

**INDIAN STATES
AND THE
FEDERATION**

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Address delivered by
COLONEL SIR KAILAS HAKSAR, C. I. E.
To the European Progressive Group, Bombay
on 11th February, 1937

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D. B. TARAPOREVALA SONS & CO.
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Ladies and Gentlemen,

POONA 4.*

It is not as a matter of formality that I say I regard it as an honour to have been asked to address you. I feel it an honour because this evening's engagement was proposed many months ago. It should have come off long before now and, as it did not come off, it still remained a wish of the organisers of your group that it should. Apparently, you all thought that I might have something to say which would be worth hearing and to have been judged even on that basis I feel undoubtedly to be a compliment. Whether the fact of my tardy appearance before you is going to fulfil your expectations is quite another matter. If you do not go to your respective homes this evening grievously disappointed, I shall at least escape the charge of being an impostor. From my personal point of view, the delay which has occurred in the

performance of my promise is all to the good. To-day, I am freer to speak than I was three months ago.

It is all the greater satisfaction to me to lay before you this evening my views because *I am convinced that Federation will come into being sooner than many people think* and, so, if not I, others who think with me and have borne the heat and the burden of discussing a controversial issue for the last seven years, would be cooperating in the Federal Legislature with some of you or with those who think like you—so that the meeting this evening lays the foundation of an understanding and of a bond of union which I trust will grow up and become firmer with the passage of time after the Federation begins to function.

The subject upon which I agreed to address you is "*The Indian States and Federation*". It is a subject which lies very near

my heart—not because all my service has been in a State, not because I have had the honour since 1916 of being often placed in the position to serve a large number of the States, not because I was a delegate to the Round Table Conference in the early stage of the evolution of the Federal constitution, but because *I feel that in Federation not only the States will have the opportunity which they never had before, but also because in Federation, India as a whole will have the best chance of unity, development and progress that it has ever had throughout its chequered and variegated history.*

Now to plunge into the subject, before I tell you my opinion of what the States are to expect in Federation and what Federation, in the aggregate, may expect from them, in other words, before I venture to give you my personal forecast of the future, it seems to me necessary to attempt some analysis of

a complex problem and of a striking, if not perplexing, phenomenon.

In all conscience the problem of federation in India is extremely complex by the mere fact of the diversity of conditions operating in this country as the result of its history during the last 133 years and by the multitude of interests which the constitution had to make provision for and to safeguard. The phenomenon which has been witnessed, more particularly since September 1935, is perplexing—almost baffling by the fact that the ordinary reader of the newspapers cannot understand the marked contrast between what may be called the avidity of the representatives of the Princes at the first Round Table Conference to enter into Federation and the diffidence and hesitancy of the States to-day to fulfil the promise of six years ago.

The Government of India Act, 1935,

having been placed on the Statute Book, people's minds have naturally been riveted on the examination of its sections. According as those sections have been interpreted, either by British India or by the States, either by particular schools of thought in the former or by different schools of thought in the latter, people have formed their own estimate of the merits and the demerits of the Act. One side has said it entirely favours the other. The other side has felt and, perhaps, said that it is going to be handed over to the tender mercies of the first. Both sides have said and continue to say that the Act is altogether very unsatisfactory.

With the background of the ready response of the States in 1930 to the Federal idea, and of the discussions at all stages of the Round Table Conference where the representatives of the States clinched many important issues, people have wondered at

the frequency of the meetings of experienced Ministers of States, held in this city and in the Imperial city to discuss various details whether arising out of the draft Instrument of Accession or out of the financial as well as other provisions of the Act.

All this, I think, will become intelligible to you if I take a retrospect of the last three quarters of a century.

Since the Butler Committee reported and even more since the Ministers' meetings have been held in your city, you gentlemen have heard a great deal about Paramountcy—a subject my treatment of which I propose to confine to this bare allusion to it by name.

I refer to Paramountcy because in explaining the attitude of the generality of the States to-day, it is material to my purpose to draw your attention to the relation between Paramountcy as affecting the

economic life of the States and, therefore, the financial structure of India as a whole.

