

**INDIAN  
CONSTITUTIONAL PROBLEMS**

# INDIAN CONSTITUTIONAL PROBLEMS

BY

SIR P. S. SIVASWAMY AIYER, K.C.S.I., C.I.E.

RETIRED MEMBER OF THE EXECUTIVE COUNCIL,

MADRAS

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## PREFACE

The greater part of the substance of this book was the subject of a course of lectures delivered by me in the University of Madras in the latter part of 1927 under the terms of an endowment in memory of my friend the late Mr. V. Krishnaswami Aiyer. When the University offered the lectureship to me, they left the choice of topics entirely to my discretion. In view of the fact that the appointment of the statutory commission for the revision of the Indian constitution was then impending, it seemed to me that a discussion of the main problems which would be likely to arise in connection with the revision of the constitution would serve a more useful purpose than a treatment of the history of the Indian constitution, or a mere description of its present form.

It has been remarked that the constitutional development of India has not proceeded on any systematic or preorganized plan. The reason for this is that, until the historic announcement of August 20, 1917, in the House of Commons, there had been no declaration by the government as to the aim of British rule in India. Responsible government in India as an integral part of the British

Empire was for the first time then formulated and authoritatively declared to be the goal of British administration. The Montagu-Chelmsford Report is the first, and by far the most, important document in which the development of the Indian constitution has been envisaged in its entirety. Any discussion of the questions arising on revision must necessarily start from this declaration of policy as the fundamental basis. The goal as declared in the historic announcement cannot be changed or lost sight of. Any suggestions which may be made for the improvement of the constitution must be consistent with the realization of this ultimate aim. All schemes which proceed upon the assumption that the solemn declaration of August 20, 1917, was a mistake, or that the system of parliamentary government is not suited to the genius of the East must be ruled out as inadmissible. The one touchstone by which all proposals for constitutional reforms must be tested is whether they will be conducive to the attainment of the goal, or will retard the progress towards it, or lead India away from it. It is from this point of view that I have approached the subject of constitutional revision.

I have attempted to deal with the questions which would have to be considered, if the system of responsible government were introduced into India. To some critics it may appear that such a discussion is idle on the ground that responsible government will not be realized in the near future. Whether responsible government in the provinces, or provincial autonomy as it has been called, will be introduced is a matter of conjecture. Whether res-

possibility will be introduced in the internal civil administration of the country by the central government is still more a matter of conjecture. Into these matters of prophecy as to the future intentions of the government, I do not enter. I can only express my opinion as to what changes are called for. Even if responsible government is not going to be introduced in the immediate future, the discussion of the problems involved in a constitution providing for responsible government would still be of advantage; for it is essential that whatever intermediate steps in revision may be taken, they should not be inconsistent with the eventual attainment of the goal.

It was not possible for me to deal with all the topics involved in a scheme of constitutional revision. But I have dealt with the more salient problems relating to the structure and functions of the legislature and the executive in both the provincial and the central governments. The subject of local self-government has not been included within the scope of my work, partly for the reason that considerations of space forbade such inclusion and partly for the reason that the subject is not one of a controversial nature like the problems arising in connection with the provincial and central governments and is comparatively of secondary importance. The questions to which I have specially directed attention and upon which I have dwelt at considerable length are those which have been pointed out as the chief stumbling-blocks in the way of responsible government. They relate to the subjects of defence, the relations between the Government of India and the

Indian states and the protection of minorities. I have endeavoured to deal with the various topics in the light both of general principles and of practical considerations. In all cases admitting of a difference of opinion, while I have not hesitated to express my own view, I have tried to present as fairly and impartially as possible the case for and against my own conclusions.

After the delivery of the course of lectures, it was represented to me that their publication might appeal to a wider audience. I have since thoroughly revised and recast the matter of the lectures and made considerable additions to it.

