

The rest would be a matter of detail, which may be changed or reconditioned at any time we find it necessary to do so.

The writer has tried to profit in this volume by the many friendly hints and criticisms advanced against the first volume on Provincial Autonomy whose second edition was out a month ago. But, even so, he is aware that there may remain many points in the following pages, which expose them to just criticism. For these, the writer alone is responsible, and trusts to an indulgent public to overlook these blemishes in his work.

25th September, 1937.

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CHAPTER I FEDERAL STRUCTURE IN INDIA

INTRODUCTORY

Ingredients of a Federation

A Federation is usually a voluntary association of autonomous States to form a closer union among themselves in order more effectively or expeditiously to attain a common objective. The union involves a considerable surrender of the previously existing independent sovereignty of the combining States. The resultant entity from their combination is more powerful than any one, and often all, of the combining States.

Sovereignty in a Federation

The new creation is not a fully sovereign State by itself. In so far as international relations or recognition is concerned, it is the only sovereign representative of the combination. But in domestic matters, and by the implication of the constitutional law of such creations, the sovereignty is divided. Certain specified functions of the State are assigned exclusively to the Federal or the united State; and certain other functions are similarly reserved to the uniting States. Even in the central, national, or Federal Government, the functions of government are clearly demarcated between the Legislature, the Executive, and the Judiciary. Each authority—the State or the Federation—is sovereign within its own allotted or agreed sphere of action, and has no right to interfere in the sphere assigned

exclusively to the other. In the undefinable sphere of no-man's land—the so-called residuary powers, or inevitably overlapping functions—the practice is by no means uniform. In some federations, e.g., Canada, it is the Union Government which is vested with all the balance of undistributed powers;* while in others, e.g., Australia or the United States of America, the corresponding powers are given to the constituent States of the Federation.† The same holds good also for the several representatives of sovereignty—the Legislature, the Executive, and the judiciary—each all-powerful in its own peculiar domain; but utterly excluded from the corresponding domain of its sister authorities.

Written, Rigid Constitution

A definite, written, rigid instrument of Government, the Constitution, is another distinctive feature of Federations. It is open to interpretation as well as amendment by the authority appointed for the purpose; and, pending such amendment, or interpretation,—which in effect sometimes even amends the Constitution, that document is the sole authority for defining the nature of the various governmental bodies, their powers, or functions. This written Constitution embodies the will of the people, the ultimate, *de jure* as well as *de facto* sovereign in all Federations; and it is more potent than either the Federal or the Constituent State authority.‡

*The Legislature of the Dominion of Canada is not only vested with all residuary powers; it is empowered to disallow any provincial legislation which it deems to be injurious to the welfare of the country as a whole.

†cp. Amendment X of the U.S.A. Constitution.

‡cp. MacIver, *The Modern State*: "The written Constitution is the expression of a will more fundamental than either the Federal State, or the constituent State can exercise."

Divided Allegiance

The union among the several units composing the Federation is, as already observed, a voluntary association and is essentially a union of equals. It must, therefore, function on a basis of equal participation in the rights and benefits accruing from the Federation. Every Federation must, accordingly, have not only divided sovereignty; its citizens must owe a divided, or rather, a dual allegiance; one to the State of their birth or domicile forming part of the Federation; the other to the Federation itself. This often causes complication, and sometimes a conflict, to which we shall refer later on a little more fully.

Constitution Democratic

Federations must, likewise, be democratic, in the sense of having responsible, constitutional governments, exercising delegated authority, in accordance with the written instrument of government. A Federation is essentially a union of equals, and must, therefore, needs be democratic. Empires, like the Roman, or the British for a long time before 1900, are thus marked out from Federations, for want of an equal participation of all the members of the Empire in the concerns of the Empire. So also are all component parts of a united kingdom—two or more States under one Crown, such as the Kingdoms of England and Scotland from 1603 to 1707; amalgamated in 1707, with Ireland added in 1801.

Federations Distinguished from Feudal Combines

Feudal or semi-feudal combines under a common suzerain are also not the same thing as modern Federa-

tions, since the latter are essentially democratic, and must have responsible Governments; while the former are as essentially autocratic; the latter have divided sovereignty amongst the constituent States and the Federation, as well as a divided or double allegiance from its citizens, while the former claims to be based on unified sovereignty and common allegiance.

Distinguished from Leagues

On the other hand, a voluntary union for a given purpose, and for the time being only, *e.g.*, the alliance of the Greek States under the Achaean League, or the unity of command in the European War between British, French and American Armies, is also not the same thing as a Federation, the essence of which is a permanent association for common purposes. Because of this characteristic, Federations generally dislike any tendency in their member States to disruption, or separation of one component part from the rest, however considerable the powers of local autonomy left to the individual States under the ordinary constitution, may be.* The sentiment of State or local patriotism, however powerful at the start, insensibly undergoes a change, as the common sentiment for the nation collectively gathers strength; and becomes daily more serviceable and vocal in all material concerns of the people affected. If the local allegiance is allowed scope, it is in the purely domestic sphere of each component unit of a Federation. Even there, the growing interdependence of modern industrialised communities upon one another tends to undermine the State patriotism as against the national; and so weakens

* "Federalism, like democracy itself, is a matter of degree, but the general tendency is towards a stronger unity." MacIver, *The Modern State*, p. 360.

the authority, within its own proper constitutional sphere, of the State, or the component unit of the Federation.

