

difference of opinion in regard to any first class piece of legislation; but Government seldom utilised this power, as they found Certification more easy and effective.

It is needless to dilate further upon the elements of disunion and lack of solidarity in the Constitution of 1919. Provincial rivalries; communal jealousies; class antagonism; race prejudices; and the conflict between the Central authority *versus* the Provincial ambitions,—all these combined made it impossible to foster any measure of progressive, or responsible, government.

The Devolution Rules were such that no Provincial Government could really start truly developmental projects. The central and final authority rested unquestionably with the Government of India, who were in no department responsible to the Indian Legislature; but who were responsible to the Secretary of State for India—British Cabinet Minister. Ministers in the Provincial as well as the Central Legislatures of a nominated element; and of an Upper Chamber in the Central Government with an official majority, which made it more representative than the Legislative Assembly, made the expression of Indian opinion on given questions but of little real effect. The bulk of the Central Budget was directly non-votable and that portion which was theoretically subject to the Vote of the Legislative Assembly, could, in the event of an adverse Vote in that body, be always adjusted to the liking of the Governor-General by the device of Certification. There was, likewise, the provision in the Act of 1919, of the two Chambers of the Central Legislature sitting together in the event of a

CHAPTER II.

GENERAL VIEW OF PROVINCIAL GOVERNMENT UNDER THE NEW CONSTITUTION.

Evolution of the Idea of Provincial Autonomy: It is in the ground, described in the preceding chapter, that the seed of Provincial Autonomy was sown. The Indian political leaders seem, at the commencement of the present century, to have realised that it was impossible to expect the British Government to part with any effective power in the Government of India, so far as the central authority was concerned. If the Indian people at all desired to be associated in the task of their own government, the only field open to them was in the provincial administration, under definite conditions and restrictions. They, therefore, raised the cry of "Decentralisation", and asked for a larger and larger measure of association of elected Indians in these bodies right upto the Provincial Government.

Upto the time of Lord Morley, British statesmen could not conceive of the possibility of Parliamentary Democracy in this country. After reviewing the changes he had proposed in the so-called Morley-Minto Reforms, Lord Morley declared, from his place in the House of Lords:

"If it could be said that this chapter of reforms led directly or indirectly to the establishment of a Parliamentary system in India, I, for one, would have nothing at all to do with it."*

* House of Lords Debates, Dec. 17, 1908.

And though, within less than 6 years after this declaration, the outbreak of the world War compelled British statesmen to reconsider their position,—at least so far as verbal professions went,—the outlook in essence has remained undisturbed.

Self-Government as Conceived by Indian Leaders

The Indian leaders had, meanwhile, widened unconsciously their own outlook, and had learnt to think and speak of effective control of the entire governmental machine in their country. They were yet far from perceiving the true character of British Imperialism and Capitalistic exploitation in India. If the more sagacious among them had a glimpse of the real state of things, they were themselves much too closely linked, by the invisible ties of personal interest, and the mystic sympathy of identity of economic classes, with that system, really to desire a radical replacement of the entire system. The charge could, therefore, be made, with something more than merely a show of logic, that all they desired was the substitution of the brown for the white bureaucracy, Indian for the European exploiter. They had, indeed, no aim higher than the attainment of "Dominion Status" within the British Commonwealth of Nations, as the British Empire is euphemistically described by its admirers. The ideal of complete independence, and all that such an ideal would, if realised, connote, of responsibility, was openly disavowed, or silently dismissed as mere window-dressing, which would mislead no one. As for a radical reconstruction of Society through the use of political power, they were mostly innocent of the very conception of social justice, to be accomplished by such means. They, accordingly, still thought of

constitutional reform in terms, and on a scale, which, under the Government of India Act, 1935, may be claimed,—from the British side at any rate,—to have been met.

Scope and Purpose of the New Constitution

In the pages that follow, a picture is attempted to be laid out of the real nature and the exact extent of Provincial Self-Government conceded by the new Constitution. The possibilities of achieving any thing constructive or substantial with this new instrument are also considered hereafter. But, at this stage, it is necessary to add, as a general observation regarding the outstanding characteristic of the new Constitution, that the reservations expressly made; the conditions and limitations specifically imposed, and the directions in which,—and which alone,—any governmental action can take place at all, make it impossible to hope for any substantial relief from Imperialist burdens or exploitive policies.

