

# CONFEDERATION OF STATES

OR

## FEDERATION WITHIN FEDERATION.



BY

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

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

**VAKIL, HIGH COURT, GWALIOR**

&

**JOINT SECRETARY, GWALIOR CHAMBER OF COMMERCE**

*Price* **4s. 8.**

## CONFEDERATION OF INDIAN STATES

OR

Federation within Federation.

---

**HIS HIGHNESS THE MAHARAJA OF PATIALA** has sounded a note of discord. Having previously given his unstinted support to the ideal of All-India Federation, he has now resiled from his position and has "come to entertain a firm conviction that this new found faith in a new fangled federalism is at best an empty dream and the delusion pregnant with the greatest dangers to the very existence of the States." He says "a Federation is a radical innovation ; it subverts the very basis of well tried and time honoured political institutions of the States ; it attempts to destroy their individuality and political culture. It is a revolution as far reaching as the absorption of States in British India "

Only a few months before he is reported to have said in the Round Table Conference:

" I believe and I am happy to think that my belief has been shared by many, that the readiest and quickest method of achieving this enhanced status and dignity, lies along the road of Federation. For Federation I am prepared to work, knowing that only through Federation can the Indian States

join with British India in the formation of greater India which we all desire."

It is interesting to find out his reasons for this radical change in his angle of vision. It is neither fair nor enough to criticise his conduct as one becoming a most fickle tempered man rather than a politician or statesman. We should analyse and consider carefully his grounds for changing his opinion so soon before we are entitled to pronounce any opinion about his attitude or his new scheme.

It appears from the Press note that he has released for publication that he finds the following defects or shortcomings in the scheme of Federation as outlined by the Sankey Committee and thus he finds himself unable to support the scheme and on a further consideration thinks that the scheme will prove disastrous to the Indian States. Those defects are :—

(1) One of the most important problems affecting Indian States relates to the so-called power of Paramountcy claimed for and on behalf of the Crown and in so far as these powers of Paramountcy are totally excluded from the purview of the Federal scheme, the proposal of the Federal Structure Committee cannot afford the slightest satisfaction to the States. In his opinion the States will continue to be

controlled and ruled by the agents of the Crown as they are to-day.

(2) Another danger inherent in the proposed Federal scheme is the certainty of the gradual disappearance of a vast number of smaller States and principalities because it would be extremely difficult for them to devise suitable Federal machinery

(3) The proposals of the Federal Structure Committee make no attempt to safeguard Indian States against obvious dangers which are bound to arise from a strong Federal Executive. In his opinion in the scheme as it stands, there cannot be an adequate representation of the States either in the Federal Legislature or the Federal Executive. The proposed Supreme Court also, according to him, does not afford adequate protection to the States against the inroads of a Federal Executive because it is not possible to secure a judiciary sufficiently strong and independent to maintain an equilibrium in a seething mass of conflicting powers and interests.

(4) There are serious conflicts of interests and powers inherent in a Federal system between component units and central body and no device has been suggested by the Federal Structure Committee to minimise the chances of such conflicts of interest and powers. There is always a tendency in a Federal constitu-

tion for a gradual extension of Federal authority.

His Highness the Maharaja of Patiala has not contented himself by merely pointing out the defects of the Federation as outlined by the Sankey Committee but has also offered a tentative scheme. His scheme is that British India and Indian India should form distinct and separate unions amongst themselves. British India should federate with the Federal Legislature while there should be an "Union of Indian States alone in direct relationship with the Crown." A nucleus of such union already exists in shape of the Chamber of Princes whose functions and constitution, according to him, should be considerably enlarged. The enlarged Standing Committee with a few selected advisers will confer with the permanent Standing Committee of both Houses of the Federal Legislature of British India specially constituted for the purpose and settle all questions of common interest and policy. In case of any dispute or disagreement all justiciable issues will be referred to the Judicial Committee of the Privy Council of England and all non justiciable issues to a permanent court of arbitration comprising representatives of the parties and presided over by a representative of the Crown.

