

# Indian States and Indian Polity

BY

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WITH AN INTRODUCTION BY

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**Mr. A. Rangaswamy Iyengar, B.A. B.L., Editor,  
"Hindu" Madras and President, Bombay States'  
People's Conference says :—**

**"Your book forms a useful and timely con-  
tribution to the discussions on the Indian States  
Problem."**

## INTRODUCTION

This broucher is written by Mr. Raghavan, M. A. the learned editor of the 'Democrat'. It gives very briefly the present aspects of the problem of Indian States, and it will prove of a very great interest to all students of this problem. It is to be regretted that its publication will suffer in its claim for originality after the Sankey Report and the Round Table proposals are available to the public. The writer traces the growth of the idea of federation from the Montford Report, from the scheme of Sir Leslie Scott prepared for the Princes, from the Butler and Simon Reports and lastly from the Neharu Report, and he has shown that without a complete political unification of the Indian States and British India the ideal of Dominion status can never be reached. Federation he has proved to be the only solution. The outlines of the federation are similar to that given in the Sankey Report but with this change that the writer proposes that the Council of State or the future Senate should be in charge of the political department of the Central Government as is the case in the United States' Constitution. The writer further suggests that with a view to induce the Princes to leave off their present system of arbitrary Government and to introduce an element of popular responsibility in the constitution of their respective States representation in the Council of State or the future Senate ought to be conceded only to those States that are prepared to adopt a system of popular Government as obtaining in the British Indian Provinces. The real difficulty however is how to force this upon the Indian

Princes. If it is only by means of persuasion we seriously doubt whether the Princes would be prepared to give up autocracy looking to the keen fight which they are putting up to entrench the same. The list of federal subjects shall have to be revised in the light of the present division of federal subjects common to British India and the States (2) central subjects relating only to the British Indian Provinces (3) and the Crown subjects which will be called reserved subjects hereafter. The writer makes a valuable suggestion that the subsidies paid by the Indian States should be remitted altogether. This would be only fair if the Princes are prepared to allow paramountcy to vest in the Federal Government. The author has very intelligently summarised the guarantees which the Princes enjoy at present and which they will enjoy even under the future constitution and this portion deserves the serious consideration of the Indian Princes. The question of internal reforms is very lucidly dealt with. The writer has exposed the hollowness of the claim of the Princes that their consent is necessary for the transfer of their relations to the federal Government. The writer pertinently asks did the Princes choose to object to changes in the English constitution which have rendered the Crown to be a legal fiction and the powers of Government are wielded by the democracy in England. The writer has suggested that the Princes should be obliged to introduce responsible Government into their States before they are allowed to join the federation. It is however to be remembered that if the question had been confined only to British India and the Indian States it would have been quite easy to bring round the Princes to

join the federation on the condition described above. But we have to keep in mind that it is not a bilateral arrangement but a tripartite one to which the British Government also is a party. The British Government is reluctant to force any reforms on the Princes though it had acted otherwise and forced many things on the Indian Princes in furtherance of Imperial and British Indian interest. If the Indian Princes decline to join the federation on the conditions namely—the introduction of responsible Government in their States, the representation on the federal Houses through the elected representatives of the States' people and not through their nominees, incorporation of fundamental rights in the constitution, submission of the Princes to the jurisdiction of the Supreme Court—how are they to be forced to join the federation against their will? Persuasion is the only remedy and failing this, the remedy lies not outside but in the hands of the people of the States concerned. The wonderful agitation which has accelerated the speed of reforms in British India, which has brought down the Government from its high pedestal to enter into negotiations with Mahatma Gandhi the great apostle of this new creed, teaches a lesson to all Indian States' people and they have only to forge this sanction to reach their goal. The publication of this pamphlet is very opportune and it is thought provoking and deserves careful perusal at the hands of those who are interested in this problem.

## PREFACE

This book was to have been published before the London R. T. C.; but it was not possible for me to do so owing to circumstances beyond my control. It has however been brought up-to-date: the last chapter of the book is devoted to a criticism of the Sankey Scheme and the last chapter of the Appendix to an account of the conclusions of the R. T. C. I hope the book is even now of great topical interest in that the principles of the Indian Constitution as arrived at at the London Conference are going to be re-examined in another R. T. C. as a result of the Gandhi-Irwin truce.

This next conference will be attended by the representatives of the Indian National Congress; and I am hoping that this time at least the accredited representatives of the people of the Indian States will be invited to partake in its deliberations.

I have written this book to enable all concerned with the problem of the Indian Constitution to understand aright what I conceive to be the point of view of the people of the Indian States in the matter. I have endeavoured to make out a case for immediate political unification of British and Indian India on the basis of a real federation. I have tried to point out that this sort of federation itself is the greatest security to the honour, prestige and continuity of existence of the Indian Princes. And finally I have raised, at the end of the book, the important question of forging an effective constitutional sanction to induce the princes to join a real federation after fully understanding all its implication. The enunciation of this sanction is based on the principle that there can be no rights without obligations. This aspect of the problem I claim to be my original contribution to the discussions regarding the question of Indian States in relation to Indian polity

BANGALORE,  
18th March 1931.

S. R. S. RAGHAVAN.

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# Indian States & Indian Polity

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## CHAPTER I

### THE NEED FOR POLITICAL UNIFICATION

It has now been realised in all responsible quarters that the satisfactory solution of the future Indian constitution is not possible without at the same time determining its relation to the Indian States. Even the Simon Commission, which was originally asked by its terms of reference to report on the British Indian constitution only, ultimately found that it could not perform its task effectively without taking cognisance of the fact that their work was intimately connected with the future of the States too; therefore, their final recommendations deal to some extent with the relation of the States to the future all-India polity. The ground for this purpose was prepared by the Butler Committee which was asked to report on certain points in the relation between the States and the paramount power which required elucidation. And now the R. T. C., which is meeting in London to settle the fundamentals of the revised Indian constitution contains representatives of the Indian States also and also considers the problem of the States in all its bearing on the future Indian constitution.

The first question that naturally arises in this connection is: what should be the nature of the relation between the Indian States and British India in the future?



That the existing arrangements in this respect are unsatisfactory has been recognised in all quarters; and everybody desires a more satisfactory relationship to be established between these two halves of India.

### THE PRESENT POSITION

Under the present constitution, the powers of suzerainty are exercised by the Governor General in Council acting through the political department of the Government of India. The Indian States, generally speaking, enjoy in varying degrees internal sovereignty to the extent guaranteed by treaties, sanads or actual practice. Many matters of all-India importance, including the States, are dealt with by the Government of India or by the Indian Legislature without the States having any part or lot with them, though they are vitally concerned in every action of the Government of India and every decision of the Indian Legislature in this respect. Further, the Indian States contribute to the coffers of the Indian Government a pretty large sum of money by way of indirect taxation through salt, customs, etc., but the States have no voice in deciding its apportionment; nor do they get any share in it.

This is indeed an entirely unsatisfactory state of affairs which ought to be immediately remedied.

### CUSTOMS UNION

What then should be the nature of the remedial measures? They can be of various kinds and some of them may be stated here with a view to consider their utility for the object we have in view.

It has been suggested in some quarters that a Zollverein or a customs union will serve the needs for the present for the purpose of more satisfactory adjustment of the relations between the States and British India. Such a scheme came for consideration before the Butler Committee, its main features being:

1. "The adoption of a common tariff administered by the officers of the Government of India even in maritime States.

2. The abolition of all inland customs.

3. The division of the customs revenue among British India and the different States according to population.

4. The association of representatives of the Indian States with the Indian Legislature in the determination of policy."

The above scheme has been turned down as impractical by the Butler Committee itself. Besides, it is based on the erroneous supposition that political union of the States and British India is not possible at present and that consequently some such economic union must precede political fusion, which is to come later on in the wake of realisation of identity of interests in economic matters. But the advocates of the Zollverein forgot the fundamental fact that what is needed at present for India is political unity between the States and British India and not mere common action in certain fiscal matters. Besides, the parties to the customs union will meet together for the purpose of securing greatest financial advantages for themselves individually and therefore

differentiation and not unity will be emphasised through this union—an attitude of mind which is opposed to the needs of Indian unity which we all wish to see accomplished. Further, fiscal matters are not the only points of contact between the States and British India—there are other matters as well, which are in some respects more numerous and more important than the subjects under the purview of the customs union.

### THE PRINCES' SCHEME

Therefore, the relation between the States and British India should be predominantly political in character and not merely economic. This has been realised by the Princes themselves, who consequently determined upon a scheme in this connection as early as April 1928. This scheme was not pressed before the Butler Committee, but the committee took notice of it.

This alleged Princes' scheme aimed at the creation of a States Council consisting of six members, three Princes or State ministers, two English members with no previous experience of India and the Political Secretary "This States Council would become the executive body directing the political department. In matters of common concerns to British India and the States, this States Council would meet the existing Governor General's Council and endeavour to arrive at a joint decision. In the event of a difference of opinion, the Viceroy and Governor General would decide."

This scheme has also been turned down by the learned authors of the Butler Committee, their reasons being :—

1. "It would put the Viceroy out of touch with the Princes, a matter on which the Princes attach the greatest importance.

2. British India could hardly be expected to join the States on the basis of equal voting power in view of their relative size and population, not to mention any question of relative advancement.

3. A Prince could hardly join an executive body of the kind proposed without ceasing for the time to be ruler in his own State; and many Princes would object to be placed under other Princes or ministers of their own or other States.

4. There would be quite insufficient work for such a body since the number of cases of any real importance arising in any year are very few.

5. Such a Council would inevitably lead to greater interference in the internal affairs of individual States especially of the smaller States.

6. There would be a large surface of possible conflict between the new States Council and the existing Chamber of Princes and its Standing Committee."

Without subscribing in toto to the line of reasoning in the above passage from the Butler Committee Report, it may be stated that the above reasons are weighty enough to make us realise that the Princes' scheme will be unworkable in practice and will not effectively serve the purpose for which it is intended. What India requires at present is not mere *administrative* relation between

the States and British India in regard to matters of common interest, but some kind of *political unification* which will give us a united national existence.

#### MONTFORD SCHEME'S SUGGESTION

Though the Montford Report was the first to perceive the inevitability of ultimate coalition of the States with British India in some sort of federation and though it realised the immediate necessity of bringing together these two halves of India for purposes of joint consultation on matters of common interests, yet its recommendation in this respect only tended to keep the States and British India eternally separate from each other on the plea that the one should not interfere with the internal affairs of the other. Thus the States were brought together under the aegis of the Princes' Chamber; the British provinces secured reforms for themselves; but no sort of constitutional relation between them was suggested except some vague mention of occasional joint consultation between the representatives of the Princes' Chamber and the Indian Council of State whenever necessary. This arrangement too ought to be characterised as extremely nebulous in character and cannot therefore be acceptable in as much as it does not lead to political unification of India immediately.

#### BUTLER COMMITTEE'S SCHEME

The Butler Committee too, while maintaining the individual existence of the States entirely apart from the British Indian Constitution, only makes certain suggestions for methods of joint consultation in matters of

common concern. It also recommends the setting up of committees of the Chamber of Princes and the Indian Legislature whenever required for this purpose. This arrangement too cannot be considered as satisfactory, because it is also purely administrative in character and does not lead to the political unification of British and Indian India, which is of paramount importance to us immediately if we want to evolve a united national existence in our country.

#### SIMON COMMISSION'S RECOMMENDATIONS

The same objection holds good in regard to the recommendations of the Simon Commission too, though they have gone a step further than the Butler Committee in the direction of working for Indian national unity. Part 7 of Volume 2 of the report deals with the problem of the Indian States in relation to the Indian Constitution. The Commissioners keep in view in their recommendations that "the ultimate ideal is some sort of federal arrangement which would embrace every part of Greater India," and in consequence want that "there should be included in the preamble to any new Government of India Act a recital putting on record the desire to develop that closer association between Indian States and British India which is the motive force behind all discussion of an eventual federal union." But their recommendations in this respect do not make a substantial beginning at least in the direction of achieving ultimately the ideal they have in view. Their immediate recommendations in this connection have been stated thus:—"What is now needed is some organ, however rudimentary, which will,

for some purposes however limited, address itself to the treatment of matters of common concern to the whole of Greater India." For this purpose, they recommend a standing consultative body consisting of the representatives of the Chamber of Princes and the central legislature for joint consultation. The arrangement herein suggested is very complex in character and will be found to be unworkable in practice, as likely to lead to frequent deadlocks and frictions between the States and British India, which are not conducive to harmonious relations between them. It virtually aims at the creation of a political machinery which is without a precedent anywhere else in the constitutions of the civilised nations. It is calculated to perpetuate the present inadvisable division of India into two political halves and put further obstacles in the way of ultimate Indian unity which the commissioners themselves foresee in the future.

### DON'T BE ULSTER OF INDIA

The recommendations of the Butler Committee and the Simon Commission both suffer from one other serious defect. They have both drawn their inspiration in this respect from the vicious suggestion of Sir Leslie Scott that the relation of the States should be with the Viceroy and not with the Governor General and that this relation should not be transferred to any other agency without the consent of the Princes. The Simon Commission particularly has gone a whit worse in this direction of backing up Sir Leslie Scott's untenable proposals. According to this legal luminary, in view of the treaty obligations

of the British Crown in relation to the Indian Princes to protect these latter from external invasions and internal disturbances, the control over the Indian army could not be transferred by the former to the Indian Legislature without the consent of the latter. That is, practically in perpetuity, or until such time as the Princes see their way to release the crown from its treaty obligation in this respect, British India could not enjoy the full benefits of Dominion Status. I shall later on prove how it is quite possible to have the powers of suzerainty transferred to mutual satisfaction to the control of an Indian Dominion Government. Here I shall content myself with only pointing out that this reservation of the control over the Army and the States to the Viceroy, practically in perpetuity, means negation to that extent of the benefit of full blown Dominion Status to the people of India. The Princes have stated on ever so many occasions that they have absolutely no intention of standing in the way of the progress of India towards full fledged responsible government and that they would not play the inglorious part of being the Ulster of India. Indian statesmen, politicians and publicists have always maintained that reactionary elements in England would some how or other trot out the plea of "safeguarding the interests of the Indian States" to deny to the people of India the honour of complete Dominion Status. Their fears in this respect have unfortunately only proved too true. India is not to enjoy the right of full Dominion Status for the sake, among other reasons, of protecting the 'rights' of the Indian States and consequently Army and Treaty Relations should be kept out, almost eternally, from the perview of



the popular Government of India. Thus the Princes, unconsciously let us hope, have come to be the Ulster of India in spite of their protestations to the contrary and denied to India her right to complete self-government. I am firmly convinced that the States should not play this inglorious part in the task of building up a United India. It will be the height of patriotism on the part of the Princes if they can come to a satisfactory and honourable understanding regarding these two particulars with the people of India so that all of us shall conjointly be sharers in the benefits of a full fledged Dominion Constitution for India as a whole.

#### THE NEHRU REPORT

There is one other scheme which deserves consideration at our hands as coming from the best talents of British India representing all parties in the country, viz., the Nehru Report on the Indian constitutional reforms. This report has made the following recommendations with reference to the Indian States :--

(1) "All treaties made between the East India Company and the Indian States and all such subsequent treaties, so far as they are in force at the commencement of this Act, shall be binding on the Commonwealth. (2) The Commonwealth shall exercise the same rights in relation, and discharge the same obligations towards the Indian States as the Government of India exercised and discharged previous to the passing of this Act. (3) In case of difference between the Commonwealth and an Indian State on any matter arising out of treaties, engagements, sanads or similar other documents, the

Governor General in Council may, with the consent of the States concerned, refer the said matter to the Supreme Court for its decision." (4) "In regard to non-justifiable matters involving financial and administrative relations, it should not be difficult to come to a settlement through mutual conferences and understandings."

Though the Nehru scheme realises the necessity of a federal constitution for India and though it is prepared to welcome such a constitution provided the Indian States are prepared for it "after understanding the implications of a federation" and though the above recommendations are an improvement over the other recommendations discussed above, yet the people of the States cannot welcome it because it does not provide for the immediate participation of the States in the constitutional structure of India. In essence it is only a substitution of Brown suzerainty for White suzerainty—the powers of suzerain control now exercised by the Governor General is sought to be transferred to the control of the popular legislature without the States having any part or lot with the constitution or the work of this popular Government. There is absolutely no provision in it for the State to take part in discussions of matters of common interest, beyond a vague mention of committees for this purpose whenever needed; and no satisfactory arrangement has been suggested to solve the problem of fiscal relations between the States and British India—a problem on which the States have been continuously stressing much all these years. Therefore, the Nehru constitution should also be pronounced to be unsatisfactory from the point of view of the Indian States.