Ground Plan of the Act of 1919

The Act of 1919 was alleged to be founded on four principles, viz.:—

- (1) Complete popular control in local bodies, like the Municipalities, and freedom from outside control;
- (2) First steps towards a progressive realisation of Responsible Government in the Provinces, consistent with the ultimate responsibility to Parliament of the Government of India;
- (3) Supreme authority, in India, of the Government of India, subject to their responsibility to Parliament;

- (4) Gradual relaxation of the control of Parliament in proportion as the principle of local responsibility and provincial autonomy develops.

Changes in the Act of 1935: In all these respects, the Act of 1935 professes to effect a radical change.

(1) Doctrine of British Parliamentary Sovereignty

The doctrine of Parliamentary supremacy and British Trusteeship of India is not altogether abolished. In fact, the inclusion of the Indian States in a proposed Federation of all India extends the theoretical sphere of British Parliamentary supremacy to those parts of India, which were, until the advent of the Federation, not expressly and indubitably under that supremacy, or sovereignty. In another Monograph of this Series, an attempt is made to evaluate concretely the contribution of this device of including Indian States in a single Indian Commonwealth to the progress of the ideal of Indian autonomy. In all the still remaining autocratic or discretionary powers of the Governor in the Provinces, and of the Governor-General in the Federation of India, the ultimate responsibility is to the Secretary of State and, through him, to the British Parliament. But, allowing for this, the admission of the principle of Responsibility in the Provincial as well as the Federal Government of India,—however restricted the sphere of activity of that Government may be, and however rigidly conditioned its exercise,—is claimed to be a change in the scheme of the existing Constitution, that, they claim, the Indian people must regard as a fulfil-

ment of the pledge contained in the Montford Report and the preamble to the Act of 1919*.

(2) Relaxation of Central Control

The relaxation, again, of the control or domination of the Government of India over the Provincial Governments, and the recognition of the principle of Responsible Ministries chosen from the Parties commanding a majority in the Provincial Legislatures, is claimed to be another indication of the same trend of policy, which the advocate of the British regime in India points to as the earnest of good faith and constructive statesmanship. The Responsibility of Provincial Ministries, in so far as they could be compact bodies with collective responsibility at all, is, as will be shown more fully hereafter, so circumscribed; the rules or conventions regarding the choice by the Governor of his Ministers so rigid; and the scope of action open to Provincial Governments so narrow, that there can be no real autonomy in the Provinces; much less a real independence of the Indian Government.

- (3) The control of the latter in minor details here and there might be relaxed; but, in essence, the powers of the Governor-General, as head of the Federal executive, would, if anything, be more extensive and effective than under the Act of 1919, especially if the offices, of the Representative of the Crown,—the Viceroy proper,—and of the Governor-General are combined in one and the same individual.†

*"Whereas it is the declared policy of Parliament to provide for the increased association of Indians in every branch of Indian administration; and for 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."

†Cp. Section 3, Government of India Act, 1935: also "Federal Structure" Chapter vi.

(4) The relaxation of Parliamentary Control is the logical consequence of the growth of self-Government in India; but, as will be shown more fully later, the Act of 1935 does not by any means correspond, so far as India is concerned, to the Statute of Westminster as applying to the Dominions. Parliamentary control is both real and extensive; and the Indian politician who ignores the numerous sections in the Act of 1935 which refer to this control, either in their intent or their effect, would only be proving himself ignorant of the very elements of Imperialist politics.

Peculiarities of Federation in India

It is unnecessary to go into the details, at this point, of the powers and functions of government distributed between the Provinces and the Central authority, under the Act of 1935, to lend point to the observations just made. But it is necessary to point out, even here, that the Federation in India will differ from all other Federations in the world in two important respects:—

(1) The component units are, as between themselves, not of equal wealth or status. While the Indian States who join the Federation claim a degree of local sovereignty and independent existence, which the British Provinces, being creatures of the supreme authority, can never be allowed to claim; the Provinces, in their turn, command a degree of economic development and general progress, which the Indian States confessedly lack, and may even be averse to. The motive forces in demanding, or working together in a common system of government, will also not be the same for these two classes of the Federal con-

stituents, as also their respective ideals and ultimate objectives.