Pre-requisites of a Federation

The essential pre-requisites, then, of a sound and lasting federal organisation are:—

Geographic Contiguity

(i) An obvious geographic contiguity, and a certain community of material interests, which can be served better in union than by keeping apart of states often at variance with one another. Apart from the exceptional case of the British Commonwealth of Nations, which it would do considerable violence to the accepted terminology of Political Science to describe as a Federation, there is no instance on record of a Federation among units geographically separated from one another. The federating units may occupy a territory as vast as that of the United States of America, or the Union of Socialist, Soviet Republics; or they may be confined in a space so limited as that of the Cantons of Switzerland, forming the most ancient as well as the smallest example of a democratic Federation in the world. Mere distance is no bar, especially in modern times. But, though distant from one another, the federating parts must nevertheless be contiguous to one another, so as to form a single whole as a unit in space.

Cultural Community

(ii) Community of cultural heritage, or race consciousness, or other such political cement, also goes a long way in stimulating, emphasizing, and eventually realising the desire for union. In all the classic examples of Federations in the world, from the loose association of the Greek States to the latest instance of the Russian Union of Socialist Soviet Republics, stretching over 8½ million square miles of territory, this community of heritage and sentiment, of initial impulse and continued urge under modern conditions, is noticeable in all cases of successful Federations. True, in a case like that of the U.S.S.R., there are, within the Union, a number of cultural or racial minorities, differing widely *inter se* in historical tradition and cultural

background. But despite this difference or divergence, there is a stronger cement holding them together, in the consciousness of a common economic purpose more effectively than under separate Statehood for each of these racial or cultural minorities. United in a vast, powerful, Federation, whose aggregate resources are, at a pinch, available for the benefit of every member of that community of peoples, each combining unit finds itself much better off, more able to achieve successfully the objective of a radical reconstruction of society, than each existing as an independent State by itself would be able to realise. The terms and conditions of the Union, loose enough to allow the fullest possible scope for the realisation of the individuality of each racial and cultural minority in the U.S.S.R. are also such, that there is no obvious purpose to be served by disintegration. Hence we find economic interest transcending the more intangible factor of racial or cultural distinctness, in order to form and maintain a Federal Structure, under conditions like those prevailing in Russia.

Common Danger

- (ii) The presence of a common danger, such as that which drove the British Colonies in North America, when freed from the British domination, to form a union among themselves, has often accounted for the desire among States to federate, which would otherwise have remained apart, and even antagonistic. The political danger which forms the original motive force may disappear in course of time; but the Federation once formed, will not be discarded simply because the original impulse has been exhausted. New advantages discovered from the continued association will almost always prove strong enough to restrain disruptive tendencies, if any; and so such considerations have often no more than historical importance in the life of an accomplished Federation.

Common Characteristics of Federations

Given these pre-requisites for a Federation, the resultant State has certain common characteristics or features, which, in its normal life, distinguish it from the other communities organised as States.

As already noticed, (a) Federations invariably connote a **divided Sovereignty**, divided between the component or constituent parts of the Federation, and the Federation itself. As a corollary to that, the citizens owe a two-fold allegiance, which, however, insensibly transforms itself into an overwhelming sentiment of loyalty to the Union, often in opposition to the claims of local patriotism. The advantages of the Federal System are too material, too direct, to be dropped, once they have been tasted. And though the larger size of the Federal State may make it difficult, if not impossible, to exercise real self-government on a national scale, even that may be regarded as an immaterial sacrifice in virtue of the direct material benefits resulting from a Federation. Each component part will, of course, continue to be democratically governed in itself; and all will be equal *inter se* in the Federation. But in the latter the principle of democracy would be realised rather by delegation than by actual exercise. As the concerns reserved for federal action are not of immediate concern to the individual citizen, the latter does not perceive the sacrifice of his democratic privileges involved in the creation of the Federation. The advantages of the Federation are direct, and immediate; its disadvantages or burdens indirect and imperceptible.

(b) The Union thus formed, loose as it may seem to be, must remain an *enduring association*, a perpetual bond between the communities federating, which the Federation collectively would, if need be, maintain by force of arms in the last instance. It is not merely the hyphen that joins, the buckle that links, two distinct

entities. It is the cement which makes one out of many distinct parts. Of course, the Union cannot subsist on the oppression or suppression of minorities within the Federation; and hence certain rights are usually reserved, or guarantees given, for the continued individuality and equal opportunity for self-expression to the peoples of the uniting States, and to the racial or cultural minorities which may be scattered all over the union. The actual form of each Federation is essentially influenced and largely determined by such factors within it; but the overriding feature is observable in all modern Federations, that, once formed, they seem to be setting their face sternly against any centrifugal tendency noticeable within the Union.

