian Federation and I shall for the present leave aside the peculiar and special problems existing in British India itself, which, though requiring a satisfactory solution, will not, to my mind, present such constitutional difficulty as the problem that I am discussing.

The first difficulty that presents itself arises from the heterogeneous character of the units to be federally associated. I will leave out for the sake of simplicity of analysis, on the one side, the numerous small

feudatories and estates, and on the other, the parts of British India which are outside the major provinces, though neither of these complications can be dismissed as unimportant.

We have then to conceive of some sort of federal union between

- (i) Non-British Native States possessed of sovereign rights and generally speaking completely independent of one another;
- (ii) British areas which derive their measure of autonomy from a common Centre and already form part of a single political system.

It is necessary to discuss the relative status of these two units from the point of view of the Constitutional Law to find out how their fusion into Indian Federation is possible.

The units of the first class possess sovereign rights within their territories and are independent of one another. The Native States in India enjoy sovereign rights in different measures and for the purposes of Political rights they can be classed under three heads.

- (i) Those that have treaties with the Paramount Power. Their number is forty.

(ii) Those and a very large number have some form of engagement or Sanad.

Sir Henry Maine defines the term 'Sanad' as "an ordinary instrument of contract, grant or cession used by the Emperors of Hindustan." He points out that the Sanads may have the same effect as treaties or engagements in imposing obligations for 'they are not necessarily unilateral.'

(iii) There are others who are recognised in different ways.

Irrespective of the fact how the political rights are possessed and enjoyed by the States, they are said to possess 'internal sovereignty' within their territories. In my opinion the word does not fully represent the status possessed by the States. I have taken the words 'internal sovereignty' from State documents. The word 'internal sovereignty' denotes, and implies the division of sovereignty into 'internal' and 'external' affairs. There may be technically speaking certain matters or rights which are neither internal nor external; or some rights or powers which are technically speaking relating to external affairs which are enjoyed by the Native States. The right of 'extradition' is such a right

for example. Extradition is an international right and enjoyed by the States in interstate matters. There may be such other powers or rights in existence or such other powers or rights may come into existence at some future date which according to law do and must vest in a sovereign. I will define the status of Indian States thus :

“They possess full sovereign rights and powers minus the rights and powers conceded to Paramount Power under the terms of treaty or Sanad.”

If there are any sovereign rights or powers analogous to the rights and powers conceded to the Paramount Power but which cannot by any strict interpretation of the terms of treaty or Sanad have been or be deemed to have been conceded to Paramount Power under the terms of treaty or Sanad, those rights and powers vest in the sovereign of the land. If there are any rights or powers to be exercised by the Paramount Power with the consent of, or in the interest of, or subject to the sanction of the State under the terms of treaty or Sanad, such rights and powers can only be so exercised and the grant or relinquishment of such rights and powers in favour of the Paramount Power is only conditional and subject to the proviso,

As a matter of fact the Paramount Power has insisted and interpreted the terms of the treaty to mean that the Paramount Power has a right to interfere in internal matters and in internal sovereignty of the State in certain cases as well but I understand the States have never accepted the view.

The second unit of Federation consists of several British Provinces. The British Provinces, at present, though no doubt they enjoy certain unrestricted rights and powers independently and possess a local government of their own but they are not independent from one another and are linked to a Common Centre to which they are subordinate in several matters. Each Local Government possess a legislature which exercises certain rights and powers independently but the laws passed by the Local Legislature are subject to a veto by the Governor-General of India as the head of the Government of India. The British Province has no independent existence of its own as a Native State has got. It constitutes a link of a single political system. The governmental powers are shared by the Provincial and Central Governments between themselves. It is said that under the coming constitution the Provinces will be made autonomous. But according

to Simon Report "Provincial autonomy is not a constitutional solution but an attractive phrase which is sometimes employed without any clear view as to the methods or results of attaining it."

As far as the units of this class are concerned the change from the present form to the position of an unit in a Federal Government will only mean a shuffling and reshuffling of governmental powers between the Provincial and Central Governments.

Prof. Brown has in his 'Austinian Theory of Law' expressed it as follows :—

"These Provincial Governments are distinguished from the Local Governments of a Unitary State in two respects—the Provincial Government of a Federal State is very highly organised in its constitution, and is, in fact, capable of exercising all the necessary legislative, executive and judicial functions of a National Government,the relation which a Provincial Government in a Federal State bears to the National is one of Co-ordination, not of sub-ordination. Of the two marks the latter is more distinctive. National and Provincial governments are mutually independent within their several spheres. In Unitary States with a fundamental constitution which cannot be altered by

ordinary legislative process, the local government may chance to possess a certain degree of independence, in its relation to the National Government, but such independence will be found to be very inferior in degree to that which is characteristic of the Provincial Government in a Federal State. The essence of a Federal State, as distinct from a Unitary State, is therefore a governmental dualism at a high developed stage of government".

It will thus appear that the change of status in case of the British Provinces only amounts to distribution and redistribution of governmental powers between the local and central governments and there is no chance of any permanent loss of any power or right or of any status in the course of transformation and the surrender if any, is from one link to another of the system.

But in case of the units of the First Class, *viz.*, Native States, the change implies surrender of certain sovereign powers hitherto enjoyed by them to a central federal government and permanent parting with of certain authority and power. It is therefore a matter of great importance for the Indian States. The process of fusion should be carried on in a very careful manner after a good deal of deliberation and the transfer should be

effected in a strictly legal and constitutional manner as not to impair in any way the present status and independent identity possessed by the States and that they may not be relegated to the sub-ordinate position of the unit of a British Province in the Federation in the course of change or fusion. The matter possesses a value of utmost importance and far-reaching effects to the States and I wish to invite the attention of the Rulers of the States to this constitutional aspect with all the emphasis at my command. The matter is more important and has greater far-reaching effect than the selection of the subjects to be conceded to the Centre and in my opinion deserves equal consideration if not more. I shall try to discuss the subject at some length.

How to Join the Federation ?

The subjects of 'common concern' that will be made over to the Central or National Government for administration will fall under two groups as far as the Indian States are concerned. They are:

Either (a) some of those that have already been conceded to the Paramount Power under the terms of treaty or Sanad by the States;

Or (b) some of those over which the States possess sovereign powers at present or in other words some

subjects which are included within the category of 'internal sovereignty'.

The transfer of the subjects to the Central Government can only be effected by a pact between the different units granting the powers to the Centre or by a provision for the same in the Act of the Parliament to be framed.

I shall discuss both the positions below from the point of view of the Native States.

Now as far as the subjects of the first group are concerned, if the change implies any change of responsibility or the exercise of those powers or rights by a different agency than the one contemplated by the terms of treaty or Sanad, I am of opinion that the transfer can only be effected by a fresh treaty or pact, or by the revision of the old treaty and not by the dictation or sweet will of the Paramount Power. Even, if the Paramount Power possess an unrestricted right under the terms of treaty or Sanad to choose or appoint the agency for the exercise of those rights and powers, then too, the Parliament (which I shall show later on constitutes the Paramount Power), I am doubtful if it can delegate those powers to the Indian Federal Government. I am unable to find any legal principle on which it is possible

to base a contention that an Act or resolution of the Parliament can impose any obligations upon a State.

As far as the subjects falling under the second group are concerned, I am definitely of opinion that the transfer can only be effected by coming into existence of fresh valid pacts as far the Native States are concerned between the different units of the federation.

I have already stated that the transfer of subjects cannot be effected, in the case of Native States, by an enactment of the Parliament as can be done in the case of British Provinces. If the Parliament does so and the Princes agree to it, then they will be conceding the right of a third party to interfere in their internal sovereignty and will still further lower their status of Sovereign Power and an Independent State which they possess at present and will be relegated to the position of a subordinate unit like a British Province in the new constitution. They will lose their independent identity and the consequences will be fatal. Moreover I will say that the Parliament cannot legally do so. The rights of any given State being defined by its agreement with the Crown, it follows that the Crown has no power to curtail those rights by any unilateral act. For the same reason it is impossible for the Parliament in Great

Britain by means of legislation, to curtail any rights of the States. Similarly the Legislature of British India is equally unable to impose upon the ruler of a State any obligation which under its agreements with the State, the Crown is not authorised to impose.