It may interest you to know that before Paramountcy which had been a fact long before it became the current coin of political parlance, came to be employed as an argument in discussion with the States of various problems—more economic than political—which affected them, the Foreign and Political Department of the Government of India always held a brief on behalf of the States and it proved, I speak from knowledge, a wonderful champion of their rights. It made it its business to protect not merely their Treaty rights but even their economic rights not specifically recited in their Treaties, and it always succeeded in extending to them such protection. Whatever the constitutional position was, from 1860 for many long years after, it was the Viceroy—on the advice of the Foreign and Political

Department—who took decisions in matters affecting the rights and interests of the States. At all events, in all official communications the Government's decisions, communicated to the States, came in the name of His Excellency the Viceroy and not in the name of the Governor-General in Council. The Foreign and Political Department, in those days, regarded itself as the custodian of all the rights of the States—whether they were legal rights or moral rights, and it fought for the preservation and protection of those rights. In fighting for those rights, it not only paid meticulous regard to the letter of the Treaties with the States, but also to the implications of those Treaties. That Department, I am free to own, acted the part of a sage counsel, and it certainly acted the part of a very successful advocate. It may be that this was due to the fact that the Rulers of

States had, until 1916, been kept in isolation. They were not free to meet each other for purposes of discussing their common problems and, therefore, the Foreign and Political Department of the Government of India regarded it as its sacred duty, while such isolation lasted, to see that their rights did not go by default. And it might be said that when the Rulers of States and their Ministers began to speak to their own briefs, it was no longer necessary for anyone else to argue on their behalf. But such an observation would depart from the course of events.

The year 1916 in which Lord Hardinge called the first Chiefs' Conference, though it may have been a landmark in the history of the States in their relations with the British Government, was not really a turning point in the road to India's progress where it came to the parting of ways.

It was not a mile-stone on that road at all.

Since the pacification of the country after the upheaval of 1857, the economic development of India, more particularly of British India, had gone on steadily. And this development being the paramount consideration, nothing could be allowed to stand in its way. All interests that were in the way of fiscal measures favoured or adopted, had to be subordinated to the success of those measures, all barriers that stood between those measures and their attainment had to be got out of the way, all policies dictated by ethical considerations had to be adjusted to secure the end in view, viz., the development of the country or at any rate the larger part of the country or that part of the country with which the British Government was more directly and immediately concerned.

In my belief, it was this economic development of India which made the Foreign and Political Department give up un-willingly and under the pressure of circumstances, the brief it had held since its formation. Long before 1916, the point had been reached where the Foreign Political Department had to submit to being overruled by sister Departments and had to endorse and identify itself with the policies of those Departments, e. g. the Railway Board, the Commerce Department, and the Finance Department.

The results of such submergence were in marked contrast with those invariably achieved in the antecedent period of the successful advocacy of the rights of the States by the Foreign and Political Department. The failure or the inability of that Department to secure to the States what appeared to them to be patently legitimate

protection, caused the States great wonder. It mystified them. They asked how it was that their ally, the Foreign and Political Department, could no longer stand by them, could no longer withstand the invasion of their rights by its sister Departments? There was only one reply possible and it had to be based upon the constitutional position.—“The Government of India are not a compartmental organisation. They are an organic whole.”

Accordingly, the assembling by Lord Hardinge of the first Chiefs' Conference in 1916 was not a point of departure from the consistent policy of the protection of the States. But I think it may be said that the Act of 1919 which introduced Dyarchy in the Provinces and gave to the constitution of the Legislative Assembly a more representative complexion and greater powers to influence the decisions of the executive

Government, did so operate as to compel the Foreign and Political Department to fall back upon Paramountcy in defence of many policies adopted by the Government of India under the pressure of economic considerations which were passed upon it by the Legislature created by that Act.