(c) For these features of modern Federations to work in harmony together, all such organisations provide, not only a rigid, written constitution, but also postulate the ultimate and absolute sovereignty in the people of the Federation collectively. Popular sovereignty in Federations is a living reality. It is the sole guarantee of the equal rights of all component parts of the Federation, and the final power to amend the Constitution if and when needed. The exercise of this sovereignty usually takes the form of the will of the majority, and majorities to be effective must be moderate; to be acceptable, must be reasonable; to be obeyed, must be considerate. The only limits that popular sovereignty is subjected to by the Constitution, itself an expression of the sovereign will, may be found in the rights of equal representation, as distinguished from *pro rata* representation, granted in the Upper Chambers to the member States;

association of that body in certain functions of sovereignty; or provisions by which a given majority, or a prescribed procedure, is needed to carry out structural emendations or constitutional amendments.

Conditions in India

In India, the factors making for a Federation, are not all present in an equal degree. The component parts of a Federation of India are not all, *inter se*, of equal status; they have not the same system, principles, or ideals of government; nor have they all the same urge to unification. The British Provinces are, in their present form, all the creations of the Central Government, or of the British Parliament acting as the absolute and final sovereign authority for this country. The motive force in setting up each Province was administrative convenience, rather than any recognition of the intrinsic unity of the entity created. Their equal status, *inter se*, is a creation of the Act of 1935, and their constitutional autonomy derives from the same source. The economic strength of each province, again, is markedly different from its neighbour's; and so the objective sub-consciously sought in federating is necessarily not identical. There is, thus no definite principle of intrinsic unity, of political or economic homogeneity, among the Provinces internally, which could make of each of them a distinct and organic whole. There can, therefore, be no question of a voluntary association of these units to form a Federation of British India, since they are already integral parts of that entity, and have no rights either to separate from, or to come into closer union with, the national State. They have, in themselves individually, no trace or attribute of sovereignty, and so can make no pre-

tence at sharing sovereignty, or sacrificing any part of it. Federation is imposed upon them by an act of their present sovereign authority the British Parliament, which neither consults the people of the Provinces, nor would abide by their decision in such matters if incompatible with British Imperialist interests and requirements. If Provinces are re-formed, if old associates of the Empire are cut away and disjointed from it, or new ones created within the Empire, that is all the doing of the same absolute sovereign authority.* Neither real democracy nor working

*Says Section 2 of the Government of India Act:—

(1) All rights, authority and jurisdiction heretofore belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the government of the territories in India for the time being vested in him, and all rights, authority and jurisdiction exercisable by him in or in relation to any other territories in India, are exercisable by His Majesty, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Majesty.

Provided that any powers connected with the exercise of the functions of the Crown in its relations with Indian States shall in India, if not exercised by His Majesty be exercised only by, or by persons acting under the authority of, His Majesty's representative for the exercise of those functions of the Crown.

(2) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in or in relation to any territories in India by the Secretary of State, the Secretary of State in Council, the Governor-General, the Governor-General-in-Council, any Governor or any Local Government, whether by delegation from His Majesty or otherwise.

This declaratory provision makes a unilateral assertion of the rights, authority and jurisdiction exercised by or appertaining to the British King, for which it would be difficult to find satisfactory juridical authority. Even if it be conceded in regard to the British Provinces, as sanctifying the right of conquest and annexation, it is difficult to justify similarly its effect in ascribing practically identical powers and authority in regard to the territories and government of the Indian States whether federating or not. The right of the British Parliament to regulate, from time to time, the governance of British India has been exercised too often to justify its being questioned at this date. But the essence of Federation is undeniably the voluntary association of equals, to promote some common purpose, or realise some common interest. The Government of India Act, 1919, (9 & 10, Geo. V. c. 195) had, in its preamble, promised the progressive realisation of responsible government in this country.—presumably only for British India. That Act is now repealed, except, curiously enough, for its preamble, and subsection (1) of section 47.

The present Act does not substitute any other preamble; and as the Act of 1935 applies or is intended to apply, to the British Indian

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autonomy, on the basis of a responsible government, has obtained until now, in any of the Provinces. The political consciousness of their peoples, however aroused and in whatever degree, is utterly dumb or non-existent, in so far as the accomplishment of the Federation is concerned. Neither the governments, nor the peoples of the Provinces, are consulted, before any change of boundaries, powers or functions, status or purpose, is resolved upon and carried out by the supreme authority, which has constituted itself the absolute trustee of India's destiny. Hence the basic ingredient of a free consent to be united, or federated, by equal and autonomous units, who have some common interest to promote by such closer union, or some common purpose to serve, is lacking in India.

