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INDIAN STATES IN THE FEDERATION.

[*Contributed by* SIR BENJAMIN LINDSAY.]

THE enactment of the Government of India Act, 1935, brought to a close a prolonged period of discussion and negotiation the object of which was the discovery of a scheme which might serve to achieve a measure of political unity between two distinct parts of India which, while geographically united, were politically divided though under the bond of a common allegiance to the British Crown.

On the one side was British India, a territory divided up into provinces which had no autonomous existence : such powers of government as they enjoyed were derived from a central government, itself responsible to the British Parliament. On the other was the territory of the Native States—Indian India—covering about two-fifths of the total extent of the sub-continent and containing, roughly, one-fourth of India's population. Over this territory Parliament has no authority ; it is governed by its own rulers whose powers know no limits except those which the British Crown as the Paramount Power chooses to impose.

These Native States are for the most part survivals of former dynasties and powers which, in one way or another, contrived to prolong their existence after the collapse of the Mogul Empire and the ensuing struggle for supremacy which ended in favour of the British. Some of them, while the Mogul Empire still stood, had been able to establish themselves in a position of practical independence, yielding only a nominal allegiance to the Emperors of Delhi, and were able later to secure recognition from the British power. Others of them, such as the Rajput States of Central India, had been engaged for centuries in conflict first with the Moguls, later with the Mahrattas, and were only rescued from extinction by British intervention which secured them in possession of such territories as they had been able to retain. Still others were principalities carved out during the short-lived period of Mahratta domination in Western India by soldiers of fortune who came to terms with the British forces which broke up the Mahratta Confederation.

By the beginning of the nineteenth century British supremacy had been consolidated over the major portion of India, and by the year 1818 there was no power in India, except the Sikh State of Ranjit Singh, in a position to claim independence. With the extinction of the Sikh kingdom after the second Sikh War (1848-9) all State territory in India was under British suzerainty.

After the suppression of the Mutiny (1857-8), which was effected with the timely and substantial aid of many of the States Rulers, the British Crown assumed the direct government of India as being, in the words of Lord Canning, the first Viceroy, "the unquestioned ruler and Paramount Power in all India." In one of his dispatches as Viceroy, Lord Canning declared the policy which was thenceforward to govern the relations between the Crown and the Native States. The two main pillars of that policy, which has ever since been pursued, were (1) that the integrity of the States as they then existed was to be preserved by perpetuating the rule of the Princes, and (2) that the Crown, as Paramount Power, reserved the right to intervene in the internal administration of the States in the event of flagrant abuse of power on the part of any of the States Rulers.

In this brief statement is to be found the key to the nature of the connexion between the Indian States and the British Crown. It is a relation generally described as Paramountcy—an expression which eludes definition; all attempts to bring this relation within the limits of a precise legal formula have failed. A few years since, *i.e.* in 1928-9, the demand of the Rulers for a legal delimitation of the authority of the Crown was referred to a special Committee (The Indian States Committee) and was rejected as impossible. The Committee in its Report adopted the description of the position set out in a letter from Lord Reading to the Nizam of Hyderabad in 1926, in which he declared that British supremacy over the Indian States was not based, as had been contended, upon treaties and engagements but existed independently of them, and that, in consequence, it was both the right and the duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India.

Subject, then, to this vague but real power of control the Crown has allowed the States to develop on their own lines under their own rulers, who have been left free to follow such methods of government as they choose. Some of them, with large territories and abundant revenues, have introduced into their States institutions modelled upon those of British India and have attained conspicuous success in the way of efficient administration. Others less amply endowed and more remote from contacts with the outside world still stand upon the ancient ways, while the minor States, with scanty resources, are subject, in varying degrees, to the control and advice of British agents in matters concerning internal administration. But in all of them, large or small, the system of government is still, in essence, autocratic. The Rulers follow the Oriental tradition and have shown, hitherto, no disposition to copy the democratic institutions favoured in some of the countries of the West.

In British India, on the contrary, the professed policy has been to educate the people into admiration of democracy with a view to fitting them ultimately for the responsibility of governing themselves, and British

India has in recent years been insistent in its demand for the introduction of the popular government which finds no favour in the eyes of the States Rulers ; there is no unity of political ideals between British and Indian India.