Thus, by the time the representatives of the States went to the first Round Table Conference in 1930, they had seen the results of the operation of an enactment which undeniably embodied the response of His Majesty's Government to the demand of the people of British India for a larger measure of self-government. It will be conceded that the Act of 1919 was not framed with any eye to the protection of the interests of the States which its operation might affect. It may be that when that draft Act became law, it was not realised that it could be worked or would be worked

to the detriment of the States for, when it was being framed, the States were not in the picture. Attention was naturally concentrated upon the measure of responsibility which could be conceded to the representatives of the people and upon items which it was felt must be reserved to ensure the safety of the structure of the Government.

To appreciate the point I am making, I do not think that you would have to do much ransacking of the measures enacted in the Central or Provincial Legislatures to discover how, I believe unconsciously, the policies adopted by the Central Legislature in regard to matters vital to the States, or by Provincial Ministers in matters not so vital, affected the States. They were adversely affected both in matters of life and death to them and even in small matters having to do with the problems of daily administration. I shall give one instance and

I am deliberately choosing a very insignificant one of the operation of Dyarchy. It has bred such a narrow parochialism that to-day the subjects of the States cannot even obtain admission to colleges, especially to technical institutions, in the various Provinces. I am not concerned with the justification of the policy adopted. The justification may be complete from the economic, the administrative, and possibly even the ethical point of view. I am rather concerned with drawing attention to the effects of the Act of 1919 in order to suggest to you an explanation alike of the attitude of the States towards Federation in 1930 at the first Round Table Conference and to-day when the Act of 1935 has already been on the Statute Book for eighteen months.

It does not strike me as at all strange that the States are nervous. Their experience of the

last eighteen years tends to make them nervous, and the fact that in some Federations at least the verdicts of the Federal Court have extinguished rights believed to have been safeguarded by the provisions of the Act is not exactly reassuring. But apart from that there are other matters to which I shall presently refer which have given anxious thought to the States. You, gentlemen, must know much about those matters because your city has been the venue of many discussions held by the Ministers of the States.

True, such hesitation is in some, possibly a large, measure, due to vague apprehensions. It is also due to the inability of the authorities to give positive assurances as to the future in respect of specific issues. The hesitation of the authorities is due less to their want of knowledge of the intentions of definite provisions of the Act than to their inability to anticipate the interpretations of

those provisions by the Federal Court. Also, there is some justification, at any rate at the present stage, for the hesitancy or timidity of the States in taking a plunge to bring the Federation into being. In effect they are asked to place their trust in the protecting arm of the Governor-General upon whom has been laid a special responsibility to protect them. Those of you who are familiar with the Government of India Act of 1935, would recall the provisions of Section 12. Apart from the fact that so far as the States are concerned, that Section leaves to the Governor-General the widest possible discretion, the States imagine—rightly or wrongly—that when Federation is functioning, the pressure exerted on the Governor-General by so many convergent forces would be so great and the merits, in the abstract, of policies favoured by the country at large would be so compelling

that with the best will in the world, he might find it impossible to protect "the rights of any Indian State" which is how Clause (g) of sub-Section (1) of that Section is worded.

But it is not merely the inadequacy of the so-called protecting provisions of the Act which appears to be worrying the States. There are other considerations.

The Chapter on Finance, more particularly specific Sections in that Chapter, read with the Federal Legislative List, place obligations upon the States the incidence of which, it has been admitted, cannot be definitely estimated. I am referring to Sections 137, 138, 139 and 140. The first of these Sections, while dealing with sources of revenue the yield of which is distributable amongst the Provinces and the States, provides for a surcharge which may be levied for Federal purposes. The

provisions of Section 138 also lay upon the States the obligation to pay surcharge on Income-Tax. By Section 139 the States become responsible, after ten years have elapsed from the establishment of the Federation, to pay to the Federation the proceeds of the Corporation Tax or an equivalent. Section 140 deals with Salt duties, Excise duties, and Export duties, and it lays down that if an Act of the Federal Legislature so provides, the net proceeds may be distributed amongst the Provinces and the States in accordance with such principles of distribution as may be formulated by the Act which imposes those duties.

