

*Published under the auspices of the Indian States' Peoples'
Conference (Bombay.)*

MEMORANDUM
OF
THE INDIAN STATES' PEOPLE

**(With four Supplements, Correspondence
with the Butler Committee and
Appendices.)**



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APPENDIX A.

Provision for Joint Consultation.*

—:O:—

The following is the draft outline of the scheme put forward by Sir Leslie Scott for consideration by the meeting of Princes on April 19 last at Bombay :—

This outline is put forward for discussion, criticism, and comment, so that after the Bombay meeting, there may exist an agreed groundwork upon which future constructive proposals may be based. It will be found to explain the proposals tentatively sketched in paragraphs J to M of Document No. 1.

2. The Scheme has been framed with a view to satisfying the following requirements.

- (a) Effectively protecting the States in the enjoyment of the rights, political and economic, to which they are really entitled; thus facilitating their efforts to develop their resources and to advance the cause of good and beneficent government.
- (b) Providing for joint consultation with British India in matters of common concern, with a view to common action, under conditions of reciprocity, with British India, in the interests of India as a whole and of the Empire.
- (c) Providing for the exercise, under effective safeguards such as are specified in 5 (i) and (ii) below of certain ultimate powers of intervention in the event of gross misgovernment of flagrant injustices.

3. The Scheme contemplates the creation of three new bodies, the Viceroy in Indian States' Council, the Union Council (that is the Indian States' Council and the Governor General's Council sitting together to settle matters of common-concern) and the Union Supreme Court; it also contemplates the enlargement of the powers of the present Chamber of Princes; and an improvement of the organization and the functions of the Political Department.

THE INDIAN STATES' COUNCIL.

4. The Indian States' Council will consist of the Viceroy as President, three representatives of the States (either Princes or

* Published in the Times of India on 21 May 1923.

Ministers): two English Members with no previous connection with India: and the Head of the Political Department. It represents a natural development of the Princes' original idea of an advisory Council.

5. The functions of the Indian States' Council are set out in sub clauses (a) to (g) below, and the necessary safeguards, from the standpoint of the States, are enumerated under the appropriate subclause.

(a) Safeguarding the interests of the States, and generally transacting, subject to the internal autonomy of the States, the business which arises concerning the States' side of India.

(b) Representing the States' side of India on the Union Council which will be competent to take decisions, subject to the safeguards indicated below, in matter of common concern to the States and British India.

SAFEGUARDS :—

(1) The Viceroy and each Member of the Indian States' Council should subscribe to a solemn obligation to protect the interests of the States together with the constitutional rights, powers and dignities of the Princes and Chiefs. The Viceroy may in future take a separate Oath of Office laying this duty upon him, and in the Patent of Appointment of each Member of the Indian States' Council, this obligation should find a place.

AUTHORITY OF COUNCIL.

(ii) The authority of the Indian States' Council to commit the States to arrangements arrived at in the course of negotiations with the Governor-General-in-Council upon matters of common concern will not be unrestricted. The Standing Committee of the Chamber and the Indian States' Council will together work out general principles of policy which will be accepted by the Indian States' Council as a guide to the desires of the States in matters of common concern. Matters not covered by the general principles of policy so settled will require to be referred to the Chamber, whose ratification of any proposed arrangement will be necessary before the authority of the Indian States' Council on behalf of the States becomes effective. The Indian States Council and the Standing Committee should moreover remain in close touch, and joint meetings might be utilised for the purpose of dealing with questions of emergency arising between the sessions of the Chamber.

(iii) Each individual State should have an opportunity, where its interests are particularly affected, to urge before the Indian States' Council its desire on special grounds either.

- (a) to modify in its own case a general arrangement settled in Indian States' Council, or in Union Council, or
- (b) to stand out of this arrangement altogether. The Indian States' Council will come to a decision upon the merits of each case.

(IV) Each individual State will have the right to obtain from the Union Supreme Court a ruling that any particular exercise of powers by the Indian States' Council by the Union Council, or by any Representative of the Paramount Power, is unconstitutional and accordingly invalid.

(V) In order to provide the Indian States' Council with a moral authority corresponding to that which the Legislature may supply to the Governor-General in Council, the functions of the Chamber of Princes will be enlarged and its importance increased (see para 8 below).

- (c) Advising the Viceroy as to intervention by him in the event of gross misgovernment or flagrant injustice in any State, in which case the constitutional responsibility for intervention will continue to rest upon him personally and exclusively, but subject to the condition that he shall first have consulted with and been advised by the Indian States' Council.

SAFEGUARDS (in addition to the express condition embodied in para (c).

(i) Providing that before intervention takes place, the facts of the case, unless admitted, must be established by a process of investigation to which the Prince or the State concerned shall be a party, enjoying the normal presumption of innocence until the contrary is proved and entitled to know and to meet all the evidence against him or it.

(ii) Providing that before tendering such advice the Indian States' Council shall afford to the Prince or State concerned an opportunity of presenting before the Indian States' Council his or its views or proposals.

- (d) Directing and Controlling the Political Department. (See para 9 below).
- (e) Receiving references from the Chamber of Princes (See para 8 (iii) below) or from any individual State upon matters requiring consideration or action.
- (f) Referring any matters to the Chamber of Princes for consideration and advice; without limiting the above

general power, a particular illustration is afforded by subjects personal to the Rulers, such as Ceremonial, dignities and privileges.

