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INDIAN STATES
AND THE NEW REGIME

BY

MAHARAJ-KUMAR

RAGHUBIR SINH

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Heir-Apparent of Sitamau State

WITH A FOREWORD BY

SIR C. P. RAMASWAMI AIYER

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To
THE MAKERS OF
MODERN
UNITED INDIA

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FOREWORD

IT is a sign of the times that the heir-apparent of the Sitamau State in Central India, should not only win academical distinctions and a doctorate for his writings on historical topics but should publish a comprehensive and well-conceived monograph dealing with the history of the relations of Indian States with the Paramount Power, with their efforts to organize themselves, with the inner history of the transitional movements that are now taking place, and with a historical and philosophical disquisition on the emergence of a federal India. This book is not only a most useful analysis of the discussions relating to federation and the part played therein by the Indian Princes, but is a commentary, which will be useful to all students of Indian constitutional development, on the new Government of India Act and its effects and implications. Maharaj-Kumar Raghubir Sinh has not flinched from criticism and has not contented himself with

commonplaces. He develops the thesis of the inevitability of federation and pleads for freedom from obstructionist tactics and for a reorganization of the Chamber of Princes so as to enable the Princes to act in concert.

To all those who are interested in the absorbing problems presented by the events that are talcing place in Indian India, this book will serve not only by way of help and guidance but by way of advice and warning. I commend the book to all students of the Indian constitution.

C. P. RAMASWAMI AIYER

TRAVANCORK

PREFACE

THE literature on the new federal constitution of India is rapidly growing and the greatest constitutionalists of the country are contributing their quota to it. Under such circumstances any addition to it by a novice like me obviously demands an explanation if not an apology. Let me at the very outset frankly admit that this book makes no great claims. I have merely tried to summarize the relevant portions of the Government of India Act, 1935 and, by rearranging them, made an effort to present my readers with a complete picture of the new constitution in so far as it affects the Indian States. The one fact which made me bold enough to think of its publication was the most encouraging foreword contributed by that veteran politician and eminent constitutionalist of India, Sir C. P. Ramaswami Aiyer. My sincerest thanks are due to him for the great interest he took in this venture of mine; he not only wrote the foreword but went through the complete manuscript very critically and made many useful suggestions which have been duly carried out.

The federal constitution has not sprung up full-blown all of a sudden, like Athene in> full panoply from the head of Zeus. It is the

culmination of a whole series of events and, in its final form, may be said to be the embodiment of the varying political situations during the last few years. I have tried to trace the history of the development of the federal idea in respect to the Indian constitution and the ultimate shaping of the present constitution. The Act gives us the final result of long deliberations extending over a period of five years and more. But obviously enough it merely represents a stage in the development of the Indian States polity, and the question of 'what next?' is haunting the minds of all the statesmen of Indian India. No one can forecast with any degree of certainty, the events that might be coming. Yet the shadows which these events are already casting over the political arena give us an indication of their possible nature. It is in the light of these anticipations and on the basis of many a recent event that I have tried to state very frankly what these shadows mean to the Indian States. The fact that there is much in my conclusions which is likely to be unpalatable to the States has not deterred me from putting them down with all clarity; I am confident that they will give food for thought to the serious-minded statesmen of Indian India. The future is yet indefinite and in the making. Perhaps we can still shape it to our liking if we earnestly make up our minds and begin our efforts in that direction. There is much

truth in the age-old proverb: 'Forewarned is forearmed.'

In spite of my earnest desire and efforts to get this book ready at an earlier date, its publication has been delayed till this month. It is but natural that, at a time when history is being made every day, a book dealing with contemporary events should soon be out-of-date, and this book of mine is no exception to that general rule. Nearly eighteen months have elapsed since the last word of the original text was written; and the months from August, 1936 to March, 1937 witnessed rapid developments. In order to give my readers an up-to-date knowledge of recent events, I have added a short postcript entitled 'Since Then', which gives a detailed summary of all the important developments and movements during those very eventful months. Since March, 1937, once again there has been a period of comparative calm in the sphere of Indian States[1] politics. The inauguration of the ne* Constitution in British India on April 1, 1937, did not fundamentally affect the relations of the Indian States with the British Government. The constitutional crisis, which threatened the nev constitution and the working of provincial autonomy at the very outset, has come and gone, bu it has left behind it a clear, definite and at th< same time a very grim warning to the Princes Thg^tide of democracy is rising with^an addec

force; it would not be very long before, this rushing tide will overflow the bounds that separate the Indian States from British India, and will flood the Indian States as well. The Princes will then be called upon to face a very difficult, and at the same time, a very delicate situation.

In conclusion, I would acknowledge that but for the ungrudging help of some of my friends and helpers, it would have been impossible for me to see the book through the press in such a short time. The compilation of the index was also entrusted to their care and they deserve my sincerest thanks as well as those of my readers for making it as exhaustive and complete as it is. Before taking leave of my readers I would request them to be kind enough to acquaint me with any mistakes or shortcomings in the book. I shall feel highly obliged for any such help and shall do all I can to remedy them in the next edition.

RAGHUBIR NIWAS,
SITAMATJ, C. I. RAGHUBIR SINH
February 5, 1938.

an early decision. These official communications were soon followed by personal letters from H. E. the Viceroy addressed to individual Princes, informing them of his intention to depute his special representatives to help the Princes not merely in coming to a decision in respect to the all-important matter of their accession to the federal constitution, but also in preparing the ground for it by discussing the various matters arising out of the new scheme, and by solving many vexed questions and problems which might arise in respect to these matters. This took the, Princes by surprise: they were bewildered, not knowing how to deal with the situation.

The outlook was too serious either way to be ignored. The Princes found the new federal constitution staring them in the face, and many of them felt that their doom was near at hand. At all events no one could deny that momentous political changes were at hand. There began a series of crowded gatherings. The office of the Chamber of Princes began to convene conference after conference, first to draw up a questionnaire for the help and guidance of the States and then to draft the list of proposed reservations and limitations. At this important juncture once again, the Committee of the Indian States' Ministers, presided over by Sir Akbar

Hydari, came to the rescue of the Princes and gave them a definite lead. In the middle of September, it met and made its recommendations. It suggested some changes in the Instrument, commented at length upon the various aspects, of the federal scheme and suggested important general reservations to the various items. It, however, laid great stress on the economic aspect of the federal scheme and ^pointed out that all the essential conditions precedent to an equitable economic settlement with Indian India were not to be found in the scheme before them. Much of the work done by other minor conferences as well as that of the bigger conference of the Princes and ministers held during the last days of October in Bombay was based on the recommendations of this report.

One important feature of this period was the growth of the provincial group organizations. The States iji Kathiawad and the Punjab had forestalled the events, and all the States in those two regions had gathered together under the able leadership of Their Highnesses the Maharajahs of Kutch and Patiala respectively. They had engaged their own legal and constitutional experts and done much useful work. The same plan was tried in the other provincial groups, but did not meet with the same success owing to the lack

of cohesion and absence of a real spirit of co-operation.

In the meanwhile the opinion of the Princes was divided on the question of holding a formal session of the Chamber of Princes. One section advocated that an early session in November, 1936, would make it possible for the Princes to act in concert and the Chamber would not only be able to elect its new office-holders but through them it would be possible for the Princes to negotiate with the Government of India as one united body. The other group felt that such important questions could not be discussed with the necessary freedom in a public and official session of the Chamber. The programme of H. E. the Viceroy was already full and the holding of a formal session of the Chamber in November was not possible; the Princes had to content themselves with the holding of an informal conference of Princes and ministers at Bombay during the last week of October, 1936. The Conference of Ministers, which preceded the joint session, drew up by itself a lengthy document proposing all sorts of reservations and limitations. In the combined session not much could be done save the appointment of two importanl committees for a further examination of the federal scheme. The first committee was called the 'Federal Finance Committee/ Its main

business was to make a thorough examination of the financial aspect of the new constitution. It consisted of Their Highnesses the Nawab of Bhopal, the Maharajah of Dholpur, and the Jam Sahib of Nawanagar, and three ministers, the Nawab of Bhopal being nominated chairman. The late Sir B. N. Mitra and Mr. Manu Subedar were engaged as financial experts to advise and help the Committee in its deliberations. Thus, for the first time, the Princes decided to consult financial experts. The other Committee was known as the 'Constitution Committee[5] and was entrusted with the task of examining the scheme from legal and constitutional points of view and then to propose any amendments, limitations, or reservations. It was a large committee consisting of some sixty and more members including some of the Princes and all the members of the Hydari Committee. His Highness the Maharajah of Patiala was nominated as its chairman. Both the committees were called upon to submit their reports to the Chancellor of the Chamber some time in January, 1937.

Early in November the three Special Representatives of His Excellency the Viceroy began their tour. They went to all parts of India and by visiting individual States, or by meeting a group of them at some central place,

did all they could to clarify the issues by putting before the States' representatives their own point of view. Many of the provincial groups made elaborate preparations to meet these representatives and in more than one place serious efforts were made to put the same set of papers on behalf of the various States constituting that group. The one great result of the tours of these emissaries was to make the rulers of the various States come to grips with this great problem. It had a great educative value and the accession of the States to the Federation no longer seemed to be a matter of very distant future.

While thus the opinion in the States was slowly crystallizing, the British Government was slowly yet steadily forging ahead with its scheme of the inauguration of the new constitution. The long-drawn-out negotiations between the British Government and H. E. H. the Nizam in respect to the province of the Berars at last ended successfully, and on October 24 1936, an agreement was signed whereby the British Government recognized the Sovereignty of the Nizam in respect to the Berars. It further agreed to its visible representation in some matters. The Nizam on the other hand agreed to accede to the Federation as established by the Government of India Act, 1935, in respect to the Province. The

details of the settlement arrived at on the various points are noted at length in the agreement. Thus one great political question was settled and everything was ready for the inauguration of the new constitution so far as it related to the provinces only. A series of Orders-in-Council followed, which supplied many details in respect to various matters like audit and accounts and India Office pensions. Another Order-in-Council, dated the 18th December, 1936, made provision for the establishment of the Federal Court from October 1, 1937.

The new year began with a revival of activity among the Princes. The Chamber of Princes had engaged Brigadier-General J. H. (Morgan, K.C., and had called him to India to advice that body so far as the legal aspect of the federal scheme was concerned. On the other hand the Federal Finance Committee under the chairmanship of His Highness the Nawab Sahib of Bhopal was busy drafting its report. The two experts had differed widely in their conclusions, and the committee on the (whole agreed with the views of Mr. Manu Subedar, who had examined the whole question from the stand-point of the Indian States. The report was unanimous and was submitted towards the end of January, 1937. With its two enclosures, giving the detailed notes of

the two experts, the report forms a masterly document.

During the last week of January the Constitution Committee began its sittings and, after a strenuous and prolonged session for full twelve days, a unanimous report was drafted. It proposed some amendments in the revised draft of the Instrument of Accession, suggested additional clauses to be inserted in the Instrument, drafted general limitations, and made a detailed survey of the various items pointing out the matters in respect of which some specific reservations would be necessary. The representatives and ministers of even the biggest States, like Hyderabad and Baroda, had participated in its proceedings and as such the report represented the unanimous opinion of practically all the Indian States. It was a great achievement on the part of His Highness the Maharajah of Patiala to have brought the whole of Indian India together and rallied such great support to the findings of the Committee over which he presided.

This success of His Highness the Maharajah of Patiala as the chairman of the Constitution Committee just on the eve of the election of the next Chancellor had far-reaching effects. The ofl&cial session of the Chamber was summoned for February 22 (later changed to February 24), 1937. All possibilities of a

unanimous understanding between the various groups of Princes in the Chamber having failed, the stage was set for a final weighing of comparative strength and support of the two candidates. Their Highnesses the Maharajahs of Patiala and Dholpur opposed each other and active canvassing was carried on by both the parties. It was a rather big gathering of forty-five Princes and chiefs which met in Delhi to elect the new office-holders. For the time being the issue of big *versus* small was forgotten. The one question which was engaging the attention of all the Princes was the new federal constitution. The Princes felt that the future of the States depended greatly on the man who was going to lead the Indian States during this crucial year, and, hence, the greatest amount of attention was being paid to the question of electing the Chancellor. Under the influence of this conviction even the all-absorbing topic of the accession of the States to the federal constitution receded to the background and election fever and excitement ran high. It was a struggle between two personalities, and there was His Highness the Maharajah of Patiala standing before his brother Princes with the report of the Constitution Committee in his hand. The Princes rallied round him and he was elected Chancellor for the next

year by a decisive majority of 30 votes to 13 only. A new Standing Committee was elected, and it is felt that the inclusion of some new personalities like Their Highnesses the Maharajahs of Jodhpur and Nawanagar and the re-entry of a veteran like His Highness the Maharajah of Bikaner have definitely strengthened the executive of the Chamer.

But on the most important question of the moment, the All-India Federation, the official session of the Chamber did not give any lead to the Princes. At this stage, it was considered inadvisable to discuss any resolution concerning the Federation officially. But the Princes in general felt it most essential that the Chamber should give a definite lead to the States as a whole, and soon after the close of the official session an informal meeting of the Princes and ministers went on to discuss the report of the Constitution Committee at length and finally accepted it with a few minor modifications here and there. And with the draft containing the final views and the suggestions of the Constitution Committee at hand, every individual State began to draft its own reply to the Government of India. The replies were due by the middle of March, 1937, but it was only by the end of the month that the replies from the States began to pour in the offices of the various political officials.