Thus as far as I can see the coming into existence of new treaties or the revision of old ones is unavoidable in the course of change and the States will do well to equip themselves thoroughly well for this new contingency and be not caught napping at the time and may not have to repent for one sidedness of the pact as they sometimes do now in connection with their old treaties.

The execution of a pact implies the existence of two sovereign powers on either side who are authorised under the law to enter into and sign the pact.

It will not be out of place here to discuss the modern conception of sovereignty according to jurists as developed so far.

According to Grotius, Sovereign power "is completely independent of other human power, in as much as that its acts cannot be annulled by any human will other than its own."

According to Von Martens Gottingen "a sovereign Government is a Government which ought not to receive commands from any external or foreign Government."

There are two postulates of sovereignty according to jurists—legal and political. Dicey differentiates them as follows in his 'Law of Constitution' :

“That body is politically sovereign the will of which is ultimately obeyed by the citizens of the State. ...That body is legal sovereign, in which resides the power of law-making unrestricted by any legal limit.”

There can be no doubt that under the constitutions of the governments as prevails in almost all the Indian States at present both legal and political sovereignty resides in the Ruler of the respective States.

The question requires a little examination as far as the other side of the pact is concerned.

It is to be noted that the King is seldom mentioned in connection with the treaties. The word used in this connection is 'Paramount Power.' Now let us see what the phrase 'Paramount Power' means and implies.

According to Butler Committee Report “the Paramount Power means the Crown acting through the Secretary of State for India and the Governor-General in Council who are responsible to the Parliament of Great Britain.”

The words 'responsible to the Parliament of Great Britain' are very important and imply that the ultimate responsibility rests with the Parliament and the Crown

only acts as an agent for the due execution of the responsibility.

The view is supported by constitutional writers as well and Prof. Dicey in his 'Law of Constitution' says:

“According to the existing theory of the British Constitution, true and legal sovereignty undoubtedly resides in the King and Parliament.”

According to some writers 'legislative political powers' and 'executive political powers' may be distinguished and in the case of limited Monarchy, as the Government of Great Britain is called, the legislative sovereign powers and the executive sovereign powers belong to distinct parties. For example according to Sir William Blackstone, the legislative sovereign powers, reside in the Parliament: that is to say, in the tripartite sovereign body formed by the King, the members of the house of lords and the house of commons. But according to the same writer, the executive sovereign powers reside in the King alone.

Prof. Salmond also shares the above view. According to him:

“The legislative sovereignty resides in the Crown and the two Houses of Parliament, but the executive sovereignty resides in the Crown by itself, the House of Parliament having no share in it.”

His argument in support of his contention is "that the Crown is not merely itself a part of the legislature, but a part without whose consent legislature cannot exercise any fragments of its own power. No law passed by the two Houses of Parliament is operative unless the Crown consents to it. How then, can the legislature control the executive. Can a man be subject to himself? A power over a person, which cannot be exercised without that person's consent, is no power over him at all."

Austin has examined this theory of Blackstone and Salmond at some length in his book and after giving a number of good and valid reasons has come to the conclusion :

"That the legislative sovereign powers, and executive sovereign powers, belong, in any society to distinct parties, is a supposition too palpably false to enure a moments examination."

and that the present "British Constitution affords not the slightest countenance to the supposition."

Sir W. R. Anson comments adversely upon Austin's criticism of Blackstone and contends that there is a dualism in the British Constitution:

"The Crown through its members does the acts of the State, the Crown in Parliament enacts laws..... the picture which Austin presents of a legislative issuing commands which alone inspire action of the executive is remote from facts." Prof. Brown has in his 'Austinian Theory of Law' examined the above view and the view of Prof. Salmond as quoted above, at some length and has come to the conclusion.

"It appears to me that an executive may be subordinate to the legislative though possessed of important powers of initiative and the theory of the British Constitution requires us to differentiate between the King in his two capacities—to hold that the King as the head of the executive is subordinate to the King as a member of the supreme legislature."

In further examining the view he says :—

".....King in Council is legally subordinate to the King in Parliament. In actual practice the Executive fulfills its functions subject to the general direction of the Parliament. From the point of view of legal theory an Act of Parliament remodelling the Executive or restricting its powers would be completely valid."

I need not stress the point further and it may be taken as settled beyond doubt that the sovereignty

under the British Constitution resides in the King and Parliament.

While discussing the question of sovereignty I propose to examine and discuss in whom does the sovereignty reside under a Federal constitution. The subject of the location of sovereignty in a Federal State is a highly controversial one. Austin says:—

“But where the supreme government is properly federal, each of the several Governments which are immediate parties to the federal compact, is in that character a limb of the sovereign body. Consequently although they are subject to the sovereign body of which they are constituent members, those several governments, even considered as such are not purely in a state of subjection.—But since those several governments, even considered as such are not purely in a state of subjection, the common or general government which they have concurred in creating is not sovereign or supreme.”

It will thus appear that Austin in locating the sovereignty in a Federal Government has vacillated between the States comprising the Federation and the common or general government created by the pact between the units. As a matter of fact his view

is inclined towards locating the sovereignty in the federal units. At any rate, however, it is certain that from the point of view of Austin that the sovereignty under a Federal Constitution cannot reside in a third party external to the constitution.

Prof. Brown in his 'Austinian Theory of Law,' has examined at great length the constitution of the United States of America. He writes:—

"Can sovereignty be located under conditions so complex? In answer to this question I will venture to state two conclusions which are suggested by the letter of the section without reference to the history of interpretation by American practice or American Judges.

"(1) We are not entitled to say that the sovereign is constituted of the National and Provincial governments together with the Organisation of the Republic behind them.....

(2) The sovereignty then, must be looked for in the organisation of the republic behind the National and Provincial governments. That organisation is varying in constitution and difficult to arouse in action."

We find the following in Encyclopædia Britannica:

"The system of the United States is almost the only national system in active and successful operation

as to which the exact location of sovereignty, is still a mooted question."

Another Federal government in existence is Swiss Confederacy. Let us look into the Swiss Constitution for the location of sovereignty under it. The constitution of Switzerland presents no difficulty in this connection for it is agreed on all hands that sovereignty under the constitution resides in the Central Government and so did the sovereignty reside under the Old German Confederation.

After discussing the Constitution of German Confederation, Austin says:—

"I also believe that Swiss Confederation was and is of the same nature. If, in the case of the German, or of the Swiss Confederation the body of the confederated governments are one composite State, rather than a system of confederated States. The body of confederated government is properly sovereign: and to that aggregate and sovereign body, each of its constituent member is properly in a state of subjection."

It will not be without interest to examine the question of sovereignty in the constitution of another Federal State in existence *e. g.* Canada. The Encyclopædia Britannica says:

“Colonial legislatures are said to have delegated powers. It is more accurate to say that as to certain matters the Legislature of Canadian Dominion is sovereign and as to others it is not, and as to some matter they are in fact if not in form ‘universitates superiores non-recognoscentes’ or that they are States in making. At all events the self-governing colonies may be classed as half-sovereign States or quasi-sovereign.”

By discussing the theory of sovereignty as above and trying to locate the sovereignty in a Federal State I wanted to emphasise and clear the following two points.

Firstly the location of the other sovereign side in the pacts or treaties that are likely to be executed at the time of the transfer of subjects to the Central Government.

Secondly the point should be constantly kept in view and if the rulers are sagacious and far-sighted enough the transfer be so effected that there is no further surrender of sovereign rights and the granted sovereign rights are kept as much intact as possible.

Both the points require further elucidation and I have mentioned them in the beginning only with a view that further discussion of the subject be confined in its scope and be examined in the above light.

As to first point I believe it must have become clear from the discussion of the theory above that the sovereignty will and must reside in the future federal constitution of Free India as well and no pact will be valid, binding or lasting unless the future Federal India is a party to it.