In my humble opinion the proposed new scheme besides having the disadvantage

of dividing the two Indias into two watertight compartments, is unworkable and will be no improvement, as far as the States are concerned, on the present form of Government. I would like to know what will be the function of this new "union of States". Will it be an executive governing body or purely an advisory body as is the present Chamber of Princes; and how can the various component States owe allegiance to it? The union will have no effective hand in shaping the all-India policy which will still be determined and shaped by the British Indian Federation. The Standing Committee can only confer, but cannot decide, the matter of policy which must be discussed, decided, and settled in an open session of the Legislature. If it be intended that the representatives of the Union should have seats in the Federal Legislature and be free to take part and vote in the discussions and have a hand in deciding matters, then the new scheme is not different from the proposed federal scheme and only suggests a new form of electorates. The new proposal, in practice, amounts to this; that instead of separate representation or representation by groups of the States in the federal constitution, there ought to be a joint electorate for the States for purposes of representation.

After all, there are many subjects of common interest between the States and British India. A list of those subjects has been provisionally formed.

The Indian States are also anxious and claim a right to be consulted in matters of common interest. I would like to know how the unions are likely to function in such a State of affairs. Will the two Unions deliberate separately after mutual consultation and arrive at conclusions separately and independently? There will be conflict of decisions every day and the constitution will be unworkable. If there is to be a mere ascertainment of the views and the Indian Federation is to decide the policy on matters of common interest there will be no improvement upon the present system of Government as far as the Indian States are concerned. Thus any constitution which contemplates the existence of two separate contemporaneous bodies deliberating and deciding subjects of common interest separately and independently must be ruled out of consideration. The Indian States must not have merely a right to advise but must constitutionally have a hand and a right in defining and shaping the policy on matters of common interest and this is only possible in a single federal constitution and not in two Federations working side by side. The scheme of Alwar, Dholpur, and Jhalawar suggests safeguards in the constitution in case of difference of opinion between Indian India and British India, that in certain cases of unanimity, the decision will not be binding on States, which deserves to be considered carefully.

The idea of two such Federations working in India has been discussed in para 22. of Simon Report. It is said there :—

“It might be possible to visualise the future of Federation in India as the bringing into relationship of two separate Federations, one composed of the elements which make up British India, the other of the Indian States.”

It would appear that the Simon Report thought of a third central Federation to bring into relationship the two Federations to make it workable while the Patiala Scheme contains no such proposal. It is significant that the Simon Report rejected the proposal because this “alternative methods would reduce progress to the pace of the slowest”. The proposal contains no improvement because an All-Indian Federation has to come into existence though by a double distillation process.

Before we analyse and discuss the objections of Patiala to the proposed Federal Scheme it is necessary to mention the idea and the policy underlying the proposal of a Federation for the whole of India. Though there are two political units—British India and the Indian India—India is still one, and both form part of the same great India. It is the unanimous opinion of all the leaders and great thinkers of both British and Indian India that the ultimate salvation of the country lies in



bringing the two Indias together while enabling both to retain their special features and traditions. The desire to develop closer association between the Indian States and British India is the motive force behind the idea of an eventual Federal Union. The Indian Princes have not been slow to recognize and give open expression to their views that they look forward to the day when a United India will be enjoying Dominion Status under the aegis of the King Emperor, and the Princes and States will be in the fullest enjoyment of what is their due. It is a fact worth being borne in mind that India, and not British India, is a member of League of Nations. If India then is one of the nations in world organization it must surely be India as a whole which will be involved in the ultimate constitutional scheme. A clearer vision is perhaps to be found in the historic announcement of Lord Irwin when he envisaged an India not divided into two water-tight compartments but as a single entity, the component elements of which call for a harmonising process. Thus any scheme which either widens or perpetuates a gulf between the two Indias would not meet with the requirement of the hour, and is not commendable and will not be in the interest of the people or country as a whole.