Soon after this, on April 1,1937 ,there was inaugurated the new Constitution (the Government of India Act, 1935, save Part II), which involved drastic changes in respect to the control of the Political Department, its relations with the Government of India, and, above all, in the designations and the nomenclature of the various political officials who deal with the Indian States, including the Viceroy as well. But all these things did not in any way affect the States, nor did they bring about any great fundamental changes in their relations wtih the British Government. Having sent down their replies to their political officials, the States once again relaxed themselves into lethargy and complete political inactivity. Thus it happens that while the months immediately after the inauguration of the new constitution have been full of great political activity, heated constitutional debates, and frenzied legal controversies throughout British India, there is in the Indian States, complete lull and total political inactivity.

To a lay reader, however, all these reports and discussions do not matter much; he wants a simple answer to a simple question; "Will tho Princes federate?" And my answer to that question is a very short one, consisting of one word only, "yes". If the Princes as a class

had thought of *not* federating, all this trouble, all that huge expense and, above all, all those long delays were useless; the reply could be a very short one : "The States do not intend to federate." It is mainly a question of give and take. When the Princes are accepting the greatest change in their existence, they want to be very cautious. They wish to see that this change does not involve an ultimate extinction of their identity and existence; they want to guard against all such possibilities. The next few months will see active negotiations going on behind closed doors, and one may expect that the Princes will soon receive the final replies of the British Government intimating to them the utmost length to which it is ready to go in order to accede to their wishes.

Lastly, the question of the future of the Chamber of Princes once again comes to the fore. The election of His Highness the Maharajah of Patiala to the high office of Chancellor has in no way solved that difficult problem. His recent success is merely an indication of the few possibilities that still exist for the re-making of that body. The prestige and strength of the Chamber is no longer what it was some seven years ago, and to restore it to that high pedestal it would be essential that it should once again rally to its support

even the biggest of the Indian States; and this in its return automatically raises the knotty problem of the reorganization of the Chamber. It seems certain that the coming struggle between the big and the small cannot be avoided except if the so-called small Princes decide to arrive at a compromise and, in the face of much bigger and more important problems, restore the unity and strength of their ranks by making what little sacrifice is demanded of them for the common good and welfare of Indian India as a whole. The question of the control and organization of the members of the Indian States in the federal legislature is inseparably connected with the question of the reorganization of the Chamber; and it must be fully realized that the future of the Indian States under the federal constitution depends substantially on the unity of the Indian States members in the federal legislature and the work done by them. It is high time that we grasped the realities and, by realizing what lies ahead of us, gave up the quarrels of an epoch which is fast turning into a dead past.

February 5, 1938.

ADDENDA ET CORRIGENDA

Page.	Line.	
160	22	Read 'Hyderabad Residency Area' *for* 'Bangalore in Mysore'.
201	12	„ 'Eleven' for 'ten'.
354	15-16	„ "Any of these taxes may be levied even within a federated State if the. latter, by acceding to the corresponding item in the Federal Legislative List, empowers the federal legislature to impose the tax within the limits of the State." *for* "These taxes will be levied even within the federated States."

PART ONE

THE PAST

CHAPTER ONE

THE TWO INDUS

I.—THE PARTITION OF INDIA

INDIA, GEOGRAPHICALLY ONE and indivisible,? is politically divided into two arbitrary parts ; British India governed by the Crown and Indian India ruled by the Indian Princes. The two Indias share the same glorious past and the same great cultural heritage. Yet today they stand apart not only in political organization but in political ideals as well. While the States still retain the ideal of kingship, a despotic autocracy based more or less on the theory of divine right, British India is developing democratic institutions and is being moulded on Western lines.

The partition of India is definite and clear-cut. For all political purposes British India and Indian India are two different worlds. Indian dynasties controlled by the British Crown rule over Indian India ; British India on the other hand is ruled directly by the Crown, and its administration is carried on according to the enactments made by the British Parliament. Again, the laws of the two Indias emanate from different sources. Though the laws of Indian India are more or

less adaptations,of the laws of British India, they are enacted and enforced by Princes possessing powers and rights to make laws for their States. Lastly, the judicial systems of the two Indias are wholly unconnected. Neither the High Courts of British India nor the Privy Council in London can entertain appeals to suits from Indian India. The British officers who have a final voice in the judicial affairs of the smaller States, estates, or *jagirs,* belong to the Foreign and Political Department of the Government of India and have nothing to do with the British Indian judiciary.

Indian India, however, is not subject to any single authority or power. It comprises within its limits 562 States, estates, *jagirs,* and other holdings. The classification can be made on the basis of more than one criterion, but, generally speaking, the States are now officially divided into three distinct classes as shown in the accompanying table.

From the geographical, historical, and political points of view there is great diversity among the various component units of Indian India. Kashmir stands on the northernmost border of India, while Travancore reaches to Cape Comorin, the southernmost point. Again, save a few connected groups of States, like those in Central India and Rajputana, the

States are intermingled with British India. The size, population, and income of the various States differ widely. Hyderabad, the biggest, comprises an area of 82,698 square miles, a population of 14,146,148, and an income of Rs. 8,92,43,000; while there are minute holdings in Kathiawad amounting to a few acres only.

CLASSIFICATION OF THE STATES

Class of State	Number	Area	Population	Revenue
I. States, the rulers of which are members of the Chamber of Princes in their own right.	109	519,129	60,736,789	42.42
II. States, the rulers of which are represented in the Chamber of Princes by twelve members of their order elected by themselves.	126	72,603	7,114,511	2.63
III. Estates, *Jagirs,* and other holdings.	327	6,406	801,674	.74

N.B.—The areas are in square miles and the revenue in crores of rupees.

Different circumstances have led to different relations between the States and the British Power. Some States concluded treaties with the East India Company on terms of equality, while others were mere creations of the Company from territories conquered by it. Culturally, too, there is a good deal of

diversity. The systems of administration also differ widely. Some States, like Mysore, Baroda, and Travancore can claim systems of administration which are more efficient, better organized, and more solicitous for the welfare of the people than even British rule in British India; at the same time, it must be admitted that there are States whose administration is medieval in structure and feudal in spirit. "The one feature common to them all is that they are not part, or governed by the law, of British India, but can be grouped together into the common term Indian India."

The partition of India was effected and, later, perpetuated by a series of treaties, engagements and other agreements entered into by the British when conquering and settling India during the first quarter of the 19th century. For one full century after this settlement,, the two Indias were kept separate, the only bond of authority between them being the British administration which ruled over British India and tried to strengthen its hold over Indian India. It would not be wrong to assert that the conquest of India during this century of peace was much more extensive and effective than that achieved by the sword on the battle-fields. But this slow yet steady encroachment on the independence, authority, and status of the various States now appears

to be a blessing in disguise for Indian nationalism. The attempts at perpetuation of the partition have finally resulted in the unification of India. The quarter of a century which has passed by since the departure of Lord Curzon from India, has seen amazing changes. It is a tale stranger than fiction. Unforeseen circumstances, trends of world events, and, last but not the least, efforts of the British to strengthen their hold over India, all combined to create a situation, the only way out of which lay in the acceptance of a great ideal—United India.

II.—THE FIRST STAGE : SUBSIDIARY ALLIANCES AND THE POLICY OF RING-FENCE

Though the beginnings of the relations between the British and many of the Indian States and Powers can be traced back to the first half of the 18th century, the first treaty with which the problem of modern Indian India begins was concluded in 1765 with Oudh after the defeat of the Nawab Vazir, Shuja-ud-daulah, and his allies in the battle of Baxar. The relations which thus commenced were never severed, and there began a new policy on the part of the British towards their protected allies or Powers, which was later

applied with due modifications to other States and Powers.

By accepting this treaty, the Nawab Vazir agreed to maintain forces for the common defence of Oudh as well as of the British possessions in Bengal. The forces were to be equipped, organized, and commanded by the officers of the Company, but were to be paid for by the Nawab Vazir. By ceding the provinces of Kora and Allahabad to the latter in 1773, Warren Hastings put the finishing touch to the policy towards Oudh. Historically, it is wrong to assert that the policy of subsidiary alliances was enunciated by Wellesley. He only perfected a system which was begun by Clive in 1765 and developed by Warren Hastings.

This alliance with Oudh proved to be of a permanent nature. Moreover, though in 1765 Shuja-ud-daulah was neither debarred from entering into relations with any foreign Power, *e.g.*, the Marathas, nor made a feudatory of the British, the power of Oudh dwindled away, and soon the virtual sovereignty of the State passed on to the British. The relations of Warren Hastings with Oudh show that even at that early period the question of undue intervention by Residents in the internal aflfairs of allied States had arisen. And when Lord Cornwallis came out to India, he considered

Oudh to be a protected State and believed that the terms of Pitt's India Act did not debar him from intervening in its affairs.

Out of the genuine fear of a Maratha invasion the British began to create a series of buffer states on the frontiers of their own possessions and entered into permanent alliances with them. After obtaining control of Oudh, they went on to create an independent State of Benares under Chait Singh Later, they tried to enter into relations with the States of Bihar and Orissa to guard their frontier on that side. In the Deccan the State of Carnatic was allowed to exist as it had already entered into permanent relations with the British. The policy of intervention in the internal affairs of the protected States was not limited only to Oudh. It was more or less a rule with all: the case of extortions from Chait Singh is well known.

Though Warren Hastings tried to extend British influence imperceptibly, he could make no additions by means of war. When Lord Cornwallis succeeded him, he followed a policy of neutrality, which is wrongly termed a policy of non-intervention. The policy of intervention in the internal affairs of protected States like Oudh, in whose case the Company had assumed certain rights of suzerainty, continued.

The appointment of Wellesley to the Governor-Generalship of Bengal radically changed the situation. The policy towards the so-called allies was now fully developed. In spirit it was the same as that of Clive and Cornwallis, but Wellesley applied it with greater vigour, to a larger number of States, and, above all, for more purposes than one. Clive had enforced the maintenance of a subsidiary force; Hastings had believed that these alliances were of a permanent nature and had decided to intervene in the affairs of an allied State even against the will of its ruler; now Wellesley introduced the new provision that any State entering into such relations with the British should promise not to enter into foreign relations save through them. Wellesley enforced the policy of subsidiary alliances on all those who would accept it. The Nizam was the first to do so and, a few years later, he was followed by the Peshwa. The Gaikwad also accepted it.

In the meanwhile, Mysore had been conquered, and a new State was created out of the territories thus conquered. With the fall of Tipu and the acceptance of the subsidiary alliance by the Peshwa, the only Powers that remained independent were Holkar, Sindhia, and Bhonsle. On the conclusion of the Second Maratha War, Wellesley tried to dictate

similar terms at the point of the bayonet to these Princes also, but these treaties had to be cancelled on orders from Home. Wellesley was recalled. Sir George Barlow, however, maintained the treaties concluded in 1803 with Bharatpur and Alwar.

There was no more active aggression till the arrival of Lord Hastings in 1813. The old policy of neutrality was continued and the period of peace devoted to settling the territories which had come under the influence of the British, and also to strengthening their frontiers. The alliance with the Gaikwad made it possible for the British to arrange the settlement in Kathiawad and Gujrat. The alliance with the Peshwa strengthened their hands to intervene and restore peace and order in Bundelkhand, which was nominally under the suzerainty of the Peshwa. These were, however, merely attempts to strengthen the frontier against the independent Maratha Princes. The recognition of the various Princes as independent potentates in these areas not only made them staunch supporters of the British and thus served to reduce the area of the central Maratha domination, but also proved to be a temptation to the Princes still under the yoke of the Maratha Power, like Holkar and Sindhia.

Moreover, the Company entered into new treaties with its old allies like Travancore and brought their relations into line with the other protected States. Thus, the treaties of alliance on equal footing were replaced by alliances of perpetual friendship, which gave the Company right to intervene in all internal affairs and even to bring lands within the State under its direct management in order to ensure payment for the subsidiary force.

The last addition to the list was made by Lord Minto, who took the cis-Sutlej States under British protection. The increasing menace of a strong Sikh Power under Ran jit Singh forced the British to include these States in their system and thus create another ring of buffer states.

Thus, for Jull^ortyHBight years, one consistent policy was followed, Mysore being the only exception. This policy has been termed the 'ring-fence system*. The original idea of the sys!emwas well expressed by Warren Hastings when explaining the reasons for maintaining an alliance with Oudh. He said, "Thus our alliance, so long as he or his successors shall deserve our protection, was rendered advantageous to the Company's interest because the security of his possession from invasion in that quarter is, in fact, the security of ours." Thus, the Company undertook to defend the farther

frontier of their immediate neighbour, but of course at his expense. The Company obtained money for all defensive purposes from the State which was brought into the alliance. And this maintenance of a subsidiary force, as has already been pointed out, gave the Company a right to intervene in the internal affairs of the allied State on two grounds,—either that the defensive force kept up in that State was not efficient enough or that the payment for its maintenance was not duly made, specially when the force was organized by the Company. "The ring-fence system was thus based on the policy of extending British authority without enlarging the line of direct defence/'

The fact that external defence was the main concern of this policy was amply proved by the annexation .of the Caraatic in1801l. A permanent alliance with the Nizam having been made and Tipu's power having been put an end to, the line of defence moved farther away from the Carnatic, and the British did not hesitate to annex the region as soon as a pretext for this course came easy to hand.

Moreover, when Wellesley negotiated the Treaty of Hyderabad, he did not hesitate to make the idea underlying these alliances perfectly clear. "The fundamental principles of His Excellency the Governor-General's policy

in establishing the subsidiary alliance," it was explained, "is to place the States in such a degree of dependence on the British Power as may deprive them of the means of prosecuting any measure hazardous to the security of the British Empire/' And this policy was to lead to similar treaties with other States and Powers in India.