(g) Referring to the Union Supreme Court such questions of fact or law, or both, as any State or the Chamber of Princes may require to be so referred: or such other matters as the Indian States' Council may consider fit subjects for such reference.

THE UNION COUNCIL.

6. As above stated, the Union Council will be composed of the Viceroy in Indian States' Council and the Governor-General in joint session, presided over by the Viceroy. The functions of the Union Council will be the consideration of and action upon subjects of common concern both to British India and States' India which will include.

(a) The Crown's obligations in regard to Defence and Foreign affairs.

(b) The promotion of the interests of India as a whole, including necessary adjustment of interests between British India and the Indian States where the interests of the two sides are not identical.

SAFEGUARDS.

(i) No power will be given to the Governor-General's Council to outvote the Indian States' Council.

(ii) If a proposal from British India goes beyond the mandate of the Indian States' Council (See 5 (b)(ii) above), it cannot be enforced against any State without that State's specific consent.

(iii) If a proposal discussed in the Union Council does not commend itself to the Indian States' Council, because of its anticipated consequences to the interests of the States, it will fail to receive the assent of the Union Council. Provision to meet such a case of deadlock requires careful consideration. A possible remedy might be found in giving the Viceroy powers of Certification corresponding to those which the Governor-General enjoys in British India.

(iv) See 5 B. (iv) above,

THE SUPREME COUNCIL.

7. The Union Supreme Court represents the logical development of the Princes' original idea of a Court of Arbitration. It will be staffed by a Chief Justice and two other Judges appointed for life on high salaries, selected from the best men in Great Britain.

Its functions will consist, generally, of providing an impartial tribunal to which constitutional and other justiciable matters in dispute can be referred, subject to appeal to Privy Council, and in particular deciding:

- (a) Disputes between the Indian States' Council or a State or States on the one hand, and the Paramount Power on the other as to respective rights and obligations under treaties, agreements, usage, sufferance or otherwise.
- (b) Justiciable disputes between States.
- (c) Whether any Statute of British India affecting a State or any legislative act of a State affecting British India is *ultra vires*, and therefore of no effect in regard to such State or British India, as the case may be.
- (d) Issues of law or fact underlying any political dispute.

SAFEGUARD:—

(i) Where the issue before the Union Supreme Court is in the judgment of the Court a matter of constitutional right no plea of "act of State" will be admissible.

(ii) The Union Supreme Court will have no jurisdiction over the person of a Ruling Prince.

(iii) The Union Supreme Court will have no power to intervene in the judicial machinery of any State. The Union Supreme Court will not be a British Indian Court but a Court created by the Paramount Power and the Princes jointly. It is possible that some States might like to utilise it as their own Court of Appeal conferring on it jurisdiction under rules of Court made by themselves to hear appeals from their own High Courts. Then so sitting, it might be entitled. The Union Supreme Court sitting as Court of Appeal for the State of—

CHAMBER OF PRINCES.

8. In order that the Chamber may not only perform all the functions originally proposed for it; but also further that it may be made an effective machinery for safeguarding the position and rights of the Princes its power and influence must be increased by:—

- (i) Giving it control over its Standing Orders and its Agenda.
- (ii) Giving it the right of raising any matter it likes, including with the consent of the State concerned, the affairs of an individual State.
- (iii) Giving it the right to refer any matter it likes to the Indian States' Council for consideration and action and the further

right to pass resolutions upon the action, taken by the Indian States Council.

(iv) Giving it its own Secretariat with its own paid Secretary who will be responsible to the Chamber for the conduct of the Chamber's business, and who will provide a permanent link between the Chamber and the Viceroy through the Secretary of the Indian States' Council.

(v) The Secretary of the Chamber, under the general supervision of the Chancellor and the Standing Committee, will be assisted by Special Committees of Ministers, appointed from time to time by the Standing Committee or the Chamber, either on their own initiative or on the suggestion of the Indian States' Council. These Committees will be summoned by the Secretary of the Chamber upon the direction of the Chancellor whenever necessary.

(vi) Providing in the Chamber's standing orders for Committee Procedure in the Chamber with the Chancellor in the Chair as when the House of Commons goes into Committee and the Speaker leaves the Chair.

(vii) Giving the Chamber some power of final ratification over principles of policy provisionally adopted by the Indian States' Council in matters of common concern, but not already worked out under the procedure suggested in 5 (b) (ii) above. It might also be prudent to apply some similar method of ratification, in matters affecting either the financial interests or the internal sovereignty of the States, even to actual arrangements provisionally agreed to by the Indian States' Council.

(viii) Providing seats in the Chamber for Members of the Indian States' Council who will have the right to be present at sittings of the Chamber (when not in Committee) but not to vote; and imposing upon them the duty (a) when called upon by the President of addressing the Chamber upon specified subjects; and (b) of answering questions addressed to them under Procedure to be laid down in the Standing Orders by any Member of the Chamber.

POLITICAL DEPARTMENT.