As far as I am aware, nobody has yet been able to say what the incidence of the surcharge under Section 137 is likely to be, nor, so far as the States are concerned, how the recoverable amount of surcharge under

Section 138 is going to be calculated; while the prospects of the distribution of Excise duties are, by the States, regarded as remote.

You, gentlemen, who are probably connected with one business enterprise or another and are, therefore, presumably financial experts, have doubtless mastered Sir Otto Niemeyer's Report. At all events, you must be familiar with his forecast of the immediate future of Railway earnings in India. Having regard to that forecast and to the other provisions of that Report, I am sure you do not feel that the prospects of the distribution of duties under Section 140 or of escaping the payment of surcharges under Section 137 are particularly bright. But whether you think so or not, I think you are more interested in understanding the attitude of the States and in knowing what determines that attitude. To that end

I propose to do something which may be quite superfluous and that is to give you certain figures which have been roughly worked out in connection with the contributions to Central revenues which the States are making to-day. These are as follows:

- | | | |
|---|------|------------------|
| (1) Through Customs duties
(excluding Kathiawad) | | |
| | | Rs. 11.65 Crores |
| (2) Through Salt
(after paying 46 lacs as
compensation to the
States with whom
agreements for the
payment of compensa-
tion were entered in-
to in 1879) | 1.62 | „ |
| (3) Through Currency
and Mint | .88 | „ |
| (4) Through Services rend- | | |

ered, i. e., the maintenance by the Indian States of nearly 59,000 troops calculating their cost at the standard of expenditure of the Indian Army Rs. 9.6 Crores

- (5) Income-tax paid through holdings of Government loans and shares in Joint Stock Companies held by subjects of States (very roughly worked out) 1.4 „
- (6) Cash contributions by the States — originally .75 crores, since reduced, I believe to .63 „
- Rs. 25.78 Crores.

Thus, if these figures are not unduly inflated by virtue, in the case of some of

them, of having been worked out on the population basis, the States are already contributing something in the vicinity of 26 crores as against the cost of the Federal Centre assumed by the Joint Parliamentary Committee, in paragraph 243 of its Report, to be somewhere about 78 crores. It must be remembered that the States, taken together, contain only 22.7% of the population of India and, in the figures I have given you, I have not included the contribution of the States in the shape of ceded territories for the maintenance of troops for their protection, troops since incorporated in the Indian Army.

There has been much discussion, as you are aware, regarding the ethical justification of laying upon the States the responsibility for pre-Federation Debt Service and pre-Federation Pensionary charges. I mention this point only to pass it by because I attach

full weight to the retention by the future Federation of 50% of the yield of Income Tax paid by British India. What may, in my opinion, be regarded as more legitimate points for the consideration of the States in the realm of finance, are those arising from the burden laid upon the future Federation by the constitution of new Provinces, by the separation of Burma, by the assignment of 62½% of Jute export duty to the Provinces concerned, in addition to the re-payment of 50% of the Income Tax, and not the least by the added cost of the Federal structure itself.

It is, therefore, a matter for careful consideration whether already the States are not contributing sufficiently to the resources of the future Federation and whether even after the remissions under Section 147 have been made in twenty years after the establishment of Federation,

the liability upon them to contribute further than they are doing at present, will be in proportion to the similar liability laid upon British India! I submit this point for your impartial judgment because I have seen it argued by some 'experts' (save the mark) that the Act favours the States at the expense of British India!

I trust I will not be thought to express any opinion upon the merits of the case or to pronounce any judgment upon the principles of the distribution of burdens or upon the likely effect of the application of those principles. My purpose rather is to explain the hesitant attitude of the States which many think to be inexplicably strange and are, therefore, disposed to be harsh in their judgment.

