

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.

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

Whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction now be taken; and

Whereas the time and manner of each advance can be determined only by Parliament upon whom responsibility lies for the welfare and advancement of the Indian people; and

Whereas the action of Parliament in such matters must be guided by co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility; and

Whereas concurrently with the gradual development of self-governing institutions in the Provinces of India, it is expedient to give to those provincial matters the largest measure of independence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities.

Ultimate Object of Constitutional Evolution

This five-point Preamble is not repealed, and may be taken still to be in force, representing, as the Joint Select Committee of Parliament on the Government of India Bill of 1935 declare, "the ultimate aims of British rule in India."*

But it is difficult to assess its exact legal or constitutional significance at the present day. For even assuming a Preamble to be as good law as the operative portion thereof† even when the rest of the enact-

*Cp. Para. 12, Op. Cit.

†"It must be held a mistake to refrain from including the words (Dominion Status) in the Preamble. Inserted there they would, as Sir T. Inskip insisted have just the same weight as a formal declaration in Parliament of the Governmental intention. Neither Preamble nor Declaration can bind a succeeding Government, and it was inevitable that omission from the preamble would be resented in India." (Keith, Op. Cit. p. 472).

ment in question is repealed, and the Preamble remaining is incorporated in another Act, the conditions under which this particular definition of British policy, *vis-a-vis* the political aspirations of the people of India, was formulated have expressly altered. For whereas the Preamble to the Act of 1919 applied clearly to *British India*, the present Act contemplates and provides for a Federation of all-India, less Burma; i.e. the Indian States are now contemplated to be as much part of a Federation of India as the British Indian Provinces,—apart from Burma and Aden, which are separated from the Government of India. Then, again, the Preamble speaks of an "Empire" in its very first paragraph,—a term, which, even if constitutionally a correct description of the conglomerate of the United Kingdom, the British Dominions, Colonies and Dependencies beyond the seas in 1919, is, since the creation of the Irish Free State, and the passage of the Statute of Westminster*, no longer appropriate to describe the British Commonwealth of free, equal, self-governing communities scattered all over the globe. Even if the term Empire could be construed to designate only the Empire of India, that term is nowhere spoken of in the Act of 1935, and much less defined.† His Majesty the King

*22, Geo. V. c. 4. "They (Great Britain and the Dominions) are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or internal affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations" (cmd. 2768, p. 14 commonly called the Balfour Declaration).

†cp. Section 311; also Section 2 of this Act. The latter does speak of the "Emperor of India" but not of the "Empire."

There does not seem to be any official definition of the British Empire. Says the *Encyclopaedia Britannica* (Ed. XIV, Vol. 8, p. 410), after defining the term Empire as "a term used to denote a state of large size, and also (as a rule) of composite character, often, but not necessarily, ruled by an Emperor,—a State which may be a Federation, like the German

(Continued on page 32)

of the United Kingdom, etc., is, indeed spoken of, in Section 2 of the Act of 1935, as "Emperor of India",* but there is throughout the Act no definition of the term Empire. It stands to reason, therefore, that, with the advent of the Federation, there could be no Empire of India, even if there was one before that enactment was passed. The title is thus a sobriquet without any political, or constitutional significance. The Preamble to the Act of 1919, which is still unrepealed, is thus without much significance in law, even if it holds good and may be taken to form part of the Act of 1935.†

Dominion Status vs. Complete Independence

It is, accordingly, impossible to judge of the nature and purpose of the new Constitution as embodied in the Act of 1935, so far as a Preamble can be any guide to such a discovery. Assuming, however, for

(Continued from page 31)

Empire from 1870 to 1918, or a unitary State, like the Russian Empire before its collapse, or even, like the British Empire, a loose commonwealth of free States united to a number of subordinate dependencies." (Ibid. p. 402):—

"There is one Empire which remains to be mentioned—an Empire, which unlike the other Empires of which we have spoken, is entirely independent of the tradition and memory of Rome. This is the British Commonwealth. It is an Empire so much *sui generis*—a Federation of National States at once so independent and so interconnected, that it is altogether a matter for separate consideration. This much, however, may be said of its nature. The British Empire is, in a sense, an aspiration rather than a reality; a thought, rather than a fact; a common culture, not a common government; but, just for that reason, it is like the old Empire of which we have spoken: and though it is neither Roman, nor Holy, yet it has, like its prototype, one law, if not the Law of Rome; at any rate the Common Law of England—one faith, if not in matters of religion, at any rate in the field of political and social ideals."