In dealing with the subject of Indian states and their relations to British India, I have examined the question whether it is feasible to bring the states into any real federal union with British India. My conclusion against the feasibility of any such scheme is mainly based upon the attitude of the Indian princes themselves and their unwillingness to sacrifice even a tittle of their individuality. I have remarked that the conception of any closer union with British India entertained by the princes does not stretch beyond a mere loose confederacy of states. At the time I wrote the chapters dealing with the Indian states, no scheme had been put forward in public by the princes themselves. I could only discuss some of the proposals which had been put forward by a publicist in Mysore. Since then a scheme has been published in the papers and it has been associated with the name of Sir Leslie Scott, the counsel employed by the princes to present their case to the Butler committee. It is said to have

been partly sponsored by the standing committee of the Chamber of Princes. It is not known whether the scheme has assumed a final form and whether it has been adopted by the princes generally. At the time of the Princes' conference held at Bombay in April last before the submission of the scheme to the Butler committee, it was stated that there was no general agreement among the princes and that the rulers of Hyderabad, Baroda, Mysore, Travancore and Cochin had not agreed to it. Down to this moment, there has been no official publication of the memorandum submitted by Sir Leslie Scott to the Butler committee. I have therefore considered it inadvisable to discuss it in the body of the book. It is not a little curious that though the enquiry largely concerns the relations between the Indian states and British India, no steps have been taken to ascertain public opinion in British India on the matters under enquiry. The ways of government and of committees appointed by the government are often inscrutable. It is not possible to discuss Sir Leslie Scott's scheme within the limits of a preface. Nor is it worth while to do so, when we do not know what modifications the scheme may undergo before the final presentation of the case to the States Enquiry Committee. I must, however, observe that a perusal of the scheme has confirmed my conviction that the attitude of the princes renders any close organic association with British India impossible and that the most expedient course is to leave matters as they are at present. No reasonable objection can be taken to the desire of the princes for an ascertainment of their rights, but



any attempt to bring about an organic relationship with British India is now impracticable. One fundamental principle of all corporate organization is what may be called the rule of the majority, and this principle the princes have not learned and will not learn. To put it briefly, the whole of Sir Leslie Scott's scheme is based upon a want of touch with the realities of the situation. The scheme is inspired by vague ideas derived from the League of Nations and the Permanent Court of International Justice and by a notion of equality of status between the princes and the paramount power. The scheme is also quite incompatible with the Dominion status which is the aspiration of British India.

The appointment of the statutory commission has produced some fantastic schemes for the revision of the constitution and notably by English publicists. Some of them have been struck with the want of party cohesion and the instability of ministries and have put forward *inter alia* suggestions for making the ministries more or less irremovable. These schemes betray an ignorance of the evolution of the party system and its working in western countries. The instability of ministries may be admitted to be an evil, but it is not confined to this country and is, on the other hand, very conspicuous in other countries also. The enforcement of the principle of joint responsibility of the cabinet is bound to promote party cohesion. The principle of an irremovable executive is a prominent feature of the presidential system and is inconsistent with the parliamentary system. Though the Americans have got accustomed to the presidential system and have been

able to work it somehow, its inherent defects are so patent that it is a wonder how it can work at all. No inference in favour of the suitability of such a system to other countries can be drawn from the example of America. The Swiss system also is so unique that it can be hardly looked to for guidance.

The growing estrangement between the government and the people of British India is a source of sincere sorrow to persons like myself who have been firm believers in the value of the British connection. I can only point out the dangers ahead and the remedies which seem necessary and practicable for the purpose of putting an end to the unrest in the country. But the chances are that the government will be unable to distinguish friends from foes and will regard all criticisms as equally inspired by a spirit of hostility to the British connection. The reactionary friends of the government have always endeavoured to asperse the advocates of political reforms as self-seeking agitators indifferent to the welfare of the country and much less in touch with their countrymen than the members of the ruling race. To all such criticisms one can afford to be perfectly indifferent. It is sufficient to have done one's duty to the best of his lights.

Among the text-books on politics from the study of which I have derived help, I should like to make particular and grateful mention of Bryce's *Modern Democracies*, Keith's *Responsible Government in the Dominions* and Marriott's *Mechanism of the Modern State*.

It only remains for me to acknowledge my indebtedness to my friend Mr. V. S. Ramaswami Sastri for the trouble he has taken in going through the proofs and to my friend Mr. S. N. Panchanadesvar for his kindness in preparing the index.

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OOTACAMUND.

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