This does not mean that we have no common purpose to serve, no common interest to realise, if all the Provinces could be united in a closer organism of

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Provinces, as well to such Indian States as accede to the Federation, it is open to question how far that Preamble can apply to and explain the purpose of the new Constitution. The Act of 1935 is described, in its title, as "An Act to make further provision for the government of India," and Section 1 simply lays down:—

"1.—This Act may be cited as the Government of India Act, 1935."

Without any Preamble, or any more enlightening description, it is impossible to appreciate the purpose and objective of this Act, the more so as it is intended essentially, fundamentally, for a different structure from all its predecessors regulating the Government of India. A declaration of Lord Irwin as the Governor-General of India (October 31, 1929) solemnly affirmed that Dominion Status is implicit in the constitutional evolution of India; but that declaration, however authoritative of British policy at the time it was made, forms no part of the present Act; while its express provisions make a marked differentiation between the Constitution of British Dominions, and that applied to India under this enactment.

Even the principle of Responsibility, introduced in the Central Government of India for the first time was distinctly conditional upon the States joining the new system upto a required minimum.

equal and autonomous units.* India has been hitherto exploited in the British capitalist interests, who have only recently admitted a small section of the Indian people as their junior and sleeping partners. Our trade and industry, our domestic and foreign policy, our national impulse and international contribution, are all suppressed, or perverted into channels ministering to the growth and nourishment and fulfilment of British Imperialism. If we would reverse this exhausting process of a century and more, and redress the social injustice of an archaic system, undoing the might of the vested interests now being rapidly allied with foreign imperialism, we must have a Federal system, in which each component unit of the nation would function as an integral, but at the same time a distinct, autonomous, part of the whole, and wherein all would collaborate for a common regeneration of the country and its people.

Given this community of purpose and interest, India cannot be said to be lacking in the essential prerequisite of a successful Federation; given likewise the history we have passed through and the traditions we have evolved, the terms and conditions on which an effective Federation could be formed out of the Indian Provinces merit serious discussion.

Reconstitution of Provinces

In another volume on the new Indian Constitution† it has been pointed out that the existing Indian

*cp. the Report of the Statutory Commission, Vol. II, ch. 3, also para. 120 of the Montagu-Chelmsford Report, which says: "Granted the announcement of August 20th (1917) we cannot at the present time envisage its complete fulfilment in any form other than that of a congeries of self-governing Indian Provinces, associated for certain purposes under a responsible Government of India; with possibly what are now the Native States of India finally embodied in the same whole, in some relation which we will not now attempt to define."

†cp. Provincial Autonomy, Ch. 2.

Provinces cannot claim to be integral local units, with a distinct homogeneity of their own, which could justly make of them independent States. But within many of the present units called Governors' Provinces, there are distinct cultural entities, or sub-provinces, which could well constitute a people, each by itself, and make a State. The tendency in some distinct homogeneous Provinces, or historical communities, to emphasise local patriotism, or sectional loyalty, may perhaps be deemed to militate against the development of national solidarity. In so far as national solidarity is indispensable at the present juncture for the effective development of India's inherent natural resources, the central national authority would have to be vested with powers, which would easily ensure such development being carried on unimpeded by parochial loyalty or communal sentiment. When, however, due safeguards have been provided for this end, wide scope could still be left for effective local autonomy to the constituent units of a Federation of India, which seems to be the most feasible form of political organisation and constitutional machinery for the governance of this country.

Communal Cleavage

There is, also, another hindrance in the way of a proper formation and satisfactory working of a Federal State in India, viz. the presence of the communal sentiment. But the communal antagonism between the two chief communities of India, is superficial, confined only to the upper strata. So long as the end of political agitation in India was merely a sharing of the spoils of Government, his rivalry in the two communities had its own explanation. But as the purpose of India's demand for political independence is being

better appreciated by the mass of the people; as the leaders and spokesmen of India's political aspiration begin more and more to give concrete form to this urge for self-expression of a whole people; as the necessity of political power to effect social justice and economic amelioration all round is being understood, the artificial divisions emphasised by the communalists will weaken, and in course of time be obliterated.

In so far as these communal lines of division at all conceal real cultural differences, which are incompatible with a uniform mould, the Federal form will be the most serviceable to afford the utmost scope for such genuine differences between the communities without injuring their common purpose and unity. It is of the essence of modern Federalism that regional minorities which represent also cultural minorities must be duly protected and encouraged, in order to make the resultant life of the entire people as rich and varied as possible, and enable it to contribute in full measure to the sum total of human advancement.