The above is from the pen of Prof. Ernest Barker; and though more eloquent than accurate, it shows the impossibility of endowing with a definite juridical, constitutional, connotation a term which has no bearing in reality.

*Cp. ante pp. 10 and 11

†Cp. the Debates in the House of Commons in March, 1935; also Keith, *Op. cit.* pp. 466 et seq.

the sake of argument, that the Preamble to the Act of 1919 is still part of the Indian Constitution, as enacted by the Act of 1935, the conditions expressly laid down in that Preamble no longer hold valid as they may have been at the time they were laid down. The ultimate goal of constitutional evolution in India is stated to be "the progressive realisation of Responsible Government in British India" on the clear understanding that that entity remains "an integral part of the Empire." Even if one eschews the tempting subtlety that an "Empire" and "Responsible Government" are two mutual contradictions, there is no doubt that, under the radically altered conditions of the Commonwealth of free, self-governing communities under the Union Jack, the term Empire is now of no validity outside India. The Indian people, in their turn, refuse to be dominated by the capitalist Imperialism of Great Britain.

Moreover, the two specific manifestations of the realisation of this goal, viz:—

- (a) increasing association of Indians in every branch of Indian Administration; and
- (b) the gradual development of self-governing institutions.

as understood by British statesmen in 1919 or 1937, will now be utterly inadequate to satisfy the political consciousness of the Indian people. Though the pledge for a Dominion Status was repeated,* in the course of the parliamentary discussions on the Government of India Bill, 1935; and though the Instructions to the Governor-General specifically contain a clause enjoining upon that officer to—

"so exercise the Trust reposed in him that partnership between India and the United Kingdom with—

*See ante, footnote 1, p. 29-30.

in our Empire may be furthered, to the end that India may attain its due place among our Dominions”*

it may safely be assumed that even the so-called “Dominion Status” will not prove adequate for the new political consciousness of India. The capture of all posts and machinery of administration is regarded as the *sine qua non* of any semblance even of self-government. The essence of Dominion Status is the complete control of the domestic affairs of the country as also of inter-Dominions, and of the foreign policy of such a unit in the Commonwealth, exclusively by the people of that unit. So long as that substance of power is not available to the people of India, no constitution, however mighty the shadow, will satisfy the Indian people. It is unnecessary to add that, if self-governing institutions are to be introduced in India, capped with a Responsible Ministry, they must be brought in as fully and immediately as possible, so as to abridge the period of transition, and avoid or minimise the undesirable effects of too rapid a political growth.

Parliamentary Trusteeship

The idea of gradual constitutional evolution from stage to stage is thus easily discounted. The basic principle of British Trusteeship, as embodied in the clause making Parliament the sole judge of the time and manner in which each successive stage of constitutional advance should be effected, is fundamentally at variance with Nationalist opinion of every shade in this country. Parliamentary Trusteeship has never been exercised for the benefit of the

*Article XVI of the Instructions.

Indian people, when the demands of that Trust went counter to the national interests of Britain. From the day of Warren Hastings to the last Great War, and the enforcement of the Ottawa system of Imperial Preference, India's interests have always been sacrificed in the interests of British Imperialism; and the latest Constitution bears ample testimony to the continued presence of this element in British dealings with India in unabated strength.