Apart from the political theory no pact or contract can be of any lasting value unless the person or persons who have to see to the execution of the terms are party or parties to it. It may be argued that States are forbidden by treaties to enter into any pact or deal with any foreign power and the rights relating to foreign matters have been relinquished in favour of the Paramount Power under the terms of the treaties or Sanads. The reply to the contention is that the old treaties were effected between the respective State and the Paramount Power in British India and the new treaties will also be made with the same Power and the execution of fresh treaties does not involve the making of treaties with any third or foreign power. The execution of fresh treaties may take the form of revision of old treaties.

Now as to the second point the present British India must form itself into a nucleus of an Indian Federation to constitute as one party to the pact with

powers to enter into valid pacts with the Indian States, for specific purposes to be settled between the parties, as the other party. It will not be possible or practicable or, even necessary that every present British Province may figure in the transaction. The various British Provinces stand on the same footing and their interests and status is common. They all constitute as similar links of the same political system and can be merged into one Federal constitution quite easily by an Act of the Parliament. No complications, such as arise from an association of an independant Native State, arise in case of their fusion into a federal constitution.

The constitution should be progressive and be so framed as to permit the entry of the Indian Native States whenever any or all of them may like to join in the constitution as equal parties on such terms as may be agreed upon between the parties at the time.

Safeguards.

It will be necessary to provide certain 'Safeguards' in the constitution to protect the integrity of the parties joining the Federation. Such safeguards will apply equally to all the parties and will equally protect intact the integrity, position, status and interest of all and will act in the common interest.

The point requires a very deep and careful consideration. I shall try to mention herebelow some of such safeguards that are in my opinion necessary for keeping intact and protecting the integrity and independant status of the Indian States such as is possessed by them at present and will naturally act in the interest of all the parties to the pact. Of course the points that I am mentioning herebelow will form the subject and context of the pact as well, to be entered into between the parties—Indian Federation consisting of British Provinces (in the first instance and later on) such Native States as have joined on the one side, and the particular State that wishes to join, on the other side; but the constitution be so framed as to provide for and to assimilate such and similar pacts to be entered into at any later or subsequent time.

(a) *Power of Veto.*

This is an important matter. Since the Indian States will be granting some of their sovereign rights and making over certain subjects to the Indian Federation over which they at present possess sovereign rights and which are included within the category of the so called 'internal sovereignty', no exterior third party be allowed to have any right of veto to the laws and acts of the Indian Federation concerning them otherwise it

will amount to interference with their internal sovereignty and still further reduce their position. All the laws and acts of the Indian Federation in which the Indian States are represented by their representatives with right to vote will be deemed to have been passed or done by them or with their consent if they have been passed or done in accordance with the constitution to which they have given consent by pact. Their reversal should only be permitted by parties to the pact as provided in the constitution and not by an outside agency.

(b) Residuary Powers.

All the other sovereign powers but those that have been specifically granted to the Central Government under the pact or those that are necessary for the due execution of the powers granted must vest in The several united governments. Of course this implies setting up of independent judicial tribunals under the constitution such as exist under the constitution of other Federal governments to determine whether the central Government has exceeded the powers granted to it by the federal units or the latter has in any way exercised those rights and powers which were relinquished in favour of the Central Government under the pact.

(c) Optional right of Entry and Scession.

I understand that it has already been accepted that it will be optional with any Native State to join or not to join the Indian Federation. The time when to join the Federation also depends upon the will of the State wishing to join the Federation. This decision is necessary on account of the special circumstances existing in some States and is only consonant with the independant status possessed by an Indian State. Gwalior State is an instance of the former state of affairs. The ruler is a minor, who is the real political and legal sovereign of the State. The Government is carried on by a Council of Regency and in my opinion it will neither be safe nor wise for the present Council to take up the matter. The decision must be left over till His Highness attains majority and takes the reins of Government in his hands.

If it is optional with a State to join the Federation and the State joins it as an equal partner and the federation is supposed to have been brought into existence for common benefit and interest, it is the inalienable right of an independant and equal partner to withdraw from the alliance when he finds it prejudicial to his interest to remain in the alliance, of course subject to such limitations and conditions as

may be provided in the constitution or the pact. This right of secession alone, if it is secured by the Native States, will keep their status of independence intact more than anything else and I would urge with all the emphasis that the States should strive hard and do all that lies in their power to secure this right even at the risk of refusing to join the Federation. The possession of such a right under the constitution will give a stamp to their independence and status which can never be effaced and will endow them with the status of an independent and sovereign State which can never be taken away from them. They may not and will not secede from the Federation but the recognition of their right to secede and the insertion or provision of such a clause in the constitution or pact will demonstrate their independent and sovereign status and establish their association with the Indian Federation as an equal partner. In fact apart from any other consideration, it only gives recognition to the right possessed by a State as an equal partner.

(d) Entry by a Pact.

A Native State which possess a sovereign and independent status should join the Federation by an independent pact as an equal partner. This will emphasise its independent position and give the status

of an equal partner in the constitution apart from the fact that constituted and placed as the Indian States are, they can join the Federation only by means of a pact. A British Province which at present possess no independant status can merge into a Federation by an Act of the Parliament. Parliament has no right, as shown above, to legislate for the internal governance of an independant Native State. It should be carefully kept in view and watched that no consent is given in a hurry for any such infringement of sovereign rights by any mention of such matter in the Act. States who are not parties to such consent can legally refuse to abide by any such provision.

(e) In case of Breakdown.

It should as well be provided that in case of any eventual breakdown of the central machinery or change of the form of Government the powers and rights granted by the States will automatically revert to the Government of the respective States without any further action or act necessary for the purpose and all those rights and powers delegated under the pact will be deemed to have been revested in the State from the moment of such break down or change of the form of Government in any way.

I will try to make my point clear still further. Supposing the constitution now framed for India is found unworkable after some time and the Parliament feels a necessity of making some change. In such a case the powers and rights delegated by the States should revert at once in the State. Perhaps the importance of entry by a fresh pact will be all the more apparent in such a case. If the transformation is effected by an Act of the Parliament in which the Indian States are also included, the future change in the constitution can also be effected by another Act of the Parliament without a reference to the States. If the entry is by a pact, the pact comes to an end at the time of breakdown or change of the form of Government and the States will be free once more to negotiate their terms with the new form of government.

(f) Guarantee for internal Sovereignty.

The exercise of full sovereign powers in all other matters but those delegated, be guaranteed to the Indian States. There should be special mention of no interference in case of marriages, succession and such other cognate subjects. A freedom of association between the several units of the Federation be allowed without any interference or within certain limits. The limit should be fixed with the sole view of securing the

permanence or the rights or powers of the Centre intact and for no other purpose. Definite and fixed provisions be inserted providing for the extent and the the manner of interference in the case of any break-down of the governmental machinery of a State. The question for freedom in interstatal alliances and connections should also be examined and provided for.

(g) *Financial adjustment.*

This is an important subject and if necessary I will deal with it at another time. It covers a very wide field including maritime customs, the maintenance of an army for All-India purposes and other commercial and industrial subjects. The subject should be carefully gone into and adjusted and provision on the subject is essential. Some leaders of public opinion in British India think and it seems to be more or less an accepted Indian view that the military expenses of India require curtailment and it is just possible that in course of reconsideration of the army question a formulae may be evolved whereby the British India may contribute something towards the maintenance of army in States or may take over a portion of the army maintained by States and thus afford a financial relief to the States. The matter requires a careful study and

attention on the part of the States. The British India is agitating for the question of Public Debt at present and it is contended that India cannot be saddled with debt incurred for imperialistic purposes and that the whole question be scrutinised by some impartial tribunal. Similar is the case of the States. They have been charged for and saddled with expenses in the past which could not be legitimately demanded from them under the terms of treaty. In all fairness the whole question should be scrutinised impartially and the States should press for the same.

(h) *Election of Representatives.*

The question need not be discussed at any length. The several units must be independent in the method and manner of elections of their representatives to the Central Government. Such a provision exists in all federal constitutions and is a necessary attribute of an independent Sovereign state joining a pact.