We should always keep this basic idea in our view while discussing any constitutional scheme for India.

Judged by this criterion, the new Patiala scheme falls much short of this ideal.

When we proceed to examine the objections of H. H. the Maharaja of Patiala to the proposed federal scheme we cannot help saying that His Highness deserves our best thanks and congratulations for bringing to light the inherent defects in the scheme. But the question is "Are the defects so fatal that the scheme should be wrecked and rejected or is it possible to remove those defects from the scheme and to make the scheme constitutionally sound and quite safe for all the units to join it?"

I shall discuss the various objections of Patiala in the above light.

(1). *The control of the Paramount Power.*

The first objection is that the powers of Paramountcy have been placed beyond the scope of Federation and will continue to be exercised as unreasonably and arbitrarily as they have hitherto been done. Nobody can deny the force of the objection and the pity is that the danger was not foreseen. The defect in the Scheme struck me and the scheme of the Federation from this point of view has been discussed by me in my book—"The Indian Federation and the States." A few suggestions have been made in the book on the subject which in my opinion are constitutionally necessary and deserve to be considered.

From the discussion of the subject in

the above mentioned book from the point of view of the constitutional law, it will appear that the Indian States possess a defined independent and sovereign status and the only constitutional and legal way by which they can join the Federation is by the execution of fresh treaties or by the revision of the old ones, without impairing in any way the sovereign and independent status which they possess at present. A perusal of the series of articles on "Indian Federation and the Sovereignty of the States" published recently in "Princely India" will also help to clarify the issue.

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

As far as the Indian States are concerned there can be no doubt that under the constitutions of the Government such as prevails in almost all Indian States at present both Legal and Political sovereignty resides in the Ruler of the respective States.

The question of sovereignty as far as the other side of the pact is concerned has been discussed at some length in this treatise. After a full discussion supported by authorities on the subject, the conclusion which has been arrived at is: "I believe it must have become clear from the discussion of the theory that the soverei-

gnty will and must reside in the future federal constitution of Free India as well and no pact will be valid, binding or lasting unless the future Federal India is a party to it.

“ Apart from the political theory no pact or contract can be of any lasting value unless the person or persons who have to see to the execution of the terms are party or parties to it.

“ It may be argued that States are forbidden by treaties to enter into any pact or deal with any foreign power and the rights relating to foreign matters have been relinquished in favour of the Paramount Power under the terms of the treaties or Sanadas. The reply to the contention is that the old treaties were effected between the respective States and the Paramount Power in British India and the new treaties will also be made with the same Power and the making of treaties does not involve the making of treaties with any third or foreign power.”

It will appear from the above point of view that constitutionally the All India Federation must also be a party to the treaties that are bound to come into existence at the time when states join the Federation. If the above view is correct and the States insist on joining the Federation by means of fresh pacts (the only legal and constitutional way) then the rights under the treaties will fall within

the purview of the constitution of Federation where the States will be fully represented.

Thus, in my opinion, if the States insist on exercising their constitutional and legal rights and join the Federation by a pact, the first objection loses much of its force and the scheme of the Federation offers a solution for the same.

Here, it will not be out of place to mention that the theory of direct relationship with the Crown for any unit of Indian Federation deserves to be constitutionally examined by experts and may be found to possess some constitutional defects which may affect the Indian States prejudicially.

After all, in practice, the Federation will only take the place of the present Government of India as far as the exercise of the Paramount Power by the Crown is concerned.

(2) *Elimination of Smaller States.*

The second danger pointed out by Patiala is also real one. There can be no doubt that the future of the Indian States will be materially influenced by the course of development in British India. With the coming into existence of an Indian Federation and the advent of democratic rule in India, the course of events are bound to have a reaction in the States, and the States for the sake of their own preservation will have to march with the times. The modern democratic administrative

machinery is very expensive and while the bigger States may be able to bear the weight, the smaller States, with poor revenues and resources, are likely to give way under the weight of additional expenses. The experience of past history also shows that smaller Principalities and States have suffered in the past under similar circumstances. The attention of the smaller States has been pointedly invited to this aspect in the discussion of my book, "The Indian Federation and the States."—under the chapter "Organisation among the States", and the readers are requested to go through it. The smaller States owe a debt of gratitude to H. H. The Maharaja of Patiala for having brought this danger to their notice in time.