Disappointed in the trust placed in the honesty of British politicians, and wiser by the repeated experience of broken pledges, the Indian Nationalist of to-day sees no point in that demand for “co-operation”, which is mentioned in the Preamble to the act of 1919, as the condition precedent for the grant of successive stages of India's political advancement by the British Parliament. For, to co-operate is to court disappointment, humiliation, and an enforced association in the ruthless exploitation of this country. Not to “co-operate,” in the sense in which the established authorities understand that term, would at least serve to put the Indian on his mettle; and force him to devise other ways of arriving at his goal, which seems impossible to attain by the road of “co-operation.” This last condition in the Preamble is, accordingly, equally unfulfillable and so, the vision of India's march on the road to constitutional progress embodied in that document has failed utterly to materialise.

No Fundamental Rights of Citizenship

Lacking in a Preamble, the Act of 1935 is also silent as to those distinguishing features of a truly liberal constitution, which relate to certain guaranteed Fundamental Rights of citizenship. We may speak of

these rights collectively as the civil and economic liberties of the people. Such rights are not, it is true, specifically mentioned in any constitutional document relating to the governance of Britain herself. But civil and economic liberties in Britain have been part and parcel of the Common Law of the land; and have grown with the growth of political consciousness and popular power. There was, besides, no need in Britain or the Dominions to fight against an alien power to win the basic political rights of the people, as we have to in this country. In such matters, moreover, as the fact of popular Sovereignty, which constitutions like that of the U.S.A. specifically enunciate, Britain has ample Parliamentary precedents, even if the legal fiction still prevails making the King Sovereign of the United Kingdom. We in India have no such precedents to fall back upon. If the sovereign power is really to be transferred to the people of the country, the fact of the transfer must be unambiguously stated and recognised. Other countries, again, have discarded the British precedent of remaining silent, in their fundamental constitutions, as to the nature and extent of the Fundamental Rights of Citizenship. There is, ample precedent, therefore, to urge that a constitution which does not state the goal clearly, and which offers no substitute in the nature of Fundamental Rights, sufficiently liberally conceived to be really a compensation, cannot prove satisfying to a people so painfully conscious of their political subservience as those of India.

Purpose of Present Constitution

How, then, is one to ascertain the purpose and nature of this system of governance for a whole Conti-

ment? Is it to be taken merely as a piece of lifeless mechanism, designed to provide simply for immediate requirements, and incapable of adjusting itself to changing conditions and the varying needs of a living community? Judged from the actual terms of the Act; and read in the light of the attempt to associate the Indian States, or rather their Rulers, in a closer bond called the Federation of India, it is impossible to see in this document any sign of a real emancipation of the Indian people from the controlling might of the British power; any indication of a transfer of effective power, for the leaders of the Indian people to put their ideals of social organisation and political machinery to test. Hedged round with innumerable conditions and reservations; rich in countless safeguards for the vested interests of the alien exploiter of every shade, and his local coadjutor of every class; breathing at every pore unmitigated distrust of the leaders of the Indian people,—there can be no hope, under this Constitution, for any real self-government in India. It belies the pledges, weak and inadequate as they were, given in 1919*; and places a positive barrier in the way of constitutional advance by peaceful means, if the interpretation by the Governors, in the six Provinces where the Congress had obtained a majority of seats in the local Assemblies, of the nature and purpose of their “discretionary powers,” is any guide to the possibilities of this Act under unsympathetic interpreters.

The Act, viewed collectively, does not make any real advance on the road to a true Responsible Govern-

*Says Prof. A. B. Keith (*Op. cit.*, p. 468):—“It must be admitted that it did not lie with the government which secured the admission of India to the League of Nations to deny that the goal of India was Dominion Status.”

ment in India. In the Central Government of the country, a number of the most important Departments of the State are summarily and completely excluded from the purview of any Ministerial Responsibility.* The Governor-General is, in these excluded or Reserved Departments, the absolute master of the situation; and is vested with powers and authority to find means for their administration as to him seems best. In other Departments, again, where Ministerial aid and advice are not so specifically excluded, the Governor-General has innumerable powers of "discretion," in the exercise of which, also, he need not even consult his constitutional advisers, the Ministers. In still others, he is authorised "to exercise his individual judgment," whereby, even if he seeks the advice of his Ministers, he is not bound to follow that advice in every instance. We shall review these various categories of extraordinary powers given to the Governor-General in some detail in a later chapter of this volume. Suffice it to add here that, taken together, these various powers of the Governor-General serve to make of that officer as complete an autocrat as any King by Divine Right ever wanted to be, or as any Dictator by popular mandate of modern times can afford to be.