9. The Political Department will be under the control and direction of the Indian States Council. Its future activities will be somewhat modified by the following provisions:—

(i) A limitation will be imposed, by Royal Proclamation or other appropriate means, upon intervention in the affairs of the States (2) (c) above, and the Princes will be encouraged, as well as

authorised, to bring every transgression of this limit to the notice of the Indian States' Council or the Union Supreme Court according to the nature of the case, from whom the necessary redress can be obtained.

(ii) A new Manual of Instructions to Political Officers will be framed by the Indian States' Council in consultation with the Chamber of Princes, wherein the duties of the Political Officers will be defined. This Manual will not authorise interference with the domestic concerns of the States.

(iii) The existing records of the Political Department will be transferred to the Record Office of the Indian States' Council or its Officers, and will be available to the scrutiny of the Prince or State concerned, when a question arises affecting him or it.

APPENDIX B.

At the Conference of ruling princes held in Bombay on 20th April 1928 the Maharaja of Patiala moved the following resolution.

RESOLUTION.

"This meeting of rulers and representatives of States' Governments.

- (a) Appreciates the wisdom of His Majesty's Government and of the Government of India in providing for an enquiry into the relations of the Indian States with the paramount power and with British India.
- (b) Recognises that the readjustment of these relations so as to secure the political future of $\frac{1}{2}$ th of the human race calls for the highest statesmanship on the part of His Majesty's Government, on the part of the Government and people of British India and on the part of the Indian States.
- (c) Declares its resolve to devote to the moral and material progress of the subjects of the States, the advantages resulting from the equitable adjustment of fiscal and economic issues.
- (d) Affirms the intention of the Indian States to join with His Majesty's Government and with the Government and people of British India in working for a solution which shall secure protection for all interests and progress for all India.
- (e) Reaffirms the abiding determination of the rulers of Indian states as recorded in the last session of the Chamber of Princes, to ensure the rule of law in their states and to promote the welfare and good government of their subjects.
- (f) Emphasises the dependence of the progress and prosperity of British India and the states alike upon the creation of constitutional means for the adjustment of relations between them.
- (g) Reaffirms on the one hand the loyalty of the Indian States to the Crown and their attachment to the Empire and on the other hand, their sympathy with the aspirations of British India, which they regard as legitimate."

The resolution was seconded by His Highness the Maharajah of Kashmir and carried unanimously.

A vote of thanks to Sir Leslie Scott was also passed unanimously :—*Associated Press.*

APPENDIX C.

Indian States and Sir Leslie Scott.

—:—

The Right Honourable Sir Leslie Scott, P. C., K. C., M. P. has sent the following letter to the Editor of "The Law Quarterly Review" for publication and it has found a place of honour which has appeared in the July issue of the said Quarterly.

"The Editor has pleasure in publishing the following letter from the Right Honourable Sir Leslie Scott, P. C., K. C., M. P. :—

Sir,—You ask me on my return from India what opinions I have formed upon the legal and constitutional problems presented by the relationship between the Indian States on the one hand and the Crown and the Government of British India on the other. This is the first question referred by the Secretary of State to the Indian States Committee, of which Sir Harcourt Butler is Chairman; and as I am, in my capacity of counsel for the Standing Committee of the Chamber of Princes, to address the Committee in July upon that very subject, it is better that I should reserve my considered reply for your October number. But a note of some of the questions raised may be of use.

The political issues are of first-class importance to the future of India as a whole. Their wise solution will affect directly the successful accomplishment by Sir John Simon and his colleagues of the task imposed by Parliament upon the Statutory Commission for British India. From an Imperial standpoint a statesmanlike treatment of the Princes now, may well prove a vital factor in the future attitude of India towards the British Empire. Consequently the more that public attention is focussed on the position of the Indian States and the more the profession thinks out the legal aspects of it the better.

The relationship between the Crown and the Indian States is unique. There is nothing in the world to-day and there has been nothing in history at all like it. It does not fall within the ambit of international law, for the States are not independent nations and cannot make war and peace. They have entrusted the whole business of their foreign relations and defence to the Crown. As paramount Power the Crown of the United Kingdom has undertaken to protect them, from all dangers, external and internal—to preserve their frontiers, their constitutions and their rulers—and to keep

available all necessary naval and military forces. In some respects the Crown is the guardian; each State is its ward. To such a relationship international law has no application.

But equally it is outside municipal law. Although sovereignty has been divided as a result of the Princes giving their consent—evidenced by treaty or other form of agreement—to transfer to the Crown some of the functions of their sovereignty, each Prince remains the true sovereign of his State, in respect of all those functions of sovereignty, which he has not consented to transfer to the Crown. And his subjects are not British subjects. He is amenable to no Court outside his State. No legislation of the British Parliament or of the British-Indian Legislature binds him or his subjects; nor can British Indian taxation be imposed upon his State.

To what system of legal principles then are the relations of an Indian State to the Crown referable? There is no legal decision to serve as precedent, no complete analogy to guide. Resort must be had to first principles of law. We must think things out for ourselves. It is almost a virgin field for the lawyer.

However, certain broad propositions emerge pretty clearly:—

(1) The fundamental tie is consent, and its recognition by Britain is unequivocal. The British nation is irrevocably committed by the pronouncements of Kings and Viceroy, to the scrupulous observance of all its contractual undertakings to the Indian States—which occupy one-third of India and contain over seventy millions of people.