But if the States and British India have thus been living politically apart, they have, none the less, under the Pax Britannica, been inevitably drawn into closer intimacy with each other, especially in the economic sphere. The result is that there has gradually come into existence a field of common interests. Both parties, for example, are vitally concerned with defence against external invasion and have been under the necessity of co-operating in the provision of the means required for that end. Lines of communication which pass continuously through the territories of British India and the States have been constructed at the expense of both sides. And these lines serve also to provide security against internal enemies in the shape of those seasonal calamities, such as famine, to which all parts of India are periodically exposed. Increased facilities for intercourse have led in their turn to important economic and social developments. The States, which in earlier times lived in comparative isolation, have been brought into closer contact with the British Provinces and with each other, and have been drawn into a stream of world-wide influences which operate equally upon British India and themselves. The removal of ancient trade barriers between these different parts of India has been a powerful stimulus to economic progress in which both parties participate. The efforts of both sides have contributed to the establishment of an economic unity which is highly advantageous to both. And yet, by reason of the political division of the parties, the situation has become anomalous, for the States have no representation in the legislative body entitled to deal with these matters of common concern and can therefore exert no influence on policy in this field. They have been led to complain, and not without reason, that in existing conditions their interests are apt to be postponed to those of British India, and it is sufficient in this connexion to recall the full-blooded measures of protection taken in recent years by the Government of British India for the purpose of raising revenue. High tariffs upon imports into British India have hit the States hard ; they have to share the burden of enhanced prices, but take no benefit from the increased revenue.

It is easy, then, to understand the feeling of the States in this matter. However irksome they may have found the control of the Crown as the Paramount Power, they had much more reason to apprehend injury from the transfer of further powers of self-government to the Provinces which was being demanded so insistently by the politicians of British India. For the States, too, could rely upon and demand the fulfilment of the pledge given by Lord Canning in 1860 that their integrity was to be preserved. And the obvious justice of this claim was recognized when it was decided that the States could not be driven into federation against their will. And so it was essential to provide, as has been

provided by the Act, that the States can, if they so desire, be included in the federal scheme and given a share of control within the sphere of federal subjects.

From what has been said it is apparent that any plan designed to embrace the States in an All-India federation was bound to differ materially, both in form and in the mode of its creation, from any other federal plan known to history. For other federations have come into existence through agreement entered into by constituent units, homogeneous in structure and of equal, or at least comparable, independent political status. These units have agreed to surrender to a new central body an identical range of powers and jurisdiction to be exercised thenceforward over them all. By their agreement they create a new organism to which, within the range of the powers surrendered, all will be equally subordinate. Outside that range of powers each unit remains autonomous. But these conditions are not to be found in India. The units vary in area, population and wealth. There is no identity of political ideals, much less of political status. The States are, speaking generally, autonomous; the British Provinces, before the Act came into force, were not, but were under the control of a central government responsible to the British Parliament which has no authority to legislate for the States. In these conditions the formation of a federation by general agreement was out of the question. In the case of the British Indian Provinces federation has been imposed from above and has been accomplished by the breaking up into units of a central government which has retained certain powers and has relinquished the rest to the different Provinces. For the States the process of federation must be the reverse; their entry must be by agreement involving surrender to the Crown of a portion of their autonomous powers for transfer to a central government of which they will then become an integral part. Outside the range of powers so surrendered they will continue to retain the autonomy they possess. In their case the agreement to federate must be with the Crown, which can refuse an offer of entry which does not propose a surrender of powers extensive enough to make federation a reality. For them union in the federation will be qualified and restricted; nor need they all become subordinate in equal degree to the central government. In these respects the All-India Federal Scheme contained in the Act differs, and must necessarily differ, from the models adopted elsewhere. The disparity between the units and the inequalities arising therefrom are facts which could neither be got rid of nor ignored by the framers of the constitution, and while the history of previous federal experiments might furnish them with useful guidance, it was clearly expedient for them to avoid any slavish imitation of precedent. Their duty was to produce a scheme which would represent and be suited to the phenomena with which they had to deal.

Needless to say, the scheme of federation provided in the Act fails to satisfy either party and has been subjected to destructive criticism by

partisans both of the States and of British India. The book¹ now under review gives expression to the opinions held by the politicians of British India ; and the author is concerned to show that no success can be anticipated for a constitutional plan which does not correspond with any known federal model. The tone of his arguments lends point to the remark of Professor Berriedale Keith, at page 294 of his *Constitutional History of India*, that the fact that the federal scheme embodied in the Act is not a rigid imitation of any existing model is sufficient to render it suspect in the eyes of Indian politicians.