Federation and National Unity

Even the plea in favour of this Constitution of unifying India by associating the Rulers of the Indian States in a common scheme of National Government is little better than a pretence. The combination of the British Indian Provinces with the Indian Princes, the Rulers of the Indian States, in a Federation of India, is a **union of two mutually in-**

*cp. Section 11 of the Government of India Act, 1935.

compatible categories, which can never march harmoniously together, unless one of them changes completely its nature and ideals, the purpose of its being and the goal of its activities. To all those who desire the maintenance of the Indian Princes in all their ancient privileges, their archaic forms of government, their obsolete methods and ideals, side by side with the progressive, democratising, socially more liberalising Provinces, the union can have only one objective: the curbing, with the aid of the former, of the more progressive tendencies of the latter.* Since the British Imperial Government and the Indian Public Services,—not to mention all the might of the vested interests of British and Indian Landlordism and Capitalism,—are openly ranged on the side of the former, there can be no question as to which of these two categories is likely to suffer most by this forced association in an utterly misconceived purpose.

Given the presence of the Indian States in the new polity of India as an unconcealed drag upon the progressive tendencies of the Indian people as a whole, the question is almost unnecessary to ask: How far complete national independence, could be achieved for the whole of India under the new Constitution. The Princes, though torn among themselves with personal jealousies and conflict of material interests, may be depended upon never to support the slightest hint of National Independence for India. They have been trained to look upon the

*... For the Federal Scheme it is difficult to feel any satisfaction. The units of which it is composed are too disparate to be joined suitably together, and it is too obvious that on the British side, the scheme is favoured in order to provide an element of pure conservatism in order to combat any dangerous element of democracy contributed by British India." Keith, *Op. cit.* p. 474.

British garrison in this country as the best guarantee of their own existence, insured against local disorder, immune from any challenge to their absolutist authority, and safe against any outside aggression, so long as they are content to remain in their century old sloth, vice, decrepitude, extravagance, and semi-servitude. Their class interests coincide with and cement this force of their environment and education. They would, therefore, oppose as emphatically any movement from below towards a fuller and a freer national life for the people of India, as they would fight against any manifestation of ambition by one of their own confrères. In each case they would rely upon the British bayonet to protect and preserve them. A Nizam may have his own grudge against the British on account of Berar; or a Kashmir on account of Gilgit, or family intrigues, or personal indignities. Of these the Princes, if only they had courage to speak, could retail far more sensational examples than any commoner in India when pitted against British greed or insolence. But these individual affronts or injustices are seldom vocal and never effective. The British can, therefore, afford to despise these *soi disant* descendants of the Sun and the Moon, of the Great Mughal and the mighty Mahratha, who cannot raise a finger without the connivance of the Resident, who may not receive a brother Prince without the gracious if silent consent of the Political Department; who certainly must not appoint a Minister without the full permission of the Viceroy. To such people, the only thing that can matter is the cut of a coat or the whirl of a skirt. History to them is a bore, when not a personal reproach; politics, a synonym for intrigue; sociology, a

subject for ribald jests. With them in his camp, there can be no thought of a national resurrection, which the ardent Nationalist seeks, first of all in an emancipation from British domination, or complete independence.