One quotation will suffice. King George in 1921 made this proclamation: 'In My former proclamation I repeated the assurance given on many occasions by My Royal predecessors and Myself of My determination ever to maintain unimpaired the privileges, rights and dignities of the Princes of India. The Princes may rest assured that this pledge remains, inviolate and inviolable.'

(2) Those contracts are between sovereigns—the Princes and the Crown—not the Company or the Government of British India.

(3) The relationship is wholly legal—a nexus of mutual rights and obligations. It is in no sense arbitrary. Those rights and obligations may not always be easy to define, but they are none the less real and ascertainable because they have not hitherto been scrutinized.

(4) If one were speaking of contracts between private individuals, one would say that the contracts between the Princes and the Crown were personal—incapable of being performed by anyone else,

The Princes in making them gave their confidence to the British Crown and Nation, and the Crown cannot assign the contracts to any third party. The British Government as Paramount Power has undertaken the defence of all the States, and therefore, to remain in India with whatever military and naval forces may be requisite to enable it to discharge that obligation. It cannot hand over those forces to any other Government—to a foreign Power such as France or Japan; to a Dominion Government such as Canada or Australia nor even to British India.

(5) How far the Crown can delegate to the Government of British India, as its agent, the discharge of its treaty obligations to the States is also matter for consideration. The Crown can normally choose its agents. But an agent cannot act where his interest may conflict with his duty. In all matters of common concern with the States—customs, railway, posts, the salt monopoly etc—there is always the possibility that the interests of British India may not be identical with the interests of a particular State. The Crown's duty is, or may be, to safeguard the interests of the States—particularly in case of minority administration, should the interests of the agent be given the chance of conflicting with the duty of the principal?

In all these matters it is essential to get the legal relationship made clear. When that has been done, suitable constitutional machinery for harmonious working between the two sides of India can be devised, and the States have already made it clear that they are ready and willing to fall in with such a plan on reasonable lines.

LESLIE SCOTT,

Goldsmith Building Temple, May 29, 1928.

APPENDIX D.

The following is the text of the Chapter in the Nehru Committee's report dealing with the position of Indian States in the Swaraj Government :—

We now come to the all-important problem of the Indian States. At the commencement of our treatment of the subject we desire to enter a caveat against the general criticism which it has become the fashion in certain quarters at present to make against public men in British India that they ignore in their discussions or their schemes the very existence of the Indian States and the problem of their relations to the Government of India of the present or of the future. It is not we maintain emphatically, the fact that the Indian States or their problems, or the readjustment of their relations to the Government of India, have been ignored in the past on public platforms, or in political conferences, or in the utterances of our public men. If the grievance is that the affairs of the Indian States, or the nature and character of their relations with the Government of India, have not been discussed on the floor of the Legislative Assembly, the answer is plain and it is that such discussion is barred by the standing orders and in practice is never allowed. It is obvious that for this the responsibility cannot be fixed on Indian public men. On the other hand, there is scarcely a political organisation of influence in the country which has not had in recent years to say something or other on the problem of the Indian States. The Congress and the Liberal League and the Hindu Sabha and lastly the All-Parties' Conference, to which this Committee owes its existence, have so far from ignoring the problem laid considerable stress on it. The subjects of the Indian States also have been showing a lively interest in the internal affairs of their respective States and urging for a definite recognition of popular rights and liberties. They have held two representative conferences and a committee appointed by the second held at Madras has approved and recommended to us a scheme of Swaraj embracing British India and the Indian States. We shall deal with this scheme later on. We are aware that the sensitiveness of some Indian princes has in recent years been touched by what they consider to be a somewhat obtrusive interest taken in them by public opinion in British India, which they have condemned as either lacking in knowledge, or political sagacity are sympathy. We therefore very strongly repudiate the ill founded charge that intelligent public opinion in British India has been too self-

centred to look beyond the confines of British India or has shown unwillingness to understand the view point of the Indian princes or their subjects, or even to sympathise with them wherever and whenever it has been possible to extend sympathy. If it has at times been critical of some of the "claims" of the Indian princes, or if it has at times approached their internal problems or tried to envisage the development of the constitutional relations between them and the future self-governing India from a different angle of vision, it is no more than what it is clearly entitled to do. We are afraid that the present tendency to stress the problem of Indian States as presenting insurmountable obstacles in the way of British India achieving Dominion status is full of incalculable mischief for both and instead of helping to bring the "two Indias" closer to each other is likely to give rise to serious misunderstandings.

AFFINITIES BETWEEN BRITISH INDIA AND INDIAN STATES.