(2) The other point of difference consists in the distribution of powers and functions between the Federation and its constituent units. While the Provinces are given, by Act of Parliament, definite functions exclusively of, and certain others concurrently with, the Central Government,—with an almost unquestioned superiority of the Central Government in the event of a conflict,—the States make over, or *delegate*, to the Federal authorities only such functions and powers,—and under such reservations and conditions,—as the Instrument of Accession of each State joining the Federation may prescribe. The Provinces are part of the Federation by Act of Parliament; the States become part of the Federation by an Instrument of Accession, signed by the Ruler of each State, under such terms, conditions, or reservations, as are made in the Instrument and accepted by the Governor-General.* The list of Federal subjects (Schedule VII to Section 100) includes 59 subjects, of which only 47 are of direct concern to the States. It is possible the Instruments of Accession would exhibit,—when the required minimum of these documents are executed,—a degree of similarity without which it would be impossible to run a machinery of the kind provided in the Government of India Act, 1935. Nevertheless, the whole *raison d'être* of Federal authority in the States is essentially different from that in the Provinces; and, consequently, the working of these two parts in the central authority is bound to be radically different.

*cp. Particularly Sections 2 and 6 of the Act of 1935, as also Ss. 122—129 *idem*.

Sovereign Authority Outside India

Formed on these different,—and somewhat contradictory,—bases, the Indian Federation has two other points of weakness inherent in its very Constitution, which cannot speak too well for the future of the country collectively. (a) The supreme authority,—the complete sovereignty,—does not remain in India: It is vested in an outside authority,—the King-in-Parliament of the United Kingdom. There are directions in which the Federation of India cannot act, even if all the constituent units were agreed as to such action, simply because they have not,—collectively or severally,—the power to act in such ways. There are matters on which the Federation cannot legislate,—simply because there is no authority, either in the Federation or the units, to do so. And the most important of such matters for action or legislation is in regard to the modification of its own constitution. Without a concurrence of the British King-in-Parliament, there can be no change in the essential provisions of the Indian Constitution, however much the people of India in all parts of the country and of all classes may desire a change.

Supreme Power of the British Parliament

But while the Indian people can effect no radical change in the Constitution, the British Parliament has supreme authority to make any change it desires. The beginning of the new regime by an act of dismemberment,—the separation of Burma from India,—may be justified by respect for the right to self-determination of the people of Burma. The actual terms of that constitution does not afford any proof that the separation

of Burma is due solely to a recognition of the right of the Burmese people to self-realisation in their own way. Even granting that this was an act in the proper direction, the example may well suggest a separatist bend in the fundamental policy, which needs must weaken the authority of the Federation. Even the institution of Sind and Orissa as separate provinces may not unjustly be taken as illustrations of the tacit resolve of the British Government to allow no single unit so much strength as to make it a source of danger to the central authority. The coincidence of the Mussulman sentiment for separation, in Sind as well as outside, was a fortuitous help to British Imperialism, which would in no way be jeopardised, at least for half a century at the present rate of progress, simply because, both in Sind and in Orissa, the local people are much too backward to be really a match for British diplomacy.

The creation, moreover, of a Mussulman block all along the North West of India, adjoining the traditional Muslim countries of Western Asia is,—not a contribution to the realisation of the Pan-Islamic dreams. It is simply a sort of Damocles' Sword held over Nationalist India. If the latter desire the continued functioning of a united India, it must do so in loyal and subordinate co-operation with Imperialist Britain. Otherwise the centrifugal forces inherent in such acts would be unleashed to the undoing of Indian unity. The Punjab, Sindh, and the North-West Frontier Province are sufficiently contiguous, homogeneous, and strategically situated, to make the threat of secession more than a mere nightmare of the overheated Nationalist imagination. So long, however, as it may suit the

British Imperialist authority in India to maintain the unity and integrity of this country, the Federation will be supported and strengthened, despite all professions of regard for local autonomy. But the moment, the Indian Federation as a whole, or any component parts thereof, show signs of effective recalcitrancy against the British Imperial domination, the centrifugal tendencies will be encouraged, just as effectively as the Communal sentiment is at the present times fanned or checked precisely as the Imperialist policy needs.