The author has a good deal to say about the doctrine of Sovereignty and ridicules the insistence of the Princes upon their sovereign rights, and it need not be doubted that all along they have been pitching their claims too high. It cannot be seriously disputed now that the States are not sovereign in any of the senses of that ambiguous expression. It would, however, have been more helpful to discussion if the doctrine of Sovereignty had not been appealed to in this connexion, for, as observed by Professor Brierly,² sovereignty is merely an abstract idea invented by philosophers and lawyers to explain the political facts of their time. The fact remains that the Rulers of the States do, in one degree or another, exercise autonomous powers which the Act is bound to respect. The States can claim no more than this, nor does the Act concede them more. Then, again, it is a complaint of the writer that the scheme embodied in the Act is not a federal scheme at all because it does not conform to what is styled the "true juristic concept" of the federal relation. And here the author takes the opportunity of castigating Lord Sankey, who, he says, gave a misleading definition of Federalism to the Indian representatives attending the preliminary conferences. As to this, it is sufficient to say that if Lord Sankey was wrong, he was erring in good company, for his description of the federal relation agrees with that given by Lord Bryce, whose authority in such matters is in no way inferior to that of the American jurist to whose opinion the author appeals. It is true that in speaking of the transfer of powers by the units to the proposed central organism it would have made for greater precision if it had been said that the powers were "surrendered" rather than "delegated." But, this apart, there is no fault to be found with Lord Sankey's definition of Federalism, and we venture to think that the author is wrong in declaring that the proposed federation is not a federation at all. The essential characteristic of a Federal State is the distribution of powers between the central organism and the constituent units. As against the author's judgment in this matter may be set the opinion of Professor Berriedale Keith, who has written a sympathetic foreword to this book ; according to him the federation proposed exhibits all the normal characteristics of a federal

¹ *Indian States in the Federation*. By N. D. Varadachariar, B.A., B.L., Advocate, Madras High Court. Foreword by A. Berriedale Keith, D.C.L., D.Litt. (London : Humphrey Milford, Oxford University Press, 1936.) Pp. ix + 156. 5s.

² *The Law of Nations*, Second Edition, p. 38.

government. The author again scouts the notion of a "double allegiance" under a truly federal scheme to which Lord Sankey referred. Here again he has against him the authority not only of Lord Bryce but also that of Professor Dicey, who characterizes this double allegiance as being the most conspicuous of the weaknesses attaching to a federal form of government. Even in the United States of America the idea of a dual citizenship was developed under the Constitution according to the opinion of the learned American jurist, Mr. James M. Beck, in his book on the Constitution of the United States.

The author then proceeds to enumerate particular defects in the structure of the proposed federation which, in his opinion, render it disadvantageous in many respects to British India. He complains of the inequality between the units arising from the concession to the States of privileges in the shape of "quasi-contractual" rights, a concession which, he fears, will leave the development of the proposed Constitution too much in the hands of the States. He points out that in progressive modern federations equality among the constituent units is the rule, and here he instances the federations of the United States, Canada and Australia. The answer to this objection is that there is no analogy between the cases. No doubt the success of any federal scheme is facilitated where there exists at the moment of federal union an approximate equality in wealth, population and political status between the elements which are seeking to combine. This was the case in the United States, in Canada and in Australia. But from what has already been said, there is no such equality among the units proposed for federation in India—and there are no means of producing such equality. The inequality between the units is an obstinate fact which must necessarily be reflected in the Act which embodies the federal scheme; the Act has not created the inequality, it has only recognized it, and it could not do otherwise. Nor can it be argued successfully that equality between the constituent elements is an essential condition of their federation.

As for the "privileges" in the shape of "quasi-contractual" rights secured to the States and not conceded to the Provinces, these, it appears, have their origin in the Instruments of Accession which the Rulers must execute in order to obtain admission to the Federation. The Act requires that each Ruler who applies for admission must, by means of such an Instrument, declare specifically the matters in respect of which he is willing to surrender his powers through the Crown to the Federal Government. The offer is one made to the Crown, and the Crown has full discretion to accept or reject it. If the offer is accepted, the State at once is incorporated as a federal unit, but only to the extent provided for by the declaration in the Instrument of Accession. Outside the range of those matters in which powers have been surrendered, the central government will have no authority over the State concerned. It is difficult to see how an Instrument of this kind can be construed as a contractual document: its only value to the States is that it is a piece of documentary evidence

which indicates the measure of their accession and which the States would be able to rely upon in the case of any dispute brought into the Federal Court regarding the authority of the Federal Government to act with respect to a particular subject.