While the fact that there is an Indian "India" consisting of these States—some almost as big as if not bigger than some of the countries of Europe—enjoying, in a way 'internal sovereignty', 'autonomy' and 'independence, dignities and status—may be and has to be freely admitted, we think it would be very poor statesmanship and short sighted policy to ignore those obvious historical, religious, sociological and economic affinities which exist between the people of British India and the people of these States. Nor do we think that it is possible to erect artificial geographical barriers between the two. Ideas and opinion travel from one part of India to another much more rapidly than was the case 60 or 70 years ago, and it would be absurd to deal with the problem of Indian States on the assumption that the dynamic forces now in operation in British India can for a very long period of time be expected to spend themselves on the borders of British India. It is inconceivable that the people of the States who are fired by the same ambitions and aspirations as the people of British India, will quietly submit to existing conditions for ever, or that 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. In dealing with the problem, therefore, we would much rather base our conclusion upon the community of interests than upon differences of form. This community of interest would clearly point to joint action by the parties concerned as the most natural course to adopt with a view to mutual protection and advancement. Indeed, if there ever was a case for a round table conference at which a perfected understanding could easily be reached it was

this. With the representatives of the princes, of their people, of the British Government, and of the people of British India assembled at such a conference all difficulties could have been solved with mutual good will. But most of the princes have unfortunately chosen to ignore the two most important parties—their own people and the people of British India—and have asked for or acquiesced in the appointment of the Butler Committee which apart from the absence of necessary parties is precluded by its very terms of reference, as we read them, from dealing with the constitutional issue. This Committee is sitting in camera but such information as is available from published statements leaves no doubt in our minds that an attempt is being made to convert the Indian States into an Indian Ulster by pressing constitutional theories into service.

We have referred in our introduction to the constitutional question raised by Sir Malcolm Hailey in his speech in the Legislative assembly in February, 1934. The same or similar questions have since been raised in other quarters and we now proceed to deal with them.

THE CONSTITUTIONAL POSITION.

The constitutional position at the present moment notwithstanding some vagueness that may surround it is, by no means difficult to understand. It is claimed that according to true constitutional theory the Indian States are and have been in relation with the Crown whether their treaties were with the East India Company, or the British Crown or whether they have been entered into since 1858 with the Government of India. Now it is obvious that the Crown under the constitution does not mean the King alone. It is a convenient constitutional phrase used to indicate the King-in-Parliament. Before 1858 the East India Company exercised sovereign rights under power delegated by the Crown and since 1858 those powers have been exercised under delegated authority by the Government of India and the Secretary of State, who is an integral part of the machinery established by Parliament for the Government of India. Section 67 of the Act 1858 provided that 'all treaties made by the said Company shall be binding on Her Majesty' and similarly section 132 of the Act now in force provides that "all treaties made by the East India Company so far as they are in force at the commencement of this Act are binding on His Majesty". In point of fact the enforcement of those treaties, the fulfilment of the obligations created by those treaties, and the interpretation of those treaties have hitherto been among the normal functions and duties of the Government

of India, subject to a so called 'appellate' or supervisory jurisdiction of the Secretary of State for India. It is inconceivable that any Indian Prince could under the present constitution ignore the Government of India or the Secretary of State and take up any matter relating to such obligations to the King or to His Majesty's Government. Again, the fact is that the Government of India have acquired certain powers by mere practice usage or convention which are outside the scope of the written treaties. The Foreign Jurisdiction Act of 1890 and the Indian Foreign Jurisdiction Act XXI of 1870 have not unoften been resorted to by the Government of India for the extension of their jurisdiction.

RESOLUTION OF GOVERNMENT OF INDIA.

By the resolution dated 29th of October 1920, the Government of India have given effect to the recommendations contained in paragraph 309 of the report on Indian Constitutional Reforms which prescribed a procedure for dealing with cases in which "the question arises of depriving a ruler of an important State, temporarily or permanently, of any of the rights, dignities, powers or privileges to which he, as a ruler, is entitled, or debarring from succession the heir apparent or any other member of the family of such ruler who according to the law and custom of his State is entitled to succeed".

In his letter dated the 27th March, 1926, Lord Reading emphasised the constitutional position as follows:—(a) The sovereignty of the British Crown is supreme in India, and therefore no ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements but exists independently of them and quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements, to preserve good order throughout India. (b) The right of the British Government to intervene in the internal affairs of the Indian States, is another instance of the consequences necessarily involved in the supremacy of the British Crown. (c) The varying degrees of internal sovereignty which the rulers enjoy are all subject to the exercise by the paramount power of this responsibility.

It is a matter of common knowledge that the exercise of these large powers, or to be more accurate, the decision of the Government of India to exercise these powers in the case of some Princes in recent years has been the subject of much comment and dissatisfaction and the exposition of the constitutional position in Lord Read-

ing's letter to His Exalted Highness the Nizam, from which we have quoted, above has led since to much searching of heart. It is not our intention or purpose to discuss the merits of the claim put forward in that letter. We simply desire to draw attention to it to show that even these large powers can only be exercised at the discretion upon the initiative, and by the machinery of the Government of India.

THE PLAIN FACT.

By usage or convention, or as a necessary corollary to the paramountcy of British Power, the Government of India have claimed and exercised the right of (a) "installing" Princes on the *gaddis*, (b) administering the States during the minority of the ruler, and their (c) settling disputes between rulers *jagirdars* and (d) interfering in cases of gross misrule. With any legitimate desire on the part of the Indian Princes to get their grievances in these respects remedied, it is possible, even for democratic India to sympathise; and we feel that it is by no means impossible or impracticable to define the limits within which the Government of India, as it is constituted at present, or as it may be in future, may seek to interfere. We think however that the plain fact ought not to be overlooked that the Government of India as a dominion will be as much the King's Government, as the present Government of India is, and that there is no constitutional objection to the dominion government of India stepping into the shoes of the present Government in India.