There are thus inherent, in the 1935 Constitution of India, seeds of a Civil War. All the passions which lead to such conflicts are germinating; only the effective power to wage war is reserved exclusively to the representative of British Imperialism in India, the Governor-General. Even the States, which are supposed to join the Federation by a voluntary act, are not at liberty to secede from it to suit their own convenience. Once they join it, they will have no option to leave the Federation, however much their local interests or personal prejudices of the Rulers may suffer. Section 6(5) and Section 45(4)* suggest that, any radical modification of the Act of 1935, or the suspension of the Constitution provided for by that Act for over three years, may justify the Federating States to desire to withdraw from the Federation. But such a withdrawal, if it is at all possible under the Act, is not effected at the instance of the States individually. In fact, this oblique opportunity provided for the States to threaten withdrawal from the Federation, under specific contingencies, is, in reality, an implicit threat to the more determined of the Indian Nationalists bent upon com-

* See Federal Structure ch. III.

plete emancipation of this country from bondage to British Imperialism, that the latter would disintegrate the entire country if their "subversive" activities are pushed beyond a point suitable to the British notions of propriety in such matters.

Distribution of Powers and Functions

(b) The division of Powers and Functions, resources and obligations, between the Federation and its component units, is also made on the same basis of keeping intact the ultimate domination and sovereignty of Britain. When we come to discuss the resources open to the Provinces, we shall see more clearly how they are all crippled inevitably because of the need to maintain British supremacy intact. Even in the States, while theoretically only such resources and powers will be delegated to the Federal authority as the Ruler of each Federating State considers necessary for the proper working of the Federal Structure, the exigencies of the situation would enforce a minimum of delegation of powers, or surrender of resources from the State, which cannot but restrict narrowly all opportunities for local development. There are provisions, of detail as well as of fundamental principle, which make it beyond the possibility of a doubt that the regard for developing the sentiment of Provincial Autonomy is only in so far as it is not incompatible with British supremacy, or in so far as it could be made an effective weapon against the undue expression of unyielding Indian Nationalism.

The ability of the units is thus extremely restricted in achieving anything substantial for the welfare of the people under their jurisdiction. They have enough power to earn a bad name for themselves,—as lacking

in a political sense, or a sense of reality, or ability to do teamwork. But they have no means to undertake projects of national,—or local,—development in any material sense, if those projects do not chime in with the British Imperialist policy. The existence of Provincial Autonomy will only provide the Central authority with an excuse not to intervene and insist upon a certain minimum of administrative efficiency or progressive civilisation being maintained. Every Province has an immense leeway to make up—some more, some less,—in developing the resources of the territories and peoples in their charge. The States without exception are too backward not to have considerable lag in material development. But the presence of a heavy mass of unproductive debt, a hopelessly wasteful defence organisation, and of an excessively paid public service in all departments of government, make it impossible to find a surplus which could be expended on new projects of further development. Such resources, therefore, as may be available are pledged to the hilt, and for many more years to come, to the upkeep of these engines of British Imperialism, which would make the Provinces,—and, *a fortiori*, the States,—unable to raise the standard of living of their own peoples for a generation or more to come.

Centre vs. Units.

Does the Centre,—the Federation,—dominate, or the units preponderate? This is a difficult question to answer in the new Constitution. As already observed, there is every margin of effective authority reserved to the Federal Government, and more particularly to the Governor-General, to uphold the authority of the Central Government in every conceivable emergency.

And if that does not suffice, he can, by Proclamation, suspend the whole Constitution, abrogate the Federation, supersede the Legislature, and arrogate practically all power to himself.* A study of his "special responsibilities," detailed in Section 12 of the Act, correlated with a further study of the financial provisions in the Act, make it evident, that in every direction in which British hold upon India is to be maintained, the Governor-General is armed with powers and authority that would be proof against any ordinary means of being shaken or displaced.

