

## THE NATIONAL PUBLICATIONS SOCIETY OF INDIA.

This Society has been formed to undertake and carry out the publications of books, etc., describing, explaining, or criticising institutions and organisations of public administration in India, as also those affecting the collective life and consciousness of the people of India.

These books, etc., are to be so selected and written up, under the directions of the Society's Board of Editors, as to indicate wherein changes should be made, so as to promote most effectively the freedom and collective well-being of the Indian people. In their general plan and substance, these publications should provide for a reconstruction of the Social System on the basis of complete Socialisation of the means of Production, Distribution and Exchange of material commodities and services needed for the maintenance and advance of the community.

Each Book or Monograph will, whether written by one of the Editors or by a selected writer, be edited by the Society's Board of Editors, who will contribute two Chapters to each such volume: one, by way of introduction, explaining the place of the institution or organisation studied in other countries; and the other, at the end of the work, giving constructive suggestions for the reform of the Institution in question so as to make it more in accordance with the main objective of the Society, viz., to bring about a planned reconstruction of the Social System so as to socialise all means of production, distribution, and exchange, of all material commodities and services.

The Board consists of Pandit Jawaharlal Nehru, Acharya Narendra Dev, and K. T. Shah. They will arrange for the writing of such books and other publications of the Society, as also for their translation into the principal Indian languages, translation being an essential item in the Society's programme.

The Society consists of Members, who may be either Foundation Members (for life) named in the schedule, or other Life Members, who accept the aims and objects as well as the Rules and Regulations of the Society, and are elected as such by the Managing Committee. The Life Member's subscription is Rs. 250, and that of the Foundation Members Rs. 100, for life. In addition, the Society may have associates, sympathisers, or regular customers for its publications, in accordance with the resolutions of the Society passed in that behalf. Copies of the Aims and Rules of the Society as also the list of subjects, the Society intends to have written upon, can be had from the Honorary Secretary, Sjt. R. Saran, 2-A, Metcalfe House Road, Delhi.

## PREFACE

The author owes an apology to the reading public for the inordinate delay in the appearance of the present volume. It had been planned for publication early in last April, soon after the publication of the first edition of the "Provincial Autonomy." Circumstances, however, over which he had no control prevented the realisation of this purpose; and all that the author can now do is to tender an earnest apology for the delay that has taken place.

Whether the time that has intervened since the appearance of the first edition of the "Provincial Autonomy" has been utilised in this work to any advantage is for the discerning reader to judge. Many of the issues discussed in these pages have not advanced a step towards their final solution, since the actual advent of autonomy in the Provinces. Many more are being created by the inherent divergence of viewpoint and ideals between those who have fashioned this Constitution, and those who have to work it. The present writer cannot but leave those various issues at the stage at which they are. Those who realise to the full the intrinsic injustice and unworkability of this Constitution have declared their resolve to "work" it so as the soonest to show up its inherent impossibility. Whether they succeed in this aim or not depends upon the soundness of the tactics employed. Their success or failure would not question the absolute unsuitability of the instrument of government as provided for in this Act.

Under these circumstances, the attempt at a detailed, critical examination of the basic idea as well

as the operative portions of this new Constitution,—particularly in its Federal portion—may be open to misconstruction. The dissection of the Constitutional provisions contained in the following pages has only one justification: It shows why and how, in detail as well as in principle, the projected Federation must be unacceptable to the Indian people. It is designed to discover the pitfalls, which British Imperialism has laid so skilfully in the path of our constitutional evolution; so that, knowing them, and understanding their true nature and significance, we may avoid them in any corresponding instrument of our own devising.

As promised in the first volume of this Series, the present volume embodies two chapters contributed by the Editors of the Series,—one by way of Introduction, explaining the basic conditions for a Federation, and showing the extent to which they exist in India to-day; and the other by way of conclusion, outlining the directions in which radical recasting of the entire system of governance must take place, if it is at all to meet the requirements of India. The work is, of course, not intended, primarily, for constitutional lawyers, nor legal practitioners. It is addressed rather to that much wider class of our fellow citizens, whose consciousness of political wrongs is growing, whose longing for social justice is no less keen, and whose desire to be enlightened on the ways and means of effecting radical reconstruction requires to be met before we can hope for any substantial impulse from our own people for a change. Perhaps this standpoint adopted in preparing this work would explain, even if it does not excuse, the defects of

prolixity, repetition, or undue polemics, which a critical reader might discover in the work. The author's defence against such a charge can only be that, given his objective, repetition, prolixity and even polemics are, in the nature of the task, inevitable.

Constitutional forms and mechanisms are, essentially, not of an abiding nature. With the constantly changing circumstances of a dynamic organism, they needs must change, if they are to continue to be suitable to the new conditions and requirements. Criticism, therefore, advanced against given forms; or particular alternatives suggested for specifically defective forms or devices, must not be understood to imply the writer's conviction that the remedies suggested are to be of everlasting use. It has been the author's aim to make the criticism in the following pages suggestive rather than dogmatic; to point the way to a new system, rather than to provide the goal to be attained. That is because he holds that constitutions are instruments rather than objectives. They are valuable, not in themselves, but in so far as they aid in achieving the important aim of social justice and human happiness. Experience shows that many of the existing forms have signally failed to accomplish these aims. Hence, even in the concluding Chapter, the Editors have contented themselves, rather with indicating the broad lines of change, than with any specific alternative offered as the *sine qua non* for remodelling the frame-work of our constitution. What is needed is to inform our mechanism of Government with a new vision, to inspire it with a new motive, to arm it with a new purpose. Any alternative constitution, which we fashion ourselves, must assure us on these points.

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.

K. T. S.

## 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