It must, however, be admitted that whatever the fundamental motive and ultimate purpose of these treaties, outwardly, three characteristics were common to them all, except in the case of Mysore. First, there was a general recognition of the equality of status between the two parties, and the States^were ^ogriized as being in the enjoyments of sovereign iridependence. Secondly,, the .Company atlhat time had no intention of claiming lFor~themselvesTor for the Crown the rights of an overlord or of encroaching otherwigs on. the sovereigty of their allies. No limitation whatever was placed on any of them to restrict their army to a fixed strength. Thirdly, by a most unequivocal declaration, the States were guaranteed by the Company full and absolute sovereignty in their internal affairs.

At the same time, it should be pointed out that the age was one of veiled authority, so that, as long as nothing was done in formal disregard of the clauses of the treaties, no

objection was raised to interference in the internal affairs of the States. The power of the two parties to the treaties was not on the same plane, and the weakness of the ally made it all the more necessary for him to submit meekly to the dictations from the British.

These interventions generally originated from the provision regarding the subsidiary force. The contribution was generally heavy and could not be regularly paid. Again, the fact that the subsidiary force was under the control of the British strengthened their position. Hence, whenever a chance occurred, the British Residents did not hesitate to intervene even officially in the internal affairs of the States.

Thus, though outwardly the ring-fence system advocated a policy of alliance on a footing of equality, a systematic encroachment, slow but steady, was going on. This was to reduce the various allies to the status not merely of dependents but even of puppets. The case of Oudh, where the process had already gone far, would have forcibly illustrated the probable fate of the States had there not come about a change of policy with the arrival of Lord Moira, better known as Lord Hastings, under whom the policy of ring-fence was replaced by a policy of 'subordinate isolation'.

in.—THE SECOND STAGE : THE POLICY OF SUBORDINATE ISOLATION

(1813—1857)

In 1804, Wellesley had dreamt of a system in India in which a general bond of connexion would be established between the British Government and the principal States of India on principles which rendered it the interest of every State to maintain its alliance with the British Government, and which secured to every State the unmolested exercise of its separate authority within the limits of its established dominion under the general protection of the British Power. It was, however, denied to him to see the realization of his dream. Some ten years after his recall, it fell to Lord Hastings to carry out the ideal of Wellesley with, of course, due modifications dictated by the changed political circumstances of the day.

After settling the relations with Nepal, Lord Hastings turned to the settlement of Central India, Rajputana, and other neighbouring territories which had hitherto not been entered on the treaty map. The execution of this plan required a strenuous campaign against the Pindaris and another war with the Marathas. But the outcome was worth the effort. These successes carried British supre-

macy all over India, only leaving out Sindh, the Punjab, and Burma. The Maratha Confederacy came to an end; the Peshwa became a pensioner; Holkar, Sindhia, and Bhonsle entered into treaty relations with the British; three new States (two Muslim—Tonk and Jaora, and one Maratha—Satara) were created; the relations of the Maratha and Rajput Princes and landholders were put on a final and satisfactory footing; and, lastly, the relations of the British were re-established with all the Princes by treaties, engagements or other assurances. In addition, a treaty with Sikkim in 1817 brought that State also within the orbit of the Indian State system evolved by the British.

The settlement effected by Lord Hastings forms the basis of modern Indian India. Their constitutional position, as it stands today, developed from this settlement, and, though after him some more States were added to the system, this only meant its extension and involved no change in its character. Hence it is essential to discuss at some length the fundamental principles of the settlement. In laying these down, Hastings was greatly influenced by a number of his colleagues, like Malcolm, Metcalfe, Elphinstone, Jenkins, and Tod, who had been trained under Wellesley

and, later, played an important part in the annals of Anglo-Indian administration.

Lord Hastings based his policy on the fact that the political and military supremacy of the Company was fully established. Therefore the "treaties of mutual amity, friendly co-operation and reciprocal obligations were replaced by treaties of subordinate co-operation, allegiance and loyalty." The Company no longer stood in need of help from the minor States, and the treaties were negotiated not for the security of the Company's dominions as was the case when the ring-fence system prevailed, but for the purpose of extending the benefits of the *pax Britannica* to the States and for asserting the pre-eminent authority of the British Power. The treaties made during this period were not in the nature of reciprocal obligations, but introduced the new principle of 'subordinate co-operation[5]. In most of them the rights of protection and the arbitrating authority were explicitly laid down. The term 'subordinate co-operation' has given rise to much discussion. While the Princes assert that it refers to matters connected with war and external relations only, the British have applied it consistently for more than a century to the entire range of their political relations with the Indian States. But a controversy over this question is only of academic

importance. An authority which had reduced the States enjoying treaty-rights to mutual friendship and alliance on an equal footing to a position of subordination, could also extend the scope of the term 'subordinate co-operation'.

Secondly, Hastings extended the policy of subordinate alliance even to the small States and went on to guarantee the position and possessions of subordinate chiefs and land-holders. This was specially the case in Central India, Bundelkhand, Kathiawad, and Gujrat. The lands which were ruled by the Maratha Princes had been in a fluid state, and the prevailing anarchy gave every landholder who could command a sufficiently strong force an assured position in the political system of the region. The result of Lord Hastings's policy was a crystallization of the contemporary conditions in these provinces. The situation in Kathiawad, Gujrat, and Bundelkhand was rendered less complicated by the passing away of the power of the Peshwa and the surrender by the Gaikwad of his rights over Gujrat and Kathiawad. Politically, the situation in Malwa was very complicated. A system of mediation and guarantees was introduced to perpetuate the state of affairs then existing, which became the cause of much heart-burning and troubles in

the years to come. It is only very recently that the whole situation has been cleared up and the relations defined by restricting the guarantees given to the estates and *jagirs* merely to the original terms of the settlement, and by definitely limiting the relations between the Maratha States and the mediatized States to mere money payments to be made through the British Government.

Hastings was no annexationist; on the other hand, when he found that the annexation of the States and estates in Kathiwad ceded to the British by the Peshwa would affect the rights of the Gaikwad, all of these were continued in their authority even though many of these estates did not possess any sovereign power, being more or less small landlords. Majority of the States in Classes II and I I I have come to be considered as distinct from British India only in this way. A similar policy was followed in Bundelkhand.

Lastly, Hastings believed in the policy of non-intervention in the internal affairs of the States, especially in the case of those which had been termed allies in the treaties. In his letter to Sir Charles Metcalfe on the question of suggested intervention in the affairs of the *Nizam, he clearly stated his views in these words: "Over States which have, by particular engagements, rendered themselves

professedly feudatory, the British Government does exercise supremacy; but it has never been claimed and certainly never has been acknowledged in the case of Native Powers standing within the denomination of allies; Although a virtual supremacy may undoubtedly be said to exist in the British Government from the inability of other States to contend with its strength, the making such a superiority a principle singly sufficient for any exertion of our will, would be to misapply and to pervert it to tyrannical purposes." Further, when discussing whether maladministration was a sufficient reason for interference, he added: "No analogy exists between indisputable exigency and an asserted convenience, where vague arbitrary charges, if tolerated on the ground of procedure, would furnish ready pretext for the foulest usurpations/' These words were more or less an echo of the ideas of Sir. John. Malcolm, who believed that unnecessary interference with the affairs of the States weakened the position of the rulers. According to him, it was thei duty of the British to employ all their moral influence and physical power to strengthen, instead of weakening, these royal instruments of government.

The system of subordinate isolation, coupled with a strict adherence to the policy

of non-intervention, was in force till after the Mutiny. Yet, while the term 'non-intervention* continued to be in use, it was amply modified in practice in more ways than one by the Government of India.

According to Hastings, the object of the British ought to be "to render the British government paramount in effect, if not declaredly so. We should hold the other States as vassals in substance, though not in name; . . . . possessed of perfect internal sovereignty and only bound to repay the guarantee and protection of their possessions by the British Government with the pledge of two great feudal duties. First, they should support it with all their forces in any call. Second, they should submit their mutual differences to the head of the confederacy (our Government) without attacking each other's territories." And it was in obedience to this principle that the British refused to intervene in cases of dispute regarding successions. Even in the case of Bharatpur, Lord Amherst decided to intervene only when Metcalfe urged the view that it was the duty of the British, "as supreme guardians of general tranquillity, law and right, to maintain the legal succession of Balwant Singh." In 1833, in the case of the Gwalior succession, and, twenty years

later, in the case of a disputed succession in Bahawalpur, the British refused to intervene.

Time and again the Government decided not to interfere with the internal affairs of the States even when things went wrong and the man on the spot, the Resident, believed intervention to be salutary. This happened at Indore in 1835 and also in Oudh when the British decided not to set things right even though it was evident that the conditions were definitely becoming intolerable. Yet, these cases were rare and there was developing a new method of intervention.

The entire period from the retirement of Hastings to the Mutiny saw a gradual increase in the authority of the Residents in questions of internal administration. "During this time of administrative development/' says Panikkar, "the resident ministers of the Company at Indian Courts were slowly but effectively transformed from diplomatic agents representing a foreign Power into executive and controlling officers of a superior Government." Of this the case of Oudh is the most outstanding example. As early as the time of Warren Hastings, the Resident interfered even in matters connected with the horses in the Nawab Vazir's stable and the dishes to be cooked in his kitchen. In spite of the efforts of Lord Hastings to check the power

of a Resident at Hyderabad, he was becoming a factor to be reckoned with in local politics, and Chandulal, during his administration, took his orders from the Resident only. Thus, with the right to give advice to the rulers, the power of the Residents began to increase, which naturally frightened the Princes. Hence Maharajah Gulab Singh of Kashmir refused to entertain any Resident within his State and did not yield even though pressed by the British Government.

The strengthened position of the Residents and their ever-increasing intervention began to shape slowly but definitely what is termed 'political practice' in the States, which has effectively modified the original treaties and engagements, and, above all, the spirit of the relations between the Company and the States. The States which had the longest connexion with the Company, suffered most. 'Political practice' sanctioned interference with their internal affairs, and the beginning of this intervention meant a definite denial of that absolute internal sovereignty which had been guaranteed to many. Moreover, some States, which were near Bengal, suffered in other ways too. Not merely were the sovereignty and powers of these States of Bihar and Orissa definitely abrogated, but an attempt was even made to include all these States, as well as the

States, estates, and other holdings in Kathiawad, and the State of Kuch Bihar in British India. Thus, the States of Bihar and Orissa became 'estates' and the 'Rajas' merely 'proprietors'.

The influence of this political practice is evident in another field. When Bentinck became Governor-General, he came imbued with humanitarian ideals and, in order to enforce them in British India, certain Eastern customs were officially proclaimed as forbidden. But things did not end there, and "all those States which claimed union with the British Government in the interior of the Empire were pressed to take the same view of them." "At the outset," Sir W. Lee-Warner goes on to add, "this obligation was made the subject of special agreements, but in all cases the law of custom and usage has now engrafted on the political theory of the Indian Empire the principle that British protection involved the abandonment of inhuman practices condemned by the common sense of civilized communities." The loftiness of the humanitarian ideal cannot be denied, nor can it be said that their enforcement did not relieve human misery within the Indian States. At the same time, it has to be pointed out that the method of enforcing it was an innovation and that the attempt was made when non-

intervention in the internal affairs of the States was supposed to be the watchword of British policy. In their admirable zeal to extend the boons of civilization to the subjects of the Indian States, British officers forgot that they were establishing a political practice which was to limit to a considerable extent the internal sovereignty of the States.

The scope of intervention did not end here. There was yet one more plea which afforded at least once during this period an opportunity for intervention in the internal affairs of a big State, *viz.*, Gwalior. The troubles which had been brewing there since 1833, came to a head ten years later. Lord Ellenborough, at that time Governor-General of India, crossed the Chambal and in a military campaign defeated the army of Sindhia. Soon afterwards the army was disbanded and "a Council of Regency was established, whose members were to act in accordance with the advice of the Resident, and were not to be changed except with the sanction of the Government of India." Thus, "beneath the policy of isolation," says Sir W. Lee-Warner, "the principle began to be observed that each separate State was one of a family, and that a common defence and a common welfare were objects deserving of attainment."

But in spite of all these cases of intervention, the theory of independent rule of the rulers prevailed. The British Government took no interest in the administration except when it touched their interests. Thus, with their position assured by the British and freed from all fear of external danger, all the forces which had proved to be possible checks on the vices of an irresponsible autocracy disappeared. "The Courts of these Princes became the theatre of the most degraded debauchery and the most horrible misgovernment." This degradation of the Indian States polity, combined with the heavy strain on the States finances caused by the upkeep of the subsidiary force, served to reduce the States most intimately connected with the British to the most forlorn condition. "Thus, in every State which had come under the subsidiary alliance, its influence led to an utter and complete breakdown of the Indian system of government. A chronic anarchy prevailed in the States and the revenues of the State were dissipated between the mercenaries of the camp and the minions of the Court." The history of the Nizam, Sindhia, Oudh, Gaikwad, Holkar, Travancore, and Cochin during this period bears testimony to this fact. Except in the case of Mysore, which stood on a different footing, no attempt was made to set matters

right. At a later time the rise of a new set of administrators represented by Salar Jung of Hyderabad, Dinkar Rao of Gwalior, Sankurni Menon of Travancore, and Madhav Rao of Indore, laid the foundations of modern administration in the Indian States.

But before the rise of these men the British Government had found a new remedy for the breakdown of Indian States. "If a scrupulous avoidance of interference in the internal affairs of a multitude of isolated principalities was to remain an essential factor in the political system, then annexation was the only possible correction/' Besides this, there were many additional causes for the inception and development of this policy of annexation, which began in 1834 with that of Coorg. Though with the settlement effected by Lord Hastings, all possibilities of extension of the British Indian dominions had come to an end, it was an honest belief with many an English statesman, of whom Bentinck was one, that a time would come when all the territories of the Indian States will be included in British India. It was an age when ideas and ideals dominated the beliefs of people and the desire to extend the blessings of civilized government to suffering millions occupied a place in the thoughts of British administrators. The revived interest in the study of Roman

law had also its repercussions on the Indian problem. The relations of the Indian States with the British were believed to be analogous to the feudal relations of medieval days. This idea of feudal relations so imbued the minds of the statesmen of this age that more than one attempt was made to classify the various States into a number of groups with a view to varying the relations with each class. Thus attempts were made to evolve a new feudal law in respect to the Indian States.