If there are personal ties of allegiance or devotion which bind the Indian Princes to the throne, person or dynasty of the King, they cannot and ought not to suffer in strength by a change or modification in the composition of the King's government in India, when India attains Dominion Status. There will always be plenty of room for the discharge of those duties to the Crown and for the exercise on the part of the Crown of those prerogatives which may be insappable from the personal relation that has subsisted between the Crown and the Indian rulers.

SIR LESLIE SCOTT'S PROPOSITION.

We shall now turn to the latest contribution on the subject. It comes from no less distinguished an authority than Sir Leslie Scott, the learned counsel engaged by the Princes. Sir Leslie Scott has expressed his views in a letter which has been printed in the July number of the "Law Quarterly Review." We recognise his eminence as a lawyer, but we cannot help feeling that his views as

counsel for the Indian Princes have yet to be tested by an independent judicial or legal authority after having both sides of the question presented to it. So far as we are concerned we beg to differ from him entirely. After laying down that the relationship between the Crown and the Indian States cannot be governed either by international or municipal law, Sir Leslie Scott asks "To what system of legal principles then are the relations of an Indian State to the Crown referable! There is no legal decision to serve as precedent, no complete analogy to guide. Resort must be had to first principles of law. We must think things out for ourselves. It is almost a virgin field for the lawyer. Even if it is a virgin field for lawyer and we venture to say this is not quite correct, we think it is more a case for the constructive statesman than for the analytical lawyer. Sir Leslie Scott has in this letter stated five definite propositions. Some of which may be admitted to be correct, others of which strike us as being too broadly put. In any case the conclusion which is sought to be drawn from these propositions is of such far-reaching consequence that it may be taken as definitely certain that if the Indian Princes decide to take their stand upon the position so ingeniously argued out for them, British India must substantially discount their profession of sympathy with its aspirations to Dominion Status, and treat their reference to the federation of India as no more than a vision, the realisation of which must be left to a remote but uncertain future. The first proposition of Sir Leslie Scott is that the fundamental tie is consent and its recognition by Britain is unequivocal." This may be admitted to be true. It implies nothing more than what can be said of any two states bound together by treaties or mutual understandings.

The second proposition formulated by him is that "those contracts are between sovereigns—the Princes and the Crown—not the Company or the Government of British India." This proposition to our mind is untenable historically and legally, and in any case, whatever may be the true legal theory, actual practice shows that the Indian Princes and States have dealt with the Government of India and submitted to its rulings and decisions and intervention, and have never dealt with 'the Crown' or His Majesty's government. The fact that there may be personal relationship between His Majesty and an Indian Prince does not in our opinion alter or affect the real legal position or the interpretation of that legal position in actual practice.

The third proposition is "that the relationship is wholly legal—a nexus of mutual rights and obligations. It is in no sense arbitra-

ry." We should have thought that one of the main grievances of the Indian Princes was that the Government of India had in actual practice extended their jurisdiction over them by going beyond the legal relationship in an arbitrary manner. If they are protesting against 'the arbitrary' extension of such jurisdiction, it is in our opinion an understandable position, but it is somewhat remarkable that importance of this proposition in the setting in which it is stated lies not so much in its practical application in the present, as in relation to possible constitutional developments in British India.

The fourth proposition is that the princes in making these contracts gave their confidence to the British Crown and nation; and the Crown cannot assign the contracts to any third party. The British Government as paramount power has undertaken the defence of all the States, and "therefore to remain in India with whatever military and naval forces may be requisite to enable it to discharge that obligation." It cannot hand over these forces to any other Government—to a foreign power such as France or Japan, to a Dominion Government such as Canada or Australia; *nor even to British India* ("italics, our")

BARRIER AGAINST PROGRESS.

The necessary corollary to this is stated in the fifth proposition viz. that "The Crown can normally choose its agents. But an agent cannot act when his interest may conflict with his duty. In all matters of common concern with the State—customs, railways, Ports, the salt monopoly, etc—there is always the possibility that the interest of British India may not be identical with the interest of a particular State. The Crown's duty is, or may be, to safeguard the interest of the State particularly in case of a minority administration. Should the interest of the agent be given the chance of conflicting with the duty of the principal"? This if true is putting up an effective barrier against the progress of British India towards dominion status, now and for ever, for it is obvious that of these 'contracts' between the Indian princes and the British Crown and nation are of a personal character. India must always continue to be divided between what is British India and Indian States, and the British Nation must always maintain adequate military and naval forces to discharge its obligations to Indian States. The argument we venture to say does not appear to us as anything more than ingenious. It starts on a false analogy and in applying that analogy ignores the "hard facts" of the case. There is no ground for the assumption that "contracts between the princes and the Crown" are on the same footing as contracts between private individuals. Sir Leslie Scott has himself pointed out in an earlier

part of his letter that the princes continued to retain the attributes of sovereignty even after parting with some of its functions to the Crown. It is as such sovereign that they must be taken to have dealt with another sovereign whether we take the latter to be the East India Company or the King in Parliament. Again it is not true to say that every contract between private individuals is of such a personal character as to be incapable of being performed by any one else. There is no question of one of the contracting parties having any special confidence in the other. The so-called contracts were made under stress of circumstances and would have been of the same or of similar character with any other power which occupied the same position as the British. The argument ignores the settled practice of the Government of India and by invoking so called first principles in determining the "legal relationship" it overlooks the hard and unchallengeable fact that from the early days of the Company it has been the Government of India and the Government of India alone which dealt with Indian princes and Indian States.