(i) *Rule of Law.*

Under the new constitution a Rule of Law should be guaranteed to States. What I mean by Rule of Law is that in case of any dispute between States inter se or between the Paramount Power and any Indian State, the matter should be decided according to International Law fixed or laid down for deciding.

disputes between two Sovereign States. Up till now both the India Office and the Government of India have totally ignored the theory, altogether. The Government of India have in fact challenged the whole contention that the rights of the Princes could be expressed in terms of legal principle, or that when an Indian State complained that its rights had been infringed by the Government of India, those rights have never been brought to the touchstone of legal principles. As a corollary of this political attitude, that law had nothing to do with the case, the demand of the Princes already put forward for an independent judicial tribunal, to which they might have recourse as a right for the trial of any dispute between them and the Government of India, under a judicial procedure consonant with natural justice, had never yet been conceded. This was not because the Princes had not asked, for they frequently had asked; nor because there were no disputes, for the Princes complained of many and grave trespasses by Government on the constitutional rights of the State; nor because the disputes were not suitable for such adjudication, for justifiable issues were continually being raised.

The practice of the India Office is open to the criticism that it repudiates the Rule of Law laid down

for its constitutional guidance in two fundamental respects. In the first place, the India Office and Government of India refused to allow that legal principles had any relevance to the ascertainment of the rights of the States, and claimed that those rights were dependant on the discretion of the Paramount Power, which meant the British Executive Government; and in the second place, in a dispute between the Government of India and a State as to the nature and extent of the State's rights, or as to whether its rights had been infringed by the Government of India, there was no independant court to adjudicate between the parties. The dispute was adjudicated on in the first instance by the Government of India in India, which was thus judged in its own cause, and on appeal by the Government of India in London, which was equally judged in its own cause. In neither case was there any semblance of judicial procedure.

The States are smarting under a great grievance in this respect and under the new constitution or at the time of entering into new pacts, the matter should receive the importance which it deserves and should be specifically provided for. A Rule of Law should be observed in relation with the Indian States as well. The practice so far followed is a negation of that principle.

Organisation among States.

While I am on this subject I would like to invite the attention of the States to another important matter which concerns them alone and on the efficient and thorough performance of which depends their status and share in the future Indian Federation.

Up till now I have been treating Native States or States as a whole. It is necessary to understand what the phrase 'Native States' implies. It is when we proceed to examine the phrase that we are confronted with the real difficulties in the problem and it is just possible that the advantage may turn into a loss if the difficulties involved in grappling satisfactorily with this internal matter are not solved beforehand tactfully and wisely and some sort of amicable settlement is arrived at. It is in this field that the proverbial jealousies and the clique making tendencies of the States will rear up their heads and if the matter is not handled in a spirit of far sighted statesmanship and on equitable basis, it may leave a legacy of permanent heart burning among the States and mar the beautiful fabric by a bad texture of threads. The discontent, if any, left at present will become more and more marked with the gradual development of the constitution as the various federal

units acquire a better self-consciousness of their independent status.

"The term Indian States," says Butler Committee Report, "is, in fact extremely elastic as regards both size and government. It covers, at the one end of the scale, Hyderabad with an area of 82,700 square miles with a population of 1,25,00,000, and a revenue of $6\frac{1}{2}$ crores of rupees or about £ 50,00,000 and at the other end of the scale minute holdings in Kathiawar amounting in extent to a few acres only, and even in certain cases, holdings which yield a revenue not greater than that of the annual income of an ordinary artisan. It includes also States economically, politically and administratively advanced and States patriarchal or quasi federal in character which still linger in a medieval atmosphere; States with varying political powers, constitutional like Mysore and Travancore and States which are under purely autocratic administration. The one feature common to them all is that they are not part, or governed by law, of British India."

The problem presented by the heterogeneous character of such States varying in sizes, states of advancement and constitution of Governments as described above, assumes a still greater complexity when it be borne in

mind that the number of such States is about 600 whose interests have got to be represented and who would claim a share in the governance of the future Indian Federation. The Indian States roughly represent about one-fifth of India in area and population.

I have mentioned above that the constitution of a federal Government involves the establishment of a federal Legislature, a federal Executive, a federal Finance and a federal Judiciary.

The Federal Legislature would exercise legislative powers over matters of common concern made over to the Federation together with powers of imposing, spending and distributing federal taxes. The Federal Executive would be charged with the duty of administering federal subjects and, since it is useless to undertake a duty without means being available for carrying it out, would have to be able to secure the effectiveness of federal administration. The Federal Finance would be a necessity in Indian Federation to adjust the financial relations and obligations of the various numerous units composing the Federation. The Federal Judiciary would be charged with the duty of seeing that the Federal Legislature does not overstep its powers and of securing that the units of Federation do not seek to exercise legislative powers which they have surrendered.

The question of representation in the Federal Legislature is an important question. The individual membership of greater States will be as essential as of British Provinces and the issue for determination will be what will be the criterion—whether of area, or of population, or of revenue—which will entitle a State to have the right of individual membership in the Federation. The problem of association and representation of the numerous minor States in the Indian Federation and the Federal Legislature requires a careful, tactful and sympathetic consideration on a fair and equitable basis so that no interests are sacrificed or left out or that no States receive an undue share over and above what their position and status demands. An important consideration in the solution of the problem would be the amount of interest or risk involved of the various States or group of States having regard to the nature of the subjects committed to the care of the Centre. The problem will no doubt present many intrinsic difficulties in the course of solution but I do hope that the statesmanship and far-sightedness of the various Rulers will be able to find out a solution satisfactory to all the parties concerned and leave no heartburning or bickering in the minds of other minor States who cannot get a direct representation on the Federal Legislature in the end. As far as I can

see some system of representation either by rotation or other form of grouping will have eventually to be found out for the smaller units.

The association of the Indian States with the Federal Executive furnishes a crop of problem of its own and is much more difficult of solution and is a very delicate matter indeed. It requires a very deep deliberation and statesmanlike handling. How a Federal Executive is to be composed and what it is to do? It must include, both members from British India and members from the Indian States, but it would be a difficult matter to determine how and in what proportion, they are to be chosen. However composed, the authority of the Federal Executive must extend over the whole area and, therefore we have to contemplate a time when, for the purposes of federal administration, a decision reached with the help of Indian States representatives will take effect in other Indian States which are very remotely connected if at all and to which these representatives do not happen to belong, as well as throughout British India.

The conception of a Federal Finance also involves decisions on matters effecting numerous divergent and conflicting interests and may effect and be binding on units not at all directly represented therein or very remotely, if at all, connected with it.

The association with the Indian Federation of the numerous minor States existing in India, many of which are so small in area, size, population and revenue and which will be very remotely effected by the subjects within the cognisance of the Central Government, will by itself present a great problem. As far as I can see the solution may take the form of a faderation within a federation for the purposes of association and representation in the Indian Federation. The smaller units may combine in groups by pacts to be linked with the Central Government. The smaller units should insist and combine as suggested above to maintain their integrity and independent status as to have direct connctcion with the Indian Fedration. They should not be content and suffer to be represented by a third power otherwise they will lose their status of a sovereign State.

In absence of any conception or idea as to the exact nature of the constitution that the future Indian Federation is going to assume, no definite suggestions can be made with regards to the various problems that are bound to arise before the idea takes a definite shape. At best one can only bring them to prominence and emphasise them at this stage by inviting the attention of the States to engage themselves in solution of the same while there is still time and to give to these

matters of detail all the thought and care that they deserve and to consider all these problems from all points of view beforehand and to have defined views and clear cut proposals regarding them for consideration at the proper time. If the intervening period is not so utilised, the matters of details will have to be rushed through in a hurry and in the end the States may find, especially smaller ones, that they are losers in the bargain which could have been well avoided by a little forethought. Their case is different from the case of the Provinces of British India. In the case of latter what is loss to one part is a gain to the other but in case of States it will be either a permanent loss or a permanent gain.

It will be a matter of supreme satisfaction and a piece of crowning glory to the statesmanship of Princes of India if at the time of stock taking in the end it can be said to their credit that they have much strengthened and entrenched their position in the course of fusion into Federal India.

I would suggest that the Chamber of Princes should take up the matter in right earnest and establish a wide-awake organisation allied with an excellent Publicity Department under the control of experts to collect necessary data and to tackle all the problems beforehand that are sure to arise in the near future.