He who taking all the facts upon which I have touched, into consideration, would speak a word of hope to the States

and by discussing, on the one hand, figures believed to be approximately correct and, on the other, provisions of the Act which have presented difficulties to the States, would give them a disposition in favour of bringing Federation into being at the earliest possible date, would, in my opinion, render a great public service. I, for my part, adhere to my belief that, however things may turn out, the States would be better off in Federation than they have been during the period (from 1860 onwards up to now) of the evolution of economic and fiscal policies conceived for the development of British India.

You are all aware how sensitive the States are, on the subject of their sovereignty which has been upheld by judicial decision. However limited that sovereignty be as the result of historical rivalry or political practice, the Austinian school of jurists and

all authorities on Constitutional Law regard the measure of sovereignty still enjoyed by the States and their Rulers as a real sovereignty. The admission that the Rulers of the States can only accede to the Federation by an act of their own volition, i. e., by voluntarily signing an Instrument, also makes it clear that the Act of 1935, in recognition of the consensus of authoritative opinion, sets out to bring Federation into being by suggesting to the States that they delegate the necessary measure of their sovereignty to the future Federation. It is again in recognition of their sovereignty that sub-Section (2) of Section (6) of the Act of 1935 leaves it to the States to specify the matters with respect to which the Federal Legislature may make laws for them and the limitations to which the power of the Federal Legislature to make laws and the exercise of the executive

authority of the Federation in the States would be respectively subject.

Now, it must be appreciated that irrespective of the question of sovereignty, the States, for purposes of internal administration, have been autonomous—the larger States completely so, the others, perhaps, in a comparatively lesser measure. The question, therefore, arises, that they are bound to take into consideration the fact to what extent this internal autonomy would be affected, by their entry into Federation? I am not aware of any instance in which a State's Ruler or Minister is not prepared to federate in respect of most of the subjects in the Legislative List (being List I of the 7th Schedule) for purposes of policy and legislation. The rub comes where the fact of federalisation, despite the liberty conceded in sub-Section (2) of Section (6) and the provisions of Sections 124 and 125, tends

to affect internal administration. My personal view is that if in judging whether a particular State's Instrument of Accession is worthy of acceptance or fit to be rejected, regard is had to the existing administrative machinery of that State in all Departments concerned and that regard is made the guide of acceptance or rejection, the problem of entry would be considerably simplified. I do not see why the agreements permitted by Section 125 should not be freely made. I say this on the basis that all those who, as I do, visualise the future of this country under Federation, would consider it a desideratum to create conditions which will facilitate the entry of the States without which Federation cannot be formed and, indeed, would offer them all fair inducement and encouragement to enter.

As it is, the States cannot but treat

with some concern the question of the administration of Federal subjects and, therefore, regard the prospects for their future autonomy and, indeed, their sovereignty with some misgiving.

My own view is that except for purposes of certain taxes which the States cannot be expected to impose and are not likely to impose, they should federate in respect of practically the whole range of subjects mentioned in the Legislative List. This does not of course exclude the possibility of reservations, in individual cases, of particular matters where there are surviving vestiges of the symbols of sovereignty or where a position has grown up any alteration in which will not only involve the particular State in serious financial loss, but would possibly upset its budgetary position and, therefore, its whole financial structure.

But apart from the financial and administrative issues upon which I have so far touched, there is another consideration of weight and importance which cannot be entirely overlooked. It is that while it is true that the Federation is going to comprise the autonomous Provinces of British India, on the one hand, and the sovereign States, on the other, and while it is equally true that, for gaining the essential ends of Federation, there must be a parity of conditions, even in financial and administrative matters, between the States and the Provinces, yet it is not to be expected that the States would be willing and it should not be expected that they would agree to the elimination of every difference, even for purposes of Federation between themselves which are sovereign bodies to-day and between the Provinces which, for purposes of Federation, are

going to be, by an Act of the Crown, elevated to the position of sovereign States as a matter merely of constitutional parlance.

