

to Provincial Governors for carrying out Federal Laws, to assent to or withhold assent from Provincial Bills reserved for his consideration, to issue Instructions to the Governors and to grant them permission for promulgating Governor's ordinances and the enacting of Governor's Acts, (Sections 88, 89 and 90), to sanction or disallow any rules made by the Governors for the administration of Excluded Areas, (92), to sanction the suspension of the Constitution by a Governor in his Province, to permit the Federal Legislature to make any law for the Provinces in a State of national emergency, (102), to direct the Governors to discharge certain functions as his agents in respect of matters concerning Defence, Ecclesiastical Affairs, External Affairs or Tribal areas, to determine as to how and by what stated periods the Provinces will receive their share of income tax (138), and to decide disputes between the Federal and Provincial Governments regarding the conditions under which the latter will borrow or guarantee loans (163). Incidentally, it may be observed that these provisions amply demonstrate the hollowness of the claim that the new Constitution confers Autonomy on the Provinces.

The Executive authority of the Governor General over the Federated States will also cover an extensive field. If it appears to the Governor General that any Ruler of a Federated State has in any way failed to fulfil his obligations to the Federal Government, he will be entitled, under Section 128, to issue, in his own discretion, such directions to the Ruler as he thinks fit, provided that if any question arises as to whether the executive authority of the Federation is exercisable in a State with regard to any matter or the extent to which it is exercisable, the question may, at the instance of the Ruler or the Federation, be referred to the Federal Court for determination. Besides, most of the Special Responsibilities of the Governor General will be as much applicable to the Federated States as to the Provinces, and in the discharge of functions connected with these Respon-

sibilities, the Governor General will be entitled to interfere as freely in the affairs of the States as in those of Provinces.

This bare enumeration of the Governor General's powers needs no commentary. It will be seen that there is hardly any aspect of government over which the Governor General will not wield complete dictatorial authority. Not only will the Federal Legislature be an ineffective and powerless body enchained by the innumerable discretionary powers vested in the Governor General, but the executive machinery of the Federation will also be under the complete and unquestioned sway of the Governor General. The Federal Government will thus be in reality a one man's rule, unsurpassed in many respects by oriental despotisms or modern dictatorships.

The Federal Judiciary.

The new Constitution provides for the establishment of a Federal Court consisting of a Chief Justice and six puisne judges to be appointed by the King by Warrant under the Royal Sign Manual. The number of puisne judges may be increased if the Federal Legislature makes a demand to that effect in an address presented to the Governor General for submission to the King. Every judge of the Federal Court will hold office during good behaviour until the age of 65, and unless he resigns, he will not be removed from office except by the King by Warrant under the Royal Sign Manual. The salaries and allowances of these judges will be fixed by the King in Council, and will not be varied to their advantage after their appointment.

The primary function of the Federal Court will be to settle litigation relating to Constitutional questions, and to advise the Governor General, if he so desires, on any point of law of public importance. The Court will also hear appeals relating to civil cases of a certain type.

The jurisdiction of the Court will be both Original and Appellate. On the Original side it will confine itself to disputes between the members of the Federation, i.e., the Provinces and the Federated States, in so far as these disputes involve "any question (whether of law or fact) on which the existence or extent of a legal right depends." Its judgment in such cases will be a declaratory judgment, interpreting the Constitution, and merely stating the existence or extent of a legal right. On the Appellate side, the Federal Court will entertain appeals from any judgment or decree of a High Court in British India, if the High Court certifies that the case involves a substantial question of law relating to the interpretation of the Government of India Act or an Order in Council made thereunder.

The Federal Legislature will have the power to enlarge the Appellate jurisdiction of the Federal Court, and to extend it to judgments or decrees of High Courts concerning civil cases, which involve a sum of not less than Rs. 50,000 or such other sums, not less than Rs. 15,000, as may be prescribed by the Legislature, or the property of like value. No other civil appeal will be entertained unless the Federal Court gives special leave to appeal.

The Federal Court will also admit appeals from a High Court in a Federated State, on the ground that a question of law, involving the interpretation of the Constitution, or an Order in Council or the extent of authority vested in the Federation by virtue of the Instrument of Accession of that State, has been wrongly decided.