Even Dominion Status, in its respectable sense, has little chance of realisation, so long as the British elements in the Public Services; British Capital in our Industry and Commerce; and the British Army in our midst, hold a stranglehold on our energies and resources. The new Constitution amply, carefully, categorically provides for them. At the very first test of the reality and the genuineness of the new "Reponsible Government," said to be introduced in the Provinces under the Act of 1935, the Governors refused to promise non-exercise of their own discretionary powers,—not obligatory duties imposed upon them,—even if the Ministers from the Congress Party promised to act within the Constitution, or in regard to their constitutional activities only. And the Governor-General of the Federation is only an *edition de luxe* of the Provincial Governor. Notwithstanding all the safeguards and the reserve powers, or special responsibilities and obligatory functions imposed upon the Governor as the watchdog of British Imperialism in India, this very modest demand of the Congress Ministers-to-be was rejected without ceremony, proving thereby that real progress toward real self-government, even on this limited scale, was unthinkable to the mandatories of British Imperialism in India. How, then, can one think of the possibility of attaining to Dominion Status under this engine of Imperialist exploitation?

Components of the Indian Federation

The Federation of India is to be composed, as already remarked, of the British Provinces, and such Indian States as execute the required Instruments of Accession,* provided that they do not fall below a prescribed proportion in size or importance.† Part II of the Government of India Act, 1935, is entitled “**The Federation of India**”; and its very first Chapter is styled: “**Establishment of Federation and Accession of Indian States.**” There are only two Sections in this Chapter; but they are about as fateful and mischievous; as liable to difference of opinion, in construction and interpretation, as any that might be found throughout the British Statute Book. So far as the British Provinces are concerned, there is no option left to them to join or keep out of the Federation. Except Burma, which has been separated before the Federation of India comes into being. Federation for the Provinces is an act of imposition from above, *i.e.*, by the British Parliament.‡ The unquestionable implication of that Act so far as the Provinces are concerned, is that they cannot sever their connection from the Federation, once they have been “united” into it,—unless, indeed, the same sovereign power which thus

*Cp. Section 6 of the Act.

†Cp. Section 5 of the Act.

‡It is interesting to note that there is no provision in the Act of 1935, except as regards the Indian States or the so-called excluded areas,—for old associates like Burma, or new partners like Afghanistan or Ceylon, to be incorporated in the Federation of India.

united them decides to sever their connection.* The entity called the Federation of India is thus a creation of the British Parliament. It will come into being, provided the condition imposed is fulfilled, by a Proclamation of the King-Emperor. There is, it may be noted, no time limit imposed, within which the condition laid down is to be fulfilled if the Federation is at all to come into being; though, it is curious to observe, that the States acceding, or any of them, may, under provision (b) of Section 6 (1), stipulate a time limit for the coming into birth of the Federation, which, if not fulfilled, would absolve the State so stipulating from acceding at all to the Federation.

*Section 5 provides:—

“5.—(1) It shall be lawful for His Majesty, if an address in that behalf has been presented to him by each House of Parliament and if the condition hereinafter mentioned is satisfied, to declare by Proclamation that as from the day therein appointed there shall be united in a Federation under the Crown, by the name of the Federation of India—(a) the Provinces hereinafter called the Governors’ Provinces; and (b) the Indian States which have acceded or may thereafter accede to the Federation; and in the Federation so established there shall be included the Provinces hereinafter called the Chief Commissioners’ Provinces.”

(2) The condition referred to is that States—

- (a) the Rulers whereof will, in accordance with the provisions contained in Part II of the First Schedule to this Act, be entitled to choose not less than fifty-two members of the Council of State; and
- (b) the aggregate population whereof, as ascertained in accordance with the said provisions, amounts to at least one-half of the total population of the States as so ascertained have acceded to the Federation.

It is obvious that the States,—even those of them that decide to accede to the Federation,—are not members of the Federation, until and unless they execute each an Instrument of accession, (Section 6) and that while executing such an Instrument, they may make any reservation or condition they deem proper to safeguard their treaty and other rights. There is no such option allowed to the Provinces. But there can and will be no Federation until a proclamation is issued by the King; and the latter will not issue such a proclamation unless and until the condition mentioned in Section 5 is fulfilled. No such condition applies in the case of Provinces.