## WANTED IMMEDIATE POLITICAL UNIFICATION

All the above schemes for bringing together the States and British India for common purposes—the Zollverein, the Princes' scheme, and the Montford, the Butler, the Simon and the Nehru reports—all suffer from one serious defect in that they provide for only certain stop-gap arrangements, pending complete political unification of the Indian States and British India, which is only perceived as a distant vision. Some of the arrangements are based on the wrong conception that the States together on the one hand and British India on the other possess diversity of interests and what is therefore required is to attempt at effecting some sort of reconciliation between these conflicting interests; while others only indicate certain lines of administrative procedure to be followed regarding matters of common interests—which procedure may or may not lead to ultimate political unification and which may do considerable harm in the meanwhile to this very ideal of final unification, due to possibilities of constant friction and undue emphasis on diversities rather than unity. What is now wanted, therefore, is neither economic unification nor satisfactory administrative arrangements regarding matters of common interests, but complete unification between the States and British India which will immediately bring into existence a strong and united India. The bifurcation of India into two water-tight compartments called the States and British India has done incalculable harm to

united national existence and India cannot any more afford to continue to thus remain indifferent to the requirements of united Indian nationalism. Further, the people of the States are as much Indians as the people of British India. Why should then the States' people alone be denied the honour and privilege of enjoying the full benefits of the rights and responsibilities of a fuller and freer national existence? If India comes to be in the enjoyment of full Dominion Status in the near future, then it will be most unjust to deny a legitimate share in it to the people of the States, who are as much the children of the soil as the people of British India, and who should, consequently, have as much right as others to take their honourable place to the fullest extent possible in the reformed all-India polity of the near future. Further, the task of Indian national regeneration that ought to engage the predominant attention of the people in the near future, if our Motherland should become the foremost nation of the world, is of such stupendous magnitude that for its performance the united endeavour of the States and British India will be far more advantageous than the single-handed work of the British Indians alone. Moreover, the people of the States make a substantial contribution to the coffers of the Indian exchequer by way of indirect taxation. Taxation without representation has been a discarded principle of modern politics; and, therefore, why should the States alone go unrepresented in the all-India polity when they are thus asked to pay taxes to this polity. And lastly, the problem of the Indian States in relation to the Indian

constitution, whose solution everybody wants sometime in the future, will become more and more difficult of solution, as time goes on, if not immediately tackled for the following reasons :—

(i) The very fundamental basis of the Indian constitution *must be* of one character if the States are to be included in it, and *may be* of a different character if they are not to be included. If the States are to be included, the Indian constitution ought to be federal in character, as I will explain later on; if they are not to be included, it can be unitary. Supposing we decide upon a more or less unitary basis for the Indian constitution without the States included therein, then, when the time for inclusion comes, we will find it extremely difficult to change the very basis of the constitution then to give accommodation to the States.

(ii) Then allocation of subjects between the Central Government and the Provincial Governments *may be* of one kind if the States are not to be included in the Indian constitution and *must be* of different kind if they are included, for reasons similar to those mentioned above. For instance, residual powers may be left with the Central Government if the Indian constitution excludes the States; but must be left with the provinces if it includes them. Supposing we now have the residual subjects in the control of the Central Government without taking the States into consideration, will it not be difficult for us to change the entire system of allocation of subjects at any future date, when it will be decided to include the States within the fold of the Indian constitution?

(iii) In the same manner, the allocation of specific items of revenues between the Central and the Provincial Governments *may be* of one kind without the States, and *must be* of a different one with the States. For instance, generally speaking, none of the major items of direct taxation can be a source of central revenue if the States are included in the Indian constitution, e.g., income-tax. If the States are not included, this as well as any other tax can be assigned to the central revenues without difficulty. If that is done and if the States enter the fold of the Indian constitution at a future date, it will be easy to understand how difficult it will be for us to dislocate the entire financial arrangement then for the sake of the inclusion of the States.

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## CHAPTER II

### FEDERALISM THE ONLY SOLUTION

Therefore, the only solution for the problem of the Indian States with reference to the Indian constitution that will be found to be eminently satisfactory and workable from all points of view is to devise a federal constitution for the whole of India with the States and Provinces as equal and honourable component parts therein. That the constitution ought to be federal and not unitary in character goes without saying. The States are in the enjoyment of varying degrees of internal

sovereignty ; and if they can be expected to take part in an all-India polity, then the problem should be considered from the point of view of maintaining intact this internal sovereignty of the States as far as possible, at the same time entrusting the central Government with all possible subjects of common concern, which require to be dealt with by the central authority in the interests of the strength and solidarity of the united Indian nation. Political experience of the world so far has been able to devise federalism as the only effective solution for the problem herein indicated. Only federalism can guarantee maximum of internal independence to its component parts, at the same time providing for a strong common political existence in matters of common concern. Only through federalism have the States in the world, with separate independent existence hitherto, have come together for common purposes and common existence without sacrificing much of their independent existence, which they have so long enjoyed and which is greatly prized by them to such an extent that they are not prepared to give it up even for the sake of a strong united existence. History furnishes very few examples of willing obliteration of separate sub-national entities for the sake of national solidarity ; but history furnishes numerous examples of such sub-nations deliberately coming together, provided their individual existence was guaranteed, for the sake of a larger and stronger national existence. Similar ought to be the case as regards the Indian States also, which have had so far individual existence of a semi-independent nature uninfluenced by any considerations of all-India requirements. They can

therefore be expected to make sacrifices for the sake of national solidarity and be willing to become component parts of an Indian constitution only if they are guaranteed maximum of internal sovereignty consistent with the minimum requirements of a strong and united India. This can be accomplished only through federalism and through nothing else, because only federalism can guarantee maximum of internal independence and a common national existence at the same time. Moreover, with a little amount of adjustment here and there, it is easy to devise a federal constitution for the whole of India including the States, because many of the would-be federal subjects are already under the jurisdiction of the Government of India; and what is therefore now required to bring into existence in a federal constitution for India is to make the States and the provinces component parts of such a constitution.

Only under a federal constitution can the residual powers be under the control of the States. Being jealous of their internal independence, these States will be prepared to hand over to the control of the central government only a definite number of subjects of all-India importance; the rest will be retained by them alone. That many of the States will insist on retaining within their own hands the control over residual subjects, goes without saying. That is possible only under a federal constitution.

#### Authorities Quoted

Almost all the authorities on the Indian constitution are agreed that this constitution, if it is to include the



States in its perview, ought to be federal in character, though they do not see the immediate possibility of the States falling in line in this respect. I shall quote a few of the authorities here.

#### MONTFORD REPORT

"Looking ahead to the future, we can picture India to ourselves only as presenting the external semblance of some form 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 British provinces are also to a great extent those in which the Native States are interested: defence, tariffs, exchange, opium, salt, railways, and posts and telegraphs. 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 so."

#### BUTLER COMMITTEE REPORT

"We have left the door open for 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 a group of States from entering now or at any time into closer union with British India. Indeed, in the next section of our report, we make suggestions which, if adopted, may have this result." Again: "But we have

left the door open for constitutional developments in the future. While impressed with the need for great caution in dealing with a body so heterogeneous as the Indian Princes, so conservative, so sensitive, so tenacious of internal sovereignty, we confess that our imagination is powerfully affected by the stirrings of new life and new hopes in the States, by the progress already achieved and by the possibilities of the future. We are confident that the Princes, who in war and peace have already rendered such signal service, will play a worthy and illustrious part in the development of India and the Empire.

#### SIMON COMMISSION REPORT

“The ultimate ideal is some sort of federal arrangement which would embrace every part of Greater India. All-India problems, whether of war or peace are really common to the whole of India. Indian Princes have acknowledged that their interest in the future constitutional progress of British India is not that of detached spectators, but of fellow Indians, living in a world which for all its history of deep divisions and bitter rivalries preserve, in some respects, remarkable cultural affinities and is slowly working out a common destiny. The essential unity of Greater India will one day be expressed in some form of federal association.”

#### NEHRU REPORT

After pointing out the implications of a federation and asking whether the States are prepared to enter a federation after fully comprehending the effects of these

implications, the Nehru Report observes:—"If the Indian States would be willing to join such a federation, after realising the full implications of the federal idea, we should heartily welcome their decision and do all that lies in our power to secure to them the full enjoyment of their rights and privileges."

In fact, generally speaking, even the Indian Princes are not averse to the federal idea, provided their rights and privileges are adequately safe-guarded. Many of them have given definite expression to such sentiments, while the latest conference of Princes to consider the Simon Report has categorically stated the willingness of the Princes to agree to a scheme of all-India federation on certain conditions which are not impossible of fulfilment. I am glad to say that H. H. the Maharaja of Mysore, prompted by the highest feelings of patriotism, is most explicit on the subject. In the course of his Banquet Speech on 29th July 1927 in honour of H. E. Lord Irwin, His Highness was pleased to observe:—"And we sincerely hope that, as a result of the conversations which His Excellency is inaugurating in this matter and with the aid of your wise statesmanship, a way may be found in which it will be open to us to play an honourable part as partners with the British provinces in whatever form of federal government may hereafter be decided upon."

The authorities quoted above do not suggest immediate federation because they do not want to 'force the pace'. But I am firmly convinced that in the light of the latest pronouncement of the Princes on the subject, there is no need to 'force the pace' because the Princes

themselves seem to be prepared to welcome a federal constitution for the whole of India. The Princes are also, above all the children of the same soil as the people of India and it is unthinkable that they will not consent to the immediate creation of a strong and united India (provided their rights and privileges are properly guaranteed) which will open before us all a glorious future which shall be more glorious than the Past. The Samurais of Japan deliberately and voluntarily obliterated their very existence to evolve a strong and united Japanese nationality. The Princes of India are not called upon to make this extreme form of patriotic self-sacrifice: they are only asked to become component parts of a common nationality without sacrifice in essence of their individuality. Small sacrifices there may be here and there for the realisation of this noble ideal; but they are most insignificant when compared with the grand result which we aim at, *Viz.*, the creation of a strong and united Indian nationality—an ideal which is dear to the hearts of the Princes and people alike.

### OUTLINES OF A FEDERAL CONSTITUTION

The glorious vision of a United States of India alluringly presents itself before my mind's eye whenever I think of the honourable position which the Indian States will be called upon to occupy in the common polity that may be devised for our country as a whole in the near future. I am firmly convinced that only the creation of a federation for India, on the model of the United States of America, can offer a happy, practical and permanent solution of this important problem. It is

through the instrumentality of a strong federated central government that the conflicting interests of provinces and States can be reconciled and a united Indian nationality evolved. Bearing in mind that the fundamental principles which ought to be taken into account in the proper solution of this problem are, as elaborately explained in the preceding sections, that the citizens of the States are as much the children of Mother India as the subjects of the British provinces and that morally as well as legally the rights of the Indian nation as a whole and the requirements of the common Motherland are the supreme factors that ought to be taken into consideration in the solution of any political problem, it is easy for us to understand that these cardinal principles of nationalism will find adequate application in solving the problems of the Indian States if only the future constitution of united India is unequivocally cast on a complete federal basis. Happily for us, a system of bi-cameral legislature has come into existence in the central Government of India as a result of the Montford Reforms and it is therefore easy to adapt the existing machinery of the constitution to suit the requirements of a federal State. In the constitution of the United States of America, the House of Representatives is made up of delegates directly elected by the people at large, while the Senate consists of representatives of the several States that go to constitute the United States. Similarly in the proposed federated constitution for India, the Legislative Assembly may be made to contain the direct representatives of the people of the British Indian provinces and the Indian States as well, divided into convenient electoral units on

the basis of a common franchise, while the Council of State may be so constituted as to contain the representatives of the several provincial and State governments, the smaller States being grouped into convenient units for this purpose. Governmental subjects will have, of course, to be clearly and definitely divided into central and provincial, the former being placed under the jurisdiction of the Legislative Assembly and the Council of State and the latter, under the charge of the several provincial and State legislative bodies. As the Senate of America is charged with the conduct of foreign relations of that republic, in a similar manner the Council of State in India may be made to be in charge of the political department of the central government, an arrangement which ought to be eminently satisfactory even from the point of view of the Indian Princes, who seem to require effective safeguards to protect their present rights and status from any likely infringement on the part of the more democratically inclined Legislative Assembly.

But, impartially and dispassionately considered, we are sure to be convinced that there is the least likelihood of any such infringement on the part of the people over the vested interests of the Princes, because, when a clear demarkation has been made between central and provincial subjects, we can easily perceive that the control of the provinces and the States over the latter category will be entire and unrestricted. Even in cases of any likely misunderstanding in this matter, which may be granted for argument's sake as a remote contingency, we will then have the impartial federal judiciary, which is sure to be created as a natural corollary to any federal

constitutional arrangement which I have suggested here, to afford adequate safeguard to the legitimate rights of the Indian Princes.

But the constitutional machinery which I have suggested here (to afford adequate safeguards to the legitimate rights of the Indian Princes) ought not to be converted into an instrument of reaction to be used for thwarting the endeavours of the Indian democracy in the direction of national regeneration by any effective combination of the conservative elements in the Council of State representing the Indian States and the British Indian bureaucracy. To guard against this contingency and make this body act as a real revising second chamber and not as an ante-chamber of reaction, and also to offer an effective inducement to the Indian Princes to leave off their present systems of arbitrary government and introduce an element of popular responsibility in the constitution of their respective States, representation in the Council of State ought to be conceded only to those States that are prepared to at least adopt a system of popular government as obtaining in the British Indian provinces.

I have now sketched in brief the essential elements of a federal constitution for India and I am convinced that this alone offers a real solution to the problems of the Indian States and helps us to evolve a united Indian nationality in which the citizens of the States and the subjects of the British Indian provinces shall play an equal and honourable part in making our Motherland occupy once more an exalted position amongst the comity of the forward nations of the world. This and this alone will make us feel, when

considering national problems, that we are Indians first and last, and that we are Indians and Indians alone always. For the citizens of the States, in particular, this will afford a novel but happy experience in that they will be called upon to play an honourable part in shaping the destinies of their Motherland and also in contributing their humble mite in the actual execution of the several schemes of national reforms, privileges which are their own by birth-right, but which have been unjustly denied to them hitherto. All other schemes that are now being offered in this connection suffer seriously from the great defect of trying to perpetuate the artificial bifurcation of the Indian nation into two water-tight compartments and the unnatural feeling of diversity of interests between the people of the States and those of British India. In short, a federation alone conjures before us the happy vision of a strong and united India and offers the greatest possibility for the successful evolution of Indian nationalism.

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### CHAPTER III

#### SOME DETAILS OF FEDERATION

Having pointed out the outlines of a federal constitution, the next important thing is the allocation of subjects between the central and local governments. The principle to be herein followed as enunciated elsewhere



is to hand over to the control of the central government only such subjects as are absolutely necessary from the point of view of uniform national procedure leading to efficiency. Such an allocation should guarantee to the local governments maximum amount of internal independence consistent with national requirements. Only definite subjects are to be handed over to the control of the central government, all residuary powers being left in the hands of the several local governments constituting the federal union.

The task of allocation of subjects between the central and local governments will be greatly facilitated owing to the fact that many of the subjects of all-India importance are already under the control and jurisdiction of the Government of India. Only the States have no part or lot to do with them now.