It is a duty which the Chamber and the bigger States owe to the smaller units of their Order to see that the interests of smaller units are not sacrificed or their status is not lowered or lost in any way on account of their isolated position or want of means at their disposal which the bigger States possess at their command. It is not for me to emphasise this aspect of their duty to their bretheren whom Providence has not placed in an equally good position. I would specially urge upon the smaller units among the States to take immediate steps to combine to watch their interests and to assert their position and not to trust merely to the good offices of any third power to watch their interest. "Sleeping fox catches no poultry" says the old proverb and God only helps those who help themselves. They will be to blame themselves if their interests suffer or do not receive due recognition.

Jagirs.

It will not be out of place to mention here of another class of estates called Jagirs at this stage. Such Jagirs and estates exist in almost all the States and their number is 327. They are supposed to derive their independence or integrity through the States themselves and though the Jagirdars do not possess sovereign rights within their territory, still they enjoy a somewhat

independent status within their area in different measures. Bigger Jagirdars in certain places have more or less complete internal independence and maintain their own Police, Judiciary and Custom departments. Jagir is an old institution of India and has a unique and glorious history behind it. I am afraid there has been a tendency of late on parts of States to encroach upon their rights and interfere in internal administration and to deprive them of their independence slowly and gradually. For the most part the Jagirdars are themselves to blame for it. In some places the States have even interfered in the collection of revenue from the ryots by the Jagirdars. It will only be in the fitness of things if this old Indian Order also may organise itself to assert its position and claim some sort of representation in the Federal Legislature and Federal Executive in its own right through the States. Their independent and direct representation is almost sure to be ignored unless they combine to assert their position and right. If once they receive the recognition that is due to them, on account of their position and status, a new chapter will be opened in their history and they can look ahead with confidence to an assured future and fulfil their destiny in due time. I am sure they will receive every support and sympathy from the States in their efforts for the

recognition of their just demands. At the same time they will be in a position to adjust their status and relations with the States and get full powers of internal administration without any interference in their territory. But it is for them to take a concerted action to assert their position.

The Form of Ultimate Federation.

I have discussed above the relation and position in which the Indian States stand towards the proposed Indian Federation and the manner in which it will be possible for them to join it; how it is essential that the entry into Federation be left to their option and they be gradually taken into the Federation as they feel its necessity and express their willingness to join it. A progressive and permissive Act to suit the circumstances of India will have to be enacted by the Parliament.

There is an analogy of some value to be found in the development of the Dominion of Canada. The British North America Act of 1867, which established the Canadian Federation only brought together in the first instance Nova Scotia, New Brunswick and the old Province of Canada, *i. e.*, Quebec and Ontario; and these four areas constituted the whole of the Dominion of Canada when Federation began in 1868. Thus the

whole area then administered by Hudson's Bay Company (which amounted to one-third of the area of Canada as we know it to-day), as well as the Colony of British Columbia, Prince Edward Island and the almost unsettled lands afterwards known as Alberta and Saskatchewan, were outside the Dominion altogether. But the Preamble to the British North America Act contained the recital:—

“And whereas it is expedient that provision be made for the eventual admission into the union of the other parts of British North America,”

and in pursuance of this Preamble, Part XI of the Act contained a section (No. 146) as follows:—

“It shall be lawfull for the Queen, by and with the Advice of Her Majesty's Most Honorable Privy Council, on Address from the Houses of Parliament of Canada and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island and British Columbia, to admit those Colonies or Provinces or any of them into the Union and on Address from the Houses of Parliament of Canada to admit Rupert's Island and the North Western territory or either of them into the Union, on such Terms and Conditions in each case as are in the Addresses expressed and as the Queen thinks fit to approve, sub-

ject to the provision of this Act; and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland."

It is a striking fact that even to-day the extension of Canadian Federation contemplated by the Act of 1867 is not complete for Newfoundland has always remained outside the Dominion of Canada. The Hudson Bay Territory under the name of Rupert's Island and the North Western Territory organised under the style of Province of Manicola were subsequently admitted into the Union by an Order in Council in 1870, and in 1871 the procedure of Section 146 was exactly followed for the purpose of admitting the Colony of British Columbia. Similarly Prince Edward Island was admitted in 1873.

The point of this Canadian analogy is that the British North America Act of 1867 contained a scheme for extending the area of federation, but no actual extension took place merely because the Act was passed. The statute created an opportunity, it did not impose a federation upon outside areas. Subsequently the scheme was made use of by the method of negotiation and agreement between the existing Dominion and a new area when it was ready to enter the Federal Union and

the actual operation was effected piecemeal, as each additional unit was ready to come in, without the necessity of passing any amendment of the British North America Act. This suggests that a possible mode of approach to the future Indian Federation would be for the Parliament to pass an Act for India on the lines of the British North America Act of 1867 which will have no operative effect by itself but which will contain a scheme or formulæ which might be from time to time adopted by mutual agreement between a given State and British India. The general method of treatment thus indicated is the one most likely to produce practical results. The Act for India will have to differ in some material respects from the Act for Canada in the matter of admissions of the areas into the Federation. The Indian States being independent sovereign bodies occupy and possess another status than the different Provinces of Canada possessed at the time. The admission of independent Native States into the Federation will be in their own right and on terms to be settled between the parties at the time without reference to any third party. I have already discussed above how and in what manner it is possible for the Indian States to enter the India Federation.

Conclusion.

Before I conclude I would like to address a few words to the subjects of the Native States, to the Rulers of the States and last but not least to the English Nation.

To the subjects of the Indian States I would say in all sincerity to realise that the States are passing through a critical stage of evolution. Nobody can deny, much less the Princes themselves, the justice of your demands and no force on earth can stand between you and ultimate realisation of your just rights as citizens of the States. But the present time demands that you should cast your full weight on the sides of the States in the negotiation with the British India. What is a gain to the States in the negotiation is an ultimate gain to you and will become your property in the end and it is only a matter of time when you will get it. Just consider and realise that the Princes are carrying on your battles and deserve all your support. When the battle is won and the independent and sovereign status of your States is established and assured, you can settle with your Rulers and reap the fruits of joint labour. If you launch your offensive against your Rulers at this critical stage and fritter away your energy in internal quarrels rather than utilise it in the

magnificent cause of your country it may harm the cause of the independence of your State and it is just possible that the independent status of the States be still further lowered on account of this fight. The loss will be yours and the future historians will blame you for having sacrificed the permanent gains for temporary ends. I will only just tell you what you already know that the Indian Princes have demonstrated beyond any doubt their freedom loving instincts by making the contribution that they did to bring about the Freedom of their mother country. It has become a matter of history now. They have been weighed and found not wanting and fully vindicated their position as custodians of the proud heritage of an ancient civilisation and culture and the Independence of India. What they have earned for others they will not deny to give to their dear and beloved subjects. In this connection I will quote below a few extracts from the utterances of two noble Princes for your information and benefit.

H. H. The Maharaja of Bikaner said on 3rd October 1929:

“I whom the Almighty has been pleased to ordain to be the Ruler of the Bikaner State can never forget that I am, at the same time the first servant of the State and the first servant of my subjects.”

Again he said on 19th December 1929.

“In concluding the speech to-day, I would say to the overwhelming majority of the bonafide and loyal subjects of Indian States—have faith in your Rulers and Government; they are fighting, and will continue to fight your battles for you their subjects, to the utmost power and ability; they are fighting for the whole State consisting of you as well as their Governments and not for the selfish ends of the Princes or for any other unworthy motives”.

H. H. The Maharaja of Alwar said on 5th February 1929:

“My greatest reward, which they have given me—more than which I do not seek--my richest treasure that I value and possess in their love and affection.”

Again:

“I state one word, and that should be sufficient; a Rajput word, given by his ancestors or by himself is his heritage, and past tradition, whether in fair or foul, is the surest augury for the future.”

His Highness is a direct descendent from the line of that ideal god-incarnate King—Shri Ram Chandrajī Maharaj and on reading the above I am irresistably led to the conclusion that the historic yet true words put by that great poet Tulsī Dāss in the mouth of the immorta

Shri Ram Chandra still resound and find an echo in the heart of his present living illustrious descendent His Highness the Maharaja of Alwar

एवमुक्तं सीति यदी चढी काई, प्रान काये पर वचन न हाई ।

To the Princes.