The combined effect of these ideas was to support the growing tendency to follow an annexationist policy. In 1841, the Directors enunciated the policy of "abandoning no just and honourable accession of territory or revenue/' and the Governors-General who succeeded Lord William Bentinck were convinced exponents of what has been described as the 'creed of grab/ Sindh was annexed for imperial reasons. Some years later the Punjab was also annexed. These annexations brought many new States, including Khairpur and Kashmir, into touch with the British. Oudh was annexed because of its maladministration. Satara, Jaitpur, Jhansi, Sambalpur, and Nagpur were annexed according to the 'doctrine of lapse or escheat/

Lord Dalhousie completed the 'treaty-map of India/ He had the satisfaction of

finding the whole of India united under the supremacy of one Power. But the vague and inconsistent policy towards the States, which would at one time interfere with the minutest details of administration and at another leave the ruler free to do anything, a policy, which was swerving from one of guaranteeing even the smallest feudatory holdings to the wholesale annexation of big States, did not leave India happy. "Under the calm and placid surface of India's waters were gathering all the currents of discontent and hostility occasioned by Dalhousie's high-handed and arbitrary policy towards the States and their rulers, which were soon to converge into a flood which very nearly submerged the British Empire in Hindostan and was powerful enough to wash away in its course the imposing edifice of the East India Company."

A variety of causes led to the mighty convulsion of 1857 in India, and "the greatest danger to British Power at the time of the Mutiny/' says Panikkar, "was the unsettled state of the country administered by the Indian rulers." It was but natural that in the settlement which followed the Mutiny an attempt should be made to make a change in the policy towards the States. Thus the policy of subordinate isolation, combined with that of non-intervention and annexation, came

to an end. The situation was, however, radically altered by the introduction of a new factor, *viz.*, the Crown, in the politics of Indian India after the Mutiny.

IV.—THE THIRD STAGE : THE SUBORDINATE UNION (1857—1906)

The Mutiny sounded the death-knell of the Company. The question of relationship with the Indian States once again assumed importance, and the need for re-defining the policy towards them became urgent, the more so because "the position in 1858 was exceedingly indefinite. Besides the rights vested by treaty in the Company, there had arisen under no sanctions but that of superior power on the one side and reluctant acquiescence on the other, a body of precedents relating to successions and to interference in the internal administration of the States. Together, these constituted the Company's paramountcy, undefined, undefinable, but always tending to expand under the strong pressure of political circumstances. The Princes had become *de facto* dependents, though possessing treaties many of which recognized them as *de jure* sovereigns." The change of government in 1858 offered a great opportunity for the removal of these anomalies.

But, "at a moment," says Dodwell, "when it was the fashion to describe the Indian States as breakwaters on which the Mutiny had dashed in vain, it would have seemed perhaps unwise, certainly ungracious, to insist on the Princes' formal recognition of the changes that had taken place after the earlier treaties had been made and to define precisely their position and obligations."

And when the change did come, no attempt was made to simplify the ambiguities. All the treaties, engagements, and other dealings made by the Company were confirmed, first, in the Government of India Act and, later, by the Queen herself in her proclamation. Many of the States had rendered invaluable help and service during the anxious days of the Mutiny, and they were rewarded. One thing which gave the greatest satisfaction and a feeling of profound relief to the entire order of the Princes was the announcement by the Queen that no further annexation of the territories of Indian States was to take place. They were further elated to find that they were now to deal with a crowned head through a Viceroy and they felt more than satisfied to hear the Queen proclaim: "We shall respect the rights, dignity and honours of native Princes as our own."

Thus the entry of the Crown in the politics of Indian India revolutionized the situation. That astute politician and statesman, Viscount Palmerston, had correctly forecasted the attitude which the Princes would adopt towards this change. He had said, "The respect they [the Princes] feel, the allegiance they yield [to the Company], would be increased tenfold if the one were given and other tendered to the Sovereign of a great and mighty Empire." And to add to this, in 1861, Canning covered the whole of Indian India with adoption *sanads.* The Princes were satisfied that their ancestral possessions were perpetuated. They did not care overmuch to look deep into the *sanads,* nor into the speeches of the Viceroys in order to find the change that was now coming so far as their constitutional position was concerned.

The change was, however, imminent. With the entry of the Crown, the coping-stone on the structure of a feudal law in relation to the Indian States was laid and the policy that was followed thereafter was to develop this ideal and theory. The first two Viceroys went on to assume that the treaties had been confirmed only so far as they were actually operative in 1858. Under these circumstances it was but natural that the *sanads* of adoption should make loyalty to the Crown one of the

essential conditions for the fulfilment of the *sanad.* Again, the document mentioned only those obligations of the Princes to the British Government which were recorded in the treaties, etc. Thirdly, Canning had already asserted that the *sanads* did not "debar the Government of India from stepping in to set right such serious abuses in a Native Government as may threaten any part of the country with anarchy or disturbance, nor from assuming temporary charge of a Native State when there shall be sufficient reason to do so. This has long been the practice. We have repeatedly exercised the power with the assent, and sometimes at the desire, of the chief authority in the State; and it is one which, used with good judgment and moderation, it is very desirable that we should retain. It will indeed, when once the proposed assurance (the *sanad)* shall have been given, be more easy than heretofore to exercise it. Neither will the assurance diminish our right to visit with the highest penalties, even confiscation, in the event of disloyalty or flagrant breach of engagement/' Two years later, in 1862, Canning declared in a *durbar* that "the Crown of England stood forward the unquestioned ruler and paramount power in all India, and was for the first time brought face to face with its feudatories."

The theory of paramountcy and feudal overlordship, which was thus enunciated, needed a visible manifestation. The practice of holding *durbars* at which the Viceroy presided began, and such gatherings held at Delhi on special occasions were of an all-India character. They wanted little by way of pomp and splendour. In the words of Panikkar, the effect of these *durbars* was to reduce "the independent States to complete subordination and to the status of allegiance." The situation which was thus developing culminated in the assumption of the title of 'Empress of India' by the Queen. Moreover, the establishment of two Orders of Chivalry and the bestowal of those imperial honours on the Princes only clarified the situation. The personal touch of thq Princes with the Queen and other members of the royal family made the change a permanent one. "The theory [of paramountcy] has its basis in a personal relationship between the King-Emperor and the Indian rulers." But at the same time it cannot be denied that the relationship has developed on certain lines and has taken a definite shape. Even as early at 1860 Canning wrote, "There is a reality in the suzerainty of the sovereign of England which has never existed before, and which is not only felt but is eagerly acknowledged by the Chiefs." "No personal

loyalty/* says Dodwell, "could be expected towards a corporation of merchants, despite the qualities of their government and the characters of most of their governors-general. But towards Queen Victoria it was expected. 'Allegiance to Her Majesty/ 'Loyalty to the British Crown/ such are the new phrases that appear. In a legal sense such terms had much the same force as the 'subordinate co-operation' of the earlier documents. But the underlying sentiment had changed, and though changes of sentiment cannot possibly alter legal rights they may deeply affect political conduct."

The Viceroys, too, went on emphasizing the feudatory character of the Indian States and claimed duties in respect to them which could only be justified in relation to feudatories. They harangued the Princes and Chiefs on social reform, ideals of good government, and, above all, on their relationship with the British Government. In unmistakable terms Lord Mayo told the Princes, "We estimate you, not by the splendour of your offerings to us, nor by the pomp of your retinue here, but by your conduct to your own people at home . . . If we respect your rights and privileges, you should also respect the rights and regard the privileges of those who are placed beneath your care. If we support you

in your power, we expect in return good government/* But these were ideals which needed special training and education before they could be understood correctly and, later, carried out in practice. To educate the Princes, to make them fit rulers, and, above all, to make them understand and carry out the new scheme of government, a number of Princes' Colleges were established at Ajmer, Indore, Rajkot, and Lahore. The right education of the Princes became a matter of imperial concern. At the installation of the Maharajah of Alwar, Lord Curzon declared unequivocally that the Government must satisfy itself "that the young Chief has received the education and training that will qualify him to rule over men," before entrusting him with the task of administration.

The assumption of this new position brought additional duties and rights with it. The right to recognize succession, to approve of the councillors and ministers of the important Princes, the right to remove or depose them, were all assumed by the British Government. Again, it was considered that the full control and the right management of a State during the period of minority of its ruler should be the concern of the Paramount Power. The high-water mark of this regime was reached in 1894, when after subduing the

revolt in Manipur, an attempt to claim direct allegiance from the subjects of Indian States was made on behalf of the Crown. And this tendency of treating the Indian Princes as servants of the Government of India continued till the time of Lord Curzon.

The influence of the development of this theory was all-pervading. In the words of Sir W. Lee-Warner, the new policy that was being followed was based on "a higher conception of co-operation and union coupled with the personal responsibility of rulers/' "The guarantee against the old danger of annexation/' says Dodwell, "disposed the princes to acquiesce in this development of policy and so to enlarge the extra-diplomatic element in the paramountcy of the Crown/' The confusion of form and substance, of theory and practice had produced many of the uncertainties and difficulties in the correct interpretation of the treaties and a wide latitude was taken. Thus began the theory of claiming constructive rights under the treaties and to ignore them altogether where really important issues were at stake. "Between 1858 and 1906 there were numerous causes at work tending (in defiance of all confirmation) to hasten the decay of the, Company's treaties: the establishment of personal relations with the Crown, the rising

standard of administrative propriety, the growth of common economic interests, multiplied points of contact, occasions of influence, opportunities of interference and the scope of control."

The most noteworthy case of such a claim and action taken by the Crown was in the case of the Gaikwad in 1875. The Gaikwad was first suspended and tried on the charge of attempting to poison the Resident. The trial ended in a divided verdict, and, finally, he was deposed on the charge of maladministration. The State was not annexed; on the other hand, a boy was selected and put on the *gadi.* "The action against the Gaikwad," says Panikkar, "was clearly high-handed and unlawful. Neither by treaty rights nor by recognized claims had the British Government the right of arresting and trying an Indian ruler."

Happily this was the only case of its kind. Various cases of interference had preceded and also followed this famous case. Alwar, Jhabua, Tonk, and Kalat provided a few leading cases. There was interference in some cases even when there was no reason for it, as happened in Gwalior. Sindhia had a passion for military organization and parades. Hence he kept the whole force allowed him by the terms of his treaty in the capital, under his

personal control and command, and would hold reviews of them. The fact was reported to Sir John Lawrence, the then Viceroy, with the result that the Agent to the Governor-General was ordered that "Sindhia's little army should at once be broken up, the several corps dispersed about the country, and that no such large assemblage of troops should again take place."

In the meanwhile, the Government of India took up two questions. The treaties had been confirmed by the Crown, and the control of Indian States was becoming a growing burden. Hence, for the first time during the period of Lawrence's viceroyalty and largely under his encouragement, Mr. (afterwards Sir Charles) Aitchison compiled the first edition of the work wherein an attempt was made to put together all the treaties of any importance between the British Government and the Indian States. A short resumé of the history of the State was prefixed in each case to the treaties. The first edition was, however, incomplete and there was no possibility of its early revision. The position of many minor States had not been finally defined and the disturbance caused by the Mutiny increased the unrest among them. So a speedier process was undertaken and special officers were deputed to the Central

Provinces, Bihar, Orissa, and Kathiawad to make a settlement. It was during this settlement that many of the States lost their former status, while in many cases definite reduction* of the powers and position of the rulers was effected.

This was the beginning of the later attempts to systematize the relations between the States and the British Government. And soon, even though very roughly, the various States among whom the same rules held good came to be grouped together. Within each group of States the barriers that had stood so far began to crumble and a uniform policy was enforced on all. Thus many States which did not receive the *sanads* of adoption claimed a right to adopt, and their claim was acceded to by the Paramount Power.

These attempts at systematization began from the top. It was Lord Mayo who first tried his hand at it, with the result that Government interference increased during his viceroyalty. Tie also reorganized the Political Department, which was under his direct control. The Department supervised the relations with the States, and it now began to crystallize into a bureaucratic mould. As its position grew stronger, it began to develop a tendency to ignore treaty stipulations. The method followed was not to break a treaty

formally, but to assume powers nowhere granted by it or to apply the rights admitted by a treaty with one particular State to others which had not accepted these conditions. A series of rules began to appear by which the Department invariably determined the questions relating to the States. "In fact," says Dodwell, "the relations with the Princes were being regularized, while the principle of 'reading all Indian treaties together/ so as to produce something like a coherent body of rules strengthened the process." This view was clearly stated by Lord Curzon in 1903 in his speech at Bahawalpur. "The political system of India," he said, "is neither feudalism nor federation; it is embodied in no constitution; it does not always rest upon a treaty; it bears no resemblance to a league. It represents a series of relationships that have grown up between the Crown and the Indian Princes "under widely differing historical conditions, but which in process of time have gradually conformed to a single type." And thus it happened that what was considered good and ideal for the State of Mysore and was embodied in its instrument of transfer (in 1881), was considered equally good for other States, even though the latter were not, historically or legally, in similar dependence on the British Government. Hence, directly

or indirectly, the terms of this instrument have in actual fact considerably influenced the relations of the Government of India with the States.

The central control over the States was definitely growing, and a succession of Viceroys began to take direct interest in their affairs. Lord Dufferin initiated the custom of paying regular visits to the States and was followed by succeeding Viceroys. This brought the Princes closer to the Viceroy and led to better political relations.