It had to be recognized that the only way of getting the States into a federation was by agreement ; the execution of an Instrument of Accession is the means which the Act provides for the expression of that agreement. The Provinces, on the other hand, do not enter the federation by agreement—they had no powers of their own which they could agree to surrender to the central body. The sum and substance of the author's complaint amounts merely to this, namely, that the Indian scheme was not drawn upon the lines of those adopted in other countries ; but the conditions governing the situation in India were wholly different and rendered such procedure impossible.

Again, the author disapproves of the proposed Constitution because the inclusion of the States in the Federation will serve to check the growth of democratic institutions : he thinks that Parliament should have dealt with the problem of British India quite apart from the States. But this was not feasible in view of the not inconsiderable field of subjects which had come to be matters of common concern to both parties. It was evident that even under the powers conferred upon the Indian Legislature previous to the Act the interests of the States were being gravely prejudiced by British Indian policy which they had no power to influence, and it was equally evident that the situation of the States was bound to become worse in the event of a further bestowal of powers on an Indian government. In these circumstances it was incumbent upon the framers of the Act to provide, as far as possible, for the removal of the legitimate grievances of the States by affording them the opportunity of securing association in the control of policy in the common field of interests. The Crown had long been bound by its pledge to protect the interests of the States, and there could be neither justice nor reason in breaking this pledge while fulfilling a pledge to accord self-government to British India. It is difficult to see what other course was open to Parliament in this respect. The Rulers are, both by tradition and temperament, conservative and have hitherto shown no inclination to depart from the forms of government they have inherited. But if Parliament is powerless to force them to alter their ways, it is unreasonable to blame it for resorting to the method of persuasion. At the moment of writing it is difficult to forecast the future of this scheme for an All-India Federation. The British Government is naturally desirous to secure the entry of the States into the Federation in view of the embarrassing situation which is likely to arise if the States prefer to remain outside. For in that event the Crown, while retaining its full paramount powers, will still rest under the obligation of protecting the integrity of the States—even against the aggression of an Indian government.

At an early stage of the deliberations which took place before the Bill

began to assume shape some of the principal Rulers declared in favour of federation, but only on condition that full responsibility was to be given to the proposed central government. This declaration was welcomed at the time by some of the leading politicians of British India. But a change came over the situation as soon as it became apparent that Parliament was not prepared to concede responsibility at the centre. Enthusiasm for federation then gave way to opposition from both sides. In British India the feeling at the moment is one of open hostility to the admission of the States into any federal union. The avowed policy of the Congress party, at present in the ascendant, is to sever completely the British connexion with India ; it seems to be believed that with the British out of the way, the States would be obliged either to fall into line with the Provinces or to undergo absorption. Such a prospect can hardly be palatable to the States in general. It may be that the more powerful among them would view with equanimity the disappearance of the restraint imposed by the Paramount Power which would leave them a free hand to regulate their own destinies. They might well believe that in such an event they could look after themselves and resist successfully any attempts to bring about their extinction. They might even begin to entertain an ambition to extend their present frontiers and so recover territories which were once in their possession. But the smaller States would probably be less optimistic about their chances of survival. As matters stand any hope of collaboration between the States and British India appears to be remote.

Nor can it be said that the history of events in British India during the six months or so which have elapsed since the Act came into operation has provided the Rulers with any inducement to embark on a new political venture. In the majority of the British Indian Provinces the elections went in favour of the Congress Party, which at first refused to assume the responsibilities of office. Later it changed its mind, with the result that the administration of these Provinces is now in the hands of Ministers whose continuance in power depends upon their unqualified obedience to the dictates of a handful of the Congress leaders. The States' Rulers have thus been able to see democracy, as understood by the Congress, in action and may intelligibly be excused if they refuse to associate themselves with the scheme which the Act holds forth for their acceptance. All that can be said at the present juncture is that the omens are not favourable for an All-India Federation. To all appearances there is a complete absence of goodwill between the parties, no indication of that spirit of mutual accommodation which is the essential condition for the success of this great political experiment. The experiment may fail as the author prophesies it will. But if it does, the blame will not lie with the British Parliament, which in this Act has made an honest and earnest attempt to promote the interests and welfare of the peoples of India ; it will more properly be laid at the door of those whose intransigence will have served to frustrate the measures taken for their common benefit.