I would say in all humility and respect that your dear and beloved subjects have got a suspicion lurking in their minds that Your Highnesses do not want to part with any authority and to give them the rights and share in the administration that is due to them. Those who should be a source of strength to you, constitute a danger to you. The volume of feeling is growing daily and unless matters are righted in time, I am afraid there is every possibility of their casting their weight in the other scale. Your plans are being hatched in secrecy and that still further increases the amount of suspicion in the minds of your subjects and what I feel is that a good cause is being spoiled for want of publicity. Is it too much to expect that efforts may be made to take your subjects in confidence and to acquaint them with the far-reaching effects and the importance of the various issues involved and to explain to them how much is at stake. I am sure many will rise above petty squabbles and be patriotic enough to lend all the support which a loyal citizen ought to accord to a Ruler in such a time.

The moral support of your subjects in your cause will strengthen your case and make your position unassailable. Any further neglect in the matter will only augment the volume of feeling that is already growing and make your task further difficult and alienate public sympathy from you. The agitation of your subjects is receiving a sympathetic response from British India and is only arraying forces against you. Why carry on the fight singlehanded when you can enlist the support of your subjects. May I suggest that a joint Proclamation or a Proclamation on similar lines from the various Princes be issued at once giving rights due to your subjects and allaying further discontent. The sympathies of the citizens of the British India will be a great asset in your favour in re-establishing your status and something should be done at once to win that sympathy. I can only say that States are loosing a great opportunity by not trying to win the confidence of their subjects and the sympathies of the citizens of the British India at this time. So far as I can see many new openings and brilliant prospects await for your administrators and subjects in the immediate future to which they can easily look forward if they enjoy good will and confidence of British India. It will be a catastrophe if the opportunity is not utilised and the chances are thrown away by a

narrow-minded policy. I will invite the attention of your Ministers to the following quotation from the Simon's Report :

“The Indian States include within their borders some of the races of India which have played a part in the necessary work of securing that defence, and maintaining that order without which hopes of Indian progress are baseless fabric of vision ! We have already said that the Committee on Army affairs which we contemplate a part of our scheme would be greatly strengthened if it includes representatives from the Indian States ”.

Gwalior is reputed to have one of the finest and most efficient army possessed by any State and there is every reason to hope that our distinguished Commander-in-Chief General Rao Raja Rajwade will be associated with some responsible post in the army of the future Federal India.

Similarly the States can look forward and should get some prize posts in the Political Department. It will be a great folly if the opportunities so offered are cast away.

To the British Nation.

I only want to make a present of an abstract from the speech delivered by Earl Dufferin the first Viceroy and Governor-General of the Dominion of Canada in

1874. I hope the present statesmen of Great Britain will try to maintain the reputation secured to them by their ancestors in the field of statesmanship and they shall try to see that their posterity remembers them with as much respect and pride as they do their past illustrious ancestors and the proud heritage left to them is neither lost nor impaired in any way. The sooner they realise the better that no might on earth can keep back freedom from India which is their birth-right and all the waves of Imperialism will only rise to be thrown back against the impregnable rock of Indian Freedom—a rock of Truth and Justice.

It will add a still more glorious feather to the statesmanship of Great Britain if after the solution of the present Indian problem, the first Viceroy of Free India can say, what Earl Dufferin said in Canada in 1874 towards the close of an extensive tour in the Dominion:

“Every where I have learnt that the people are satisfied,—satisfied with their own individual prospects, and with the prospects of their country; satisfied with their Government, and the institution under which they prosper; satisfied to be the subject of the Queen; satisfied to be the members of the British Empire. Indeed, I cannot help thinking that, quite apart from the advantage to myself, my early journeys through

the provinces will have been of public benefit, as exemplifying with what spontaneous, unconcerted unanimity of language, the entire Dominion has declared its faith, in its destiny, in its connection with the mother country, and in the well ordered freedom of a constitutional monarchy. It is this very combination of sentiments, which appears to me so wholesome and satisfactory. Words cannot express what pride I feel as an Englishman in the loyalty of Canada to England. Nevertheless I should be the first to deplore this feeling, if it rendered Canada disloyal to herself,—if it either dwarfed or smothered Canadian patriotism, or generated a sickly spirit of dependance. Such, however, is far from being the case. The legislation of the Parliament of Canada; the attitude of its statesmen, the language of its press, sufficiently show how firmly and intellegently its people are prepared to accept and apply the almost unlimited legislative faculties with which it has been endowed, while the daily growing disposition to extinguish sectional jealousies, and to ignore an obsolete provincialism proves how strongly the young heart of the confederated commonwealth has begun to throb with the consciousness of its national existence. At this moment not a shilling of British money finds its way to Canada; the interference of the Home Government with the domestic affairs of the Dominion has ceased; while the imperial relations between the tw

countries are regulated by a spirit of such mutual deference, forbearance and moderation, as reflects the greatest credit upon the statesmen of both. Yet so far from this gift of autonomy having brought about any divergence of aim or aspiration on either side, every reader of our annals must be aware that the sentiments of Canada towards Great Britain are infinitely more friendly now than in those early days when the political intercourse of the two countries was disturbed and complicated by an excessive and untoward tutelage; that never was Canada more united than at present in sympathy of purpose, and unity of interest with the mother country, more at one with her in social habits and tone of thought, more proud of her claim to share in the heritage of England's past, more ready to accept whatever obligations may be imposed upon her by her partnership in the future fortunes of the Empire."

How do I wish that the present statesmen of Great Britain will permit the future historians to substitute, 'India' in place of 'Canada' and 'Indians' in place of 'Canadians' in the above extract.

I have thought it advisable to give a brief outline of the constitutions of the three great Federal Governments in existence in the world at present, in the Annexure attached to this hand book to enable us to understand and solve the problem of our mother country better.

A. M. ARORA

ANNEXURE.

Brief Outlines of the Constitutions of the Leading Federal Governments of the World.

I

United States of America.

1. The Federal Government has only the powers granted to it by the Federal Constitution, while the State has all governmental powers not forbidden to it by the State or the Federal Constitution. But the phrase defining the Federal Government's power is no longer "expressly granted" as in the Articles of Confederation, but merely "granted." So that powers necessary to the execution of granted powers belong to the Federal Government, even though not directly named in the constitution. This question of interpretation, or "construction" is at the bottom of real national politics in the United States and the "construction" has pretty steadily broadened.

2. Popular sovereignty is the basis of the American system. But it does not, as does the English system, choose its legislative body and leave unlimited

powers to it. It makes its "constitution" the permanent medium of its orders or prohibitions to all branches of the Federal Government and to many branches of the State Government; they must do what the constitution directs and leave undone what it forbids. The people therefore are continually laying their commands on their Governments, and they have instituted a system of Federal courts to ensure obedience to their commands. An English Court must obey the Act of the Parliament; the American Court is bound and sworn to obey the constitution first, and the Act of Congress or of the State Legislature only so far as it is warranted by the constitution. The Act thus comes before the court for examination, and it supports or disregards it as "unconstitutional" or in violation of the constitution. If the court is one of high rank or reputation, or one to which a decision may be appealed, as the United States Supreme Court, other courts follow the precedent, and the law falls to the ground. The court does not come into direct conflict, with the legislative body; and where a decision would be apt to produce such a conflict, the practice has been for the court to regard the matter as a "political question" and refuse to consider it.

3. The preamble states that "we the people of the United States" establish and ordain the constitution. Events have shown that it was the people of the whole United States that established the constitution

4. The original constitution was in seven articles. The first related to the organisation and powers of Congress which consists of senate and house of representatives. Representatives are to be inhabitants of the State for which they are chosen, to be twenty-five years old at least, and are to serve two years. Each house of representatives thus lasts for two years, and this period is usually known as "a Congress." Representatives are assigned to the States in proportion to population. By Act of Congress the number 154,325 is the divisor into State's population which fixes the number of the State's representatives, the whole number of representatives being 325, with 8 delegates from territories, having seats and the right to debate but not to vote. The house elects its speaker and other officers, and has the power of impeachment.