But, though the Governor-General as the chief executive is empowered, in ordinary and extraordinary situations, to deal with every aspect of governing India, that does not mean that the Federal Government is equally powerful. The Governor-General is quite different from the Federal Government, which means the Council of Ministers of the Governor-General. The latter have very limited powers. The Provinces have a defined field of action, sufficient materially to detract from the authority and influence of the Federal Government, though not enough for the Provinces themselves to strike out upon original lines of local improvement. Under these conditions, it is impossible definitely and satisfactorily to answer the question put above. But it may be said that, on the whole, the authority and powers of the Central Government are maintained to a point, at which the exercise of real provincial independence becomes unlikely; and that, should any Province try a fall with the Central Government, even in the concurrent field of action, the chances are that it would come out second best.

*cp. Section 45, and Federal Structure ch. iii and vi.

Apart from the distribution of powers and functions between the Federation and the federating units, there are cases in which their action may have to be mutual and overlapping. Provisions have, therefore, been included in the Act to provide for such cases in Part VI, Ss. 122-135, both inclusive. This portion of the Act opens with the general principle that:—

“The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State.” (122).

In exercising the executive authority to enforce the laws of the Federal Legislature, regard must, of course, be had, as a sort of reciprocity, to the interests of the local unit concerned. But, so far as the Provinces are concerned, the Governor-General is empowered to *direct* any Governor to act as his agent in regard to tribal areas, or in regard to the reserved departments of the Central Government, *viz.*:—Defence, External Relations, and Ecclesiastical affairs. (S. 123).

Even the executive authority of the Federation may be delegated by the Governor-General in any matter in which the Government of the Province concerned consents to be entrusted with such powers, either conditionally or unconditionally. [124 (1)].

The Federal Legislature may, likewise, impose duties or confer powers upon a Provincial Government, its officers or authorities, even on subjects on which it is not competent to a Provincial Legislature to make laws.

It is in such matters that difficulties would, in practice, most frequently arise. For the law to be

enforced would be Federal. It would, therefore be possible,—and, indeed, necessary,—for the Federal authorities concerned to issue explanations, or instructions for the enforcement of the law. The actual working of each such law, however, must be of necessity within the jurisdiction of the Provincial Government. The officers of the latter may be entrusted with the necessary powers to carry out the law; and the Central Government would, naturally, pay such officers while engaged in enforcing the Federal laws [124 (4)]. But this by itself does not avoid all the possible difficulties and contretemps. The moment a case occurs, in which a Provincial Government may be interested on the opposite side, as it were, to that in which the Federal Government are interested, the Provincial officers might find it extremely difficult to reconcile their provincial sentiment with their duty to the Federal authority paying for their services.

The Governor-General would, ordinarily, satisfy himself in such matters by means of inspection through his own nominees; and these may constitute a Federal Inspectorate, even if the actual administration of Federal Laws is entrusted to the local officers. The supremacy of the Federal Executive is expressly provided for in Section 126, which enjoins upon every Province so to exercise its own executive authority as not to impede or prejudice the exercise of the executive authority of the Federation. The latter is even empowered to issue such **directions** to a Province, in this behalf, as may appear necessary to the Federal Government. And this right to issue directions to a Provincial Government is not confined to the Federal subjects proper, but may even extend to giving direc-

tions for carrying into execution in that Province of any Act of the Federal Legislature relating to a matter included in the Concurrent List. So far, for instance, as the means of communications are concerned, the Executive authority of the Federation can give directions to any province as regards the construction and maintenance of such means of communications,—quite apart from the means of communications coming directly under the Federal authority as part of the Federal functions in connection with the national defence.

Should any province fail to give effect to such **instructions or directions**, the Governor-General is empowered,—acting in this discretion,—to issue the same directions,—or somewhat modified, as **orders** to the Governor (126(4)). Such **Orders** may even be issued regarding the manner in which the provincial executive authority is to be exercised “for the purpose of preventing any grave menace to the peace or tranquillity of India or any part thereof.” This may very easily bring to heel a Provincial Government pursuing, let us say, a policy of active sympathy with the Nationalist (or Socialist) agitation; or another believed, at the headquarters, to have leanings in favour of one community to the prejudice of the other. In no Province could such contingency really arise, so long as the Governor sticks to the letter of the powers and authority given him by law. But even if the Governor happens to have leanings on the Nationalist (or Socialist) side, the supreme Government have reserved to themselves sufficient authority to compel such satraps to obey orders.