Governors' Provinces and Chief Commissioners'

Provinces

There is, again, a marked difference of treatment between the several regions making up British India under the Act of 1935. While those areas, which are described by this Act as the Governors' Provinces, are *united* in a Federation *ipso facto*, the areas called the Chief Commissioners' Provinces are *included* in the Federation if and when born under this Section. The States, on the other hand, *accede* to it.* Why this difference in treatment between the several parts of even British India? True, the Governors' Provinces would be *autonomous* units sometime *before* the Federation comes into being. But their autonomy has no bearing upon their being in the Federation. That is an act of the sovereign authority of the British Parliament, in which these newly created "states"—if we may use the term in respect of the British Indian Governors' Provinces,—have no voice. The same is the case, so far as federating is concerned, for the so-called Chief Commissioners' Provinces. Why then, this difference in treatment in the terms of the Act? The Provinces are all exposed to the same risk of changes of boundaries and jurisdiction,† so that variation in size or population or wealth cannot be regarded as distinguishing features for the differentiation between these two classes of Provinces. With the experience of the partition and re-partition of Bengal; of the creation of such new provinces as the North-West Frontier Province, Sind, Orissa, and elevation, perhaps, hereafter, of Coorg or British Baluchistan into Governors'

*Cp. Sections 311 (3).

†Cp. Section 290 of the Act.

Provinces, we cannot altogether overlook the difference in wording regarding the union or inclusion of certain areas in the Federation of India. It has a significance which cannot be fully grasped to-day; but to ignore or overlook this difference in wording would be short-sighted.

The ingredients of the Federation,—the component parts,—are not stated specifically,—except in so far as the above provision can be held to make such a statement. The Federation, if and when formed, will comprise:

- (a) all the British areas, whether Governors' Provinces or Chief Commissioners';
- (b) excluded and partially excluded areas;
- (c) Tribal regions and backward tracts; and
- (d) such of the States as agree to accede.

This will obviously be a conglomerate, the several component parts whereof would be as different *inter se* as chalk from cheese. While the States will come into the Federation by an act of the Ruler in each case, the Governors' and Chief Commissioners' Provinces are united or included in the Federation by Act of Parliament. While the States are independent units, possessing or pretending to a degree of local sovereignty, which not the most considerable Province can lay claim to, some of the Provinces are autonomous units, and others mere appanages of the Government of India. The power, authority and function of each of these categories, combined in the Federation of India, differ, *inter se*, very minutely; and in several important respects, as will be seen more fully below.

But they all go to show that the Federation of India, created under the Act of 1935, is a peculiar entity without precedent or parallel; and that, therefore, it must be judged in every respect on its own merits or performances.

Sovereign Authority in the Indian Federation

Thus brought into being by a variety of acts and deeds, the Indian Federation is a State whose Sovereign authority, in the theory of the Act of 1935, is expressly located outside India. Section 2 of the Act is very explicit on this point; and is notably different from all the enactments hitherto passed by the British Parliament concerning the governance of India. The Proclamation of British Sovereignty has nowhere been so explicit and unabashed as in this enactment.* Neither in the Act of 1858, which abolished the East India Company and vested the Government of India directly in the British Crown; nor in all the subsequent Acts relating to the governance of India, down to 1919, is there any such statement of the complete Sovereignty of the British Sovereign over all India as in this Act. The irony of it is that this Act is supposed to advance India substantially on the road to self-Government, if not to that of Dominion Status, or National Independence. We shall consider in the next Chapter the bearing of these provisions on the Indian States, and their claim to local sovereignty, of however limited a degree. Here it is necessary to point out that, short of the sanctification of the right of conquest or arbitrary annexation or brute force, there is no authority, historical or juridical, for such a bald

*For text of Section 2, see foot-note, ante p. 10-11.

enunciation of complete British Sovereignty all over India, as is done in this Act.