Therefore the first task of any agency that is entrusted with the work of framing a federal constitution for India will be to proceed with the allocation of subjects as herein indicated. Even the Simon Commission has pointed out the necessity for this, when it observes in the course of its chapter on the Indian States that, with a view to have an ultimate federation for India, "A serious and business-like effort should be made to draw up a list of matters of common concern." The Nehru report attempted at an elaborate classification of subjects into central and provincial. The Visvesvaraya Memorandum "On Dominion Constitution for India including the States" has briefly pointed out the important subjects that are of all-India importance from the point of view of the States and those that are of exclusive concern to the States alone. Basing

myself upon these two constitutional documents of great value, I shall herein briefly enumerate a list of principle central and provincial subjects for a federal Indian constitution with the States including therein :

### A. CENTRAL SUBJECTS

*Central subjects of all-India importance which the States may hand over to the control of a federal Government of India :—*

1. Trade and commerce with other countries and in India generally.
2. Imperial taxation such as customs, excise, opium etc., (I do not include income-tax, super-tax and allied taxes, which, being direct in character, can be more easily items of provincial taxes).
3. Borrowing money on the credit, the assets and properties of the central government ; the public debt of the central government.
4. Currency, coinage and legal tender.
5. Issues of paper money, stock exchanges, bills of exchange etc.
6. Shipping and navigation, harbours, major ports etc.
7. Railways and roads of all-India importance.
8. Air craft.
9. Posts and Telegraphs including wireless.
10. The defence of India and all matters connected with naval, military and air forces of India, naval and military works and cantonments ; schools and colleges for military, naval and air training.

11. Foreign and external relations *including relations with Indian States* (I shall hereinafter point out this possibility).
12. Emigration and immigration.
13. The central government public services and audit department.
14. The Supreme Court.
15. Civil law and procedure; criminal law and procedure; Bankruptcy and insolvency; Legislation regarding marriage and divorce; copy-right, newspapers and books; patents and trade-marks; Laws relating to registration of deeds.
16. Census and Statistics.
17. Control of arms, ammunitions, petrol, and explosives.
18. The standard of weights and measures.
19. Inter-provincial and inter-statal matters.
20. Factory legislation, welfare of labour etc.

### B. LOCAL SUBJECTS

*Local subjects under the jurisdiction of provincial or State governments :—*

1. Land Revenue and all other allied revenues.
2. Excise including control, manufacture, transport and sale of intoxicants.
3. All items of local taxation.
4. Agriculture and irrigation.
5. Administration of forests.
6. Public works and local communications including railways.
7. Co-operation.

8. Development of mineral resources.
9. Famine relief.
10. Local self-government.
11. Sanitation, public health and medical relief.
12. Land tenure and rent law.
13. Development of industries.
14. Police and maintenance of law and order.
15. Prisons and backward tribes.
16. Administration of justice, including High Courts.
17. Provincial Legislature.
18. Borrowing of money on sole credit of provinces or State.
19. Settlement of labour disputes.
20. Electricity.
21. Provincial service.
22. Court fees and allied functions.
23. Local fund and audit.
24. Religious and charitable endowments.
25. Prevention of cruelty to animals.
26. Registration of deeds and documents.
27. Judicial and non-judicial stamps and papers.
28. Control of production, supply and distribution.
29. Education including universities and technical institutions.
30. All other functions not expressly made over to the control and jurisdiction of the central government (residuary powers).

### C. PURELY STATES' SUBJECTS

In addition to the above list of local subjects common alike to the States and provincial governments, the

Visvesvaraya Memorandum has pointed out a number of subjects of exclusive importance to the States alone, the chief of them being :—

1. Relation between the Prince and his family and his subjects.
2. Relation between the Prince and the central government of India or its representatives.

### Financial Adjustments

In the task of devising a federal constitution for India, along with the allocation of subjects between the central and local Governments, the task of financial adjustments between the federal and provincial governments is a question of paramount importance. Here too our task has been rendered easy on account of the fact that many of the sources of Imperial taxation available at present will also be sources of federal finance when India comes to have a federal constitution. Generally speaking, all sources of indirect taxation will be sources of revenue for the federal government; and all items of direct taxation will be available for the financial requirements of provincial or State governments. I shall now attempt a general classification, by no means exhaustive, of the principal sources of federal and provincial finance.

#### A. FEDERAL FINANCE

1. Customs revenue, port and harbour dues, and tariff rates levied for revenue or protective purposes.
2. Profits of coinage, paper currency, bills of exchange and other negotiable instruments issued for purposes of national and international trade.

3. Taxes on all-India banking corporation, insurance and trading agencies of foreign origin.
4. Realisations through all-India savings bank, public loans of the federal government, and official federal banking or commercial institutions.
5. Revenues through the sale of opium control of petrol, explosives and arms.
6. Income through posts, telegraphs and wireless.
7. Railways and other means of inter-provincial communications including civil aviation.
8. Revenues through the monopoly of salt and any other monopolies of the federal government.
9. Interest on stocks or deposits held by the federal government.
10. Contribution if any, from the provincial or State governments.

#### B. PROVINCIAL REVENUES

1. Land revenue, irrigation cess and other local cesses.
2. Excise, including income from control, production, sale and distribution of intoxicants.
3. Income from forests.
4. Court fee stamps and fees for registration of documents, companies, corporations etc.
5. Income tax, super tax, corporation profits tax, death duties, taxation on unearned increments and all other taxes on income of land, corporations or individuals.
6. Income from industrial concerns of provincial governments.

7. Realisations from local modes of communications such as roads, railways, water-ways etc.
8. Interest on provincial stocks or deposits.
9. Provincial borrowings.
10. Contributions, if any, from the central government.

### STATES AND IMPERIAL REVENUES

I will have to consider at some length, in this connection, an important problem of the Imperial revenues, such as customs, salt, opium, profits of coinage, posts and telegraphs, railways, etc., in relation to the Indian States, who have been all along agitating for their equitable share of these revenues. The States have been contending that they have been contributing indirectly to all these items of revenues of the Indian Government, while they get nothing in return by way of benefits from them; nor have they any voice in their appropriation. The grievances of the States in this respect are justifiable in a large measure; and the Butler Committee, which was appointed for the specific purpose of investigating into this problem, has come to a series of conclusions with reference to all these items of revenues. But when an all-India federation, including the States, is under contemplation, their consideration ought to be made from an entirely different angle of vision. So long as the States are practically independent of all-India polity and possess no voice in shaping its policies in respect of these sources of revenues and problems connected with these, so long will the States have a right to claim their equitable share of all these sources of Imperial taxation to which they too are contributors to a large extent. The

argument that the Imperial government, have got a number of commitments common alike to the States and British India which require expenditure cannot be used to entirely deprive the States of their legitimate share in all these items of revenue. But when we resolve on a federal constitution and the States become integral portions of such a constitution, then it naturally follows that the central federal government should possess certain definite sources of income to carry on its definite functions of administration. For this purpose, it will be clearly seen that these sources of indirect taxation are the best means of providing for federal finances; and therefore the States, when once they enter the federation, cannot lay claim to their share of these Imperial revenues irrespective of the fact that these amounts may be required to meet the necessary expenditure of the federal government. In a scheme of federation, the one present serious objection of the States regarding these disappears: it will not be hereafter said that the States will not have any part or lot to do either with their raising or spending. Therefore, in a federal constitution, this problem resolves itself into the question of the distribution of surplus revenues of the federal government, after all its expenses have been met; and it is easy for us to understand that under such a contingency the States and the British Indian provinces will be treated on a par, the surplus amount available for distribution with the central government being distributed amongst all component parts of the federation under a uniform satisfactory and equitable arrangement. But it may also be the other way about sometimes: the total revenues available for the federal government may



not be enough to meet its expenditure and consequently the component parts may be asked to make proportional contributions to the coffers of the federal government. Under such a contingency, instead of the States and the provinces getting their share of the surplus Imperial revenues, these States and provinces themselves will be compelled to make contributions to make up the deficit resources of the central government. Such has been actually the case under the Meston Award of the Montford Reforms: contributions were levied on the different provinces by the Government of India. The recommendations of the Simon Commission in this respect seem to be more hopeful. The 8th part of the report deals with "Indian Finances" and "elucidates Mr. Layton's scheme of financial relations, a striking feature of which is the raising of a Provincial Fund by the Federal Assembly, whose proceeds are to be drawn from the indirect taxes for distribution to provinces on population basis." When the Indian federation, including the States, comes into being, and when Mr. Layton's scheme of a Provincial Fund is put into operation, I have no doubts whatsoever, that the States too will get their legitimate share of this Provincial Fund.

### SUBSIDY

But under any contingency, I am firmly convinced on one point. The Subsidy payable by certain Indian States to the Government of India ought to go. It is not at all justified either on grounds of sentiment or equity. It is an unmerited badge of inferiority over these States which they resent rightly. It is inequitable because there

is absolutely no reason why only a few States should pay this, while others go entirely scot free.

### Functions of the Supreme Court

Under a federal constitution, the bringing into being of a Supreme Court is an absolute necessity. It is the guardian of the law of the constitution. It is the pivot around which the other parts of the constitutional machinery revolve. It protects the sanctity of the constitution from being violated either by the executive or the legislature. It protects the liberties of the individual as guaranteed by the constitution from being encroached upon by either the legislature or the executive. In short, it is the custodian of the constitution.

Such being the case, in the Indian federal constitution also there is a great necessity for a Supreme Court. Its functions, generally speaking, will be as under :

1. As in other federal constitutions, the Indian Supreme Court also will sit in judgment over the validity of laws passed by the legislature in relation to the fundamental laws of the constitution. The legislature cannot pass any laws which will be against the letter and spirit of the constitution.
2. The Supreme Court will, in a similar manner, act as a check on the vagaries of the executive and see that it does not violate the laws of the legislature or of the constitution.
3. In justiciable matters of dispute between (a) the Government of India and the provinces or the States, (b) the States and States, provinces and provinces, or provinces and States, the Supreme

Court will be the court of arbitration and decision. This will be specially valuable from the point of view of the Indian States ; because, in the place of the present arbitrary exercise of powers of suzerainty by the Government of India, they will then have the more equitable judicial method of exercise of this power. Gradually, from the decisions of the Supreme Court, a case law will be evolved with reference to the nature and extent of the exercise of suzerainty by the paramount power. This gradual definition of the powers of suzerainty through the decisions of the Supreme Court will introduce a reign of law in the dealings of the Government of India with the Indian States.

4. Ordinarily it will not be a court of appeal ; but in the following special cases, it can be constituted as the highest appellate court of India.
  - a. With regard to questions of law and its interpretation in important matters, never on questions of facts.
  - b. In matters where the liberty of the individual is concerned, such as freedom of speech, freedom of association, freedom of press etc.
  - c. In murder cases alone under any contingency, when an accused is condemned to death by a High Court.

In several of the Indian States, which are at present enjoying judicial independence, there may be some unwillingness to part with this privilege to any extent. But when it is realised that to secure the advantages of

federation some sacrifice in this direction is necessary, I am sure the States concerned will not be so parochially minded as to be unwilling to make this much of small sacrifice, which after all will be found to be ultimately of benefit to themselves, for the sake of national solidarity.

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#### CHAPTER IV

### GUARANTEES TO THE PRINCES

I have now pointed out the out-lines of a federal constitution for India including the States and the functions of the Supreme Court therein. I have already mentioned that the Princes are also willing to enter into some such scheme of federation provided their legitimate rights and interests are properly safeguarded. This effective safeguarding of the Princes' real interests is a vital task preparatory to any scheme of federal constitution, because such a constitution cannot come into existence without the willing consent and active co-operation of the Princes. A federation cannot be imposed upon the Princes against their will such a procedure is beyond the range of practical politics. Therefore the best way to achieve success in our efforts to evolve a strong and united India will be to conciliate the Princes by providing effective safeguards in the constitution for their legitimate interests and thus secure their hearty and active co-operation in the great task of nation building.

What do the Princes want? In the first place, we should not scare them away by talks of independence for India. We can never hope to secure the co-operation of the Princes on the plank of independence, because they are wedded to British connection through treaty obligations and through the fact of their very existence which is due, in many instances, to British generosity, forbearance, or help atleast. Had it not been for the promise of fealty to British Crown, the Indian States would have been painted red long ago in the course of Indian history. Therefore the very existence of these yellow patches in the map of India is due to the promise of the Princes to be loyal to British Crown. Therefore, the existence of States as individual units of India depend upon the perpetual subordination of the States to the Crown, though this subordination can be reduced to mere formality through changes in the constitution. Therefore, so long as the Indian States are in existence, and so long as we want to work out the destiny of India through their co-operation, it is impossible to solve the political future of India in terms of independence. India could think of independence if the whole of the country were British India alone without the Indian States existing therein. But with the States, the highest political ideal that we could think of is full-fledged Dominion Status which alone maintains this formality of British connection. This is a cardinal factor of Indian practical politics which is forgotten by the advocates of Indian independence, who seem to forget the fact that India consists of British India as well as the Indian States and that both these political entities are vitally interested in

the future of the Indian constitution. Only under one contingency can we think of independence for India: we should be prepared to do away with the Indian States altogether or the Princes themselves should become advocates of independence. Both these things are impossible at present and I think for a long time more to come. Therefore we should content ourselves for the present with aspiring for full-fledged Dominion Status, for the realisation of which, I am confident, the Princes cannot have any objection, because it is based upon the maintenance of British connection. Therefore, the first guarantee that we should give to the Princes is that the British connection will be maintained intact whatever may be the nature of the constitution that will be evolved for the future of India. That is, we should make it clear to them that we aim at Dominion Status and not independence.

#### GUARANTEE OF TREATY OF RIGHTS

In the second place, the federal constitution should guarantee to the Princes their treaty rights. All treaties, sanads, engagements etc., between the British Government and the Princes should be maintained intact and scrupulously respected by the federal constitution.

What are the implications of these treaty rights and what are the legitimate guarantees expected of the federal constitution by the Princes?

The first guarantee to the Princes in this respect will be the guarantee of territorial integrity and dynastic permanence for them as at present in perpetuity. The

Princes and their descendants shall not be deprived of their rulership over their respective States at any time without their consent nor their territories in any way curtailed.

#### INTEGRITY OF INTERNAL SOVEREIGNTY

The second guarantee will be that the internal sovereignty of the Princes, *to the extent enjoyed at present according to usage and treaty rights*, shall be guaranteed to them in perpetuity except what they themselves may be willing to part with of their own accord at any time.

There are varying degrees of internal sovereignty enjoyed by the Indian States, from the practical independence of such large States like Mysore and Hyderabad to practical dependence on the will of the Political Agent of the Government of India as seen in many of the smaller States of Guzerat and Central India. Therefore, there cannot be any uniform procedure regarding the States in this respect. Each should be guaranteed by the federal constitution only that amount of independence as warranted by present usages or treaty rights (read in the light of present usage).

This guarantee of internal independence does not however connote any relinquishing of the powers of paramountcy at present enjoyed and exercised by the Government of India as the Agent of the British Crown. The Indian Princes were agitating for a relaxation of powers in this respect on the part of the suzerain power on the score of 'treaty rights.' The Butler Committee went exhaustively into this question and came to the deliberate conclusion that paramountcy should remain

paramount." Therefore, guarantee of internal independence to the extent enjoyed at present should not be taken to mean relinquishing of the powers of paramountcy to any extent or in any manner what-so-ever. Even under the federal constitution, therefore, the suzerain authority, whatever it may be, will exercise the rights of paramountcy, especially in respect of maintaining in the states a decent standard of good and civilised administration.

The right of interference into the internal affairs of the States by the paramount power will be exercised mainly in the case of gross mal-administration. - According to treaty rights and conditions, guaranteeing protection to the Princes from internal rebellion, carries with it at the same time an obligation on the part of the paramount power to protect the people of the States from gross mal-administration by the Princes. As a corollary to this obligation, it also naturally follows that the paramount power is in duty bound to see that the standard of administration in the States is in keeping with popular sentiments and modern civilised practices.

The Butler Committee rightly observes in this connection: "The duty of the paramount power to protect the States against rebellion or insurrection is derived from the clauses of treaties and sanads, from usage and from the promise of the King Emperor to maintain unimpaired the privileges, rights and dignities of the Princes. This duty imposed on the paramount power correlative obligations in case where its intervention is asked for or has become necessary. The guarantee to protect a Prince against insurrection carries with it an obligation to inquire



into the causes of the insurrection and to demand that the Prince shall remedy legitimate grievances, and an obligation to prescribe the measures necessary to this result." Again: "The promise of the King Emperor to maintain unimpaired the privileges, rights and dignities of the Princes carries with it a duty to protect the Prince against attempts to eliminate him and the substitute another form of government. - If these attempts were due to misgovernment on the part of the Princes, protection would only be given on the condition set out in the preceding paragraph. If they were due, not to misgovernment, but to a widespread popular demand for change, the paramount power would be bound to maintain the rights, privileges and dignities of the Princes. *But it would also be bound to suggest such measures as to satisfy this demand without eliminating the Prince.*"

Therefore, the only method of minimising the chances of intervention by the paramount power will be for the Princes to adopt civilised methods of administration and to grant responsible government to the people. Herein lies an effective method of preserving intact the internal independence of the States. I shall deal with this problem later in a more detailed manner.