ON WHAT PRINCIPLE OF LAW.

It introduces an element of "personal confidence" between them and the British nation which is not easy to understand. It suggests that the past and present governments of India which have so far exercised the power, said to be delegated from the Crown, were and are acceptable to the Indian princes and Indian states; but that the future Government of India, if it is to be of the dominion type, will not be so acceptable. This in plain English means that the past and present governments of India were acceptable because they were essentially foreign in their composition and not responsible to the Indian electorate and that the future responsible Government of India would not be acceptable to the Indian princes because it will consist of their own countrymen and because it will be responsible to an electorate of their own countrymen. But supposing that this is so is there any authority for the proposition that when a "contract" may be performed by an agent, the choice of that agent does not rest with the principal but with the other party to the "contract." We have shown that so far the "contract" has been performed by white agents to the apparent satisfaction of the brown princes. On what principle of law, we ask, may that "contract" not be performed by brown agents to the equal if not greater satisfaction of the brown princes?

A NOTE OF WARNING.

Let us now consider the argument that the principal cannot delegate to the agent the discharge of obligations where the agent's interests conflicted with his duty. Here again we find that the hard

facts have been entirely ignored. The argument overlooks the fact that the agent of the crown viz., the present Government of India, has been regularly acting when its interest has conflicted with its duty without any qualms of conscience on the part either of the principal or of the agent and without any public protest on the part of the Indian States. Sir Leslie Scott then says that when "the legal relationship" has been "made clear"—that is to say according to his own conception of that relationship—suitable constitutional machinery for harmonious working between the two sides of India can be devised. And the States have already made it clear that they are ready and willing to follow such a plan on reasonable lines." In other words if Sir Leslie Scott's theory of personal relationship and personal confidence and the consequent duty of the paramount Power remaining in India to discharge its obligations is accepted the princes would be ready and willing to fall in with British India on reasonable lines. Once this argument is accepted as sound it is obvious that whatever be the machinery devised for harmonious working between the Indian States and British India dominion status for India must be ruled out for all time to come. We have shown that this argument is wholly unsound and we sincerely hope that legal ingenuity will not be allowed to prevail against the larger interests of the country, and that the patriotism and statesmanship of the Indian princes, aided by the growing patriotism and love of freedom among their subjects, will be concentrated more upon the establishment of genuine machinery for the settlement of issues between them and a responsible Commonwealth of India than upon a determination of the theoretical question of legal relationship which can do them no good and is fraught with mischievous possibilities which can only lead to disaster. Mutual relations can only be satisfactorily determined with mutual consent and we believe that there is still plenty of room for it. But we must sound a note of warning that the natural and the legitimate aspirations of India cannot and will not be allowed to be defeated or check-mated by ingenious arguments which have no application to facts as they are.

IMPORTANT POLITICAL ISSUES.

We take special note of the following passage in Sir Leslie Scott's letter :—

"The political issues are of first-class importance to the future of India as a whole. Their wise solution will affect directly the successful accomplishment by Sir John Simon and his colleagues of the task imposed by Parliament upon the Statutory Commission for British India. From an Imperial standpoint a statesmanlike treat-

ment of the Princes now may well prove a vital factor in the future attitude of India towards the British Empire."

So that the findings of the Butler Committee arrived at in camera are to decide the fate of the people of British India without the latter being given a chance to be heard, and Sir John Simon and his colleagues who are themselves not seized of these "political issues of first-class importance" are to be guided by their "wise solution" by the Butler Committee if they are to accomplish successfully the task imposed by Parliament upon them. This was foreseen in India and openly declared from various platforms. We know now exactly what the Statutory Commission is going to accomplish. The only wise solution of these issues suggested by Sir Leslie Scott is that the British Government must "remain in India with whatever military and naval forces may be requisite to enable it to discharge its obligations." We thank Sir Leslie Scott for this authoritative forecast of the recommendations of the Statutory Commission which fully justifies the attitude taken in regard to it by all the well-known parties in India.

POSITION AS IT IS.

Leaving aside the theory of the relationship between the Crown and the Indian princes and coming to the position as it is, we maintain that we are right in saying that as a matter of fact and actual practice, it is with the Government of India that the Indian princes come into direct contact in regard to everything that concerns them or their States. It is well known that the political secretary of the Government of India exercises vast powers over the Indian States. Without being a member of the Government of India, he practically discharges all the functions of a member, for there is no separate member in charge of the political portfolio, the political department being supposed to be in the direct charge of the Governor-General. The present position is that if the political department gives any decision against an Indian State or an Indian ruler, the only remedy available against it is an appeal, under certain conditions and subject to certain limitations, to the Secretary of State. We are aware that in the present circumstances this is supposed to be a valued right, but this is obviously due to the very unsatisfactory procedure followed in the first instance in India. It is obvious that a right of appeal in a case which is not fairly tried is of little value and we think that it is possible to replace it by adequate constitutional provisions for the future.