There was, however, another side of the shield. During the years that followed the Mutiny, British India began to develop industrially at a very rapid pace. Railway lines were laid throughout its extent; telegraph and postal departments were organized, and special attention was paid to educational policy. For economic development, it was thought essential to restore economic unity to India, which in its turn demanded a uniform currency, abolition of customs barriers, and quick means of communication. Politically, India was divided into two halves—British India and Indian India, but geographically they were knit together. The British Government was keenly anxious to develop British India, but it could not do so without the co-operation and assistance of the States. Thus,

for economic reasons, a new policy was now put into force, which was to transform the States into an integral part of the Indian polity. The policy was consistently followed, with the result that in 1899 Lord Curzon could affirm that "the native chiefs had become by our policy, an integral factor in the imperial organization in India."

During the viceroyalty of Lord Mayo there was an energetic effort to extend the railway system to the States, and little could the States guess what limitation on their sovereignty would follow from this. The agreements for salt monopoly came in the wake of the railway policy in the time of Lord Lytton. The instrument of transfer of Mysore definitely specified the various services and subjects in regard to which the British Government was desirous of gaining full control in order to centralize their administration. In the sphere of public justice also, a series of agreements were made with the States with a view to settling the terms and procedure of extradition of offenders.

In securing this control, the British Government was greatly helped by the minority of the rulers of some of the States. In other cases, undue pressure was used and, at times, the Government of India did not hesitate to install its own supervising agent

even without the consent of the State, if the State did not agree to accept any agreement.

The process of union was further accelerated by the requirements of international law. All the States had already agreed to forgo foreign relations, which were to be conducted on their behalf by the British Government. It was but natural that the British Government would do all it could to secure a firm hold on all the States on the frontier. Hence, with the Russian expansion in Central Asia, the British grip on Kashmir tightened. A permanent Resident was appointed, the Maharajah resigned his position, and, above all, Kashmir came to be included in the system of Indian States.

Moreover, the limitation of the sovereignty of the Indian States in respect to their foreign relations removed all possibilities of aflfording protection by the Indian States to their own subjects staying in foreign countries. The natural result was that the authority that protected the rulers and the States at home, also guarded their subjects abroad, and in 1876 the Parliament declared that "the subjects of such Princes and States are, when residing or being in places hereinafter referred to, entitled to the protection of the British and receive such protection equally with the subjects of Her Majesty." But the acceptance of

this principle and the willingness to acquiesce in its natural implications in international obligations created certain definite rights for the British Government which inevitably restricted the sovereignty of the States. While claiming to give protection to States subjects in foreign countries, the British Government was also bound to protect the lives and property of foreigners staying or residing in the States and secure them the enjoyment of just rights and privileges. This duty provided the Central Government with an additional reason for exercising direct control over the internal affairs of the States and for interfering in their domestic administration.

Again, so far as the outside world was concerned, for all international affairs, India became one undivided unit, ruled and dominated by the British, and, hence, the responsibility for carrying into effect the international agreements and treaties with foreign Powers rested with the British Government in India, and it became imperative for the States to honour the agreements thus entered into by the Paramount Power. This cannot be described as the strictly legal position. But at the same time no one can deny the moral validity of the obligation.

The fact that internationally India is one and indivisible is incontrovertible, and even

the Princes seem to accept it. The entry of the Crown as the head of British India has made the position all the easier. To the Princes the Crown represented not merely the supreme authority, but the master of an extensive empire, and to those of them who remembered the days when their ancestors served in imperial armies on distant campaigns, this fact seemed to open a new vista of activities. When the Russian menace was demanding the anxious attention of Indian Viceroys, the Princes offered their forces to co-operate with the British Indian army in any campaign. This was, however, a new development which had hitherto not been thought of by British statesmen. It appeared to be a unique opportunity, and British policy in respect to the armed forces in the Indian States radically changed. In contrast with the orders of Sir John Lawrence to disperse the little army of Sindhia, the armies of the Indian States began to be trained, drilled, and equipped on the model of the British Indian army. The new designation given to these forces was 'Imperial Service Troops/ It was during the viceroyalty of Lord Dufferin that this new idea originated, and it was fully developed by Lord Curzon, who initiated the 'Imperial Cadet Corps/

Thus, by slow degrees, a position was reached which Lord Curzon, described in these words: "The sovereignty of the Crown is everywhere unchallenged. It has itself laid down the limitations of its prerogative/' In carrying out the policy of subordinate union, the Government of India not only subordinated the States to the will of the Paramount Power, but made them, even against their will, partners in the scheme of development of British Iadia. Lord Curzon, who "took to work as others take to pleasure" with his untiring zeal for efficiency, tried not only to organize the affairs of British India on efficient and sound lines, but did all he could to put the States on the same level of efficiency. In trying to do so, however, he caused a reaction in the States. His idea of the supremacy of the Crown made him send his orders to the States, which resented them, and for the first time opposition began to grow.

The union that was being brought about between British India and the States was more or less one-sided. The imperial authorities decided all doubtful points in their own favour, and as they represented the interests of British India, naturally, the interests of the States were subordinated to those of the former. Again, various matters of all-India concern, which not only affected British India

but also the States, were decided by the imperial authorities without much regard for the good of the latter. The dominant position of the Paramount Power and the weakened and ever-decreasing authority of the States were the two causes that led to this situation, in which the balance of advantages remained decidedly with former. This is a fact whose importance should not be overlooked, for though the intervention of the British Government was an important factor in saving the Indian States polity from complete extinction and was also instrumental in extending the benefits of modern ideas and modern means of communication to the States, it cannot be denied that these gains were secured at a heavy price. The loss of the States was really great and their isolation *inter se* made their position all the weaker.

It only remains to notice the theoretical developments of the epoch of subordinate union, which lasted from 1857 to 1906. Though the supremacy of the Paramount Power was announced more than once by successive Viceroys, the new theory lacked its political philosopher. The idea that the relationship between the British Crown and the Indian States was of a feudal nature had also to be carefully argued on a higher plane. Both these requirements were fulfilled without

great difficulty. The end of the phantom Mughal Empire and the death of the last crowned Mughal Emperor formed the basis of the new paramountcy and sovereignty which was being claimed, and Sir Charles Tupper became the first political philosopher of the relations between the Indian States and the British Government. He had compiled several volumes giving all the leading cases illustrating the political conduct towards the States. These volumes, entitled *Political Practices,* was meant for private circulation and for the use of the Political Department and its officials only. He, however, was not willing to hide his light under a bushel and in 1893 published his work *Our Indian Protectorate.* He was soon followed by another high priest in the person of Sir W. Lee-Warner, who tried to correct the mistakes of Tupper in his book *The Protected Princes of India* (published in 1894). He refused to accept the feudatory nature of the relationship, and propounded the idea of the binding nature of the treaties, but added that all the treaties should be read together and were all liable to extensive interpretation.

But while these political philosophers were busy propounding their theories, a change was impending. The Princes, who had so long accepted the changes in their

position more or less as inevitable, were becoming alarmed. When the various rules and regulations made and circulated by Lord Curzon, about visits to Europe for instance, reached them, they were roused to active opposition. "Then indeed they began to question the validity of much that had been done and to consider how much of it might be reversed."

This new attitude of the Princes together with the change in the policy of the British Government marks the beginning of a new epoch in the history of the relations of the Princes with the Paramount Power.

CHAPTER TWO

THE TRANSITION

I.—THE NEW FACTORS

THE DEPARTURE OF Lord Curzon coincided with a radical change in the attitude of the Government of India towards the Princes. It became anxious to allay their fears, to keep them satisfied, and to consult them about matters of all-India concern. On the part of the Princes, too, there appeared the signs of a new outlook. They cast aside their century-old stupor, no longer quietly acquiesced in the acts and policy of the Government of India, and began to question the validity of much that had been done and was being done. This novel situation was the outcome of a number of causes which had been taking shape unseen and unheeded by all concerned. As these factors were to influence the relations of the Indian States with the British Government during the quarter of a century to follow, they deserve to be noted in some detail.

The first and foremost fact was the strengthened position of the States as a result of the so-called policy of subordinate union. Their co-operation with the Government of India in matters economic, social, and political

gave them a definite standing in the aii-maia polity. They began to realize their importance. It was in unmistakable terms and ways that they had expressed and demonstrated their loyalty towards the Crown; they had not hesitated to sacrifice their forces, to spend their money, and even to offer their own personal services in the cause of the Empire; the Imperial Service Troops had played a gallant part in the Hunza campaign of 1893, the expedition to China to suppress the Boxer rebellion in 1900-1901, and the Somaliland campaign of 1902-1903; again, many of the Princes had made their administrative system quite a model one. If in spite of all these services they had so far never raised a voice of protest against the encroachments on their powers, it was because they felt that the assurance of perpetuating their dynasties and States was ample compensation for the losses they were sustaining. But as they realized that the policy of annexation was being definitely abandoned, they became bolder. They now refused to be treated as mere subordinate agents taking their orders from Simla or Calcutta. They began to expect their services and docility to be rewarded rather than find their existing powers, dignity, and status curtailed or openly denied. This sense of their importance in

Indian affairs grew as the years passed by, and they were not willing to allow such an opportunity for improving their position slip by without taking advantage of it.

Secondly, the cause of the Princes was greatly strengthened by the rise of a new type of Indian rulers, who were destined to play a great part in the succeeding years. They did not belong to that old school which kept itself aloof from Western influences. On the other hand, they welcomed these influences, having studied in the Princes' Colleges, spent their early days under the guardianship of European tutors, become well-versed in the English language, and acquired an intimate knowledge of Western ideals, ways of life, and society. Though young in age, many of them had already begun to exhibit statesmanship and ability. They had served on many battle-fields in the cause of the Empire. They had visited England and had come into close contact with the ablest men of the Empire. Maharajah Gaikwad, Sindhia, and the rulers of Bikaner and Alwar were a few of this ever-increasing band. There were many more, who, though not ready to go so headlong as these, were advanced and cultured enough to command the respect of their brother Princes. Gradually these and many others, of not

equally great eminence, began to influence the thoughts of the whole order.

With this also came the opportunities for meeting and influencing one another. The old policy of isolation, which formed one of the most important clauses in the various treaties, was indirectly falling into disuse. The series of *durbars* held by the Viceroys afforded opportunities to the Princes for social intercourse and exchange of thought. The Princes' Colleges also fostered the new tendency. During the period of their stay in these colleges for education, there were ample opportunities for all the students, among whom were many princes and heirs-apparent, to mix freely, and the friendships or rivalries which began during these years continued in after life. Moreover, the reorganization of the administration of the Princes' Colleges gave the Princes a voice in their management and this supplied an additional platform for them to come together. And on all these occasions the formal meetings were not as important as the informal talks, private consultations, and personal understandings, which covered the whole range of interests from the most trivial personal affairs to weighty matters of State.

A feeling of unity for the common cause was thus gradually growing. The Princes had begun to realize that on matters of com-

mon concern they all thought alike, and, hence, the leading personages among their ranks felt that their word would command weight, even though it was only a personal expression of views.

"It was an age in which India began to be disturbed by new ideas and new ambitions, and, perhaps, the same spirit which was troubling the waters of political consciousness in British India was at work in this awakening of the Princes." A new generation of Princes had come at the helm of affairs, and their outlook was different from that of their forbears. "A new recognition of their duties was accompanied by a fresh consciousness of the rights and privileges of their position." For the first time they realized their correct position as it then was and on "reading the half-forgotten treaties between their States and the British Crown, the Indian Princes were roused to reflection on many questions which had not troubled their fathers." They not only found an unmistakable contrast between their present relationship and that of their predecessors, but also the rough-shod way in which the Political Department was putting aside the explicit stipulations of the treaties. The economic pressure, resulting from the various engagements made during

the last fifty years, which began to make itself felt, made the Princes all the more uneasy.

In the meanwhile, the Princes received indirect help from a new factor, which had recently entered Indian politics and was to revolutionize the whole situation. The discontent of the Princes was not the only legacy of Lord Curzon. He left behind him a British India seething with discontent. The nationalist movement took definite shape during the viceroyalty of Lord Curzon. In 1906, the attitude of the Government of India towards the States began to change. "The explanation lies," says Dodwell, "less in any belated recognition of the Princes' rights than in the fact that political movements within British India itself were beginning to dispute the right and authority by which India was governed. Assailed by the intelligentsia, the Government looked round naturally for allies and helpers. In 1857 the Princes had in general aided to resist the tide of the Mutiny. In 1907 they might aid to slackeh the onslaught of political unrest. They were therefore to be cultivated rather than coerced."

Thus political expediency once again materially affected the attitude of both the, parties. In order to strengthen its position and to stem the ever-rising tide of political unrest, the Government gave up its attitude of

dealing with the Princes with a strong hand. Seeing their rising value the Princes raised their demands, to which the Government felt inclined to concede till they attacked the very theory of British paramountcy. The rising tide of good fortune of the Princes was then checked and they contemplated their position with dismay. They found that their own position was being attacked within the States. The demand for political advance began to be put forward by their own people, and they now looked round for an ally to restore their position. Thus it happens that the political awakening of the States subjects has greatly influenced the position of the Princes in the recent past and is bound to be even more far-reaching in its consequences in the future.

II.—THE NEW POLICY

The new political situation in India demanded a new policy and no better exponent for one could be found than Lord Minto. As compared to the tempestuous regime of Lord Curzon, his viceroyalty was one great lull for Indian India. The seeds of a new policy were sown and, as compared to the previous regime of vigorous administration, even the slight improvement appeared to the Princes as a very welcome one.