### GUARANTEE OF STATUS

A third kind of guarantee which the federal constitution should give to the Princes is the guarantee of personal status, honour and privileges. The Princes attach the greatest sentimental importance to all things in these directions and the Federal Government should do nothing to wound the sentiments of the Princes in

these directions. Therefore, whatever personal honours or privileges the several Princes are enjoying at present, whatever status they are occupying at present among their own order and whatever paraphernalia of their status they are accustomed to enjoy at present—all these things ought to be guaranteed as inviolable by the Federal Constitution.

#### FEDERATION ITSELF A GUARANTEE

More than all the guarantee mentioned above, which may be embodied in the very constitution of the future so as to satisfy the demand of the Princes for the adequate protection of their legitimate rights and privileges, the Federal Constitution itself is, in my opinion, a most effective guarantee for the Princes in this direction in the following ways :—

(a) When governmental subjects and finances have been clearly demarked into federal and provincial, it naturally follows that, generally speaking, except for purposes of general supervision, and control which the Central Government may be expected to possess over the States as well as the British Indian Provinces in the interests of national efficiency, the Central Government cannot be expected to interfere in the management of those subjects which have been expressly declared to be provincial in character.

#### THE SUPREME COURT A GUARANTEE

(b) As already pointed out, the Supreme Court of the Federal Constitution is the greatest bulwark for the protection of the legitimate rights and privileges of the

Princes. It will act as the impartial and effective guardian of whatever rights and privileges are guaranteed to the Princes under the Constitution. Moreover, the Supreme Court will substitute a rule of law to the present arbitrariness in the relation between the States and the Paramount Power; in all justiciable matters of dispute between these two, the Supreme Court will act as the impartial and competent Tribunal of Justice; and even in non-justiciable matters, the Supreme Court can be constituted as a Court of Arbitration. At present the exercise of the powers of suzerainty is untampered by any clearly laid down rules or procedure; the Paramount Power itself, *i. e.*, the very agency which exercises the powers of paramountcy, is the sole judge of the justifiableness of its own actions. The Princes may protest and under the new arrangements in vogue after the Montford Reforms, they may even get a Commission of Inquiry as a matter of grace; but "paramountcy must remain paramount" in the words of the Butler Committee; *i. e.*, the Paramount Power will be the sole ultimate judge of the correctness of their own actions. The Princes have been agitating for a clear definition of the rights and responsibilities of paramountcy as well as subordination *vis a vis* one another and the adoption of judicial procedure, instead of the present departmental administrative or political procedure, in matters of conflict between the two. In my opinion, the Federal Constitution and the Supreme Court afford to the Princes just that very protection for which they have been agitating and just that very judicial procedure which they have been all along demanding. Moreover, in its dealing with

the Indian Princes, the Political Department of the Government of India is not guided by any established code of procedure ; and if even some precedents are taken into account as showing the direction of action, the Department itself is the sole judge of the correctness of the interpretation of these precedents. But with the establishment of a Supreme Court, in course of time, as cases in this connection come up for its decision, a sufficient amount of case law will be created defining to some extent the relation between the Paramount Power and Subordinate States, which is calculated to thus bring into existence a reign of law in the nature of this relation.

(c) In non-justiciable matters of a purely administrative nature, which do not require the arbitration of the Supreme Court, the Senate or the Council of State of the Federal Government will be in charge of the subject of relation between the Central Government and the States just in the same manner as the Senate of America is in charge of the Foreign Relations of that country. At present, the Political Department of the Government of India is in sole charge of these subjects. The Princes have been agitating for the appointment of a Committee to be associated with the Political Department in its work. The Federal Constitution will therefore give to the Princes just this very reform which they have been demanding but in a far more satisfactory manner. When the Council of State is placed in charge of the subject of relation of the Central Government with the Indian States, the more popular body of the legislature *vis.*, the Assembly will not, ordinarily, interfere with the affairs relating to this subject. Thus the Princes will

not have any room for complaint that their destinies have been handed over to the control of the common people of the land, because the Senate or the Council of State will consist of the representatives of the several Provincial Governments as well as the representatives of the States' Governments themselves; and as such, the Senate may be considered as a competent, responsible and satisfactory body to deal with the States. This body will be in charge of the general supervision and control of the Political Department; and therefore, this department cannot any more act arbitrarily on its own responsibility as it has been hitherto doing. The Senate will not act from day to day in its capacity as a whole or entire body; there will be a small States' Relations Committee of the Senate consisting of representatives of both the States and British India, which will be in general charge of this subject from day to day and which will discharge its functions in closest co-operation with the Political Department. I am, therefore, confident that this arrangement will be eminently satisfactory even from the point of view of the Princes themselves and meet their wishes to a large extent in the direction of conceding their demands in this connection for which they have been all along persistently agitating.

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## CHAPTER VI

### THE QUESTION OF INTERNAL REFORMS

But the best guarantee for their permanent existence and honourable status and against the arbitrary exercise of the powers of paramountcy by the Suzerain Government will be found to be in the grant of Complete Responsible Government to the people of the respective States. The history of monarchy in England and the contrast offered to this in some other countries under diametrically opposite conditions, ought to convince our Princes that the institution of monarchy can flourish only when it is converted into a crowned Republic. The people of the States are attached to their rulers, in spite of their shortcomings by tradition and by strongest sentiments of loyalty inherent in the very culture which they have inherited through ages. But the Princes cannot base their strength for long on this blind sentiment. Modern tendencies, modern ideas and modern influences are bound to affect the people of the States, as well as others, however much the Princes may try to stem the rising tide of modern tendencies in their respective States. They may succeed for a time, but ultimately they are bound to fail. Popular will is bound to assert itself sooner or later and when it comes to its own, despite the Princes, then such a contingency cannot hold out rosy prospects to the Princes, either with reference to their honourable status or the permanency of their existence. Already signs are not wanting to show that modern tendencies have begun to disturb even the placid waters of the States. The pathetic contentment of the people and their calm spirit

of resignation to the inequities which any irresponsible and unscrupulous Princes may choose to indict upon them have given room to active discontentment with the existing state of affairs and a spirit of resistance to injustice and maladministration. Blind unquestioning obedience to constituted authority in whatever it may do is rapidly giving place to a critical temperament and an attitude of mind which finds expression in a spirit of self-assertion, as against what it conceives to be against the interests of general welfare. The princes will therefore do well to read aright the sign of the times and adjust themselves accordingly to the altered conditions of modern times which are slowly but surely permeating even within the borders of States. They should consequently grant responsible Government to their people forthwith and thus build up through this method of popular support their strongest and most effective guarantee for their permanent and honourable existence.

The grant of Responsible Government will also be immensely helpful to the princes in another important direction in that it will be the best safeguard against the arbitrary exercise of power by the Suzerain Government. The power of interference on the part of the Suzerain Government into the internal affairs of the States will be generally exercised in cases of mal-administration with a view to protect the interests of the subjects of the States. It will, therefore, be easy for us to conceive that when these subjects themselves are made responsible for the administration, then the chances of interference by the Paramount Power are reduced to a minimum, because the ostensible reason for interference *viz.*, protection of the

interests of the States' subjects from the evils of mal-administration of the Princes, now practically disappears. Therefore, with the grant of responsible government, the powers of suzerain control will be reduced to mere formal supervision.

There is one other reason why responsible Government should be immediately conceded to the people of the States. The federal constitution that I have in view and that I have outlined above is based upon the pre-supposition that the component parts of the federation are in the enjoyment of a complete measure of responsible government in the different spheres of their internal administrations. Any all-India federal constitution will sooner or later come to grief if the provinces and the States constituting it are not in the enjoyment of responsible government. For this reason, The Senate or the Council of State, in the federal constitution that I have outlined elsewhere, will consist of the representatives of the States and the provincial governments, whereas the Legislative Assembly will consist of the direct representatives of the people of British India as well as the States. In any bi-cameral legislature, with co-ordinate functions, both the Lower and Upper Chambers should be popular in character if the whole machinery of the constitution is to work smoothly and harmoniously. If the Lower Chamber is popular and the Upper Chamber reactionary, then there are sure to be frequent dead-locks resulting in the inefficiency of the administration and the paralysis of the entire constitutional machinery of the State. The ultimate result in any such conflict will be quite obvious, if we read aright the lessons of history in this respect.



The Upper or the less popular chamber will surely go to the wall sooner or later and will lose consequently its co-ordinate functions; or conversely, if perchance the Upper Chamber emerges triumphant in the conflict, then the popular chamber becomes an impotent factor in the constitution, which fact is sure to lead to fierce popular agitation of a vast magnitude, the ultimate consequences of which should be apparent to every one who has read of such conflicts in the histories of other times or of other countries. Here too, the popular will is bound to prevail ultimately and the forces of reaction crushed.

Therefore it is easy for us to understand that, for the success of the federal constitution we have in view, it is quite essential that its component parts, *Viz*, the States and the British Indian provinces, should be in the enjoyment of full responsible government so far as local administration is concerned.

The British Indian provinces are sure to have some sort of complete responsible government in the future constitution. They are already in the enjoyment of partial responsible government, however inadequate it may be, under the Montford dispensation. Therefore, the question of responsible government applies with particular prominence to the conditions of the Indian States. Supposing for the sake of argument that the British Indian provinces will have under the federal constitution full responsible government and the States none at all, what will be the consequences of the influence of the latter in the deliberations of the federal government in the face of the more popular majority element in the Senate and in the face of

the likelihood of the representatives of States' people in the Lower House throwing in their weight and influence on the side of the popular elements of the Legislature and not in favour of the representatives of their own governments—an unhappy contingency which the States should try to avoid at all costs. Therefore, responsible government alone will solve the constitutional difficulties adumbrated here.

The people of the States have all along been clamouring for reforms in the administrations of the States in two directions:—(1) establishment of efficient modern methods of beneficent administration, and (2) establishment of representative institutions and responsible government. In many of the States, even the rudiments of modern civilised administration are entirely absent. Maladministration of a severe type prevails in some of them. Though some of the bigger States have modelled their administrations on the British Indian system and possess a semblance of representative institutions, yet, even among them the personal will of the Prince is a factor of reality and against this, the will of the people has absolutely no chance to prevail. Even in these so-called 'advanced' States, responsible government is yet a far off cry and the fundamental rights of citizenship such as freedom of press, freedom of speech and freedom of association, are always at the mercy of an arbitrary executive unchecked by popular control. Therefore it is high time that the Princes immediately try to put their houses in order so that they may find their joy in the prosperity of their subjects and their strength in the contentment of their people.

The internal reforms which the Princes should immediately try to effect in their respective States have been clearly pointed out by various authorities on the subject. I shall only content myself here by enumerating the broad outlines of such reforms. They are as under:—

(1) The Princes should make a clear distinction between their privy purse and the public purse of the State. A fixed Civil List should be established which under no conditions should exceed 5% of the State's revenues.

(2) A permanent Civil Service should be created with fixity of tenur, appointment after proper qualifications and promotion on merit.

(3) The King should ordinarily act through an Executive Council of three or more members who should be in general charge of the administration.

(4) There should be absolute reign of law in the State. The provisions of law and not the will of the Prince ought to regulate the conduct of the State and the citizen alike. Moreover, laws should be passed by a properly constituted legislature and should not be issued as mere orders of the government or the Prince.

(5) There should be complete separation of judicial and executive functions.

(6) The independence of the judiciary should be adequately guaranteed by placing the whole judicial machinery of the State under the sole control of the Chief Court of the State. The pay, prospects, tenure etc., of the judges of the Chief Court should be fixed by

statute and should not be made to depend on the favours of the Prince or the executive head of the administration.

(7) Taxation and State Expenditure must be in accordance with the wishes of a popular legislature.

(8) All arbitrary and repressive laws should be forthwith repealed and no man should be punished except through the ordinary laws of the land and after open judicial trial.

(9) The right to sue the Government should be guaranteed to every citizen.

(10) The right of demanding the issue of a *Writ of Habeas Corpus* should be guaranteed to every citizen.

(11) All restrictions on the freedom of the press must be forthwith removed. The press should be entirely free subject only to the ordinary laws of the land.

(12) A Declaration of Rights should be issued by the Princes guaranteeing their subjects all fundamental rights of citizenship; such as freedom of press, freedom of speech, freedom of association, freedom of worship, freedom from arbitrary arrests, imprisonments, confiscation of properties, deportation etc., and such other citizenship rights.

(13) A real measure of local self-government should be introduced in the States.

(14) The Legislatures of the States, either unicameral or bi-cameral, as the case may be, should be constituted on the basis of the widest popular franchise.

(15) The executive should be chosen from among the members of the Legislature who command the

confidence of the House ; and their continuance in office should depend on the vote of the legislature.

(16) Every State should have a regular annual State Budget with regular audit by an independent Audit Department. The Budget Estimates should be submitted every year for the approval of the Legislature.

(17) All permanent appointments in the State shall be made by an independent Public Services Commission which shall deal with the problem only from the point of view of efficiency and State requirements.

(18) The Princes shall not undertake foreign journeys except with the previous assent of the Legislature.

(19) The Princes shall pay particular attention to improve the material and moral conditions of their subjects, such as progress in education, co-operation, industries, commerce agriculture, etc.

If the Princes are willing to effect the above items of internal reforms within their respective States, then I am confident that their subjects, and the people of India in general, will become the best guardians of their honour, dignity, status and existence, and that they will be welcomed with open arms to take their honourable place in any scheme of all-India federation that may be devised for the future.

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## CHAPTER VI

### STATES & PARAMOUNTCY

Only one more question now remains to be considered, viz, the kind of relation that ought to subsist between the States on the one hand and the paramount power on the other. This problem has come to the forefront of late owing to the agitation of the Indian Princes to have the powers of paramountcy strictly defined. Their contention is that, according to treaty rights, a limited category of governmental functions has been handed over to the jurisdiction of the paramount power and that the paramount power has absolutely no right to arrogate to itself powers of supervision over and interference into those categories of governmental functions which go under the name of "internal sovereignty of the States," which, the Princes contend, rests absolutely with themselves according to treaty rights. The whole question was gone into exhaustively by the Butler Committee, at the request of the Indian Princes, and they have come to the deliberate conclusion that "paramountcy should remain paramount." The contentions of the Princes in this respect have been found to be untenable and the following definition of paramountcy, as set forth in Lord Reading's now famous communication to the Nizam regarding the rendition of Berar, has been accepted as correct by the committee:—

"The right of the British Government to intervene in the internal affairs of Indian States is another instance

of the consequences necessarily involved in the supremacy of the British Crown. The British Government have indeed shown again and again that they have no desire to exercise this right without grave reason. But the internal, no less than the external, security which the Ruling Princes enjoy is due ultimately to the protecting power of the British Government, and where Imperial interests are concerned, or the general welfare of the people of a State is seriously and grievously affected by the action of its Government, it is with the Paramount Power that the ultimate responsibility of taking remedial action, if necessary, must lie. The varying degrees of internal sovereignty which the Rulers enjoy are all subject to the due exercise by the Paramount Power of this responsibility."