The question naturally arises "what is the remedy?" The proposed Confederation of States as existing side by side with British India Federation, in my opinion, is no solution. Constitutionally the proposal may be found to be unworkable as pointed out above and may be rejected on the other ground of expediency as well.

Apart from this fact there is another glaring danger to all States against which the States have got to protect themselves. I may be excused, but being a State subject, I can say that State subjects have got a special reverence and love for the person of their King and the theory

of Divine rights of the Kings is differently understood in the States and in British India. With the closer association of the two Indias, the theory stands a chance of receiving a rude shock and all the well-wishers of the States must join and strain every nerve to preserve the feature.

The peculiar culture and traditions of the Indian States have got to be preserved. The special features of administrations prevailing in all Indian States (which does not include maladministration of autocratic personal rule) must be assured a lease of life under the new constitution. How to do it is the problem? The end cannot be assured or achieved by wrecking the Federation scheme. The solution of the problem lies in following the natural course and the Rulers of the States must join hands with their subjects in retaining the integrity of the States. No personal whims should stand in the way of ultimate realisation of the full destiny of the individual States.

My suggestion is that all Indian States should combine and have a "States Council"—not a an unwieldy body like the present Chamber of Princes to watch and protect (1) the internal administration or sovereignty of the States, and (2) the relations with the Paramount Power.

Both these subject are beyond the scope of the Indian Federation and the establishment or existence of the "States Council" will not rebel or be in any way inconsistent with or against the scheme of Indian

Federation. This Council will not in any way interfere with the internal administration or autonomy of a State but will only advise the particular States how in case of any need to preserve their sovereignty through the Council. The Council can exist side by side with the Federation and will not deal with any subjects committed to the care of the Federation. It shall only deal with subjects so to say of 'common private concern' to the States.

In this connection I would like to say something more. At the present time the State subjects have certain grievances against the States and the general complaint against the States is that there prevails an autocratic rule in the States and the subjects of the States have no voice in the administration. I am afraid there may be some foundation and truth in the complaint. The establishment of the suggested Council is calculated to go a great way to protecting the integrity of the States and will prove a great blessing. If the Princes go to the Round Table and press for such a Council with their present record, they might well receive a retort.

"You want to perpetuate a personal autocratic rule, and we can be no party to a scheme which perpetuates an undemocratic form of Government. It is a matter, which primarily concerns you and your subjects." But if the Princes all at once issue joint or separate proclamations, as suggested in the book. 'The Indian Fe-



deration and the States'—giving due rights to their subjects, they "can go and ask for the safeguard not in their personal interests but to preserve the integrity of their States which they love and value more than their own selves. The State subjects too will then join hands with their Rulers and press for the safeguard which they will say is necessary owing to the peculiar different conditions prevailing in two units of the Federation. The Princes are sure to win their points under the circumstances and their demands will be considered to have been made with altruistic motives in the best interests of the States.

The suggested Council will also act as a counter check to the tendency of the Federation to make inroads on the rights and powers of the units which is also complained of by the Patiala Ruler.

I was discussing the fate of smaller States in the Federation that it is apprehended that smaller States may disappear in course of time. It is also a fact that the representation of the numerous minor States in an Indian Federation will be very difficult and it will be hard to find a solution of the problem satisfactory to all the parties.

The danger to the smaller States lies in the direction of meeting the heavy extra expenses of a democratic form of Government. This is a hard fact which stares them in the face and the Rulers of the small States should face it with boldness

and courage and in a spirit of far-sighted statesmanship.

In this connection I will invite attention to the scheme of "Federation within Federation" outlined in my book—the Indian Federation and the States—and discussed under the chapter "Organisation among the States".