It may, also, be pointed out, in passing, that "the rights, authority and jurisdiction" vested in the King-Emperor by this Act are, so to speak, a gift of Parliament to the King. They are certainly not in the nature of Common Law or Prerogative features of British Sovereignty. Otherwise there would be no need to specify them so explicitly. When the British Parliament abolished the East India Company, and vested the Government of India in the British Crown, it was alleged that the Company had been governing those regions "in trust" for Her Majesty; and that, the beneficiary of the Trust having resolved to end the Trust, the real Ruler stood forth directly in *propria persona* to claim her rights, authority, and jurisdiction. But neither in the Act of 1858, nor in the Queen's Proclamation, nor in any subsequent Act or Proclamation, has there been anything to indicate that the British Sovereign claimed absolute Sovereignty in and over all India.

The grant by Parliament to the British Sovereign of all those "rights, authority and jurisdiction," which had hitherto been exercised by the Secretary of State by himself or in Council, by the Governor-General by himself or in Council, by a Governor or a Local Government, is, likewise, inconsistent with the doctrine of Parliamentary Trusteeship over India, which was specifically mentioned in the Preamble to the Act of 1919, unless one assumes that there is really no transfer of power, since the British King is only a dummy, and would always act as the mouthpiece of the

Parliament. The transfer, however, if it was to be made, should have been made to the people of India, on whose behalf Parliament had constituted itself a Trustee, even though it is not clear against whom or for what purpose the Trust was constituted. Again, even the British Parliament has never enunciated the doctrine of Trusteeship for the Indian States, which are now proposed to be made part of a common polity for the whole of India. The Prerogative or Paramountcy rights of the Suzerain, as successor of the Mughal Emperors, are not touched by this Act. But even so, the Act cannot escape the charge of anomaly. By the theory of this Trust, by the fundamental principles of all Trusts, the Trust is valid only upto the day the legal incapacity or disability of the beneficiary of the Trust is ended, or upto the time limit of the Trust fixed in advance. Politically speaking, India is admitted to have come of age. Witness her independent membership of the League of Nations. She is thus no longer in need of a Trustee who has appointed himself to the charge. Parliament seems itself to have recognised this fact of the political majority of the Indian Nation, in so far as the provisions of the Act of 1935, conferring Provincial Autonomy, may be regarded as real and not a sham. Even in the Central National Government of India, with the advent of the Federation, there will have to be Responsible Government,—in however circumscribed a field. If these indices be taken to mean the political majority of the Indian Nation, the Trust, where it did apply, must be assumed to be automatically ended; and the Trustee *functus officio*. The transfer of power must, therefore, be to the people of India; and the

Sovereignty over and in India must be admitted and recognised in the people of India. The Act of 1935, however, clearly does not contemplate, any such transfer even as an ultimate eventuality, or a remote contingency.

As another index of the recognition of the political majority of the Indian people, Parliament has, within limits, allowed the people's representatives of India to propose certain amendments in the Constitution,—however restricted the scope of these amendments; while certain other Amendments may be made by Parliament, under Section 6, Schedule II of the Act, without affecting the fact of the Federation. Structural and fundamental changes in the Constitution imposed upon India by Parliament cannot, of course, be made by the people's representatives of India, however completely they command the confidence of their constituents, and however fully the latter desire those changes. Nevertheless, the very basis of Responsible Government would be negated, if the people were denied all right or title to affect their own system of Government. After all, the Australian and the Canadian Federal Constitutions are really the creations of these peoples themselves,—though, in form, they have been enacted by the British Parliament as desired by the Australian and the Canadian peoples. If Parliament persists in denying such a right to the Indian people, it would not only evince a complete distrust of the Indian people; but will, in addition, transform itself, from a self-made Trustee of the Indian peoples, to a Trustee and Guardian of the British interests in India. Every tyro knows this is the stark fact of the real politics in India; but, in words at least and for-

mally, it is still not explicitly admitted by the powers that be. Their own acts, however, would, as outlined above, vindicate this charge far more thoroughly than any condemnation of the present Constitution by its critics.