The Committee has especially defined two circumstances under which interference on the part of the paramount power into the internal affairs of the States can be justified. They are : (1) gross misrule or mal-administration of his subjects by a ruling Prince; and (2) existence of a wide-spread popular desire to have a more enlightened form of Government without displacing the Prince. The Committee are in the main right in these two conclusions of theirs. When the paramount power has expressly taken upon itself the obligation to protect their wards, *ie.* the Princes, from not only external invasions, but also internal rebellions, it undoubtedly stands to reason that this obligation carries with it the corresponding obligation to inquire into the causes of such rebellions and set matters right if they are due to mal-administration. By disarming the people of the

States and promising help to the Princes in case of internal commotions, the paramount power has effectively deprived the people of the States of their only potent weapon for redress of grievances which was employed with success on numerous former occasions. This may however be considered a crude and anti-deluvian method for righting a wrong. But, has any provision been made in the constitutions of the States for the effective prevalence in this respect of more civilised methods for public opinion to assert itself in the face of gross misrule on the part of a ruling Prince? Responsible popular government is yet a far off cry even in the most advanced of the Indian States; and the effective instruments of civilised public agitation, viz. freedom of speech, freedom of press and freedom of association, are practically non-existent even in the most forward of the States. What then is the remedy? Rebellion is impossible and out of question. Popular institutions and privileges are entirely absent. How then are the people of the States to escape from the tyranny of their Princes when such is the case? Therefore, it goes without saying that their only hope lies in the possibility of interference on the part of the paramount power into the internal affairs of a State whenever gross maladministration comes to prevail in it. Thus duty the paramount power is bound to discharge as long as the people of the States do not come to be in the enjoyment of full responsible government—under which contingency the burden of the administration will be transferred to the shoulders of the people themselves and there will consequently be no more room for complaint of mal-admini-



stration on the part of the ruling Princes. The paramount power is thus not only the guardian of the rights and liberties of the Indian Princes, but also the protector of the rights and liberties of the people of the States as against their Princes (whenever the Princes begin to misrule and oppress their subjects). We have to painfully admit that most of the reforms on modern lines effected in some of the Indian States are due in the main either to the initiative of the suzerain government or the wholesome fear of interference into the internal affairs of these States by the Paramount Power if conditions had been otherwise. This is a most humiliating situation for us, no doubt; but we have to admit it most reluctantly, none the less. Conditions in the States are already bad enough; and, with the people of the States situated in a most helpless predicament as at present, they are bound to be still more worse if the wholesome control of the paramount power is not to be exercised in the interests of the people or is to be completely done away with. Conditions being what they are at present in the States, from the point of view of the people, we must therefore unreservedly subscribe to the dictum of the Butler Committee that 'Paramountcy should remain paramount' for the present atleast.

If paramountcy is to remain paramount, the next question that naturally arises is: who should exercise the powers of paramountcy? The Princes have all along been agitating that, according to their treaty rights, their relations are directly with the Crown and not with the Government of India. This view was elaborated upon by the legal adviser of the Princes, Sir Leslie Scott, before

the Butler Committee. The Butler Committee too, and subsequently the Simon Commission also, seem to have acquired to some extent with this view, because they both recommend that the relations between the States and the paramount power should henceforth be controlled by the Viceroy alone, as representing the Crown, and not by the Governor-General-in-Council as at present and that the powers of paramountcy should not be transferred to any other agency without the previous consent of the Princes. The absurdity of this contention ought to be plain to all impartial thinkers, because, in the first place this theory of direct relationship is unwarranted by actual facts and in the second, fraught with dangerous consequences if given effect to. Apart from the fact that the so-called "Treaty States" are but a few in number (the rest being related to the paramount power according to custom, observances, etc.), it is historically a fact that these treaties were originally entered into by the Princes with the East India Company and not with the British Government or the British Crown direct. It is no doubt true that the Company was the agent of the British crown and the British Government in a legal capacity; but this is true of the very status of the Company in general and all other acts of this trading corporation as well as in respect of the treaties which they concluded from time to time with the "Native Rulers" of the time. Therefore, even if it is granted that the Company was acting as mere agent of the British Crown in respect of its dealings with the Indian States, it stands to reason to argue that the Crown has every right to have its own agent of any character at any time in India without being put to the necessity

of consulting the Princes in the matter of the nature of this agency. When in 1858 the Crown undertook the direct governance of India and dismissed the Company, it constituted the "Government of India" for the governance of the territories of the East India Company and entrusted it with all governmental functions, including the exercise of the powers of suzerainty over the Indian States, which the Company was hitherto enjoying. When such an agency was constituted, did the Princes then protest against this change in agency or come out with the plea that the change should not be effected without their previous consent? The fact is, therefore, that so long as India continues to be a "Dominion" of the British Crown and so long as any system of government in India, however constituted, continues to be the "agent of the British Crown", so long the Princes have no right to be up against any change in the nature of the agency which the Crown may be pleased to effect or insist on their previous approval being secured for effecting any such change in the agency. Any Dominion form of Government that may be constituted in the future is as much the "agent of the British Crown" as the present Government of India, though the form may be entirely popular in character; and consequently the Princes need not be *legally* consulted in the matter of establishing a Dominion constitution for India, nor their approval obtained for entrusting this Dominion Government with the powers of paramountcy over the Indian States so far exercised by the present Government of India. Therefore, so long as the British Crown does not choose to hand over the

destinies of India to an entirely independent government of the Indian people, the Princes cannot object to the transference of the powers of paramountcy to the control of a popular Indian executive or stand in the way of a full-blown Dominion constitution for India on the score of their so-called "treaty rights".

Further, did the Princes choose to similarly object to changes in the English constitution from time to time on the plea of their "treaty rights"? The majority of treaties between the British Crown and the Indian Princes were entered into in the latter part of the 18th century and the earlier part of the 19th, when the Crown was a real factor of power in the English constitution and the government of the land was conducted by the highest aristocracy of England. Subsequently, however, there have been numerous changes in the British constitution, as a result of which at the present time the Crown has come to be but a "legal fiction" (a formal factor) of the British constitution and the powers of government are being wielded, not by the blue-blooded aristocracy, but by, say, a spinner of Lancashire, a wool-worker of Yorkshire or a coal-miner of Birmingham. The commonest of the commoners are now at the helm of governmental affairs in England. Why are then the Princes keeping quiet in the case of England, where now their destinies are being conducted, not by the Crown, not even by the aristocratic families, but by the representatives of the meanest workers of the land, with whom they will disdain to even shake hands under other circumstances? If they are logical in their contentions, should not the Princes stand up and proclaim that their

"treaty rights" demand that the powers of the Crown in England must be the pivot of the constitution new too as of yore and that the reins of government there should only be in the hands of the aristocracy of the land? If the Princes have not protested against changes in the constitution of England, why should they be allowed to protest against similar changes in the Indian constitution and to say "thus far and no further" when the people of India are clamouring for a complete measure of Dominion Status?

The fact is that the Princes have trotted out this curious and untenable theory (and it has been accepted in a way by England for its own purposes) simply because they are averse, for what legitimate reasons we do not know, to allow the powers of paramountcy being exercised by their own countrymen. Why should they be so averse to this? They are prepared to hand over complacently their destinies to the control of a Tom, Dick or Harry, coming over from England, but cannot trust their own countrymen, who, by tradition, association and circumstances, can be expected to be more sympathetic towards the aims and aspirations of the Indian Princes than any raw Englishman, entirely unacquainted with the etiquette of the Indian Court, and, by his very nature and upbringing, incapable of sympathising with the peculiar sentiments and aspirations of the rulers of the Indian States? With all their faults, the Indian States strongly appeal to the imagination of every patriotic Indian. He considers the States as a hoary relic of the great historic past of India when India had known better and freer days. He regards them as in some way

standing for the "Swaraj" India of his dreams, because he finds here everything Indian and indigenous, inspite of whatever limitations there may be in their administrations from the point of view of modern principles of government. He regards the Indian States, in a peculiar way, as the custodians of whatever remains of the culture, tradition and civilisation of the India of former ages when glory and renown of a premier character were her proud possessions among the nations of the world. Therefore, the Princes have everything to gain and nothing to loose from agreeing willingly to place the powers of paramountcy under the control of a popular Indian executive. From their own verdict, they have not been pleased to any great extent with the way in which these powers have so far been discharged by the present agents of the British Crown in India. Why not they then try the experiment of entrusting these powers to the care of a different set of agents, who for aught we know, have in themselves the necessary equipment to prove themselves to be far better administrators in so far as the relation of the Government of India with the Indian States is concerned? The Indian Princes should try to overcome their unreasonable scruples to shake hands with their own countrymen. If they do so and if they allow the powers of paramountcy to be exercised by a Dominion Government of the Indian people, the results achieved thereby will be found to be most satisfactory and beneficial to themselves—far more beneficial and satisfactory than what the situation is in this respect under the present dispensation. Moreover, the Princes can insist on all kinds of reasonable safeguards from their point of

view if the powers of paramountcy are to be transferred to the control of a popular Indian executive (constituted as the executive limb of a united Indian federal constitution). In fact, the federal constitution itself carries with it the necessary safe-guards—all of which have been dilated upon in detail elsewhere. The demarcation of subjects, the institution of the Supreme Court, the gradual evolution of a roign of law regarding the relation of States to the paramount power, and the control of the political department by a government in which the States too will have their full share, are all more than adequate safeguards to ensure that the powers of paramountcy will be strictly exercised within reasonable bounds under an Indian Dominion constitution. And also, as I have indicated elsewhere, when pointing out the outlines of a federal constitution, the whole range of these powers may be exercised in the contemplated federal constitution, not by the whole legislature, but by a committee of the Upper House, working in close co-operation with the political department of the Government of India. This Committee, while being popular in character, is at the same time placed beyond any possible caprices of the more popular lower chamber; and since the representatives of the States also will constitute a portion of this "States Relations Committee" in the future Government of India, it is possible for us to comprehend that their presence and influence therein will infuse a salutary steadying influence in the exercise of the powers of paramountcy by the future Dominion Government of India over the Indian States. Therefore, all considered, I have no hesitation in saying that if the

Princes consider this problem coolly and impartially, they will have the least objection to the transference of the powers of suzerainty to the control of a Dominion constitution of the Indian people and will, on the other hand, come to realise that this sort of arrangement will be productive of immense advantages to themselves in the long run.

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## CHAPTER VII

### CONCLUSION

The major portion of this book was written before the Round Table Conference met; and now that this conference has met and come to certain conclusions, I shall have to consider at some length whether these conclusions are satisfactory or unsatisfactory.

A brief retrospect of the Round Table Conference and an account of its main conclusions, as embodied in the Sankey Report, are given in Chapter II of the Appendix. The Premier, Mr. Ramsay MacDonald, subsequently issued a statement, on behalf of His Majesty's Government embodying the main conclusions of the R. T. C. as representing what England proposed to do in the matter of Indian constitutional reforms. I shall now offer my criticisms on the Sankey Report, the main product of the R. T. C.



### The Sankey Report

The Sankey Report should be pronounced to be most unsatisfactory and disappointing, not only from the point of view of British India, but also from the point of view of the people of the States. While I am not oblivious to the fact that the initial patriotic resolve of the Indian Princes to join forthwith a satisfactory scheme of all-India federation brought the idea of a united Indian federation within the range of practical politics and that the success so much attained by the Federal Structure Sub-Committee of the R. T. C. is in no small measure due to the knowledge and enthusiasm with which its president, Lord Sankey entered upon his great and onerous task, all the same I am firmly of opinion that the Sankey Report can neither satisfy the political aspirations of the British Indians nor the constitutional requirements of the people of the States. What British India wanted was full-fledged Dominion Status; and what the Sankey Scheme gives is something which cannot be termed as Dominion Constitution by any stretch of imagination. What has been granted is an unworkable scheme of dyarchy in the centre with the all-powerful Viceroy at its head. Certain important governmental subjects, such as Army, Foreign Relations, Relation with the States, etc., are absolutely reserved for his exclusive control and jurisdiction: while others, which have been ostensibly handed over to popular control, are hedged in with all sorts of conditions and limitations that the element of popular responsibility contemplated at the centre by

the Sankey Report should be characterised as more or less chimerical in character. Especially is this the case with regard to finance, wherein the Viceroy is left with such extensive reserve powers regarding expenditure on Army, the Services, Pensions, Interest Charges, Loan Redemption, and other obligations, that what is left after these for popular control and disbursements is but a meagre portion of the total revenues of India. In addition to all these, the Viceroy is entrusted with very wide emergency powers in case of constitutional "break-down" and with a view to preserve "law and order" whenever "extreme necessity" arises; and the exercise of these "emergency powers" cannot but be considered as a source of constant friction and irritation in respect of the relation of the Viceroy with the popular limb of the Government. Moreover, the appointment of official "ministers" by the Viceroy, subject to dissolution along with the popular ministers on a vote of no-confidence in the Legislature, is a constitutional procedure unheard of in any other constitution and the purpose of which it is impossible for us to correctly comprehend. And the way in which the "responsibility" of the ministers to the Legislature is sought to be effected is most illusory in character, calculated to instal practically an irremovable executive once in every five years. The no-confidence motion, for being given effect to, should be passed by a two-thirds majority of both the Houses of the Central Legislature; and it is easy for us to see that this will never be the case as long as the legislature contains within its fold in appreciable numbers such reactionary elements as

the Europeans, communalists, States' representatives, etc. Thus, central responsibility, though conceded in theory, is impossible in practice. In short, the whole scheme, with all its several reservations and limitations, is calculated to lead to frequent friction and dead-locks leading to the unworkability and even the break-down of the constitutional machinery.

From the point of view of the people of the Indian States, the Sankey Scheme should be considered to be still more disappointing for the very simple reason that they have absolutely no part or lot to do with it at all. The whole scheme seems to have been drafted on the basis that the States mean the Princes and that the people therein do not count at all in any constitutional arrangement that may be effected for India as a whole. While a full measure of responsibility is sought to be given to the British Indian Provinces, (though this 'responsibility' is subject to the extensive 'reserve powers' of the Governor), the question of internal reforms in the States has not at all been brought within the purview of the Round Table discussions. The Indian States are sure to continue to be as autocratic as they are at present in their constitutions. The irresponsible rule of the Princes will remain intact as at present and the people of the States will have absolutely no protection whatsoever under the future constitution too as against the mis-rule and autocracy of their Princes. Even with reference to the all-India federal constitution their place is nowhere. In the federal legislature, it is the *Princes* and *their* representatives and not the representatives of the *people*, that will have a voice in

shaping the destinies of the Indian nation. Apart from the fact that such an arrangement is calculated to introduce a most reactionary element in the Indian Legislature, does it stand to reason and equity to deny to the people of the States *direct representation* in the federal legislature to whose jurisdiction they, as well as others, constitute an important element? Is it just that the States' people should thus be denied representation, especially when the people of British India will enjoy, under the Sankey Scheme, direct representation in the federal legislature? The more equitable arrangement, therefore, will be to allow *direct representation of the people of the States also* in the Lower Chamber of the federal legislature.

Moreover, the federal structure, as contemplated by the Sankey Report, is of such a curious and cumbrous nature that the people of the States will never consent to be a willing party to this sort of federal arrangement under which the fundamental unity of the federal principle is sought to be undermined. A federal constitution, as one can reasonably conceive it, is designed to deal with only such subjects as are of common importance to *all the component parts* of the federation. But under the Sankey Scheme, the Indian federal government, in addition to common federal subjects, will also deal with a peculiar class of subjects alleged to be of exclusive importance to British India only—in which case the representatives of the States in the federal legislature will have nothing to do whenever such subjects are dealt with by it. This is a curious form of federation indeed to which the people of the States will never

reconcile themselves. What they are aiming at is a federation in which the present artificial and unnatural distinctions between the States and British India will be completely done away with and all constituted to an equal extent as component parts of an all-India federation, enjoying equal rights and responsibilities. In short, federal subjects should be common to the States as well as to the British Indian provinces.

The position that has been assigned to the Indian Princes under the Sankoy Scheme is the most-unsatisfactory feature of it, to which the people of the States can never be made to subscribe. The Princes are guaranteed absolute powers of autocracy in their home-governments and given the privilege of sharing in the benefits of the Indian federal constitution. They will sit in the federal legislature, influence its decisions, take part in the federal executive, and enjoy in a full measure all the advantages resulting from the constitution of the Supreme Court. But what are their obligations in return for all these valued privileges? They are most inadequate in character. In the first place, the powers of paramountcy will not be vested with the federal government, but will be transferred to the control of the Viceroy, as representing the British Crown. In the second place, in all matters which have not been expressly handed over to the jurisdiction of the federal government, the Princes claim the right of direct and independent dealing with the Viceroy over the head of the Indian federal government. We can easily realise that such an arrangement, affecting the very solidarity of the federal constitution, cannot be acceptable to the

people of the States, who are always keen on the creation of a strong and united India, leading to the proper evolution of national solidarity in our country.

Thus the Sankey Scheme, unsatisfactory from the point of view of the people of British India, is still more so from that of the States' people. Therefore, unless the scheme is fundamentally altered for the better in the course of future discussions in India and in England, I can safely assert that the solution for the political ills and ails from which India is suffering at present, and for the growing estrangement between India and England is as distant as ever.