5. The legislature of each State elects two senators, to serve for six years, and no State can be deprived of its equal share of representation except by its own consent. The senators are divided into three classes; the term of one class expiring every two years. Six years are therefore necessary to completely change the composition of the senate, and it is considered a continuous body. Senators are to be at least thirty years old, and must be inhabitants of the States from

which they are chosen and citizens of the United States for at least nine years previous to their election. The vice-president presides over the senate, having no vote unless in case of equal division.

6. All officers of the United States are open to impeachment by the house of representatives, the impeachment to be tried by the senate. When the president is tried, the Chief Justice of the Supreme Court presides.

7. Each house passes on the election of its own members; but an Act of the Congress may control the Acts of the State legislature as to time, place, and manner of elections, except as to the place of choosing senators, in which the legislature remains supreme.

8. When a bill passes both houses it goes to the president. If he signs, it becomes law. If he holds it without signing for ten days (Sunday excepted) it becomes law, unless the final adjournment of Congress comes in the ten days. All bills passed in the last ten days of a Congress are therefore at the mercy of the president: he can prevent them from becoming laws by simply retaining them. If the president decides to veto a bill, he returns it with a statement of his objections, to the house in which it originated. It can then only become law by a vote of two-thirds, of both houses.

9. The powers of Congress are fully stated. The first is to "lay and collect taxes, duties, imposts, and excises [in order] to pay the debts and provide for the common defence and general welfare of the United States." Duties, etc., are to be uniform throughout the United States. Other powers are—to borrow money; to regulate foreign and domestic commerce; to make rules for naturalisation and bankruptcy laws; to coin money, regulate the value of foreign coins, and fix the standard of weights and measures; to punish the counterfeiting Federal securities and current coin; to establish post offices and post roads; to establish patent and copyright systems; to establish courts inferior to the supreme court; to punish offences on the high seas or against international law; to declare war, grant letters of marque and reprisals, and make rules for captures; to raise and support armies, no appropriation to be for more than two years; to provide and maintain a navy; to make articles of war; to use the militia of the States in executing Federal laws, suppressing insurrections, and repelling invasions; to provide for organising, arming, and disciplining this militia, leaving the states to appoint the officers and to carry out the system; to establish a national capital or Federal district, and to exercise exclusive powers of legislation over it, and over sites of forts, dockyards, etc., bought by permission of

States; and, finally, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the constitution in the Government of the United States, or in any department, or office thereof."

10. The real sovereignty which made the constitution shows itself in a double series of prohibitions—on the Federal Government and on the States. The Federal Government shall not suspend the privilege of the writ of *habeas corpus* in case of rebellion, or invasion, when the public safety requires it. Congress must not pass any bill of attainder or *ex-post facto* law, tax exports, give commercial preference to the ports of one state over those of another, lay direct taxes except in proportion to census population, or grant any title of nobility. Money is to be taken from the treasury only in consequence of appropriations made by law. And no person in the service of the United States may accept any gift or title from a foreign power without consent of Congress.

11. The States are absolutely forbidden to make treaties of any kind, to grant letters of marque and reprisal, to coin money, to emit bills of credit, to make anything but silver a legal tender, to grant any title of nobility, to pass any bill of attainder, *ex-post facto*

law, or law imposing the obligation of contracts. It follows from the last clause that States cannot pass bankruptcy laws. The States are forbidden, except by consent of Congress, to lay any duty on imports or exports, except inspection charges, to be paid into the Federal treasury, to lay any tonnage duties; to keep troops (a word which does not cover militia) or ships in peace, to make any agreement with another State or with a foreign power; or to engage in war unless actually invaded.

12. The president is to be a native citizen, at least 35 years old, and at least 14 years a resident within United States. He is paid by the United States; and his salary is not to be increased or diminished by Congress during his term. He is sworn to execute his office faithfully, and to "preserve, protect, and defend the constitution of the United States." The president has the power of veto already described, sends message to Congress on the state of the Union or on special subjects, convenes either house or both on extraordinary occasions, receives foreign envoys, commissions, officers of the United States, and oversees the execution of the laws passed by Congress. He makes treaties but no treaty is valid unless passed by the senate by a two-third vote of those present. He appoints

ministers, consuls and judges but presidential appointments must be confirmed by the senate. He is the Commander-in-Chief of the Army and Navy and has power of pardon. He may call upon heads of the departments for a report.

13. The term "Cabinet" is not known in the constitution. There are nine departments,—those of State, of the treasury, and of justice, of the War, of the navy, of the interior, of the post office, of the labour, of the agriculture. The leading officer of the department is called secretary. The secretaries are selected by the president and are confirmed by senate but they are not responsible to any one but the president. The president is not bound by their opinion. They are his advisers only.

14. The people have no direct voice in the choice of president and vice-president: they choose electors, each State having as many electors as it has senators and representatives together, and the electors choose the president and the vice-president. The electors are to be chosen in such manner as the legislatures of each State shall direct. When the votes are counted the highest name on the list, if it had the majority of all the votes, obtained the presidency and the next highest became the vice-president. The method was changed in 1904.

15. The constitution provides for one Supreme Court. The most important provision of the constitution is the grant of jurisdiction to Federal Courts (established under Judiciary Act) in cases involving the construction of the constitution or of the laws or treaties made under it.

16. The States were bound to give credit to the public records of other States, to accord citizenship to the citizens of other State, to return criminals fleeing from other States.

17. The Federal Government was to guarantee a republican form of government to each of the States, and to protect each of them against invasion, or, on application of the legislature or governor, against domestic violence.

18. A "Bill of rights" containing ten amendments was adopted soon after the ratification of the constitution that it may fairly be considered a part of the original instrument. They forbade any establishment of religion by Congress, or any abridgement of freedom of worship, of the press, or of speech, or of the popular right to assemble and petition the Government for redress of grievances; the billeting of soldiers; unreasonable searches, or seizures, or general warrants; trials for infamous crimes except through a grand jury's action;

subjecting a person for the same offence to be twice put in jeopardy of life or limb; compelling him to witness against himself in criminal cases; the taking of life, liberty, or property without due process of law or without compensation of property; and the demand of excessive fines or of cruel or unusual punishments. They asserted the right of the people to keep and bear arms, to a jury trial from the vicinage in criminal cases, to a copy of indictment, to the testimony against prisoner to compulsory process on his behalf, and to counsel for him. And they stated expressly the general principle already given, that the Federal Government is restricted to granted powers, while those not mentioned are reserved "to the States respectively and to the people."

19. The system of the United States is almost the only national system, in active and successful operation, as to which the exact location of sovereignty is still a mooted question.

20. The constitution provides that any future amendment, when passed by two-thirds of both houses and ratified by the legislatures or conventions of three-fourths of the States, should become a part of the constitution.

21. The United States consists of 38 States, eight territories and the district of Columbia.

II.—SWITZERLAND.

1. The Swiss Confederation is made up of twenty-two small States, differing from each other in nearly every point, — religious, political, social, industrial, physical and linguistic; yet it forms a nation the patriotism of whose members are universally acknowledged.

2. Swiss history is a study in federalism. Based on the defensive alliances of 1291 and 1315 made between the three Forest districts, the Confederation is enlarged by the admission of other districts and towns, all leagued with the original three members, but not necessarily with each other. Hence great difficulties were encountered in looking after common interests, in maintaining any real union; the diet was merely an assembly of ambassadors with powers very strictly limited by their instructions, and there was no central executive authority. The Confederation is a "Staatenbund," or permanent alliance of several small States. After the break up of the old system in 1798 we see the idea of a "Bundesstaat," or an organised State with a central legislative, executive, and judiciary work its way to the front, an idea which is gradually realised in the constitutions of 1848 and 1874. The whole constitutional

history of the Confederation is summed up in this transition to a federal State, which, while a single State in its relations with all foreign powers, in home matters carefully maintains the more or less absolute independence of its several members.