I have hoped and hoped during the last eighteen months that the issue of Federation, more particularly the question of the entry of the States, would have been dealt with by those who recognise the importance of the new form of Government, in such a manner as to re-assure the minds of the States on the important points of the future of their purses and of the integrity of their administrations. In this hope, I have been completely disappointed. I have read much acrid criticism of the provisions of the Act alleged to give everything to the States. I have read much trenchant—almost mordacious—criticism of the utterly selfish attitude of the States. I have also read patriotic advice as I have

read things which amount to patriarchal persuasion. But I am sorry to say I have not read anything which could be described as getting down to brass tacks and demonstrating that any apprehensions on the two important scores were groundless or were justified only to a very limited extent or that they arose out of contingencies which had to be admitted but were far from probable.

For my part, I have not the grasp of the minutiae of the Act, nor the gift of persuasive argument to have attempted that task myself. I have made efforts—both behind the scenes and openly—but as those efforts did not come up to my own conception of what is required, I doubt if they have attained any measure of success. It is no use my proclaiming that Federation is for the ultimate good of the States. It is no use my arguing that human beings

cannot legislate for eternity. It is no use my suggesting the reasons on the basis of which I consider that there is no immediate danger to the States. All this would be futile partly for the reason that it is my misfortune to have backed Federation from the moment of the inception of the idea and partly that in the peculiar position to which I went back in April 1932, after sitting in the Federal Finance Committee, I was quite unable to maintain the stream of persistent advocacy which was required. Indeed, since that time I have been very much out of touch with things. *But my faith in Federation remains, and I have many bases for that faith.*

The States, like properly constructed irrigation dams, will stand by their own gravity; they will impound and retain the waters which will feed their territories and they will certainly throw out channels and

distributaries in directions which until now were left without any fertilisers.

I am prepared to say more, but that of course is a matter of personal faith — that, with the alignment of groups in the Federal Legislature and with the provisions of the Act, such as they are, calculated to protect the legitimate rights of the States, they will not fare badly and that if, as a body, the States do not gain, they will not lose financially, at all events for all time and that the security of their interests will ultimately depend upon the choice of persons to represent them in the Federal Legislature and upon the ability of those representatives to secure the support of their fellow legislators in the preservation of the legitimate rights of the States and in bringing to them all the advantages of federal policies, in common with the rest of the country, advantages which up to now

it has been impossible for them to share, at least on the constitutional position.

It is my belief, too, that the States will derive from your community every support in obtaining equitable treatment under Federation. It has been commented that the Act favours your community in the matter of representation. I do not think it worth while to examine that point. It is more material for my purpose to take facts into consideration. Before I recite those facts, I must make a point of saying that, in my opinion, the States, for purposes of carrying on their daily administration, would be as much affected by the position in the Provincial Legislatures as by the composition of the Central Legislature.

In the Provincial Legislatures a total of 35 seats has been reserved for you and you are entitled to your share of the 56 seats reserved for Commerce and Industry. My

estimate, therefore, is that in the new Provincial Legislatures there will be from 60 to 70 of you. The States may, therefore, legitimately hope that all over the country, vis-a-vis them, you will act the part of mediators or honest brokers. More particularly when I consider the representation given in the Federal Assembly to the Europeans, Anglo-Indians, Indian Christians, and representatives of Commerce and Industry, as also in the Council of State, I feel fortified in my conviction that apart from the support which the States may derive from those who occupy general seats in the Council of State or the seats allotted to the land-holders in Federal Assembly, they would have the championship of your community for the purpose of all to which their history during the last 150 years entitles them and of all that is good for the economic welfare of India as a whole, on

the principle that if a fourth of India suffers, the whole of India suffers.

Let me, therefore, take this opportunity of appealing to your community at large which is by ancient tradition prone to incline towards conservatism, always to remember that the States have been called upon to act as a stabilising influence in the counsels of Federation and, on that basis, to see that they do not get swamped indeed, to do all that can be done to preserve their rights and their polities so as to keep them in heart and thus to get, in Federation, the most use out of them.

I am much obliged to you for the patience with which you have listened to me and would gladly answer, to the best of my ability and knowledge, and quite frankly, any questions that anyone in the audience may wish to ask me.

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