### Achievement of R. T. C.

Though the Sankey report is thus unsatisfactory both from the point of view of the people of British India as well as of the Indian States, it cannot be said that the labours of the Round Table Conference have been entirely fruitless. For one thing. Whatever might have been the motives of the different parties in the Conference, who all together gave their whole-hearted support to the federal idea, the fact remains that, as a result of the deliberations of the Round Table Conference, federalism has come to stay as the pivot of the future Indian constitution. What was but the dream of the distant future in the Simon Report and the Government of India Despatch, what was but dimly foreseen by the other constitutional documents relating to India, and what was but the vague longing of unrealised ambition of Indian patriots who saw in federalism the means of evolving a united

Indian nationality, has become a matter of actuality owing to the Round Table Conference and the future constitution of India has been irretrievably cast on the federal basis. The Princes welcomed this with alacrity; the British political parties grasped at it with equal falcity; and British Indian leaders gave their whole-hearted support to it, because they perceived therein the seeds of united national existence. Two facts have emerged clearly from the deliberations of the Round Table Conference. The one is that the future constitution of India should include the British Indian provinces, as well as the States; and the other, that, to bring about this consummation, the constitution of India should be necessarily federal, and not unitary, in character. Thus, for the first time in the history of British rule in India, the two Indias, which have been hitherto kept apart as mutually exclusive water-tight compartments, have been brought together into some sort of political unification for common national purposes, however inadequate this may be from our point of view. The die has been cast; the plunge has been taken; the leap has been made; and the Rubican has been boldly crossed. Whatever may be the misgivings entertained in this respect in certain quarters and whatever may be the final outcome of this momentous step so far as the individual interests of the different parties to the federation are concerned, we must concede that, in however unsatisfactory a manner it may be, the Round Table Conference has come to a most far-reaching decision in respect of the federal idea, thus opening up a grand new vista before Indian history which has within itself the potentialities of ushering into

existence in our midst sooner or later a united national existence of far greater solidarity than that achieved during the days of Asoka, Allauddin or Aurangazeb. This is a great achievement indeed of which the conference can justly be proud. No doubt much remains to be done in this connection before the Sankey federation can be made acceptable to the people of India; but none the less a great forward step has already been taken in that the principle of federation has come to stay as a result of the Round Table Conference.

I have pointed out above the several defects of the Sankey Scheme both from the point of view of the people of British India and the Indian States. I shall now indicate in brief some of the lines on which it should be improved from that of the latter:—

(1) There should be absolute equality of treatment in all matters, administrative, constitutional, and financial, between the several component parts of the federation, whether States or Provinces, in so far as their relation with the federal structure is concerned.

(2) The political development of the component parts of the federation should be more or less of a uniform character before a federation is sought to be effected. In other words, the introduction of responsible government in the States, at least to the extent vouchsafed to the British Indian provinces, should be a condition precedent to the formation of an all-India federal polity.

(3) There should be no differentiation between the States and the Provinces in the matter of electoral arrangements to the federal legislature. The electorates, the qualifications of the candidates and the voters, and



other cognate matters should be cast on a uniform basis for the whole of India including the States. Thus the the people of the States should have the privilege of direct participation in the federal legislature, especially in the Lower House.

(4) In the fundamental clauses of the federal constitution there should be provisions guaranteeing to the citizens of the States the benefits of good government and the several rights of citizenship such as freedom of press, freedom of speech, freedom of association, etc.

(5) The exercise of the powers of suzerain control over the Indian States ought to be definitely a federal subject, subject to such reasonable safeguards as may be constituted to allay the justifiable apprehensions of the Princes in this connection.

(6) As a result of the States entering the Indian federation, there shall be no relaxation in the exercise of the powers of paramountcy over the States from what it is at present, except in so far as this may be modified in the light of the constitutional arrangements incidental to any scheme of federation and in the light of uniformity of procedure. There should be no revision of treaties between the Princes and the Imperial Government abrogating, in favour of the former, certain provisions of the existing treaties affecting the internal sovereignty of the Princes. That amount of supervision and control which the federal government is authorised to exercise over the British Indian provinces in the interests of national uniformity, solidarity and well-being, should also be exercised by the federal government in relation to the Indian States also.

(7) The Federal Legislature shall not work in a dual capacity—in one respect dealing with matters of common interest to the whole of India and in another with the matters of alleged exclusive concern to British India alone, with which the States will have nothing to do. It should deal only with such subjects of an all-India nature which are of common importance to the States as well as to the Provinces.

(8) The subjects of the States shall have the right of appeal to the Supreme Court in all matters involving the rights of citizenship or the fundamental principles of the constitution.

(9) The laws of the federal legislature shall be *ipso facto* operative in the States' territories without the necessity of further assent by the States' Governments. Similarly, the federal executive shall have direct jurisdiction in the States' territories in respect of the execution of Federal Laws.

I have every confidence that in these and other lines of improvement in the Sankey Constitution will be fully explored in future discussions regarding this constitution. The Round Table Conference has only begun the work of Indian constitution building; and much more discussions and many more conferences should take place before the reformed Indian constitution is finally beaten into shape. Before that is done, earnest attention should be directed towards improving the Sankey Scheme in the light of popular criticisms in and outside the Indian States.

## FORGING OF SANCTIONS

I have now come to the end of my book ; and before I finish, I want to make some reference to one more important problem connected with the future polity of India.

Though it cannot be denied that, in agreeing to the ideal of an all-India federation, the Princes have exhibited a fine instinct of patriotism and have placed themselves voluntarily in a position which, mediately or immediately, is bound to militate to some extent against their conception of the internal sovereignty of the States, yet it cannot be gainsaid that they have been so much attracted towards this ideal so suddenly chiefly owing to its capacity to hold out to them certain concrete advantages of a definite nature. The advantages which the Princes hope to secure out of their joining the federation are great indeed and they are chiefly as follows :—

1. Participation in all-India matters, to which they have been so far excluded, and an effective voice in influencing decisions regarding them.

2. Any likely financial advantages that may accrue to them out of financial re-arrangements in the federal constitution as between the central government and the component parts of the federation. This is especially possible in regard to such items of imperial taxation as salt, customs, posts and telegraphs etc in which the princes have been claiming in vain rebates due in justice to themselves.

3. The introduction of a judicial procedure in the dealings between the States and the paramount power

through the instrumentality of the Supreme Court of the federal constitution.

4. Any possible relaxation of the powers of paramountcy which may likely be effected out of regard to the commendable resolve of the Indian Princes to join forth-with a scheme of all-India federation including the states.

These and other possible advantages of federation entail upon the Princes certain corresponding obligations, which, however, they are at present unprepared to give effect to. They want the loaf as well as eat it. The introduction of responsible government in the States and guaranteeing to their subjects the fundamental rights of citizenship, the granting of the right of direct participation to their subjects in the all-India federal polity, and allowing the federal government the right of exercising the powers of paramountcy over the States—these are some of the obligations to which the Princes should give their consent before they can be allowed to enjoy the privileges of federation.

What then should be the constitutional procedure which will induce the Indian Princes to join the federation, after being fully prepared to discharge their corresponding obligations in the matter? In other words, what sanctions should we forge in the constitution to make the Princes fall in line with our federal scheme, "after fully understanding all its implications"? It is inconceivable that they should be allowed to enjoy all the advantages of federation, while refusing at the same time to shoulder the burden of corresponding obligations. While the British Indian portion of the federation will

be in the enjoyment of responsible government, is it proper that the States' portion of it should continue to be under the autocratic sway of their Princes? While the people of British India will directly participate in the federation is, it good that the states alone should be represented therein by their Princes and not by their people? While the British Indian provinces will be amenable to the control and supervision of the federal government, is it a good constitutional arrangement to deny this right to the federation over the Indian states, and, on the contrary, allow the Indian Princes to deal directly with a third party *i.e.* the British Crown, over the head of the Indian federal government? Therefore, it is but right that we should see that, in framing the future constitution of India, all parties, who are granted the enjoyment of rights under it, are also made to bear the burden of corresponding obligations. In short, we should forge certain constitutional sanctions in this connection in the future constitution of India.

It is no doubt true, as I have already pointed out, that the Princes have been attracted towards the federal ideal mainly on account of the definite advantages which it holds out to them. I have also explained above what these advantages are. Therefore, the best constitutional sanction will be to deny these advantages to that Princes until and unless they express their willingness to bear the burden of corresponding obligations. What these obligations are, I have already stated; and unless the Princes are prepared to discharge these obligations, they should not be allowed to participate in the several undoubted advantages of the Indian federal constitution.

We need not entertain any doubts that the Princes will be scared away from the federal ideal thereby. The advantages of federation are too attractive to scare them away on the score of corresponding obligations, which, after all, entail but small sacrifices, in comparison with the immense benefits of the federal arrangement. The Princes will rather welcome the federal idea, in spite of the burden of these obligations, than go without the undoubted advantages of the federation. Therefore, the forging of these sanctions, rather than scaring away the Princes, will be additional inducements to them to join the all-India federal scheme. They will reconcile themselves to any amount of obligations which promises to free them from their present anomalous and unsatisfactory position.

For, what is the alternative to the federal idea which lie before the Princes? The present anomalous position, with all its numerous disadvantages, from which the Princes want to free themselves. Federation alone will offer them the needed freedom; and therefore they will join it despite certain apparently unpalatable conditions. In terms of the proposed sanctions, any Prince, who does not want to join the federation with all its implications, will be suffering from the following chief disadvantages.

1. They will have absolutely no voice in the decision of all-India matters which affect them vitally.

2. They will not be in a position to enjoy the financial advantages that may accrue in respect of certain items of imperial revenues to which they too are contributors.

3. Their dealings with the paramount power will not be subject to the reign of law of the Supreme Court of the federal constitution, but will be, on the other hand, subject, as at present, to the arbitrary control of the Viceroy's Political Department.

Which will the Princes prefer? This sort of anomalous arrangement or the inestimable advantages of federation—voice in all-India matters, financial advantages and a reign of law guiding the exercise of paramountcy? The corresponding obligations to secure these advantages—responsible government in the States, direct participation of States' subjects in the federal polity and suzerain control as a federal subject—are comparatively slight indeed and will be found to be advantageous to the Princes themselves in the long run. I have no doubt whatsoever which way wisdom lies and which way the choice of the Princes will be. Patriotism as well as enlightened interest will induce them, in spite of certain incidental irksomeness, to express themselves in favour of an immediate scheme of all-India federation.



# INDIAN CONSTITUTION

## IN RELATION TO

# INDIAN STATES

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### CHAPTER I:—HISTORICAL RETROSPECT

**T**HE question of the revision of the Indian Constitution has been prominently before public attention for some time past both here and in England and has assumed added importance after the publication of the Simon Report and as the date of the Round Table Conference is drawing nearer and nearer. On two similar previous occasions atleast, public opinion in the country had been deeply stirred over similar problems: on the eve of the promulgation of the Minto-Morley Reforms nearly twenty years ago and just before the Montford Reforms were ushered into existence a decade ago, political agitation in India had



raged fiercely on each occasion around the question of the exact nature and extent of reforms that would satisfy the political aspirations of the people at that time. But at the present moment, the problem is of peculiar significance, because, not only the people of British India alone as on former occasions, but the people of the Indian States as well, are now vitally interested in the revision of the Indian Constitution; since the revision this time does not pertain to British India exclusively as formerly, but also includes within its fold questions which concern the constitutional position of the States. In short, this is the first occasion in which a deliberate attempt is being made in all responsible quarters to chalk out a United Indian Constitution which shall be applicable alike to British India as well as the Indian States.

### **The Montford Reforms**

The problem of the Indian Constitution in its relation to the Indian States had begun

to interest British and Indian politicians and administrators (both of British and Indian India in the latter instance) ever since the historic Parliamentary Announcement of 20th August 1917 defining the goal of British rule in India to be "the progressive realisation of Responsible Government." Even at that moment, it was realised by some of the Ruling Princes of the land that, in pursuance of this policy, a time would come, sooner or later, when the control of the Government of India would pass into the hands of the representatives of the people; and therefore they were anxious that the constitutional position of the States *vis a vis* the reformed Government of India should be definitely determined, so that there might not be any room for popular Indian control over the affairs of the Indian States and so that these States might make their influence felt in such affairs of All-India importance in which they as well as British India were commonly interested, but

from the consideration of which they were so long excluded. Even the authors of the Montford Reforms clearly foresaw the necessity for the clarification of the constitutional relations between the Indian States and British India on the principles herein enunciated, for, they observe in the course of their report (para 157, page 100): "The volume of business which is of common concern to the States and to British India is steadily growing in importance. So long as such matters remain ultimately in the hands of the Governor General in Council, the Princes may perhaps rest content with the means which they have at present of securing the due consideration of their views. But if the control of matters common to India as a whole is shared with some popular element in the government, it must be anticipated that these rulers may wish to take a share in such control also."

In pursuance of this object, therefore, two steps were undertaken at that time. The

one was the permanent creation of the Chamber of Princes with its Standing Committee; and the other, the transference of the responsibilities of political control and supervision over a number of minor Indian States from the jurisdiction of the provincial governors to that of the Governor General. The first step was calculated to bring into existence a permanent organisation that shall collectively and authoritatively express opinions on behalf of the States over questions affecting the States themselves or affecting them in relation to British India or the Suzerain Power; and the second was designed to bring all the Indian States, great or small, under the direct, centralised and uniform control of the Governor General and free such of those States which were hitherto under provincial control from direct or indirect popular influences in supervision which were likely to result from the then contemplated constitutional arrangement of introducing an element of popular

responsibility in the field of provincial administration.

### The Butler Committee

As the Statutory Period under the Montford Reforms for the first revision of the Indian Constitution was drawing nigh, the Princes again exhibited their keen desire to have the question of the constitutional relation of the States with British India, in the contemplated revised arrangement, to be definitely determined as early as possible, so that any element of popular control that may be introduced in the central government of India as a result of the new reforms (as then anticipated as practically certain by them as well as by others in the country) might not prejudicially affect their status or their rights in relation to the exercise of Suzerain Control by the Indian Government. In furtherance of this object, they now began to definitely put forward the plea that their treaty relations were with the British Crown and not with the

Government of India and that consequently the exercise of Suzerain Control by the Crown or its authorised agent in India could not be handed over to any other agency (meaning ofcourse in this connection a popular Indian ministry which they foresaw would be placed at the helm of the Central Indian Government sooner or later and whose possible exercise of suzerain control they wanted to avoid) without the consent of the princes themselves.

Another problem which also assumed at this time definite importance with the princes was the one relating to the constitutional machinery that ought to be devised for the exercise of joint control by the States and British India over subjects of common interest to both. A necessity was particularly felt in this direction in respect of certain economic and financial arrangements regarding which the States contended that justice was not so far being done to them. The fiscal policy of the Government of India was being

formulated from time to time, the princes maintained, without taking into consideration the opinion of the States regarding such formulation, eventhough these were vitally affected in this respect through the decisions of the Indian Administration. And further, the States began to agitate for their equitable share of such Imperial Revenues as Salt, Opium, Coinage, Posts and Telegraphs, etc., to which they have always been regular contributors, but from the benefits of which they have been so far rigorously excluded.

The Government of India, on their part, were not slow to respond to this desire of the Indian Princes for the definite determination of the constitutional relation between the States and British India, especially in view of the fact that the necessary preliminaries for the task of the revision of the Indian Constitution was now proceeding apace under the aegis of the Simon Commission. Accordingly, the Butler Committee was constituted by the

Secretary of State for India on the 16th December 1927, its terms of reference being: (1) "to report upon the relationship between the paramount power and the Indian States with particular reference to the rights and obligations arising from (a) treaties, engagements and *sanads* and (b) usage, sufferance, and other causes; and (2) to inquire into the financial and economic relations between British India and the States and to make any recommendations that the Committee may consider desirable or necessary for their more satisfactory adjustment."