Scope and Extent of the Federation

The Federation conceived in the Act of 1935 would embrace, as already stated, British India less Burma; and such Indian States as accede to the Federation. In the system thus made up there is no room for separatism; so that the separate statehood, or political individuality, of all federating units will be merged and lost in the larger entity,—except in so far as the Constitution itself permits or recognises in a limited degree the local individuality of the federating or combining units. The separation of Burma was effected, not in any desire to vindicate the right of the Burmese to self-determinism; but to keep Burma reserved for the undiluted might of British Imperialism to exploit. No unit in the Federation of India will, presumably, be allowed to secede or withdraw from the Federation, once it has entered it, whether the original entrance was by Act of Parliament, or by a separate Instrument of Accession under the Act.* Local sentiment, if ever and anywhere it becomes strong enough to demand separate self-expression, will not be permitted to seek such mark of a distinct individuality, unless it suits British Imperialism to accord it such separate recognition and right to self-expression. It has happened in Sind, Orissa, and the Frontier Province, in that these are made into separate Provinces. It has happened in

*See next Chapter.

Burma, in that that Province is completely separated from India. It might happen in Bengal,—if by encouraging such separatism, the ends of British Imperialism in India could be more effectually served. But, unless such separatism is calculated to serve the objects of British Imperialism, there will be no countenance shown to separatism, whether to a British Province, or to an Indian State so long as Britain remains master in India. And the same logic applies to the entire country, which will not be permitted in peace to break away from the Empire, so long as Britain can raise a soldier, or fire a shot, in holding this country down in absolute subjection to her sway.

If the units of the Federation would not be allowed to part company, there is equally little chance of the adjoining tracts to combine with the Federation,—however much such combining might help the combining units to develop themselves more fully and more rapidly. Burma will not be allowed to rejoin; Ceylon will not be admitted; Nepal or Afghanistan would not even be thought of. There are political as well as strategical reasons for the separation of Aden from India; and, apart from the Indian capital invested in that region, no Indian would, perhaps, desire to continue this liability. But the same cannot be said of Ceylon, Nepal, Burma, or even of Afghanistan. These regions have more affinities with the main Continent of India and may be able more fully to realise their own national advantage, than is healthy for the British Rulers to recognise to-day. With their local autonomy guaranteed,—let us say, as that of the associated Republics in the U.S.S.R., these regions might

find it much more useful to combine in the Indian Federation of their own accord than to keep apart,—ever a prey to British exploitation, ever in dread of British intrigue. But the Constitution, as contained in the Act of 1935, has no device by which such adjoining units might be assimilated in the Federation of India,—unless we press into service Section 290 of the Act, or use the analogy of the States' Instruments of Accession to facilitate this measure.

CHAPTER III

ACCESSION OF THE INDIAN STATES

As already stated, we have to consider, in this Chapter the accession,—as it is called in the Act,—of the Indian States to the Federation of India. The States, it must be repeated, are not, nor become, parts of the Federation,—constituent, or component,—merely by authority of the Act of Parliament. They elect to become such parts by an act of their Rulers', individually in each case, and subject to such terms and conditions, as, conformable to the general scheme of the new regime outlined in the Act of 1935, are laid down in the Instrument of Accession, and accepted by the King-Emperor.

Place of States in Federation

The place and rôle of the States in the scheme of the Federation of India is, however, not wholly determined by the Act; or even by the Instrument of Accession; or by the two combined. A considerable field of public or constitutional dealings or activities relating to the States is still covered by their Treaties, Engagements, etc., which are not all necessarily abrogated, superseded, or rendered null and void, because of any state acceding to the Federation. What are known as the incidents of Paramountcy,—the rights and obligations, the powers and authority, the jurisdiction and control, appertaining to or derived from Suzerainty,—will continue to be exercised outside the terms and conditions of the Federal Constitution, not only with