The scheme also furnishes a solution to meet the extra expenses of a democratic form of Government. The smaller states can join under the scheme to set up a common machinery of administration jointly and share the expenses between themselves. It should be clearly understood that the scheme in no way abrogates from the internal sovereignty of the States.

I will explain my meaning by example. Take the subjects of Law and Justice and Commerce. A group of States combine to set up a High Court or appoint some technical advisers. The High Court will follow the laws of the State, A, and work under the rules of that State while deciding cases from State A and follow the laws and rules of State B while deciding causes from that State and so on. It will thus appear that there is no loss of sovereignty or independence and the smaller States join to give a better form of Government to their people.

The groups of smaller States existing in different parts of the country can federate in this way and can thus have direct

representation and association with the Indian Federation through their federation. I commend this scheme to the Rulers and from my point of view it offers a better and satisfactory solution of the problem. If the smaller States combine, as suggested they can maintain their integrity and they will be in a much better position to withstand the apprehended shock from their touch with federation.

In my humble opinion the formation of smaller Federations within the Federation offers the greatest protection to the smaller States. It will not in any way stand in their joining the bigger Federation.

(3). *Danger from strong Federal Executive.*

This is the third objection of His Highness to the Scheme.

A federal constitution involves the establishment of a Federal Judiciary. The Federal Judiciary is charged with the duty of seeing that the Federal Legislature does not overstep its powers and securing that the units of the way of Federation do not seek to exercise the Legislative Powers which they have surrendered. In a Federal Constitution there is a division of sovereign powers between the centre and the units while each remains supreme in their sphere. Whenever any question arises whether if any party has exceeded the limits of the powers possessed by it and has encroached upon the rights of the mother, the Federal

Judiciary is called upon to adjudicate and decide the point and its decision is binding on the parties. The judicial tribunals are sometimes independent of the two governments existing in a federal constitution and may owe their allegiance to the Constitution alone as in the case of the United States. Many may not share the views of His Highness that it is not possible to have an independent judiciary in India. The existence of such judiciary has succeeded in other parts of the world to protect the rights of the two parties in a Federation and there is every reason to suppose that the scheme would work in India as well. I do not agree with His Highness on the point and am of opinion that Indians possess an independent judicial stamina and can hold their own among the best judges of the world.

*(4.) Tendency of increasing centralisation.*

The fourth objection of His Highness is that there is a tendency in a Federation to enlarge its sphere of authority. He also apprehends that there are always clashes between the interests of the centre and the units. The system of federal government exists in the world since a long time and has been working satisfactorily in different parts of the world since years and generations. No such constant clashes as apprehended by His Highness have been heard of in the working of those governments. If clashes such as exist in every form of government do and have

come about, they are capable of adjustment and solution and have been so solved and settled and no complaint is now heard about them. At least there have been no such clashes as to wreck the federal constitution.

The anxiety of His Highness to keep the integrity and independence status of Indian States intact is very laudable indeed. The object can very well be attained by providing some constitutional safeguards in the Federal Constitution of India. The necessary constitutional safeguards have been categorically mentioned and discussed in the book. "The Indian Federation and the States under the chapter 'Safeguards'. If the States join the Federation by means of a pact (the only legal and constitutional way) as an equal partner in their own right and secure a provision of the safeguards as mentioned in the above book in the constitution, there is no danger whatsoever of their losing their identity in the Indian Federation.

Thus from my point of view, the defects pointed out by His Highness are capable of being adjusted in the scheme of federation and by the bringing into existence of States Council as suggested above and by founding "Federations within Federation" for groups of smaller States, the scheme of Federation will work well in the interest of Indian States as a whole.

*To be had of:—*

**MESSRS. ALAKH PRAKASH & BROS.,**

*Merchants & Agents,*

Lashkar (GWALIOR.)

*Or*

**THE MANAGER,**

*Princely India Press, Delhi.*