Lord Minto was the great-grandson of a previous Governor-General of India, who had ruled British India in the Napoleonic era. The new Viceroy began to renew the family connexions established with the various States by his ancestor. He tried to come into a closer personal touch with the States and their rulers. With this end in view, he frequently visited the States and discussed all sorts of questions with the Princes. To Lord Minto, the ruler was the State for all practical purposes and every effort was made to assuage the feelings of the Princes. Moreover, he did not merely listen "sympathetically to the grievances, which his kindly attitude made it easy for the Princes to express frankly, but he encouraged a clear facing of the difficulties which past practice had brought about in the relationship of the States with the Government/' The pressure that was being put on them by the Government of India was reduced and the Viceroy publicly admitted that he was trying to avoid issuing general instructions as far as possible. He warned the Political Officers that they were not only the mouthpiece of the Government and the custodians of imperial policy, but that he looked to them also to interpret the sentiments and aspirations of the Durbars.

The new policy of the British Government was one of trust and co-operation with the States. Lord Minto informed the Princes that there would no longer be any attempt to force Western ideals on them. He admitted that unnecessary restrictions and interference with the affairs of a State tended to reduce the loyalty of its ruler. All indiscriminate intervention was avoided and the hands of the Princes were strengthened and they were left to themselves to evolve the political system best suited to their conditions. And to commemorate the beginning of the new policy or to amend the wrong done by Warren Hastings, Lord Minto arranged for the re-establishment of the State of Benares.

The Princes felt happy at this change of policy and were all the more flattered to find the Viceroy consulting them in matters of all-India concern. He even took counsel with them on the vital question of the nationalist movement in British India and thus sowed the seeds of the association of the Indian States in the general policy of the Empire. "The foundation of the whole system," declared Lord Minto, "is the recognition of identity of interests between the Imperial Government and the Durbars/' so that they might become helpers and colleagues in the great task of imperial rule. The Princes for

once began to feel their own importance and a sort of unity among themselves. It was, however, only a modifïed form of the policy of reducing the Princes to an integral part of the all-India polity. Once again the idea of establishing a Council of Princes was taken up, which was, more or less, an adaptation of the scheme of Lord Lytton to establish an Indian Privy Council. But the proposals of Lord Minto came to nothing as they did not receive any support from Mr. John (afterwards Lord) Morley, then Secretary of State for India. But the idea of collective co-operation of the States had taken root and was to take definite shape in 1916.

All these concessions to the Princes, made as a result of the enunciation of the new policy did not involve any whittling down of the supremacy of the Paramount Power. In his speech at Udaipur in 1909 Lord Minto clearly stated the position thus: "Our policy is, with rare exceptions, one of non-interference in the internal affairs of the Native States. But in guaranteeing their internal independence and in undertaking their protection against external aggression, it naturally follows that the Imperial Government has assumed a certain degree of responsibility for the general soundness of their admi-

nistration and would not consent to incur the reproach of being an indirect instrument of misrule. There are also certain matters in, which it is necessary for the Government of India to safeguard the interests of the community as a whole, as well as those of the Paramount Power, such as railways, telegraphs and other services of an imperial character. But the relationship of the Supreme Government to the States is one of suzerainty/' Thus Lord Minto practically codified the practices that had so far been observed in relation to the States, omitting of course those which had been definitely abandoned. He, however, admitted that the diversity of conditions among the States rendered dangerous all attempts at uniformity and subservience to precedents. He "endeavoured to deal with questions as they arose with reference to existing treaties, the merits of each case, local conditions, antecedent circumstances, and the particular stage of development, feudal and constitutional, of individual principalities." And the theory of paramountcy, once again reiterated in this manner, saw its visible manifestation two years later when the Indian Princes paid their homage to the King-Emperor at the Coronation Durbar in Delhi.

III.—THE ACTIVE CO-OPERATION OF THE PRINCES : THEIR CONFERENCE, THE WAR, AND THE MONrAGU-CHELMSFORD REPORT

Though the new policy did not radically change the situation, it had removed the causes of every-day frictions. The Princes found that all was not lost, and that changes could yet be made. But the gradual, all-round curtailment of power, which was still going on, made them sore at heart. The new policy had emboldened them and now "they began to appeal, to protest, to memorialize." Politics knows no finality, and it was certain that, if Providence were favourable and if contemporary events brought about a situation which would further raise their importance, they would gain more than what they could expect under ordinary circumstances. Evidently, fate was kinder to these remnants of India than the Paramount Power, and the opportunity came in the shape of that great catastrophe to mankind, the Great War.

India had seen one of the greatest and most magnificent spectacles of the modern age in the Delhi Durbar of 1911. It aroused a feeling of loyalty and affection for the Emperor not only in the hearts of the masses but more so among the Princes, to whom such scenes appealed most. But, unfortunately, it left them slightly sore at heart as well. The

three great *durbars* of 1877, 1903, and 1911 saw a gradual decline in their position, dignity, and *izzat.* Certain details of the homage ceremony were not in accord with their notions of dignity and high position. They felt the weakness of their position and began to think of mending it by unity among themselves. They dreamed of a permanent organization, in which they could all meet and express their views on matters of common concern. At the first available opportunity they put their suggestion before the Government of India to convene conferences of the Princes to discuss matters affecting them on the one side and the Government of India on the other. It was reiterated more than once till the Government of India finally accepted the suggestion.

Lord Hardinge "initiated conferences with the ruling princes on matters of imperial interest and on matters affecting the States as a whole." The first such conference was convened in March, 1913, to discuss the question of the higher education of the Princes. No final decision could be arrived at and another conference followed exactly a year later (March, 1914). But this, too, did not show much progress. Another conference would possibly have followed in the spring of

1915, but in the meanwhile the War intervened.

The declaration of war in August, 1914 brought about a radical change in the attitude of the Princes. The Princes vied with one other in not only re-affirming their loyalty and offering help to the Paramount Power, but also in showing their readiness to render personal service at the front. "The outbreak of war with Germany/" says Dodwell, "displayed so strongly the decision with which the Princes held to their position in the British Empire, that the adoption of the new policy (of associating them with imperial affairs) was at last assured." The first two years of the War found the Government of India busy with conducting it. In February, 1916, when investing the Maharajah of Jodhpur with ruling powers, Lord Hardinge tried to state the new policy of the Government of India in his speech. He said, "We have made it our aim to cultivate close and friendly relations with the ruling Princes, to show by every means that we trust them and look on them as helpers and colleagues in the great task of imperial rule, and so to foster in them a spirit of responsibility and pride in their work which no external supervision can produce."

After his departure from India, his successor, Lord Chelmsford convened the first regular conference of the Princes in October, 1916. They were summoned to advise the Government of India on certain matters concerning the Princes, their States, and their people. The Government wanted free and frank opinion of the Princes on various important subjects, the most important of which were the minority administration of the States, the education and training of minor princes, and the ceremonials observed at the installation and investiture of a ruling Prince. As a result of the discussion, the Government of India were enabled to decide the principles to be observed during the minority administration in Indian States. These were embodied in Resolution No. 1894-1A, dated Simla, the 27th August, 1917, of the Foreign and Political Department. On the question of successions in Indian States and of ceremonials, a memorandum was drawn up, which was revised in the light of the discussions held by the Princes and was finally issued by the Government of India in December, 1917.

Before the second conference could be convened in November, 1917, many important events had occurred. The British Government decided to associate the Secretary of

State for India and three representatives of India with the War Cabinet and the Imperial War Conference. H. H. the Maharajah of Bikaner was nominated by Lord Chelmsford to represent the Indian Princes, and his work on these august bodies was highly spoken of not only by the Viceroy, but also by other prominent men from the Dominions. Soon after, on August 20, 1917, followed the historic pronouncement of Mr. Edwin S. Montagu, the Secretary of State for India, in the House of Commons. The concluding portion of this announcement stated that he would visit India to have a first-hand opportunity of examining the various questions at issue. It was but natural that at this stage the Princes should press their demand for an early establishment of some constitutional assemblage of the nature of a "Council of Princes with specified functions and well-defined powers/'

At the second conference of the Princes, no important question was discussed. Yet it was notable for two things. Unlike the first conference, the Viceroy presided over all its sittings. Again, though the Viceroy advised that the right moment for turning these informal conferences into constitutional assemblages had not yet come, rules for the conduct of business of such conferences were drafted and approved of at the conference.

On the very day this conference concluded its sittings, Mr. Montagu landed at Bombay. During his sojourn in India, he met many princes and had free and frank discussions with them, the Maharajahs of Alwar, Bikaner, and Gwalior contributing the most of it. The Princes put before him all their grievances and demanded redress. They said that the Government of India was going to assume a democratic character and demanded that they should not be left at the mercy of the legislatures, more specially those connected with the provinces. It was a good opportunity to get many of their grievances redressed and they did all they could to put their case as strongly as they could.

In their report, Mr. Montagu and Lord Chelmsford admitted that various factors had been at work to bring the ruling Princes into closer relations with the Government and attributed the discontent among them to three main causes:

(1) Uniformity of terminology, which "tends to obscure distinction of status; and practice appropriate in the case of the lesser chiefs may be inadvertently applied to the greater ones also."

(2) Government intervention in the internal affairs of the States.

(3) Interpretation of treaties. The belief that changed circumstances have made the literal fulfilment of particular obligations impracticable; the theory that the treaties must be read as a whole and interpreted in the light of relations established subsequently, has led to the growth of a body of case law, at the application of which the Princes are uneasy.

They admitted that a re-examination of the whole position had become essential, and after suggesting that an assurance for the maintenance of their dignity, rights, and privileges, even though constitutional changes take place in British India, should be given, they went on to make six definite proposals:

(1) The establishment of a Council of Princes. For its membership a definite line was to be drawn separating the rulers who enjoy full powers of internal administration from those who do not. This distinction would serve to remove the grievances of the Princes under the head of 'uniformity of terminology'

(2) The establishment of a Standing Committee of the Council to

help and advise the Viceroy and the Political Department.

(3) The appointment of a commission of inquiry to investigate and report in cases of dispute between two or more States, between a State and a local Government, or between a State and the Government of India, when the State was dissatisfied with the ruling of the Government of India or the provincial authorities.

(4) The appointment of a commission of inquiry to advise the Viceroy in cases of misconduct of a ruling Prince or a member of his family.

(5) The establishment of direct political relations between all important States and the Government of India. In cases where the States were left for the time being in relation with the provincial Governments, the head of the province should act only as the agent for the Central Government.

(6) The provision for some means of deliberations between the Gov-

ernment of India and the Princes on matters of common interest to both. They recognized the need for this, but found it difficult to devise any machinery for such joint deliberations. They hoped that the proposed Council of Princes would prove helpful to the Viceroy in ascertaining the views of the Princes on such matters. Moreover, it was their opinion that in special cases, committees should be appointed to discuss and report and that all the parties, including the Princes, should be represented on them.

They further admitted that the centrifugal forces were becoming stronger day by day, but it was felt that it would not be advisable to give them any artificial stimulation. They believed it to be unwise to force new ideas upon the Princes, many of whom did not desire them.

The Report containing the proposals of Mr. Montagu and Lord Chelmsford was published on July 8, 1918, and in November, 1918, the Great War came to an end. In April, 1918, the Maharajah of Patiala had been nominated to the Imperial War Conference and Cabinet. The Maharajah of Bikaner

represented the Indian Princes in the Peace Conference of Paris.

In 1919, two conferences were summoned, one in January and another in November. The discussion of the proposals of the Report formed the chief item of the agenda. The Princes were gratified to find their demand for the establishment of a Council of Princes accepted. But the question of the qualifications for its membership agitated their minds. The Report had suggested that a definite line should be drawn between the rulers enjoying full powers of internal administration and those who did not. But the actual state of affairs was rather anomalous. The Government of India had imposed certain restrictions on the powers of many of the States enjoying a dynastic salute of 11 to 13 guns, while many States having only a salute of 9 guns enjoyed full internal powers. The session of January, 1919, recommended that these restrictions should be relaxed to allow these States to become members of the Chamber (or Council) of Princes in their own right. Happily the Government of India accepted the suggestion, and in his inaugural address to the Conference in November, 1919, Lord Chelmsford announced the decision of the Government to enhance the powers of all States enjoying a salute of 11 guns and above,

so that they might become States with full powers of internal administration.

Further, the idea of appointing a standing committee was approved. After full discussions, the Government of India embodied their final decision on the question of the commission of enquiry in their Resolutions Nos. 426-R and 427-R, dated the 29th October, 1920, which practically accepted the proposals put forward in the Report. The principle of direct relationship of the Princes with the Central Government was accepted and this policy is being carried out.

Another important act of this conference was to appoint a permanent committee of six Princes to sit with Sir G. Lowndes and the Political Secretary to discuss the question of the codification of political practice. The Princes produced a list of 23 points representing cases in which the Government of India had unwarrantably interfered in internal administration, many of which were in reality inroads upon the economic life and interests of the States. The Committee met for its first session in September, 1919, at which Sir Robert Holland, then Officiating Political Secretary, summed up the position of the Government of India. The progress on the various points at issue was slow, and, by November, 1919, decision could be arrived at

on only four questions, *viz.*, the tours and visits of the ruling Princes and Chiefs, construction and maintenance of telephone lines in the States, and on two points relating to the judiciary. The reports of the committee on these points were accepted by the full conference.

The conference which met in November, 1919, completed the scheme of the Chamber of Princes and settled the details essential for its constitution after a full discussion. Other minor points as well as the question of joint deliberations between the States and the Government of India were postponed to be settled by the Chamber itself. And, thus, when this conference concluded its sittings on November 8, 1919, the Princes were assured that next time they would meet "not as the conference, but as the Chamber of Princes—a consummation which they most earnestly desired."