There is still a strong sentiment of local loyalty in India, but that feeling of provincial patriotism does not in the least override the feeling of national unity. Even where the provincial sentiment becomes identified with the communal cleavage,—e.g., in Sind, the advantages of remaining united in a single India are too palpable, and too obvious for this sentiment to constitute a menace to the national integrity of this country. Thus even in the border provinces there is no marked sentiment in favour of separatism, and it is well recognised that this is not a practical proposition. They all look to India as a whole and appreciate the advantages of a federal combination with the rest of India.

Indian States

The Indian States constitute a more difficult problem. Under their present form of government, and with their existing political structure and social organisation, they would be completely out of place in any form of democratic constitutional reconstruction in India. They would neither fit in with democracy, nor with the ideals of social justice and economic regeneration. A chapter in this volume has been devoted to a careful consideration of the judicial, political and economic aspect of the Indian States being incorporated in an All-India Federal system. It is clear that the admission of the States, with their present archaic form of government, would constitute an obvious anomaly in a democratic Federation of India. The people of the States have not been allowed to have their say in the matter, and the original motive force for including the States in an Indian Federation is the desire of British imperialist policy to exploit and dominate over India the more effectively through the autocratic and feudal elements in the States. And yet an All-India Federation cannot leave out the States. Their geographical position is such as to make this exclusion highly undesirable, for they are dotted about all over the country, and are often islands surrounded by provincial territories. Politically and economically, this exclusion is still less to be thought of, and no homogeneous India can be built up in this way. Nor can the people of the rest of India tolerate willingly the separation of their countrymen in the States from them, and the continuation for the latter of an out-of-date feudal regime which prevents all growth.

This then is the essence of the problem: we cannot leave out the States from an All-India Federation, and we cannot have them as they are without making the Federation a farce, and doing grave injury not only to the people of the States but also to the people of the rest of India.

The Rulers of the States have emphasized that they will only join the Federation with their autocratic powers left intact and fully acknowledged; they are to be local sovereigns in fact; their treaties are to be considered inviolate and unchangeable. And at the same time they will have the power to interfere in all India matters, and thus India as a whole will be subjected to some extent to this autocratic and feudal control. That is a position which the people of India, including the people of the States themselves, have rejected completely and with unanimity, and which they cannot willingly tolerate. That means that the ideal of a democratic India must be given up, and no constitutional process is left open to the people to get rid of autocracy and feudalism.

If the British Indian Provinces do not have the democratic basis, which we consider the pre-requisite of a proper Federation to-day, the Indian States are entirely lacking in this. These States claim now an independent existence and sovereignty in regard to their internal affairs, which is far greater than the Provinces are supposed to possess. Yet in actual practice the largest and most powerful of them is less influential than even the smaller Provinces. The Treaties on which they lay so much stress, it should be remembered, were between the British Power and the Rulers whom they choose to recognise. Even these

Treaties have been transformed in course of time by a continuous process of interpretation and erosion, beyond recognition. They have been insisted upon only when they served the interests of the dominant partner; when they came into conflict with that interest, they were ignored or interpreted so as to suit the Paramount Power. In a dispute between the two, the Paramount Power is both a party to the dispute and the final judge. No appeal or alternative tribunal is possible. Thus the Treaties have not succeeded in safeguarding the rights of the States or their Rulers. Owing to the ever growing pressure of Indian Nationalism, the British Government has sought to rally the States to its side, and has therefore, in recent years, referred to the sanctity of these Treaties and sought to make of them an excuse for the denial of democracy. But the Treaties will not be allowed to come, at any time, in the way of British interests and policy; they will only be used as a barrier to the establishment of democracy and unity in India. If the British Government so desires, a Ruler will have to join the Federation; he cannot keep out of it for long by virtue of his Treaty rights.

It must be borne in mind that most of these Treaties represent an arrangement arrived at a century or more ago. Since then enormous changes have taken place in the world, and even in India, where the outer shell persists, while the inner content of it has changed utterly. The Treaties thus are wholly unreal, and they have persisted so long simply because the British Government so desired. There is no strength or sanction behind them except that of the power of the British

Government. If that support is removed from them, they collapse and fade away. The people of the States object to them as well as to the autocratic and feudal order which they have preserved. They demand to-day, with an ever increasing persistence, a democratic and responsible form of government. They look to their neighbours in British India, with whom their contacts are of the closest kind, and desire to link their political and economic future with them. There is no trace of a separatist sentiment among the people of the States.

The idea that British India and the Indian States should be kept distinct from each other and politically apart is absurd, and entirely out of keeping with present-day forces and developments. No State is by itself so large and compact, and at the same time geographically so situated, as to make isolation and a separate existence desirable. The autocracy that prevails in the States and the archaic social system are so utterly out of tune with facts and modern tendencies that they cannot survive for long.