Appeals from the Federal Court to the Privy Council will be permitted in all those cases which involve constitutional points, or other cases in which special permission to appeal is granted by the Federal Court or the Privy Council. The Federal Court will have the power to make rules, with the approval of the Governor General in his discretion, for regulating generally the practice and

procedure of the Court. It will also be entitled to pass orders for securing the attendance of any person, the production of any document or the investigation or punishment of any contempt of Court, and all civil and judicial authorities, throughout the Federation, will be bound to act in its aid.

Two important points deserve attention here. In the first place, it may be noted that in the name of the independence of Judiciary, the Federal Court has been kept completely outside the control, direct or indirect, of any Federal authority in India, and has, on the other hand, been made subordinate, through the British King, to a foreign imperialist bureaucracy, particularly the Secretary of State for India. The appointment and dismissal of the Federal judges, their pay and allowances and other conditions of service, will be determined by the King, that is, in actual practice by the Secretary of State. It is, no doubt, desirable that the Judiciary should not be subservient to the Legislature or the Executive and should enjoy a good deal of independence, but it is equally important that a constitution which in any way claims to be democratic should make adequate provision for securing some degree of popular control over the Judiciary. Such popular control is secured in the British Constitution by the convention that the judges though formally nominated by the King, are in practice appointed by the Ministry of the day, and can be removed from office on an address from both Houses of Legislature to the King. In the Indian Federal Constitution, however, this aspect of government as most of the other aspects, has been deliberately kept outside the sphere of popular influence, so that the main-springs of imperialist authority in the country may not, in the slightest degree, be touched by the democratic will of the Indian people.

Secondly, it may be observed that the Federal Court will not be the supreme judicial authority in the country, like the Supreme Court of the United States. Section

208 of the Act, by allowing appeals from the Federal Court to the Privy Council, will make the latter the final exponent of constitutional law, and for the matter of that, even of the ordinary law. This will not only mean a further strengthening of the pro-imperialist bias in the interpretation of the Constitution but will also perpetuate the present lack of uniformity in the common law of India.

Civil Services.

The Federal Constitution has made adequate provision for keeping all the upper rungs of Civil Services in India safe from democratic influences and from any direct or indirect control of the Legislature. The political domination of India rests very largely on the steel-frame of imperialist bureaucracy; hence the preservation of this bureaucracy is a matter of vital importance for British imperialism. The Act of 1935 not only retains the direct control of the Secretary of State over the Imperial Services, and endows these Services with innumerable privileges, but makes the Governor General responsible in his discretion for the services relating to several important departments, and above all makes the safe-guarding of the rights and interests of public servants one of the Special Responsibilities of the Governor General.

Under Section 244 of the Act, appointments to the Indian Civil Service, the Indian Medical Service (Civil) and the Indian Police Service will be made by the Secretary of State, who will also be entitled to make appointments to any service which he may consider it necessary to establish for the due discharge of those functions of the Governor General which he will exercise in his discretion. The respective strength of these Services, the rules specifying their character and emoluments will be determined by the Secretary of State, and all orders relating to the promotion, suspension or leave of the per-

sons appointed to these Services will be made by the Governor General in his individual judgment, if the person concerned is serving under the Federation, and by the Governor exercising his individual judgment, if he is serving in a Province. Furthermore, according to Section 248, no order which punishes or formally censures any civil servant appointed by the Secretary of State, or which affects adversely his pay or pension, shall be made by anyone except the Governor General in the Federation and the Governors in a Province. In any case, all members of the Imperial Services and those others appointed by the Secretary of State will have the right to appeal to the Secretary of State against any order passed by any authority in India, which punishes or censures or adversely affects their conditions of service. If in the judgment of the Secretary any person appointed by him deserves compensation on the ground that his conditions of service have been adversely affected, he will be entitled to order that the amount to be paid as compensation be charged to the public revenues of India.

It is obvious that under these provisions neither the Federal or Provincial Legislatures, nor the Federal or Provincial Ministries will be in a position to make the slightest change in the inordinately privileged position held by the Imperial Services.