The conclusion of this sitting marks the close of a "prolonged and most important phase of the relations between the States and the Government of India." The age-long policy of isolation had come to an end. A definite change had taken place, but, as the next phase was to show clearly, it was not final. It was only the prelude to still greater political activity and feverish zeal on the part

of the Princes to regain their position, and their early successes with the Government of India emboldened them to expect more. Disappointment was, however, in store for them-

IV.—THE CHAMBER OF PRINCES : THE POLICY OF LORD READING

(1921—26)

On February 8, 1921, the Chamber of Princes was formally inaugurated. The Duke of Connaught had been specially deputed to take part in the formal inauguration. The Chamber thus inaugurated counted among its members 108 ruling Princes, and 12 representative members elected by the rulers of 127 lesser States. The attendance and voting by its members was voluntary. It was an advisory and consultative body and had no executive powers. Its establishment meant "a recognition of the rights of the Princes to be consulted in framing the policy of the Government relating to the States and to have a voice in the Councils of the Empire." The scope of the subjects of its deliberation was thus defined by His Majesty the King-Emperor in his proclamation: "My Viceroy will take its counsel freely in matters relating to the territories of the Indian States generally, and in matters that affect those territories jointly

with British India, or with the rest of my Empire. It will have no concern with the internal affairs of individual States or their Rulers or with the relations of individual States to my Government, while the existing rights of the States and their freedom of action will be in no way prejudiced or impaired." The Chamber elects its own Chancellor and the Standing Committee whose chief function is "to advise the Viceroy on questions referred to the Committee by the Viceroy and to propose for his consideration other questions" within the scope of the Chamber.

The first session of the Chamber, held soon after its inauguration, was taken up with settling the details of its constitution. It, however, elected His Highness the Maharajah of Bikaner as its first Chancellor, who continued to be re-elected till January, 1926, when he declined to stand for re-election. He was succeeded by H. H. the Maharajah of Patiala.

In April, 1921, Lord Chelmsford was succeeded by Lord Reading. The new Viceroy belonged to the Liberal Party in England and had risen to his high position by dint of sheer ability and application to work. His assumption of office brought about a great change in the policy of the Government of India towards the States. Though at the close of his regime he declared that the Chamber was fulfilling

those very objects for which it was constituted, it cannot be denied that the formal sessions of the Chamber during these years ceased to be of very great importance and were ineffective. There were very few lively debates. The subjects on the agenda were also not very important and did not arouse any interest among its members. One regular item on the agenda of the Chamber was to hear the report submitted by the Princes nominated by the Government of India to represent the Indian Princes at the League of Nations or the Imperial Conference, and it was followed by words of appreciation and a vote of thanks to the Princes concerned. Moreover, the Chamber generally went on to adopt the reports submitted by its Standing Committee. The Standing Committee had taken the place of the Permanent Committee appointed in January, 1919, to discuss the 23 points. The Committee could not make much headway in settling them. * It revised the decisions already arrived at on some points. The only other subjects on which some settlement was effected were telegraphs, railways, wireless telegraphy and telephones in the Indian States, mining concessions in Indian States, and rules relating to the employment of European British subjects, pensioners and aliens in the States.

But on all important matters progress was slow. The Princes more than once reminded the Viceroy of the necessity of shortening the period within which the final issue of the deliberations of the Chamber would be reached. The questions of 'extradition, excise offences and boundary settlement' were raised in November, 1921. The problem of riparian rights was referred to a select committee in November, 1924, and all these still awaited a decision even in 1926. The proposals of the Fiscal Commission with reference to their effect on the interests of the Indian States were examined and the Chamber made its own recommendations, but the Government of India shelved the final decision. The task of codifying the political practice could not be proceeded with. The procedure of the Political Department remained unchanged and continued to be unsatisfactory to the Princes. Dissatisfied with the actual working of the reforms inaugurated in 1921, H. H. the Maharajah of Bikaner, in his capacity as the Chancellor of the Chamber, proposed to Lord Reading in 1922 that an informal round table conference should be convened. In August, 1924, after important consultations with the ministers of some important Indian States, the Chancellor put before the Viceroy another definite

request, which was for the appointment of an Indian States Committee. Three months later, H. H. the late Maharajah Sindhia, on behalf of the Princes, urged the need of appointing an advisory committee of the Princes, with which the Viceroy might from time to time hold converse on all important subjects relating to the States with a view to arriving at a settlement. But Lord Reading did not wish to embark upon a discussion of these questions, which involved discussion of the question of paramountcy. The demands of the Princes fell on deaf ears.

It is true that the comparative failure of the Chamber in the early years of its existence was due to the difficulties that always beset the path of a new body, and also to the stereotyped agenda and strict rules of business. But it was also attributable in no negligible measure to the attitude of the Viceroy. An imperialist in his visions and a staunch liberal in his political beliefs, his personality was powerful enough to leave its impress on the politics of the States. More than once he reminded the Princes of the imperative need of introducing political reforms in the States. Again, in his parting address to the Chamber, he informed that body that it was expected of its members to carry out the international obligations contracted by the Paramount

Power through the League of Nations, even where they were not of a political character.

Lord Reading's viceroyalty is notable for two things. In the first place, it was an age of veiled depositions. The Government of India was anxious to save itself from the odium of deposing a ruler, but at times found itself in a situation in which drastic action could hardly be avoided. The three cases of this kind were the interference in the affairs of Mewad within a few months of Lord Reading's assumption of office, the abdication of the Maharajah of Nabha in 1925, and the abdication of the Maharajah of Indore in February, 1926. Of all these, the circumstances of the case of Mewad are worthy of particular notice and may be summed up briefly. As a result of agrarian discontent and a minor revolt in Mewad, the Maharana was called upon by Mr. (later Sir Robert) Holland to abdicate or to accept a commission of inquiry. The Maharana refused to accept either of these two alternatives, but promised to set all matters right if a detailed list of the incidents and cases which were considered serious could be supplied to him. The whole affair ended with the transfer of a good deal of the administration to the heir-apparent.

More important than these incidents was the Viceroy's interpretation of the theory of

paramountcy in respect to the Indian States in his letter dated the 27th March, 1926. He asserted the supremacy of the Paramount Power over the States, refused to treat as its equal even those States which were termed allies and equals in their treaties, and went on to specify the various rights which pertain to the Paramount Power as a corollary to this supremacy. He contended that the right of intervention in the internal affairs of a State was inherent in the paramountcy of the British Crown and the right might be exercised at the sole discretion of the Crown.

This viceregal interpretation of the fundamental rights of the States, as embodied in the treaties and engagements with the Crown, naturally alarmed the Princes as a class. They had already failed to get redress for many of their grievances. They perceived another potential threat to their position. The time for the re-examination of the reforms in British India was drawing near, and they thought that their rights relating to matters of joint interest to British India and the States should be jealously guarded. They began to prepare for the coming emergency. They knew that, though nothing could be expected of Lord Reading, a change was imminent in the near future and something might be possible then.

It was true that as a formal body the Chamber had failed to be attractive or effective. Many of the important Princes, like the Nizam and the ruler of Mysore, had not taken any interest in its affairs. According to Sir Sivaswamy Aiyar, they were so jealous of their status that they were afraid of being treated as equals among themselves. Nor were they prepared to concede the principle of a decision by the majority. Even in matters of common interest, some of them were anxious that they should be individually consulted by the Government of India. But the Princes who had taken an active part in its affairs knew that the Chamber had its usefulness. The informal discussions in the Chamber greatly fostered "a habit of co-operation" among the Princes. On all those political questions which definitely affected the States, they now exchanged views amongst themselves and consulted together. Moreover, these Princes got opportunities to meet the elder statesmen of British India. The high office of Chancellor had proved to be the golden apple which created discord among the Princes and had resulted in the formation of a couple of parties led by important Princes. But as the common danger stared them in the face, they closed their ranks and did not carry their quarrels further than the

election day. Under the leadership of Bikaner, Patiala, Alwar, and Nawanagar, all of them who had actively associated with the Chamber now decided to organize their forces.

With a view to preparing their case for the impending change in the constitution of the British India, the Princes appointed a committee, in January, 1926, consisting of some Princes and important ministers "to consider in consultation with the representatives of the British Government and to report to the Chamber of Princes:

(1) "the best means of safeguarding the interests of the Indian States on occasions when an enquiry is undertaken into matters of common interest to the States and to British India, and

(2) "what machinery should be devised for giving effect to the proposal contained in paragraph 311 of the Montagu-Chelmsford Report regarding joint deliberations."

Moreover, they decided to put the office of the Chancellor on a strong and regular footing. The Chamber levied a contribution of Rs. 800 on each of its members. An independent office of the Chancellor was established, the chief task of which was to deal with the affairs of the Princes and their

grievances. Days of feverish activity were now to follow.

V.—THE YEARS OF DESTINY

(1926—1930)

With the arrival of Lord Irwin in India, the affairs of the Princes assumed a changed outlook as in him they found a sympathetic friend. The work of the Standing Committee also moved apace and in May, 1926, and September, 1926, it discussed many important questions like the standardization of ceremonial programmes, mints and coinage in the Indian States, and the extension of the Fugitive Offenders Act, 1881, to the Indian States and administered areas. In August, 1926, a conference of the ministers of the Indian States was summoned at Bikaner to consider the question of the future of the Indian States. Moreover, when in his opening address to the Chamber of Princes (November, 1926) Lord Irwin went on to say that in order to determine the question of the future relations of the States he thought that frank, informal discussions and talks between the Standing Committee of the Chamber and the Viceroy with his advisors would prove very helpful, the Princes were amply satisfied and the Chamber went on to authorize the

Standing Committee to carry on such talks and discussions. The Princes were pleased to find that at the commencement of his viceroyalty, Lord Irwin initiated the procedure for which all of them had long pleaded.

In this new spirit of trust, co-operation, and mutual understanding, the Princes began to put forward their grievances, not only those which had for long awaited redress but also those which were of recent growth. They had already said, "The majority of our order have perused, with deep concern, certain phrases employed, and doctrines enunciated, in the published correspondence relating to the Berars." Hence they sat down to prepare their case and to decide what attitude they should take in their discussions with the Viceroy. An informal meeting of the Princes was convened at Patiala in February, 1927, in which certain aspects of the relations between the Indian States and the Government of India were considered very closely. It was further decided to despatch Colonel K. N. Haksar and Professor L. F. Rushbrook Williams to England to obtain legal opinion upon certain points. An *aide m6moire* was prepared which was presented to the Viceroy at the round table conference held by him with the Princes in May, 1927, at Simla. The "representative group of

Princes asked for a special committee to examine the relationship existing between themselves and the Paramount Power and to suggest means for securing effective consultation and co-operation between British India and the Indian States, and for the settlement of differences. The Princes also asked for adequate investigation of certain disabilities under which they felt that they laboured/'

The all-engrossing question of the future position of the Indian States naturally made it impossible for the Standing Committee and the Chamber of Princes to attend to other minor questions. The announcement of the Indian Statutory Commission on November 8, 1927, made the question of the future relations of the States with British India all the more important as the Princes pressed that any further change in the constitution of British India should not be made without due regard being paid to their wrongs, specially economic disabilities, and without suggesting the means to secure joint consultation between the Indian States and British India in matters of common concern.

In response to the demand of the Indian Princes, the Secretary of State for India appointed a committee known as the Indian States Committee, consisting of Sir Harcourt Butler as chairman and Colonel the Hon'ble

Sidney Peel and Professor W. S. Holdsworth as members. Its terms of reference were:

"(1) to report upon the relationship between the Paramount Power and the Indian States with particular reference to the rights and obligations arising from :—

(a) treaties, engagements and *sanads,* and

(b) usage, sufferance and other causes; and

(2) to inquire into the financial and economic relations between British India and the States, and to make any recommendations that the Committee may consider desirable or necessary for their more satisfactory adjustment."

The Committee assembled at Delhi on January 14, 1928, but the Princes were not ready with their case. Colonel Haksar and Professor Rushbrook Williams had returned to India in September, 1927. Early in 1928, Sir Leslie Scott, M.P., the counsel engaged by the Princes to advise them, arrived in India. It was clear that nothing could be done then and there. Hence the Butler Committee could not hold any formal sittings in India. In February, 1928, there was held a session of the Chamber. In a way it was the most

momentous session ever held, and its importance lay in more things than one.

Firstly, in his opening address Lord Irwin directed the attention of the Princes towards the criticism of the States appearing In the press and added, "It is for Your Highnesses in these critical days to maintain and enhance the name of your ancient and honourable dynasties, and to show that the Prince may be in the fullest sense the servant of his people and the wise custodian of their best interest." To meet the wishes of the Viceroy, the Chamber passed a resolution moved by H. H. the Maharajah of Bikaner, which recognized the real and permanent value of internal reforms, but left it to the wishes of the individual Princes to decide what form and method it should take. All that it urged on them was:

(1) a definite code of law guaranteeing liberty of persons and safety of property administered by a judiciary independent of the executive;

(2) and the settlement, upon a reasonable basis, of the purely personal expenditure of a ruler as distinguished from the public charges of administration.

The Princes knew full well that the resolution had no binding force and, hence, though in various speeches delivered in $upport of the resolution it was urged that an effort should be made to carry it into effect as far as practicable, it became a dead letter soon after its passing. Historically, it can be asserted that the utter disregard shown by the majority of the Princes in carrying out the terms of the resolution was a political blunder, and, later, it was seriously to weaken their position at least from a moral point of view. When facing the Indian States Committee and challenging the theory of paramountcy, the Princes were opposing a power which knew full well the weak points in the armour of the challenger. With their people dissatisfied, with autocracy strongly entrenched in the States, and with the States converted into mere instruments for the satisfaction of their personal pleasures and whims, it was simply impossible for the Princes to challenge the Paramount Power and come out successfully in the ensuing clash.