There has been recently a tendency on the part of some of the Rulers of the States to hold back from the Federation, but this must not be mistaken for an urge to remain apart. It does not represent a real desire to keep separate from the rest of India, for such separation is hardly a possibility to-day. It represents at the most a desire to keep as far as possible from the growing democracy and nationalism of the Indian people. But the real explanation of the bargaining that has been going on between the Rulers of the States and the British Government is the wish of the former to exploit the opportunity offered to them,

by the provisions of the new Constitution, to obtain the best terms they can for acceding to the Federation. It is to the interest of the British Government to meet them as far as they can, without neutralising the fundamental idea underlying their scheme of Federation. In that scheme the Rulers have an important part to play, for they are meant to be one of the main props of British Rule in India. Thus the bargaining between the Rulers and the British Government is at the expense of Indian solidarity and India's national and economic emancipation.

Differences Between States and Provinces

A. The differences, then, between the Indian States and the Provinces, joining in a Federation of all India, are threefold: (a) While the States can claim a vestige of independent sovereignty, at least for their local concerns, the Provinces are, in all instances, the creations of a central authority, and exercise only delegated authority. (b) The States had, in some cases, an existence prior to that of the British Government of India itself; not one of the Provinces can claim this distinction. In combining these two mutually distinct elements into a Federation of all-India, the technical procedure followed is, accordingly, radically different. (c) While the Provinces are combined into a Federation by a superimposed fiat of the British Parliament, the States are, in theory at least, free to choose to join or not to join the Federation; and if they do so choose, they have, nominally at least, the right to make special terms, reservations, or conditions.

B. Forms of Government. The States are almost entirely based on the absolute autocracy of the Ruler, while in the Provinces, there is visible, in however

slight a form, a germ of real democracy. Some of the States have, in recent years, introduced partly elective assemblies and councils, but these legislatures have hardly any democratic element or power, and their executive is solely responsible to the Ruler. The British Government have no legal right to dictate to the Rulers of Indian States the choice of their Ministers; but, in practice, not the most powerful State, nor the most determined Ruler, can have a Minister unacceptable to the Paramount Power. There is, therefore, no possibility in the States, under present conditions, for a government responsible to the people. The political leaders of British India, busy with their own problems, have been unable to organise the people of the States and to develop their political consciousness, which has grown so rapidly in recent years in the rest of India. It has, indeed, been the express policy of the Government of India to keep the concerns of the Indian States and Princes rigorously outside the field of British Indian politics. If they have agreed to the Federation of the States and the Provinces, and conceded the principle of responsible government in the Federation so formed, it is because they expect the Indian State Rulers to provide just that element of conservatism, or reaction, which is essential for the continued domination of India by the British, and her exploitation by British Imperialism. The proposed Federation thus represents the continuation of that basic policy which has governed England's relations with India in the past.

C. Economic Position. The third main difference lies in the economic contrast between the States and the Provinces. While the former are still mostly semi-feudal organisations, the latter are already aggressive

individualists, and ambitious capitalist entities. The emanence, in them, of a still more progressive tendency towards a greater social justice, and a better chance for individual self-expression, is a question of time, indeed these tendencies are already visible. But the people of the States are very backward in this respect as in others, and in a federal union they might act as a drag on the others, thus impeding the economic evolution of the rest of India.

Objective of Indian Federation

With these differences between the component units of the proposed Federation of India, various questions inevitably arise: How far closer association of these mutually incompatible units of a Federation of India is likely to be beneficial to the combining units themselves, and to the nation collectively? The answer to this question largely depends, of course, upon what we consider their respective benefit to consist in; what is our aim and ideal in desiring or accomplishing such a combination. If the ideal in view is the combination of all parts of the country in a more or less homogeneous, national, unified organisation, motivated by a common impulse of securing the emancipation of the country from alien control and domination, in order that the people of this land should be able of their own accord to devise ways and means of affording social justice and perfect civic equality; if we desire, by this device, to secure rapid industrialisation of the country, developing all its known and yet unknown resources; if we aim at a free India taking her due place in the roll of the independent sovereign communities of the world, and co-operating with them for social betterment and the advancement of human

civilization, then we cannot have this through a sham federation, which brings neither real unity nor homogeneity, and stops our progress to political and social freedom. We cannot have a house divided against itself, or a system in which neither the form nor the essence of government are identical in all units. The States as well as the Provinces must have the same form and ideals of political organisation and activity. Feudal, reactionary interests and the vested interests that exploit, will have to be abolished in the States, so as to bring them in line with the rest of India. Federalism can only work satisfactorily on this basis with a uniform structure on a common objective. Any other form of federation is likely to be a device to perpetuate existing divisions and differences, and to protect vested interests and privileged groups.

If we have this objective in view, there can be no doubt that a federation based on it would result in benefit to all the component units as well as to the community collectively. Without it India would be divided and weak and unable to achieve anything worth while. Federation is thus indispensable for us, but even so we cannot pay too high a price for it. If the price demanded is too high, as in the proposed Federation, then it is better and safer to do without it, till a more favourable opportunity presents itself.