In the case of the Defence Services, the Commander-in-Chief will be appointed directly by the King in Council, who, under Section 233, will be entitled to require that such appointments connected with defence as he may specify, shall be made by him or in such manner as he may direct. The King in Council may authorise any person on his behalf to grant commissions in any naval, military or air force raised in India. The Secretary of State will frame the rules, regulations and orders affecting the condition of Defence Services in India. The pay, allowances, pensions etc. of the defence forces will be charged to the revenues of the Federation and

will not be subject to a vote of the Legislature.

The Staff of the other Reserved departments, namely External Affairs, Ecclesiastical Affairs and Excluded Areas will be appointed and controlled by the Governor General in his discretion. Not only will the Governor General nominate his three Counsellors and the Financial Advisor, but will also appoint Trade Commissioners and higher officials for Legations and Consulates, High Commissioner for India, Agent to the Federal Government in South Africa, Auditor of Indian Home Accounts in Great Britain, Governor and Deputy Governor of the Reserve Bank, and a number of officials connected with the Reserved Departments.

It is noteworthy that the Act of 1935 includes several specific provisions for the protection of the position and privileges of civil servants in India. Thus, for example, according to Section 258 no civil post, which immediately before the inauguration of the new Constitution belonged to a Central or Provincial Service shall be abolished after the inauguration of the Constitution, if the abolition adversely affects the person holding the post, except by the Governor General exercising his individual judgment in the case of service under the Federation, and by the Governor exercising his individual judgment in the cases of services connected with a province. The same provision applies to any change in the pay, allowances and pensions of officials belonging to the Central or Provincial Services before the commencement of the Constitution. Section 259 provides that the salary and allowances of any person who was appointed before April 1924 to a Superior Service, other than the Services controlled by the Secretary of State, shall after the introduction of the new Constitution be charged on the revenues of the Federation or the Provinces, as the case may be, or in other words, shall not be subject to any revision by the Legislatures. Further, according to Section 260 any pension payable to a person who having been a servant of the Crown in India, retired

before the commencement of the Constitution, shall also be charged to the Federal or Provincial revenues, as the case may be. Then, there are certain provisions relating to indemnity for past acts of public servants, protection of public servants against prosecution and suits, payment of certain pensions and exemption of those pensions from taxation in India, payment of certain family pensions etc. According to Section 270, no civil or criminal proceedings shall be instituted against any servant of the Crown in India after the inauguration of the new Constitution for any act done by him in the execution of his duty before the inauguration of the Constitution, except by the Governor General in his discretion in the case of Federal Services, and by the Governor in his discretion in the case of Services connected with a Province. Any proceedings of this nature, whether instituted before or after the commencement of the new Constitutional scheme, shall be dismissed unless the Court is satisfied that the acts complained of were not done in good faith and, in the event of dismissal, the cost incurred by the defendant shall be charged on the revenues of the Federation or the Province, as the case may be. Section 271 provides that no Bill or amendment to abolish or restrict the protection afforded to certain servants of the Crown in India by Section 197 of the Indian Code of Criminal Procedure, or by Sections 80 to 82 of the Indian Code of Civil Procedure, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion. Furthermore, the powers conferred on the government by Section 197 of the Indian Code of Criminal Procedure in respect of the prosecution of a public servant shall be exercised only by the Governor General and the Governors in their individual judgment. According to Section 272, the pensions payable to a person who before the inauguration

of the new Constitution was serving under the Governor General in Council, or who after the inauguration is employed as an officer in His Majesty's force, or is appointed to a civil service in India by the King or the Secretary of State, or holds a reserved post, shall be exempted from all taxation in India, if the person concerned is residing permanently outside India. Over and above all these safeguards, there will be the Special Responsibility of the Governor General and the Governors for "the securing to, and to the dependents of persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests." In the discharge of this, as of all other Special Responsibilities the Governor General and the Governors will be entitled to act entirely in their own discretion, regardless of the opinion and policy of the Legislature or the Ministries.

Needless to add that this protection is almost entirely meant for, and is in most cases specifically confined to, the upper strata of the imperialist bureaucracy in India, which is not only one of the most expensive and top-heavy bureaucracies of the world, but is also far less amenable to popular opinion than the officialdom of any other country.