INEQUITABLE TREATMENT.

In ordinary experience, the matters in regard to which the Indian States come into contact or conflict with the Government of India

are those relating to customs, excise, extradition, railways, post offices and ports or harbours. In addition to this, there is the bigger common interest of self-defence. It is not necessary for us to examine what are understood to be the grievances of the Indian States in regard to these matters. We simply note the fact that responsible Indian rulers and ministers of Indian States, have, at times, raised their voice against what they have described to be the inequitable treatment which they received at the hands of the Government of India. How far those grievances are capable of being remedied, and how best they can be remedied, are matters for investigation and joint consultation, but we venture to think that their solution is not inextricably mixed up with the continuance of the present constitution of the Government of India, or the establishment of an entirely separate and independent machinery for the exclusive treatment of these subjects. If we refrain from going into this question at greater length, it is only because the public have not hitherto been permitted to know enough of the scheme which has been in the course of incubation during the last few months. But if it is permissible to us to draw our own inferences from such statements as have been made in this connection by Sir Leslie Scott, the Counsel for the Indian Princes before his departure for England, we shall sound a note of warning against the attempt that is being made to duplicate the machinery, by bringing into existence a separate Council for the Indian States to work with the Governor-General. Apart from the fact that it will be a cumbersome thing, its separate existence cannot secure solution of matters of conflict with British India or with the future Commonwealth government. It strikes us as being a vicious extension of the system of diarchy with all its attendant incongruities, inconveniences, and constitutional difficulties.

A federation of some sort was foreshadowed by Sir Malcolm Hailey, in the speech to which we have already referred, and there is no doubt that some such idea is also present to the mind of Sir Leslie Scott. But if the constitution of India is to be a federal one, as we think it might well be, the position of the Indian States in relation to that federation appears to us to call for a definite determination and the ideas, on the subject, require to be cleared up. Are the Indian States willing and ready to join a real federation. We put this question as we believe that the lines on which the princes and Sir Leslie Scott are working cannot lead to any kind of federation in its well understood sense. 'A federal state,' says professor Newton, 'is a perpetual union of several sovereign states, federal constitution accepted by their states, or upon some historical status common to them all and secondly, upon a federal constitution accepted by their

citizens. The central government acts not only upon the associated states but also directly upon their citizens. Both the internal and external sovereignty of the state is impaired and the federal union in most cases alone enters into international relations. It would be in our opinion, a most one sided arrangement if the Indian States desire to join the federation, so as to influence by their votes and otherwise, the policy and legislation of the Indian Legislature, without submitting themselves to common legislation passed by it. It would be a travesty of the federal idea. If the Indian States would be willing to join such a federation after realizing the full implications of the federal idea we shall heartily welcome their decision and do all that lies in our power to secure to them the full enjoyment of their rights and privileges. But it must be clearly borne in mind that it would necessitate, perhaps in varying degrees, a modification of the system of government and administration prevailing within their territories. We hope and trust that in the light of experience gained the Indian States may make up their mind to join formally the federation. Meanwhile, we think that it is by no means impracticable to provide suitable machinery for the settlement of mutual differences on administrative and other matter. The practical question of the preservation of their treaty rights and such independence as they have enjoyed or as they claim, is, in our opinion, far more important than the arid and academic discussion of the question, whether in theory their relations are with the Government of India or with the Crown.

OUR RECOMMENDATIONS.

Accordingly, we have provided (a) all treaties made between 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. (b) 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." We have made these suggestions in no spirit of vanity or idealism. We fully realise their implications and the obligations that such provisions will impose upon the future Government of India. We do believe that the Government of India of the future will discharge their obligations in their integrity and with every desire to promote harmonious relation and with no desire to override cherished privileges, or sentiments. Similarly, in regard to matters of a justiciable character, we have suggested that 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.' We think that this will be a far better method of settling such matters than the present arrangement under which the Government of India is both a party and a judge in a controversy between itself and an Indian State. We need scarcely point out that we anticipate that the judges of the Supreme Court will be men of the highest legal training character and judicial independence.

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 position, in the future, will not to our mind, be worse than it is. Indeed it is likely to be better, where between different States, there are honest differences and an independent effort is made to arrive at just and equitable settlements. Practical good-will and larger common interest are of far greater value than any meticulous considerations of ultimate sanctions. It is obvious to our mind, that the question of common defence is one which is bound to be in future the rallying centre of the Government of India and the Indian States, and if it has been possible in the past to sustain common obligations and to keep alive a common sense of duty to the country at large, we do not despair of the future.

In making these observations we feel that we have not had the advantage of discussion with the representatives of the Indian princes, and we are alive to the possibility of much greater light being thrown on some dark corners of the entire problem by such discussion. Meanwhile, we content ourselves by saying that while we recognise 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, we are not prepared to concede that until Indian States have made up their minds to join this federation in the most formal manner, that British India must be denied full responsible government or dominion status, merely because it is supposed that the obligations which the Crown or the present Government of India owe to the Indian States, can be discharged only by a central government which is, and must for that reason continue to be undemocratic. Such an argument can only mean that the Indian States, while professing their sympathy with progress in British India, must effectually defeat our aims and aspirations by an attitude based not on enlightened self-interest, but on practical hostility to our aims and aspirations.