Federation and Social Re-construction

The question of Federation can also be considered from the point of view of social re-construction. How far is the Federation calculated to help us to achieve social re-construction with a view to nationalising all forms of natural wealth and the sources of new wealth? Such an ideal presupposes the elimination of vested

interests and privileged classes. But the Federation, as now conceived, is fundamentally incompatible with and opposed to such an ideal of Social Re-construction; it has been planned to resist all social change and to perpetuate the existing order. It must fail, therefore, to solve the vast social problems that face us to-day.

India as a Federation

Let us consider the position of India as a Federation in contrast with the other important Federal States in the world. The following are some statistics regarding the principal Federations of the world.

Some comparative Statistics of the Leading Federations

Name	Area in Sq. Mls.	Population in Millions	Revenue in Millions of local currency.	Expenditure	Debt
Canada	3729665	10.377	\$ 67,513	72,360	682,494
Union of South Africa	472347	8,483	39,524	28,222	272,184
Australian Commonwealth	2974581	6,677	73,942*	70,118	1222,559
India	1808679	352,838	89,784	89,708	909,315
U. S. A.	3685382	122,775	£ 3991,905	3398,402	*27053,085
Switzerland	15940	4,066	Fr. 422,400	430,700	5215,273
U.S.S.R.	8241921	165,778	Rbl. 6590.5	65400.5	10988.9

There are many who consider the British Commonwealth of Self-governing Nations as also a case of a Federation. In reality, however, it cannot justly be described even as a Confederation; much less can it be called a Federation. The component parts of the Empire are practically independant nations, separated from one another by long distances, and holding objectives, pursuing policies, confronting problems,

*These details are taken from the Statesman's Yearbook for 1935. The U.S.A. figures for Revenue and Expenditure relate only to the ordinary revenue and expenditure. The so-called Emergency Expenditure, which was more than an equal amount, is extra. In each case the figures are the latest available for the year for which the Statesman's Yearbook could supply them. India's figures for area and population include those of Burma. Germany under the Nazis is no longer a Federal State, and so we have left it out of account altogether.

essentially different one from another. This vast mass embraces an area of 13.355 million square miles, or a fourth of the land surface of the earth; and 495.764 million souls, or more than a fourth of the world population. There is, moreover, little or no direct contact between the nominal Sovereign of the Commonwealth and the individual citizen in each component part. The citizen in each unit owes an allegiance to his own local sovereign entity; and hardly any to the common Sovereign.

In point of area, India is fifth in the list, but in point of population, she is the first, being twice as populous as the next most populous Federation,—the U.S.S.R. The latter, however, is more than four and a half times as large in area. In point of national wealth, as measured by the income and expenditure, India is third on the list. In point of individual wealth, she is probably the last on the list,—having a per capita income of probably less than one-fiftieth of the corresponding figure in the United States, or the U.S.S.R. India's chance to develop herself, and exploit the yet unexplored resources of the country to their maximum scientific capacity, lies, undoubtedly, in a regime of unification, Federation. In a system of disjointed and disintegrating units, and territories without any ethnic or geographic bond between them, that is impossible. The separation of Burma from the mainland of India has substantially reduced the area, and affected the population figure; but that would not affect her material position in the scale of comparison.

But India differs markedly from the other Federations of the world, in not only having two distinct

types in the proposed Federation, but also in the absence of any final, sovereign authority within her own united borders. The domination of an alien power makes the case of India unique in our political science. The question whether the centre should preponderate over the units, or *vice versa*, is relatively of minor importance so long as sovereignty does not rest in India. Because of the primary importance of the issue of national independence, all other issues and conflicts of interests—between the units and the Federation, between the States and the Provinces, between even different classes—become secondary.

India has also, like Russia, the problem of Cultural Minorities within her federal boundaries. It is worthy of note that this problem has grown more acute with the growth of nationalism, which is a unifying force. But as national unity and strength have grown, attempts to weaken this nationalism by encouraging disruptive tendencies have also grown. British Imperialism, in resisting nationalism, is evidently interested in playing off one group against another and thus hampering the growth of unity. These minorities are not comparable to the European or Soviet minorities, which are racially and culturally distinct from each other. In India the term minority is applied to religious groups, and the racial and cultural background of these groups is almost the same as that of the majority group. Such differences as are noticeable are largely superficial. The problem of minorities therefore in India is far easier of solution than elsewhere where deep-seated racial and cultural animosities are roused. The growth of nationalism will soften the religious divisions, but even more so the spread of

social ideas and the consideration of economic issues are diverting the attention of the people to more fundamental matters which affect their daily lives. Thus a new alignment is growing up.

India, in spite of her vast size and variety and diversity, is bound together by a basic unity. This unity is not merely one of geography, but far more of a common cultural background and common traditions. Even when politically cut up into several parts during her long history, this common cultural bond persisted. With political unity and a common purpose, the bond that unites becomes exceedingly strong and almost unbreakable.