Federal Finance.

One of the major tests of the usefulness of a Constitution to the people is the extent to which it transfers financial powers to the peoples representatives, and provides financial resources for the development of beneficent or nation-building services. We have already observed that in the Federal Government over 80 per cent of the budget will be non-votable and completely outside the control of the Legislature, and that even in respect of the remaining 20 per cent the Governor General will have the unquestioned right of over-

riding any decision of the Legislature. We may now try to examine briefly if the scheme of Federal finance as enunciated in the Act provides any scope for the development of those services which can promote the material and cultural welfare of the Indian people.

It may be observed that almost all the nation-building departments, such as Education, Public Health, Medical, Agriculture, Industries, have been entrusted to the Provinces. Therefore, the problem reduces itself to this: how far has the Federal Constitution provided adequate revenues for the Provinces and what new sources of income has it assigned to them.

Under the Reforms of 1919, the needs of the Central Government were considered supreme, and nearly 60 per cent of the total revenues of the country were monopolised by the Centre. Not only this, but most of the elastic and expanding sources of revenue, such as Customs, Income-Tax, etc., were assigned to the Central Government, while the Provinces were given such resources as were stagnant or contracting. The result was that the beneficent services were treated to starvation rations.

The Federal Constitution does not materially change this position. The new division of resources between the Centre and the Provinces again overwhelmingly favours the former, both in respect of the total share and the elasticity of revenues. The only change favourable to the Provinces is to be found in the terms of Section 138 relating to the division of Income-Tax between the Federation and the Provinces after a certain period, and in Section 142 which provides for certain subsidies to be paid by the Federal Government to certain deficit Provinces. The recommendations of Sir Otto Niemeyer, however, make it clear that even under these sections no substantial relief can be expected by the Provinces at least for several years to come. The grants in aid to be given by the Federation to certain deficit Provinces such as Sind, Assam, Orissa, and the United Provinces will

meet only ordinary deficits, and will not provide any new resources for material development. The 50 per cent share of the Income Tax proceeds to be received by the Provinces, under Section 138, would roughly amount to only about rupees 8 crores and even this sum, according to the recommendations of Sir Otto Niemeyer, will not be received in toto by the Province until about 10 years have elapsed from the introduction of the Federation. The $62\frac{1}{2}$ per cent of the jute duty to be received by Provincial Governments, as recommended by Sir Otto Niemeyer, would represent a small amount as the total yield of the duty is only about Rs. 3 crores.

The provisions of Section 137 may enable the Provinces to improve their financial position to some extent, as the Section provides that succession duties to property other than agricultural land, Stamp duties mentioned in the Federal Legislative List, terminal taxes on goods or passengers carried by railway or air, and taxes on railway fares and freight, will be levied and collected by the Federation, but the proceeds will be distributed among the Provinces and the Federated States, if any, within which these taxes are levied. The usefulness of these provisions from the point of view of Provincial Governments is, however, considerably reduced by the fact that the rates of the duties will be determined by the Federal Government, and that the latter will be entitled to increase any of the duties or taxes by surcharge for Federal purposes and the whole proceeds of any surcharge will form a part of the revenues of the Federation. Obviously, under these conditions, the prospects of securing any substantial income from these sources for the provinces are rather remote, since the Federal Government with its inflexible and over-inflated expenditure will try, through surcharges, to squeeze the utmost out of them for itself.

Section 140 holds out a vague hope of the distribution, at some future date, of the income from Salt Duty, Federal Excise and Export Duties among the

Provinces, if the Federal Legislature so provides by an Act. Needless to point out that in view of the present financial position of the Central Government and the new burdens that will be thrown on it with the inauguration of the Federal Constitution there is hardly any likelihood of the Federal Legislature passing such a measure for a long time to come.