The Butler Committee submitted its recommendations to the Secretary of State for India on the 14th February 1929; and being precluded from its terms of reference from considering the larger question of the political unification of British and Indian India on the basis of a United Indian Constitution, it contented itself with recommending certain temporary arrangements, whenever needed, for



the proper adjustment between these two halves of the land on matters of common interest if at any time there was a possibility of mutual conflict regarding them. The Committee, however, in spite of their restricted terms of reference, could not help contemplating for a while on the future of the States as integral portions of a United India; for, the report observes in its concluding portion (para 106, page 52): "But we have left the door open for constitutional developments in the future. While impressed with the need for great caution in dealing with a body so heterogeneous as the Indian Princes, so conservative, so sensitive, so tenacious of internal sovereignty, we confess that our imagination is powerfully affected by the stirrings of new life and new hopes in the States, by the progress already achieved and by the possibilities of the future. To that future we can merely open a vista. Our terms of reference do not invite us to survey the distant hills and

the valleys that lead to them. But we are confident that the Princes, who in war and peace have already rendered such signal service, will play a worthy and illustrious part in the development of India and the Empire."

### **The Simon Commission**

The inability of the Butler Committee to report on the wider question of the Indian Constitution in relation to Indian States was regretted by both the Princes and the people alike; and in fact it was soon recognised even in official quarters that this question should be satisfactorily solved by a competent body before the revision of the Indian Constitution could be efficiently effected. It was also now recognised in the same quarters that this problem was incapable of satisfactory solution if considered by itself without the simultaneous consideration of the question of the revision of the Indian Constitution. Indian public opinion interested in the problem of the

Indian States had clearly pointed out even long before this time that the Simon Commission, entrusted as it was with the latter task, was also the most competent body, owing to this fact, to consider the former question too, as both the problems were interdependent and should therefore be investigated into by a single qualified agency. Both the Simon Commission and the British Government now realised the correctness of the public contention in this respect; and consequently the terms of reference of the Commission were widened so as to include the problem of the Indian Constitution in relation to the Indian States.

The second part of the Simon Report, dealing with the recommendations of the Commission, was published on the 24th of June. Part 7 of this report deals with the Indian States in relation to the Indian Constitution. Ultimately foreseeing some sort of federal constitution for the whole of India

including the States, the Commission has made the following recommendations regarding the immediate needs of this problem: "What is now needed is some organ, however rudimentary, which will for some purposes, however limited, address itself to the treatment of matters of common concern to the whole of Greater India. As a beginning to this, the Commissioners make three concrete proposals. Firstly a serious and businesslike effort should be made to draw up a list of matters of common concern. Secondly, there should be included in the preamble to any new Government of India Act a recital putting on the record the desire to develop that closer association between Indian States and British India which is the motive force behind all discussions of an eventual Federal Union. And thirdly, they recommend the creation of a Standing Consultative Body containing representatives both from British India and Indian States with powers of discussion and for reaching

results." (quoted from the press version of the report).

### The R. T. C.

But even before the publication of the Simon Reports, the British Government had resolved, as announced in the famous Viceregal Pronouncement of 1st November 1929, upon convening a Round Table Conference in London, consisting of the representatives of England, of British India and of the Indian States, for the purpose of formulating definite mutually agreed proposals in relation to the future Indian Constitution which shall embrace within its fold British as well as Indian India regarding matters of common interest to both these hitherto separate political entities. If everything goes on well, the Conference will meet in November next. The Princes and their representatives are already making active preparations to proceed to England and formulate their considered views in the Conference regarding the part they wish to play in the

All-India polity of the future. All eyes are now anxiously and expectantly turned towards this Conference, and if there is enough of wisdom and statesmanship on either side to understand and appreciate the view points of each other and correctly comprehend the needs of the present Indian political situation, and if there is enough of patriotism and political insight on all sides to work with single-minded devotion towards the creation of a United Indian Nation, then the whole country will be justified in expecting, as a result of the deliberations of this Conference, the ushering into existence of an All-India Constitution in which the Indian States and the British Indian provinces shall work shoulder to shoulder on equal and honourable terms for the progress and prosperity of a strong and united India.

### **The Nehru Committee**

The problem of the revision of the Indian Constitution in its relation to the States had

begun to actively interest, in addition to the Princes and the Suzerain Government as detailed above, the people of India as well, both of the British provinces and the Indian States, eversince the question of drafting a suitable constitution for the future administration of the country began to occupy the prominent attention of politicians and publicists of the land. Several authors of draft constitutions in British India like Messrs. C. Vijayaraghava Chariar, president, Nagpur Congress, S. Srinivasiengar, president, Gauhati Congress, A. Rangaswami Aiyangar, Editor, "Hindu", Madras, and others have in some way or other, taken into account the existence of the Indian States as a political factor affecting the constitutional structure of the future Indian polity, in whose determination they had engaged themselves. The Indian National Congress, in particular, (which had by this time given up its old time attitude of exclusiveness from the affairs of the Indian States

and come to include within its fold both the people of British India and the States), now began to evince great interest in this problem. In its Madras Session (Dec. 1927), it brought forth into existence an All-Parties Conference for the purpose of drafting an agreed Indian constitution. This Conference entrusted this important task to an expert committee presided over by Pundit Motilal Nehru and consisting of Sir Ali Imam, Sir Tej Bahadur Sapru, and Messrs. M. S. Aney, Mangal Singh, Shuaib Qureshi, Subhas Chandra Bose and G. R. Pradhan. The Committee submitted its unanimous report to the All-Parties Conference on 15th August 1928, and this report, though condemned as unacceptable by communally minded Muslims in so far as its recommendations regarding the Hindu-Muslim problem were concerned and though a bit unsatisfactory from the point of view of the people of the Indian States in as much as it did not make any satisfactory provision for the immediate



promulgation of a united Indian constitution with the States included therein, was yet hailed in all quarters as the product of the best brains of the country and as the one which offered the best solution, under the existing circumstances, for the problem of Indian constitutional advance acceptable to all parties alike.

The Nehru Report, after dealing with the problems of the Indian States in an exhaustive manner, makes the following recommendations regarding their relation with the Indian constitution: 1 "All treaties made between the East India Company and the Indian States and all such subsequent treaties, so far as they are in force at the commencement of this Act, shall be binding on the Commonwealth. 2 The Commonwealth shall exercise the same rights in relation to and discharge the same obligations towards the Indian States, as the Government of India exercised and discharged previous to the passing of this Act. 3. In case of difference

between the Commonwealth and an Indian State on any matter arising out of treaties, engagements, sanads or similar other documents, the Governor General in Council may, with the consent of the State concerned, refer the said matter to the Supreme Court for its decision." 4. "In regard to non-justiciable matters involving financial and administrative relations, it should not be difficult to come to a settlement by mutual conferences and understandings." The Nehru Committee, however, while recognising the fact that "an Indian federation, compatible as it will be with the maximum degree of autonomy in the local units, whether provinces or States, can be the only solid foundation for responsible government", has not however seen its way to recommend the immediate constitution of a United States of India composed of the States and the Provinces as integral portions, on the supposition that the former are not yet prepared to fall in line with such a scheme. All the

same, the learned authors of this report clearly perceive the identity of interests between these two now separate political entities of India and hope for the best solution of the problems with which they were faced in this respect through basing their conclusions "upon community of interests than upon differences of form"; for, they are convinced that "it is inconceivable that the people of the States, who are fired by the same ambitions and aspirations as the people of British India, bound by the closest ties of family, race and religion to their brethren on the other side of an imaginary line, will never make common cause with them."

#### **Opinion in States**

It is perhaps from the people of the Indian States that the demand has been insistent for the immediate formulation of a united Indian constitution, with a definite place assigned therein for the States. A new life of nationalism is now surging among them ;

and they are anxious to give concrete expression to it by demanding their proper place in the larger national sphere of the country, which place has not been so far thought of by them owing to the insularity of their political existence and which place has been denied to them so long owing to the wrong conception prevailing till now that it was the 'sacred duty' of one and all concerned to maintain intact this insularity of the States. But now the angle of vision has entirely changed on all sides, particularly on the part of the people of the States.

In conference after conference during recent times, the people of the States have demanded in no unmistakable terms their right to participate without any more delay in the reformed All-India constitution of the near future. The Bombay States' People's Conference, for example, assembled under the presidency of that great friend of the States' People, Dewan Bahadur M. Ramachandra Rao, on 17th and 18th

December 1927, has clearly stated that "for a speedy attainment of Swarajya for India as a whole, the Indian States should be brought into constitutional relation with British India and the people of the States assigned a definite place and an effective voice in all matters of common concern in any new constitution that may be devised for the whole of India."

In pursuance of this resolution, the London Delegation of this conference, headed by its honoured president, observe as under in the course of their Memorandum to the Butler Committee, amplifying the same theme of the union of the Indian States and the British Indian provinces under the aegis of a united Indian constitution: "The range of matters in which the States and the British Indian provinces are realising their mutual dependence is daily increasing.....In her relations with the outside world, India is regarded as a single unit and there is in her international relations no distinction between

British India and the States.....In these circumstances, the exact position of the Indian States in an All-India Polity is no longer a matter of speculation for constitutional theorists, but has already become a matter of immediate practical importance."

The States' People's Conference, Madras, (26th and 27th December 1927 under the presidency of Mr. S. Srinivasa Iyengar) has also passed a similar resolution by resolving that "this Conference is of opinion that the future constitution of India should be on a genuine federal basis on the lines of Canada or Australia with a central government having common responsibilities, though in varying degrees, for both British Princes and Native States." This Conference, in particular, appointed a Special Committee "for the purpose of framing a Swaraj Constitution for India with a view to secure for the States their proper place in a full and self-governing India." Such a constitution was prepared.

on behalf of this Special Committee, by Mr. Hosakoppa Krishna Rao of Mysore, a leading publicist of the States' people and submitted for adoption by the All-Parties Conference as being the irreducible minimum which would satisfy the political aspiration of the States' people for a freer and wider national existence. This constitution argued out a strong case for an All-India federalism with the States and the Provinces as equal and honourable partners therein and put forth a detailed draft scheme in this connection.

And finally, the South Indian States' People's Conference held at Trivandrum on the 14th and 15th of January 1929 under the distinguished presidentship of Sir M. Visvesvaraya, has adopted 'A Memorandum on a Dominion Constitution for India, including the States', which puts forth the basic principles of such an All-India Polity. This admirable scheme is also based on federalism, applicable to the Provinces and the States

like, which, in the opinion of the learned author of this Memorandum, offers the "right solution" for the satisfactory solution of the Indian constitution for the future. "Recent world experience", observes the Memorandum, "gives many unmistakable indications of what the right solution of the Indian problem at the present time should be. The United States of America, the British Dominions of Canada and Australia and post-war Germany furnish examples of federal unions in which autonomous States live together under a strong central authority which secures for them the main advantages of a unitary system of government."

The next session of the above Conference was held in Bangalore in August 1930 under the Presidentship of Prof. G. R. Abhyankar, B. A., LL. B., of Poona. In the course of his elaborate and erudite address, the president examined in detail the Simon Commissioner's recommendations regarding the Indian States,



pointed out clearly their untenability and put in a passionate plea for good, free and responsible government in the Indian States as integral parts of an Indian federation. This conference too passed a number of resolutions re-iterating its demands for reforms and responsible government in the States, expressing the willingness of the people of the States immediately to take part in a scheme of all-India federation and laying down, as a constitutional sanction in respect of the two foregoing items, that the advantages of federation, *i. e.* Supreme Court, voice in all-India affairs, financial re-adjustments, etc, should not be conceded to the Princes unless they granted responsible government to their subjects and allowed them (their subjects) scope to participate in the contemplated federal Indian constitution.

Subsequent to this conference, on the eve of the R. T. C. Sir M. Visveswaraya published a memorandum of the Indian constitution,

wherein he pointed out with logic and precision that the future constitution of India should be federal in character and should include within its fold the Indian States as well as British India. During the pendency of the R. T. C. he (and some others) published a more detailed memorandum on the subject working out the broad outlines of such a united Indian federal constitution.

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## CHAPTER II:—THE R. T. C.

**T**HE Round Table Conference, convened by His Majesty's Government and consisting of nominated representatives of British India, the Indian States (*i. e.*, the Princes and their Ministers), and the English Political Parties, all told to the tune of about a hundred, commenced its proceedings on 12th November 1930 in London, with a plenary session opened by His Majesty the King-Emperor, and presided over by the Premier, Mr. Ramsay Mac Donald. The agreeably surprising feature of the Conference was, not the unanimity with which the British Indian delegates demanded Dominion Status for India (for that was expected of them), but the unanimity with which the Princes and their representatives at the conference pleaded for a full measure of Indian freedom and expressed their readiness to forthwith join a scheme of all-India

ederation including the States. Thus, due to this patriotic impulse and resolve of the Indian Princes, the question of Indian federation, which was but dimly visualised by the Simon Report, Government of India Despatch thereon and other official documents, became at once a matter of practical politics to such an extent that even confirmed advocates of the unitary system of government like the Right Honourable V. S. S. Sastri and others were forced to confess with alacrity their "conversion" to the federal idea. It was therefore unanimously resolved even at the outset that the constitution of India should be drafted on a federal basis and that this federal constitution should be made to include within its fold the British Indian provinces as well as the Indian States. Accordingly, a Federal Structure Sub-Committee of the Conference was appointed under the able chairmanship of Lord Sankey, the Chancellor, who entered upon his work with such knowledge and enthusiasm and with

such genuine sympathy to do his best to bring into existence a free United States of India, that whatever success has been achieved by the R. T. C. is due in a great measure to his commendable qualities of head and heart. Under his initiative, the whole question of Indian federation was considered by the Sub-Committee under the following twelve broad heads :—

1. Component elements of federation.
2. Type of federal legislature and number of chambers.
3. Powers of federal legislature.
4. No. of members of the federal legislature.
5. Methods of representation.
6. Constitution, character, powers and responsibilities of the federal executive.
7. Powers of the provincial legislature.
8. Constitution, character, powers and responsibilities of the provincial executives.
9. Provision for minorities and special interests.
10. The Supreme Court and its jurisdiction.
11. Defence forces.
12. Relation of the federal and provincial executives to the Crown.

The Sub-Committee then undertook the most difficult task of division of governmental subjects into federal and provincial (a work of vital importance in drafting a federal constitution) and, as a result of its deliberations in this respect, the following subjects have been provisionally declared to be federal in character:—

Shipping and navigation (including that on inland waterways), light houses, beacons, lightships, buoys, port quarantine, salt, currency, coinage, savings banks, commerce (including banking and insurance), trading companies and other associations, control of cultivation and manufacture of opium and its sale for export, the control of petroleum, explosives, geological survey, inventions, designs and copyright, emigration from India and immigration into India, inter-provincial migration, traffic in arms and ammunition, survey of India, meteorology, census and all-India statistics, federal service, immovable

property in possession of the Federal Government and a Public Services Commission for Federal Services.

The appendix to the Sankey report gives a list of nearly 50 subjects provisionally described as federal. Many have been provisionally agreed to be federal without qualification. A few, such as posts, telegraphs and wireless, currency and coinage, are subject to certain adjustments with the States. Others will be federal for legislation and policy. These include shipping, navigation and commerce, control of cultivation, manufacture and sale for export of opium, control of petroleum, explosives and traffic in arms and ammunition, inventions, designs and copyright. Similarly also railways, with regard to which administration will be federal to the extent of the powers now exercised by the Railway Board. Maritime Customs will be a federal subject with special adjustment with the States. Customs on external frontiers will also be

federal on the liens of the maritime customs, subject to the special case of Kashmir. Purely federal subjects include federal audit and the public debt of federal India (power to raise Federal loans).

### THE SANKEY REPORT

The Federal Structure Sub-Committee submitted its final report to the R. T. C. by about the middle of January 1931 and the following is the press version of this report, embodying the broad out lines of the Indian federal constitution which the Sub-Committee had worked out:—

“It is learnt that the Federal Structure Sub-Committee’s draft report, which is open to amendment, does not claim that the Committee has evolved a complete federal constitution but sets out certain general principles and recounts the conclusions on which general or substantial agreement has been reached indicating the lines on which further examination should proceed.



“Many points are left open to be settled after public opinion in India and England has expressed itself.

“The report proceeds on the assumption that the constitution will recognise the principle that, subject to certain special provisions, responsibility for the Federal Government of India will rest with Indians.

“The Sub-Committee are of opinion that the proper method of giving effect to this principle is in accordance with the precedent of all Dominion constitutions, to provide that executive power and authority shall vest with the Crown or Governor-General representing the Crown, who will appoint the Ministers.