Broadcasting

There are two subjects,—one relatively modern, the other of time immemorial importance in Indian national economy,—in which it is likely that there may be friction between the Federal and Local authorities. As regards Broadcasting, Provinces are entitled to be entrusted with functions, which would enable them to make or use transmitters in the Province, and to impose fees on the construction or use of Transmitters, or the use of receiving apparatus.* The Federal Government may, indeed, have their own such instruments of either sort; and over those no Province or State would be allowed any authority. Even as regards instruments and apparatus which are within the jurisdiction of the Province, the Federal Government are entitled to impose conditions for the exercise of such functions entrusted to the Provinces, including the finances of such services. But the Federal Government are not entitled to impose such conditions, which would regulate the matter broadcast from the Provincial instruments, [129 (2)], except, of course, in the broad case of a contingency in which the Governor-General considers the peace and tranquillity of India or any part thereof endangered.

Water Supply

As regards Water supply, especially in these days of extensive Irrigation works upon large rivers flowing through more than one Province or State, the chances of a conflict between the units concerned are very real indeed. It is possible for a State or a Province, in which a River rises, to obstruct or divert its flow,

*cp. Section 129.

or to withdraw water from it, to such an extent that, in the lower reaches of the same stream, flowing through another Province or State, there may not be sufficient water supply for the irrigation of the lands of that province. The latter's whole economy may be thrown out of gear because of such disturbance of its water-supply. Sections 130-134 accordingly provide for proper investigation by a competent Commission of any complaint made by a Province or a State to the Governor-General. The recommendations of the Commissions would, when turned into the form of decision or order by the Governor-General, have all the force of a legal decision, and would be enforced as such.* Room for appeal to His Majesty in Council is reserved expressly to the State or Province which feels itself aggrieved by such a decision; but the decision of the King in Council will be final, and will override,—as also the decision of the Governor-General, unappealed against,—all local legislation or executive action inconsistent with such decision.

Section 135 provides for an Interprovincial Council, appointed on the recommendation of the Governor-General, to enquire into any dispute between Provinces, as also to investigate and discuss subjects of common interest to more than one unit in the Federation, and make recommendations for a co-ordinated policy. This is a clumsy, expensive, but necessary means of securing internal co-operation between the several units of the Federation.

Given these occasions for possible conflict or divergence of interests; and having regard to the

*cp. Section 131.

solutions provided in the Constitution, there is good ground for the view that in all essential respects the Governor-General, as agent or representative of British Imperialism, will remain the *supreme* dominating force over the Provinces as well as the States, over the excluded areas as well as the entire Federation.

The Provincial Governor is appointed by a Commission under the Royal Sign Manual.

Section 131: The Governor of a Province is appointed by a Commission under the Royal Sign Manual.

(2) The provisions of the Third Schedule to the Act shall have effect with respect to the salary and allowances of the Governor and the provision to be made for enabling him to discharge his duties and with dignity the duties of his office.

Schedule III to the Act provides the following scale of salaries to the Governor-General and the Governors of Provinces:

The Governor-General	His salary annually
Governor of Madras	Rs. 120,000
Bombay	" " "
Calcutta	" " "
Madras	" " "
United Provinces	" " "
Punjab	100,000
Bihar	" " "
The Central Provinces & Berar	75,000
Assam	60,000
N. W. F. Province	" " "
Coastal	" " "
And	" " "

By clause 2 of the Schedule, Travelling Expenses and Equipment Allowance in these offices are authorized to be fixed from time to time by the Governor-General in Council. The Governor-General shall be empowered to make the necessary arrangements for the Governor to discharge his duties and with dignity the duties of his office as may be determined by the Governor-General. There is in this no hint of any limitation on these allowances "from time to time," and certainly no suggestion that they might in some reasonable ratio to the cost of living of the people.

Clause 3 provides for the Governor-General to be fixed by order in Council in these offices; and clause 4 allows the Governor-General to fix the salaries of the members of the Council for advice. As to the salaries of the members of the Council for advice, the Governor-General shall be empowered to make the necessary arrangements for the Governor to discharge his duties and with dignity the duties of his office as may be determined by the Governor-General. There is in this no hint of any limitation on these allowances "from time to time," and certainly no suggestion that they might in some reasonable ratio to the cost of living of the people.