What is important to remember is the fact that the magnitude and rigidity of the Federal expenditure as provided for in the Act will not leave any scope for the transfer of an appreciable proportion of Federal revenues to the Province, under any one of the above noted sections, particularly as over 80 per cent of the Federal budget will be beyond the control of the Federal Legislature. In fact on the other hand, there is every reason to believe that with the growing danger of a world war, the expenditure on Defence will increase in the near future. No serious reduction in the Debt charges, which will constitute another very big item of the Federal expenditure would be possible, because the insistent financial demands of the Provinces on the Centre will not enable the latter to make adequate provision for the reduction of the existing Debt. Besides, other non-votable items of the Federal expenditure particularly those relating to the salaries and allowances of the Governor General, Ministers, Counsellors, Financial Advisor, Federal Court judges and other higher Federal officials, and the grants in connection with the administration of the Reserved Departments and the discharge of the Governor General's special responsibilities will be practically fixed. In fact taking the Federal budget as a whole there will be hardly any scope for a reduction in four-fifths of the recurring expenditure.

Under these conditions the nation-building services will remain as of old stunted and undeveloped, and the illiteracy, disease and poverty of the people will continue to be as rampant as they have ever been under the British rule.

CONCLUSION

The Indian National Congress has categorically denounced the proposed Federal Structure, and has repeatedly affirmed that no Constitution, which is framed by an alien government in support and furtherance of its rule of the sword, can ever be acceptable to the Indian people. A constitution of slavery and bondage, seeking relentlessly to reinforce the entire system of imperialist exploitation must be resisted to the bitter end.

British Imperialism in its last throes is attempting, through a new constitutional machinery, to cement all its reactionary alliances, to forge stronger instruments for repression and to tighten its girdle for a fresh and more powerful offensive against the freedom movement of the country. The Indian people who have been struggling for decades, in the face of untold misery and oppression, for securing their inalienable right to breathe freely in their own motherland, to enjoy the fruits of their own toil, and to have full opportunities of growth and self realisation, can meet this imperialist challenge only by strengthening the various organs of their struggle, by uniting all the different sectors of the anti-imperialist movement under a common programme of national emancipation, and by creating sanctions for setting in motion an ever growing section of the masses against imperialism and its allies.

The Indian National Congress has declared unequivocally that a Constituent Assembly, elected on adult franchise, can alone have the right to give India a Constitution. The demand for a Constituent Assembly must become the rallying centre of all the anti-imperialist forces in the country. It must not, however, be forgotten that a Constituent Assembly will come into existence only after a relentless struggle against British Imperialism, and as a result of the overwhelming strength and will to power of the Indian people. It will embody the deter-

mination of the hungry and oppressed millions of India to wipe out every trace of foreign domination, and to establish in the country a free and democratic system of government.

The freedom movement, led by the Indian National Congress, is essentially a struggle for democracy. But a formal political democracy of the Western European type, which places on a par, the freedom of vested interests to exploit the propertyless, and the freedom of the propertyless to starve, cannot solve any of the innumerable problems facing India. In fact, today in a world torn by inequalities of wealth, overridden and cramped by acquisitive conflicts, the nineteenth century content and meaning of democracy needs fundamental revision. In a backward country like India, particularly, where the massive poverty of the great majority of the people, has for decades choked national growth, democracy, if it is to serve as a liberating and progressive force, must imply complete economic security for all those who toil. It must create that totality of circumstances in which every individual can find full scope and opportunity for self realisation and for contributing his best to society; it must so organise the production and distribution of wealth as to make the good life a reality for those millions of sons and daughters of India, whose existence is today a long drawn process of woe, coarsened and brutalised by unending drudgery.

India needs a broad based and multiform democracy; a democracy which not only provides for the universal participation of the people in the work of government, but which also secures in every other aspect of national life, economic, cultural and social, the preponderance of popular will. The Constitution of a free India, whatever its formal structure, must draw its sanctions from the basic needs and desires of the masses; it must so link up the highest with the lowest organs of the State as to create a vital and organic relation between State activity and the people's will; it must so reconstruct the

APR 19 1967

138439

56

JQ

215

1938

A65

national economy as to guarantee at least the elementary material requirements of civilised life to every citizen, it must create the conditions necessary for the growth of a real people's culture.

But, it is only when the unconquerable might of India has shattered the chains of slavery and unleashed to the full the creative energies of the masses, that there will arise on the ruins of an imperialist Federation, the glorious structure of a free and democratic republic of the Indian people.