#### APPOINTED MINISTERS FOR RESERVED SUBJECTS

“Having pointed out that the Governor-General will select one Minister to form the Government and emphasised the theory of collective responsibility the report proceeds that the Governor-General must be empower-

ed to select his own representatives for reserved subjects. They should have the right, like other Ministers, of audience in either Chamber of the Legislature. The Sub-Committee are unable to decide definitely whether the Ministers so appointed should resign if the rest of the Cabinet is forced to resign and recommend that the matter should be further considered.

“The Sub-Committee recommend no definite rule regarding the Governor-General’s presiding at Cabinet meetings. It thinks it should be left to his discretion, but that it is essential that he is kept informed of public affairs and should have the right to call for papers

#### FUNDS FOR RESERVED SUBJECTS

“The Sub-Committee say that, as the Governor-General will be responsible for the administration of reserved subjects, he must not be dependent on the legislative vote for the supply for these subjects, which should be

treated on a footing analogous to the Consolidated Fund Charges in the United Kingdom. It may be necessary in the last resort to empower the Governor-General to ensure that funds required for reserved subjects shall be forthcoming but the Sub-Committee anticipate that such a power shall ordinarily not be used without consulting the Ministers.

#### SECURITY FOR PEACE AND TRANQUILLITY

"It is generally agreed that an arrangement must be made by which in the last resort peace and tranquillity in any part of the country must be secured, serious prejudice to the interests of any section of the population avoided and the rights of public services secured. It is further agreed in this connection that the Governor-General must be empowered to require the appropriation of revenue or legislative enactment if necessary.

"Stress is laid by some members of the Sub-Committee on the necessity of defining the

use of these powers so as not to derogate from the responsibility of the Ministers.

“The report says it is obvious that the Governor-General will have every inducement to be slow in the use of his powers in a manner to enable Ministers to cast to him the responsibility which is properly theirs.

#### PRESERVING INDIA'S CREDIT

“Regarding finance, the Sub-Committee regards it as a fundamental condition of success of the new constitution that room should not be left for doubting the ability of India to maintain her stability and credit, both at home and abroad. The Governor-General must, therefore, be given such powers regarding budgetary arrangements and borrowing as to enable him to intervene, if, in his opinion, methods are being pursued which seriously prejudice India's credit. The Sub-Committee recommend with a view to ensuring confidence in India's credit and currency establishment at the earliest possible moment of a reserve

bank free from political influence, entrusted with the management of currency and exchange and, with the same object, provision should be made requiring the Governor-General's sanction for the introduction of a bill amending the Paper Currency or Coinage Acts.

“ They agree also that service of loans with a provision for redemption and salaries and pensions of persons appointed on the Secretary of State's guarantee should be secured, with supply for Reserved Departments as Consolidated Fund Charges.

“ With these limitations the Sub-Committee do not contemplate differentiation between the Finance Minister and other Ministers responsible to legislature and with regard to taxation and fiscal policy and expenditure not controlled by Governor-General, he will be responsible only to the Legislature.

“ The Sub-Committee recognise that it may be difficult at present to establish a reserve bank sufficiently strong and equipped with

the necessary gold and sterling reserves and until this is done the Governor-General must have adequate control over monetary policy and currency.

#### POWER OF VETO TO CONTINUE

“The Sub-Committee assume that, in addition to the special powers mentioned, the Governor-General will have the right, as at present, of refusing assent to legislative measures and returning a bill for reconsideration and that the existing powers of reservation and disallowance will remain. There was general agreement for the establishment of the principle of equality of treatment regarding bills affecting religious and commercial discrimination and that the method of effecting this should be further considered.

#### SMALL UPPER HOUSE

“As regards the structure and composition of the Federal Legislature the Sub-Committee proceeded on the basis that there will be two

Chambers and without deciding the relations of one with the other, opinion was in favour of the view that the Upper Chamber or the Senate should be a small body of 100 to 150 members, with qualifications ensuring that it shall be a body of weight, experience and character. This object might be secured by prescribing for the British Indian members qualifications similar to those now required for the Council of State.

“The Sub-Committee have no doubt that the rulers of States will ensure that their representatives will be of a similar standing. The Sub-Committee is almost unanimously of opinion that the British Indian members of the Senate should be selected by the Provincial Legislatures by a single transferable vote.

“The Senate should not be subject to dissolution like the Lower House but a fixed proportion of the members should retire and be replaced regularly.

**“The Sub-Committee report a difference of opinion with regard to the distribution of seats between the States and British India both in the Senate and the Lower House.**

**LOWER HOUSE TO CONSIST OF 250**

**“The Sub-Committee think that, in view of the importance of efficiency of working, 250 should be the membership of the Lower Chamber.**

**“There is no unanimous view whether the election should be direct or otherwise.**

**“The Sub-Committee are of opinion that the term of the Lower House should be five years, unless it is sooner dissolved by the Governor-General. Opinion is unanimous that, subject to the Minorities Sub-Committee's report, provision should be made, if possible, in both chambers, certainly in the Lower, for representation of Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, European and Indian Commerce and Labour.**



## JOINT SESSION FOR UNSEATING MINISTERS

“A large measure of support records the proposal that for the purpose of securing to the executive greater stability, Ministers should only be compelled to resign in the event of there being a majority of atleast two-thirds of the two chambers sitting together.

“The Sub-Committee opine that means should be devised by which in the interest of stability an adverse vote should not necessarily always involve the resignation of the Ministry and that the subject should be further explored.

## POSITION OF THE STATES

“Regarding purely British Indian subjects, it is pointed out that it will be impossible, as far as the Executive is concerned, which like the legislature, will be composed of representatives both of States and British India, so to differentiate the functions of Ministers as to confine the responsibilities of the States representatives to federal subjects.

“No workable scheme can be devised with this object which will maintain the principle of collective responsibility of the Cabinet. The States, therefore, desire, with the Sub-Committee’s general assent, that their representatives to the legislature should participate equally with their British Indian colleagues in expressing the decision of the legislature on a question involving the existence of Ministry, but the States would prefer their representatives not to participate in the decision of the matters which are not of direct interest to the States.

“The Sub-Committee recommend that the matter should be further explored.

#### FEDERAL AUTHORITY OVER PROVINCES

“The Sub-Committee point out that there are bound to be certain subjects not included in the Federal Central and Provincial lists.

“The Sub-Committee are undecided whether the residuary powers of legislation to deal with such matters should rest with the

Federal Government or the Provinces and say that will need careful consideration later. They add that the Federal Executive must have authority to ensure that Federal Acts are executed in the Provinces, but within the States territory there can be no question of exercise of such authority outside the strict range of Federal subjects; but it seems equally evident that in matters affecting more than one Province of British India, even when Provincial Subjects are concerned, there must be some authority capable of resolving disputes and co-ordinating policy.

“The Sub-Committee opine that this authority should vest with Federal Government”.

### PROVINCIAL CONSTITUTION

“The Round Table Conference also appointed a “Provincial Constitution Sub-Committee”, which, in the course of its report, recommended the ending of dyarchy in the Provinces. The following is the press version of the report:—

“The Provincial Constitution Sub-Committee Report, described as “subject to adjustment to complete constitution,” recalls that the Sub-Committee was appointed to consider two heads of Lord Chancellor's list, namely, powers of the Provincial Legislatures and the constitution, character, powers and responsibilities of the Provincial Executives.

#### ALL SUBJECTS TO BE TRANSFERRED

“The report dealing with the powers of the Provincial Legislatures and the Executives agrees that in the Governor's Provinces the existing system of dyarchy should be abolished and all provincial subjects including Law and Order should be administered in responsibility to the Provincial Legislatures.

“The report recommends unitary Executives and that individual Ministers composing the Executive should be jointly responsible to Legislature.

## CHOICE OF MINISTERS

“Recommending that the responsibility of appointing Ministers should rest with the Governor, the Sub-Committee expressess the opinion that, in the discharge of that function, the Governor, should ordinarily summon a member possessing the largest following in the legislature and invite him to select Ministers and submit their names for approval.

## NON-ELECTED MINISTERS

“Ministers should ordinarily be drawn from among the elected members of the Provincial Legislature. In the event of the appointment of a non-elected non-official, such a person, should be required by statute to secure election to the legislature (and if the legislature be bicameral to either chamber) within a prescribed period, not exceeding six months. But, subject to this limit, he may be nominated by the Governor to be a member of the legislature.

“The Sub-Committee is of opinion that there should be no discretion to permit the appointment of an official to the Cabinet.

“The Sub-Committee considered that it is a matter of practical importance to the success of new constitutions that important minority interests should be recognised in the formation of Provincial Executives. An obligation to endeavour to secure such representation should be included in the Instrument of Instructions to the Governor.

#### GOVERNOR'S POWERS

“The Governor should have power to dissolve the legislature. He may assent or withhold assent to legislation, return a bill for reconsideration by the legislature or reserve it for consideration by the Governor-General.

“It will not be lawful, without the previous sanction of the Governor, to introduce any legislation :—

“firstly, affecting religion or religious rites of any class or community in the Province.

“secondly, regulating any subject declared under the constitution to be a Federal or Central subject and,

“thirdly, any measure repealing or affecting any Act of the Federal or Central Legislature or an Ordinance made by the Governor-General.

“The Governor shall, with the knowledge of his Ministers, be placed in possession of such information as may be needed by him for the discharge of the duties imposed on him by the Constitution.

“The Sub-Committee expresses the opinion that the Chief Minister should preside over the meetings of the Cabinet, but, on any special occasion, the Governor may preside. Ministers shall hold office during the pleasure of the Governor.

#### WHEN GOVERNOR MAY IGNORE MINISTERS' ADVICE

“Sub Section III of Section 52 of the Government of India Act, conferring general

power on the Governor to refuse to be guided by the advice of his Ministers when he sees sufficient cause for dissent from their opinion, shall no longer operate. The Governor's power to direct that action be taken otherwise than in accordance with the advice of his Ministers shall be restricted to the discharge of specific duties imposed on him by the constitution. These duties shall include protection of minorities and safeguarding of the safety and tranquility of the Province.

#### PROVISION AGAINST BREAKDOWN

"There shall be vested in the Governor, firstly, suitable powers with regard to legislation and finance necessary for the discharge of specified duties imposed on him by the constitution, and secondly, suitable emergency powers to carry on the administration in the event of a breakdown of the Government or constitution. The latter powers shall not remain in operation for more than six months



without the appeal of Parliament expressed by a resolution of both the Houses.

“The Sub-Committee expresses the opinion that it is desirable that the present convention in the provinces other than the presidencies of appointing Governors drawn from Indian Civil Service should be relaxed.

“The Sub-Committee anticipates that to meet the conditions of the new constitutions and electorates the provincial legislatures will require to be enlarged on the basis of ascertained needs regard being had to the numbers and character of the constituencies.

#### COMPOSITION OF LEGISLATURES

“The Sub-Committee expresses the opinion that the normal lifetime of the provincial legislatures should not exceed five years. With a possible exception of a strictly limited proportion of non-officials, who may, in some provinces, require to be nominated by the Governor to secure the representation of

groups unable to return their own members through polls the new provincial legislatures should consist wholly of elected members and the official bloc should disappear.

“The Sub-Committee recognises that conditions in some provinces may make it desirable that the provincial legislature should be bicameral, but the decision to incorporate a second chamber in the new constitution of any province other than Bengal, United Provinces, and Bihar and Orissa, where opinion in favour of a Second Chamber has already been expressed, should not be taken until the opinion of the Province definitely favours this course.”

### THE PREMIER'S STATEMENT

The final plenary session of the Round Table Conference was held on the 19th January 1931 when the premier, Mr. MacDonald made the following statement on behalf of His Majesty's Government regarding the policy of

England in the matter of Indian constitutional reforms :—

The view of His Majesty's Government is that responsibility for the Government of India should be placed upon the Legislatures, Central and Provincial, with such provision as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances and also with such guarantee as are required by the minorities to protect their political liberties and rights.

In such statutory safeguards as may be made for meeting the needs of the transitional period it will be the primary concern of His Majesty's Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new constitution to full responsibility for her own Government.

His Majesty's Government has taken note of the fact that the deliberations of the

Conference have proceed on the basis accepted by all parties that the Central Government should be a Federation of all-India, embracing both Indian States and British India in a bicameral legislature. The precise form and structure of the new Federal Government must be determined after further discussion with the Princes and representatives of British India.

The range of subjects to be committed to it will also require further discussion because a Federal Government will have authority only in such matters concerning the states as will be ceded by their rulers in agreement made by them on entering into the Federation.

The connection of the States with the Federation will remain subject to the basic principle that, with regard to all matters not ceded by them to the Federation their relations will be with the Crown, acting through the agency of the Viceroy.

**PRINCIPLE OF RESPONSIBILITY RECOGNISED**

With a legislature constituted on the Federal basis His Majesty's Government will be prepared to recognise the principle of responsibility of the Executive to Legislature. Under the existing conditions, the subjects of Defence and External Affairs will be reserved to the Governor-General and arrangements will be made to place in his hands the powers necessary for the administration of those subjects. Moreover, as the Governor-General must, as a last resort, be able, in an emergency to maintain the tranquility of the state and must similarly be responsible for the observance of the constitutional rights of minorities he must be granted the necessary power for those purposes.

**FINANCIAL RESPONSIBILITY**

As regards Finance, the transfer of financial responsibility must necessarily be subject to such conditions as will ensure the fulfilment of the obligations incurred under the authority

of Secretary of the State and the maintenance unimpaired, of the financial stability and credit of India. The report of the Federal Structure Committee indicates some ways of dealing with this subject including a Reserve Bank, the service of loans and exchange policy which, in the view of His Majesty's Government, will have to be provided for somehow in the new constitution. It is of vital interest to all parties in India to accept these provisions to maintain financial confidence.

Subject to these provisions the Indian Government would have full financial responsibility for methods of raising revenue and for the control of expenditure on non-reserved services. This will mean that, under the existing conditions, the Central Legislature and Executive will have some features of dualism which will have to be fitted into the constitutional structure.

The provision of reserved powers is necessary in the circumstances and some such

reservation has indeed been incidental to the development of most free constitution but every care must be taken to prevent conditions arising which will necessitate their use. (Hear, hear). It is for instance, undesirable that Ministers should trust to special powers of the Governor-General as a means of avoiding responsibilities which are properly their own thus defeating the development of Responsible Government by bringing into use powers meant to lie in reserve and in the background. Let there be no mistake about that.

#### THE PROVINCIAL AUTONOMY

The Governor's Provinces will be constituted on the basis of full responsibility. Their Ministers will be taken from the Legislature and will be jointly responsible to it. The range of Provincial subjects will be so defined as to give them the greatest possible measure of Self-Government. The authority of the Federal Government will be limited to the

provisions required to secure its administration of the federal subjects and to discharge its responsibility for subjects defined in the constitution as of all-India concern. There will be reserved to the Governor only that minimum of special powers which is required in order to secure, in exceptional circumstances the reservation of tranquility and the guarantee of the maintenance of rights provided by the statute for the public services and the minorities.

#### ENLARGEMENT OF FRANCHISE

Finally, His Majesty's Government considers that the institution in the Provinces of Responsible Government requires that both the legislatures should be enlarged and that they should be based on a more liberal franchise. In framing the constitution, His Majesty's Government considers that it will be its duty to insert provisions guaranteeing to the various minorities, in addition to political representation, that the differences



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of religion, race, sect or caste shall not in themselves constitute civic disabilities.

#### FURTHER WORK

The various Sub-Committees, which have been studying the more important principles of a constitution which would meet Indian conditions, have surveyed a considerable part of the structure in detail and the still unsettled points have advanced a good way to an agreement. His Majesty's Government, however, in view of the character of the Conference and of the limited time at its disposal in London, has deemed it advisable to suspend its work at this point, so that Indian opinion may be consulted upon the work done and expedients considered for over-coming the difficulties which have been raised. His Majesty's Government will consider without delay a plan by which our co-operation may be continued so that the results of our completed work may be seen in a new Indian Constitution."

After the Premier's Statement, the Round Table Conference was adjourned *sine die*. The work of the Conference is proposed to be continued by further negotiations, discussions and investigations in India, before the reformed Indian Constitution is finally placed before Parliament for its acceptance.