3. Constitution of 1848.

A status of "Swiss Citizenship" was set up, closely joined to Cantonal Citizenship: a man settling in a canton not being his birthplace got Cantonal Citizenship after two years, but was excluded from all local rights in the 'commune' where he might reside. A Federal or Central Government was set up, to which the cantons gave up a certain part of their sovereign rights, retaining the rest. The federal legislature (or assembly) was made up of two houses—the Council of States (Stände Rath), composed of two deputies from each canton, whether small or great (44 in all), and the national council (National Rath), made up of deputies (145 in number) elected for three years, in proportion of one for every 20,000 souls or fraction over 10,000, the electors being all Swiss Citizens. The federal council or executive (Bundesrath) consisted of seven members elected by the federal assembly; they are jointly responsible for all business, though for sake of convenience there are various departments, and their chairman is

called the president of the Confederation. The federal judiciary (Bundesgericht) is made up of eleven members elected by the federal assembly for three years; its jurisdiction is chiefly confined to civil cases, in which the Confederation is a party (if a canton, the federal council may refer the case to the federal tribunal), but takes in also great political crimes,—all constitutional questions, however being reserved for the federal assembly. A federal University and a polytechnic school were to be founded. All military capitulations were forbidden in the future. Every canton must treat Swiss Citizens who belong to one of the Christian Confessions like their own citizens, for the right of free settlement is given to all such, though they acquired no rights in the commune." All Christians were guaranteed the exercise of their religion, but the Jesuits and similar religious orders were not to be received in any canton. German, French and Italian were recognised as national languages.

The method of election and length of term of office were left to the cantonal Governments. In 1887 in eleven cantons (or half Cantons) the people, in fourteen the "great council" elected deputies. Twelve elected for one year, twelve elected for three years, Wallis holding to the mean of two years.

4. Constitution of 1874.

From 1848 onwards the cantons continually revised their constitutions, always in a democratic sense. The chief point was the introduction of the referendum, by which laws made by the cantonal legislatures may (facultative referendum) or must (obligatory referendum) be submitted to the people for their approval, and this has obtained such general acceptance that Freidburg alone does not possess the referendum in either of its two forms, Tessin having accepted it in its optional form in 1883. It was therefore only natural that attempts should be made to revise the federal constitution of 1848 in a democratic and centralising sense, for it had been provided that the federal assembly, on its own initiative or on the written request of 50,000 Swiss electors, could submit the question of revision to a popular vote. In 1866 the restriction of certain rights (mentioned above) to Christians only was swept away, but the attempt at final revision in 1872 was defeated by a small majority, owing to the efforts of the anti-centralising party. Finally however on April 19, 1874 the new constitution was accepted by the people.

This constitution is that now in force, and is simply an improved edition of that of 1848. The federal

tribunal (now of nine members only) was fixed (by federal law) at Lausanne, and its jurisdiction enlarged, especially in constitutional disputes between cantons and the federal authorities, though jurisdiction in administrative matters (*e. g.*, educational, religious, election, commercial) is given to the federal council, a division of functions which is very anomalous, and does not work well. A system of free elementary education set up, and many regulations made on ecclesiastical matters. A man settling in another canton was, after a residence of three months only, given all cantonal and communal rights, save a share in the common property (an arrangement which as far as possible kept up to old principle that the "commune" is the true unit out of which cantons and the Confederation are built) and the membership of the "commune" carries with it cantonal and federal rights.

The referendum was introduced in "facultative" form; *i. e.*, all federal laws must be submitted to popular vote on the demand of 30,000 Swiss electors or of eight cantons. If the revision of the federal constitution is demanded by one of the two houses of the federal assembly or by 50,000 Swiss citizens, the question of revision must be submitted to a

popular vote, as also the draft of the revised constitution,—these provisions, contained already in the constitution of 1848, forming a species of “obligatory referendum.” It was supposed that this plan would lead to radical and sweeping changes but the right has been cautiously exercised. There has been a very steady opposition to all schemes aiming at increased centralization. By the constitution of 1848 and 1874, Switzerland has ceased to be a mere union of independent States joined by a treaty, and has become a single State with a well organised Central Government, to which have been given certain of the rights of the independent cantons, but increased centralization would destroy the whole character of the Confederation, in which the cantons are not administrative divisions but living political communities. Swiss history teaches us, all the way through, that Swiss liberty has been won by a close union of many small States, and we cannot doubt that it will be best preserved by the same means, and not by obliterating all local peculiarities, nowhere so striking and nowhere so historically important as in Switzerland.

5. The Swiss Confederacy comprises of 22 Swiss Cantons (districts).

III—CANADA.

The Imperial Act known as "The British North America Act of 1867", provided for the voluntary union of the whole of British North America into one legislative confederation, under the name of the Dominion of Canada. Thus the older provinces have preceded, even by centuries, the Dominion within which they are now embraced and have a separate history of their own.

2. The Dominion consists at present of the province of Ontario, Quebec, Nova Scotia, New Brunswick, Manitoea and British Columbia. To it also pertain territories in the North-West still unsettled, with power to receive them into the confederacy when they acquire the requisite population and organisation of provinces. Provision is also made in the Imperial Act for the admission of Newfoundland into the Confederacy.

3. It is further provided that Constitution of the Dominion shall be "similar in principle to that of the United Kingdom," that the executive authority shall be vested in the Sovereign of Great Britain and Ireland, and carried on in his name by a Governor-General and Privy Council; and that the legislative

power shall be exercised by a Parliament of an Upper House or "Senate", the members of which are nominated for life, by summons under the great seal of Canada, and a "House of Commons" duly elected by the several constituencies of the various provinces in proportion to the relative population of each.

4. The Act of Confederation came into operation on the 1st July 1867, at which date the provinces of Ontario and Quebec were united to the maritime provinces of Nova Scotia and Brunswick. In 1870 the newly created province of Manitoba, in 1871 that of British Columbia, and in 1872 that of Prince Edward Island, were successfully admitted into the confederation.

5. A Lieutenant-Governor and Council are to be appointed to administer the affairs of the North-West territories, not yet settled or organised into provinces, and thus the whole of British North America has been organised into a united political confederacy under the name of Dominion of Canada.

Previous to the confederation of provinces, Labrador was independent of Lower Canada, and it still remains politically attached to Newfoundland.

6. By the constitution of the Dominion, as embodied in the British North America Act of 1867, the criminal law, with the establishment, maintenance and management of penitentiaries, all laws relating to bankruptcy and solvency, marriage and divorce, naturalisation, aliens, Indians and Indian reserves, and generally all subjects not expressly assigned to the provincial legislatures pertain to the Dominion Parliament.

7. The judges in all the provinces are appointed by the general government, and the pardoning power is vested in the Governor-General per se, whilst his authority in all other respects is exercised under the advice of his Privy Council, or Ministers for the time being.

8. The powers entrusted to local legislatures include generally all strictly local legislation not affecting in any way the rights of other provinces.

9. The Judges of the superior courts in all provinces hold office during the good behaviour and are removable by the Governor-General on the address of both houses of Parliament.

10. The rights and privileges of each province being thus secured by its own Parliament and Courts of law, the provision of the Act of Confederation have

been completed by the establishment of a Supreme Court and Court of Exchequer at Ottawa. The Court thus constituted is the supreme and final court of appeal from all the courts of law in the various provinces,—with the exception that, while no appeal lies from the Supreme Court at Ottawa to the Privy Council, litigants have still the right of choice between the two as their final Court of Appeal.

11. The position which Canada now occupies as a Dominion formed by a confederation of self-governing provinces, under a Central Government, with its own Governor-General, Cabinet Ministers, Senate, Parliament and supreme courts of law—yet nevertheless remaining an integral part of the British Empire and acknowledging the sovereignty of its King—is unique in the history of nations and strikingly illustrates the adaptability of British institutions to the novel requirements of a free people. It will form an interesting chapter in the history of Britain in relation to her colonies, to note the freedom with which, when those of British North America had, as it were, attained their majority, they were left to frame a scheme of confederation suited to their circumstances; and when after free deliberation it had been matured to the satisfaction of those directly interested in the results, the Imperial Government received it at their hands and the British Parliament gave it the force of law.

CONFEDERATION OF STATES

OR

FEDERATION WITHIN FEDERATION.



BY

A. M. ARORA, B.A., LL.B.

Author of:—Indian Federation and the States ; Indian Federation and the Sovereignty of the States ; The Laws of Gwalior ; A Note on Laws Delays ; Etc., Etc. Etc.

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