Federalism, Nationalism and Democracy

There are two sets of forces, in the political organisation of modern States, which are often considered to be mutually incompatible. Federalism is considered, on the one hand, to be inconsistent with Nationalism; and, on the other, with Democracy. So far as the conflict between Federalism and Nationalism is concerned, it might result only in a given Federation so transcending local State sentiment as to antagonise the latter, and so imply a conflict of Nationalism with Federalism. In so far, however, as the Federation itself is an expression of national integrity; in so far as it embodies the larger unity of homogeneous peoples separated *inter se* by the accidents of history, there can be no incompatibility between the Federation and the local loyalty of its constituent units. All successful Federations in history are of this type; and India is no exception to that claim. The feeling of national unity is there; and the hindrances to its full flowering are largely the creation

of outside authority and extraneous circumstances, which must pass away.

As for the other conflict, between Federalism and Democracy, a real self-government of the people as a whole is impossible the moment a political unit attains a size greater than that of a single town. Even in the City States of ancient Greece, it may be doubted if the entire people ever joined in their own government. Vast numbers of slaves and strangers were excluded from the franchise, even though the latter were essentially of the same race. In the classic Village Community of Ancient India, which had persisted down to very recent times, Democracy was both real and an everyday affair. But we are not living in an age when the village could well be upheld as an ideal political unit. Democracy, therefore, in the sense of actual participation of every citizen in the public affairs of the community, is impossible, except on the basis of delegated authority, and vicarious responsibility. By the device of representative popular institutions, to which the executive authority could be made responsible, it is possible nowadays to realise a working Democracy on a scale as large as that of a large Indian Province. By careful demarcation of authority, powers and functions, between the several sections of a hierarchy of self-governing institutions—the Village and the Town Council; the District Council, the Provincial and the Federal Legislature—we can arrange so that in all matters that concern a citizen's life and being immediately, there will be the fullest scope for real self-Government. As those affairs become more and more of remote concern to the citizen personally, there may be representative institutions, each unit wherein may

represent an ever increasing mass of humanity, and holding sway over a corresponding field of functions, in which democratic government is realised, only on the basis of the executive government being no more than a mere mandatory of—and therefore responsible to,—the legislative organ, which represents the will of the mass of the citizens.

In Federations, this device is carried a stage further. The actual right of the people to real self-government can only be exercised, either in framing or formulating the fundamental constitution for the Federation; or by such devices as Referendum or Initiative on given questions of legislative or executive policy. Beyond this, there is nothing but representative,—or delegated,—Self-government. In so far as the actual functions of Government commonly entrusted to the Federal authority are concerned, however imposing they may appear in their collective aspect, they are of remote concern to the individual citizen in his daily life. In so far as the ultimate authority of the citizen in his aggregate is reserved, in the supreme sovereignty vested in the mass of the people, the evolution of the Federal organisation is in no way inconsistent with the Democratic principle.

In India, as in other countries similarly situated, for a vast mass of the people, and over such a large area, the only method of realising Democracy, and at the same time maintaining governmental efficiency and national unity, lies in the Federal principle; and as such there is no reason to dread from this device any loss of real self-government.

Jawaharlal Nehru.
Narendra Dev.
K. T. Shah.

CHAPTER II

NATURE AND SCOPE OF THE INDIAN FEDERATION

No Preamble

The Government of India Act, 1935, contains no Preamble.* It is therefore, difficult to judge from the terms of the Act, the exact nature and scope of the Constitution established thereunder. Section 478 of the Government of India Act, 1935, repeals the Government of India Act, 1919; but expressly provides that "nothing in this Section shall affect the Preamble to the Government of India Act, 1919."† The Preamble lays down:—

"Whereas it is the declared policy of Parliament to provide for the increasing Association of Indians in every branch of Indian Administration and for

*The following observations of Prof. A. B. Keith are significant:—
Speaking of the Government of India Bill, 1935, (now Act) he says:—
"A rather bitter controversy was waged over the question..... to include in the Bill a definite reference to Dominion Status as the goal of Indian Government. The Government adopted a curious attitude. It definitely accepted the pledge contained in the preamble of the Act of 1919 of the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in British India as an integral part of the Empire, and the interpretation put thereon by the Governor-General in 1929 with the authority of the government of the day: 'The natural issue of India's progress as there contemplated is the attainment of Dominion Status.' But it refused to put anything of this kind in a preamble, and instead insisted on preserving the preamble to the Act of 1919, when repealing that measure under the new Act. The preservation of the smile of the Cheshire cat after its disappearance was justly adduced by the critics as the best parallel to this legislative monstrosity, and the omission of any reference to Dominion Status, following on the complete silence of the Joint Committee, inevitably caused a painful feeling in India, and annoyance to those quarters of the ministry who realised that its action was certain to be interpreted in India as in some way seeking to evade frank acceptance of Dominion Status as the final goal." **A Constitutional History of India**, by A. B. Keith, p. 316.

†Section 478. Proviso (a): Sechedule 16.