Secondly, it was during this session that the Princes decided to open their archives and to bring together all the documents relating to the encroachments of the Paramount Power. The Princes had engaged Sir

Leslie Scott to represent their case before the Butler Committee, and the counsel asked for as much information as the Princes could supply. To do all this work a special organization was set up by the Chamber of Princes with Colonel K. N. (later Sir Kailas) Haksar as its Director and Professor Rushbrook Williams as Joint Director. This 'Special Organization' worked night and day, and its labours were embodied in a sketch of the evolution of the political relationship between the Crown and the States and an examination of the fiscal questions at issue between the States and the Government of India. It further produced four massive volumes of closely printed pages containing merely a small portion of the vast amount of evidence that the Special Organization had brought together. A number of examples were given to illustrate each item of the long list of ways and methods by which the position, the status, and the power of the Indian States were undermined during the systematic encroachments by the Political Department of the Government of India. These volumes of evidence were put before the Indian States Committee in support of the case of the Princes.

The year that followed the session of the Chamber of Princes held in February, 1928,

was one of feverish activity. Three committees were at work. The first and the most important so far as the Princes were concerned was the Indian States Committee. The second was the Indian Statutory Commission, popularly known as the Simon Commission, which was busy considering the question of reforms in British India and was concerned with the question of Indian States so far as their relations with British India were concerned, and particularly with the determination of the line of advance in respect to the government at the centre. There was yet a third committee, consisting of British Indian politicians who were planning a constitution for India as a whole. It was presided over by Pandit Motilal Nehru and included among its personnel Sir T. B. Sapru. The interest of this Committee in the question of the Princes was restricted only to that aspect which affected their relations with British India and the form of the future central government of India.

Of the three, the Nehru Committee was the first to report. Its report was made to the All-Parties Conference, an informal body, but the conclusions arrived at by it are of importance as showing the views held by responsible and eminent politicians of British India in respect to the Indian States. In the

years to follow the views held by these politicians became an important factor, specially in carrying on the negotiations between the two parties. The Committee propounded its views on the theoretical basis only. It, however, examined a statement on the legal and constitutional position of the Indian States by Sir Leslie Scott, made in a letter to the *Law Quarterly Review,* and refused to accept the conclusions sought to be arrived at in it from the various propositions. The Committee was of opinion that the relationship of the Princes were with the Government of India and the use of the term 'Crown* in this connexion should only be construed in the constitutional sense. Further, it proposed to accept the treaties and engagements only so far as they were in force.

In the meanwhile, the Butler Committee was engaging the attention of the Princes. On March 1, 1928, it issued a questionnaire to all the members of the Chamber and also to those who were entitled to representation in it. After visiting many important States and having examined informally 48 witnesses, the Committee returned to England early in May, 1928. Many of the members of the Standing Committee also went to England and attended the formal session of the Butler Committee held in camera during the months

of October and November. Sir Leslie Scott appeared on behalf of the Standing Committee and all those Princes who had joined it in joint representation. He submitted to the Committee the joint legal opinion of himself, Mr. Wilfrid A. Greene, Mr. Valentine Holmes, Mr. Donald Somervell, and Mr. Stuart Bevan on the material supplied to them relating to the questions covered by the terms of reference of the Committee.

The Report of the Committee was not signed by its members till February 14, 1929. In the meanwhile, the Princes began to prepare themselves to receive it. In the second week of February a session of the Chamber was held. For the first time the Chamber decided to throw open its galleries to the press, and publicity was given to its proceedings. They hoped to gain the sympathy of British India by making it known that they were not conspiring against its political advance. It was further believed that in any conflict that might follow as a result of any unsatisfactory finding of the Butler Report, they might thus hope to enlist the sympathy of British India on their side. By means of a resolution, the Princes declared that they were ready to join any proposals for an equitable adjustment of the relations between the States and British India only if

it proceeded upon the initial basis of the British connexion. Thus they raised their voice in opposition to the cry of complete independence raised by the extreme section of the Indian National Congress. Finally the Chamber suggested that the report of the Butler Committee should be circulated to all those to whom its questionnaire had been sent; and that in addition to getting the written opinions of the various Princes, the Viceroy should allow the leading Princes to explain their views verbally to him.

On April 16, 1929, the report of the Butler Committee was presented to Parliament and was published simultaneously both in India and England. The main propositions put forward in it were as follows:

(1) "Treaties, engagements and *sanads*, where they exist, are of continuing valid force but have necessarily been supplemented and illumined by political practice to meet changing conditions in a moving world."

(2) "Though paramountcy has already lost and should continue to lose any arbitrary character in full and open discussion between the Princes and the Political Department, it must be left free

to meet unforeseen, circumstances as they arise."

(3) It refused to accept the view that the relationship between the Princes and the Paramount Power were not harmonious. Still, for the bettering of the same it recommended the following:

(a) "That the Viceroy, not the Governor General in Council, should in future be the agent of the Crown in its relations with the Princes."

(6) "That important matters of dispute between the States themselves, between the States and the Paramount Power, and between the States and British India should be referred to an independent committee for advice."

(c) Better recruiting and training of the officers of the Political Department.

(4) It "indicated ways of adjusting political and economic relations between British India and the States."

(5) It expressed the opinion that "the treaties, engagements and *sanads* have been made with the Crown and that the relationship between the Paramount Power and the Princes should not be transferred, without agreement of the latter, to a new government in British India responsible to an Indian legislature." It, however, "left the door open for constitutional developments in the future."

These recommendations did not satisfy the Princes. In June, 1929, a conference of some Princes, who attended personally, and several representatives of other States, in all of about sixty, was held in Bombay. It authorized the Standing Committee of the Princes* Chamber to meet Lord Irwin at Poona on June 28, and to convey to him the informal expression of the Princes' opinion on the recommendation of the Butler Committee. Lord Irwin was going home on leave and the Princes wanted their views to be represented to the Home Government. The dissatisfaction of the Princes was mainly on the following seven points:—

(1) The failure of the Committee to draw a dividing line between the

sovereignty of the Princes and that of the Crown.

(2) Justification of intervention by the Paramount Power on the ground of imperial necessity and the shifting circumstances of time.

(3) The omission of the Committee to recommend improvements in the existing machinery for adjusting matters affecting substantive engagements.

(4) The contention that usage and sufferance, without the free consent of the States, and executive decision can modify imperial rights guaranteed by treaties etc. and reaffirmed by royal proclamations.

(5) The failure of the Committee to distinguish between *sanads* that are in the nature of agreements with, and those that are imposed on, the States.

(6) The implied opinion of the Committee that usage based on the case of individual States is a source of paramountcy applicable to the States as a whole, despite the admission that the treaties cannot be read as a whole.

(7) The failure of the Committee to provide effective means of securing to the States their rights in matters of common concern to India as a whole.

In the meanwhile the enquiry of the Simon Commission was drawing to a close and the members of the Commission were being "increasingly impressed by the impossibility of considering the constitutional problems of British India without taking into account the relations between British India and the Indian States." Hence Sir John Simon addressed a letter to the Prime Minister on October 16, 1929, informing the latter that the work of the Commission "would necessarily be rendered more complete if it included a careful examination of the methods by which the future relations of British India and the Indian States may be adjusted." He further added that according to him "what would be required would be the setting up of some sort of a conference after the report of the Statutory Commission" is finally made and "in that conference His Majesty's Government would meet both representatives of British India and representatives of the States (not necessarily always together) for the purpose of seeking the greatest possible measure of agreement for the final proposals which it

would later be the duty of His Majesty's Government to submit to Parliament." After consulting the leaders of the other parties, Mr. Ramsay MacDonald, the Prime Minister, replied to the above letter on October 25, 1929, and informed Sir John Simon that he and the leaders of the other parties concurred in the view that he had expressed. He further added that His Majesty's Government would propose to call a representative conference as suggested by Sir John Simon.

The publication of this correspondence synchronized with the historical pronouncement of Lord Irwin on October 31, 1929, on his return from England. The Princes welcomed the calling of the Round Table Conference and were satisfied to find their claim to be heard in the final shaping of the destinies of India accepted.

The Chamber of Princes, which met in February, 1930, more or less officially endorsed the view expressed hitherto on the Butler Committee's report and the pronouncement of the Viceroy. With all the vehemence and force at their command the Princes recorded their objections to the conclusions of the Committee in respect of paramountcy and the effect of the treaties, engagements, and *sanads,* the definition of the basis of intervention in the internal affairs of ^the States, and the

doctrines of usage and political practice. They urged the creation of an effective machinery for the settlement by mutual agreement of matters of common concern to British India and the States, and another for respectively adjusting and arbitrating matters of justiciable and non-justiciable nature at issue between the British Government or British India and the States, or between the States *inter se.* Moreover, after recording their satisfaction about the correspondence between Sir John Simon and the Prime Minister and the pronouncement of the Viceroy, the Chamber went on to stress the need for fuller discussions on the future of the States after conclusions had been arrived at at the Round Table Conference. They demanded that, like British India, the States should also be allowed to send their delegates at the subsequent deliberations of the Joint Parliamentary Committee, which might be appointed to consider the bill for the future Government of India. The Princes realized that a good deal of important work was ahead of them and many decisions of far-reaching consequences might have to be made, and they authorized the Standing Committee "with power to cooperate to take such general actions as may be necessary and specially to undertake negotiations in furtherance of the resolutions

adopted that session and on other occasions.'* They further asked for the appointment of an expert body to explore the fiscal claims of the States. Lastly, the Princes' Chamber realized that a time had arrived when the revision of the constitution of the Chamber itself had became essential and it was considered necessary that its powers should be enlarged.

All these were momentous decisions. To add to their importance, the Nizam decided at this juncture to co-operate with the Chamber, and sent his representatives to join in its informal deliberations and was also pleased to grant funds to carry on its work. In spite of all this, the failure of the Chamber had become apparent and the need for a thorough revision of its constitution and powers was being felt. But in the face of the all-engrossing subject of the future of the Indian States the question was practically left alone. It had, however, one far-reaching effect in the years that followed. Alternative plans for a revision of the constitution came to be used by candidates for offices in the Chamber as election planks intended to influnce votes. Though in the open session the Princes recorded a vote of thanks for the work done by H. H. the Maharaja of Patiala as Chancellor, opposition against him was definitely growing. Just when the Chamber

was holding its session there was published the report of the non-official Patiala Enquiry Committee, which gave additional weight to the opposition. An attempt was made to prevent his re-election to the Chancellorship for another year, but it failed. The opposition, which was increasing, now began to organize its forces. This chasm between the Princes themselves definitely widened and caused a division within their ranks at a time when unity was most essential. The result of this disunity and the resulting scramble for the Chancellorship in the end injured the cause of the Princes. The extremely advantageous position which they held in November, 1930 was lost. The signs of the break-up were visible even before the summit was reached.

Soon after the session was over the Princes dispersed, and the main burden of the work fell on the Chancellor, the Standing Committee, and the Special Organization. On June 7, 1930, the first volume of the Simon Commission's Report was published and, a fortnight later, the second volume containing the recommendations. The Princes were pleased that many of the Butler Committee's conclusions which were favourable to them were accepted by the Simon Commission also. The most important of these were that the official relation of the Princes should be with

the Viceroy and not with the Governor-General and that the relationship of the States was with the Crown and not with the Government of India. The Princes were disappointed to find that the economic claims of the States were not given due consideration in these proposals. The omission to recommend the immediate institution of a supreme court was also regretted. They welcomed the idea that the future development of an all-India polity was possible only on federal lines and added that the details of the composition as well as of the procedure of the council of greater India should be decided upon after fuller discussions.

The Standing Committee kept itself in constant touch with the Viceroy, and when the delegates to the Round Table Conference were nominated, he acted in full consultation with the Committee. The States delegation consisted of ten rulers and six ministers. The office of the Special Organization was also shifted to London, and on October 25, the Indian States Delegation conferred together as to what lines of action should be taken. No stone was left unturned to discover the best method of securing adequate recognition of the claims of the States at the Conference. The members of the Delegation cultivated friendly relations with the leaders of political

parties in Great Britain and the British Indian delegates, and began to exchange views with them.

At long last the Round Table Conference met and at its plenary session on November 17, 1930, the discussion was opened on behalf of British India by Sir T. B. Sapru. He presented the case for Indian self-government and addressed a direct appeal to the States to join in an all-India federation. On behalf of the Princes, H. H. the Maharaja of Bikaner accepted the invitation and promised to join the all-India federation. This acceptance on behalf of the Princes of the invitation to join the all-India federation, however conditional it might have been, revolutionized the whole situation. A new chapter in the history of the mutual relations of the two Indias was being written. The partition of India was at last to end. The new ideal of a united India was accepted by all the parties concerned, and it was only a matter of time and detail to create a new political India out of the old. With this consummation the period of transition definitely ends, and the period which saw the gradual filling in of the details takes its due place rather as a preface to the new age than an epilogue to the age of transition.

CHAPTER THREE

THE MAKING OF FEDERAL INDIA

I.—THE GROWTH OF THE FEDERAL IDEA

WHEN, ON INVITATION from British India, the Indian Princes agreed to join an all-India federation at the Round Table Conference, they did not accept an ideal wholly strange to them. The idea that the only solution of the difficulties of the Princes lay in the establishment of a federal government had long been cherished by them.

It is obvious that no such idea could be entertained before 1906, even though a union of the British Indian provinces in some form of federation had been envisaged by more than one political thinker. In 1858 the idea was adumbrated by John Bright. But it was officially condemned in 1880. Nevertheless it continued to receive the attention of Indian nationalist leaders, and in his address as President of the twentieth (1904) session of the Indian National Congress, Sir Henry Cotton, a distinguished British Indian official, set forth the ideal of a 'United States of India'. But he too limited the scope of the federation to the provinces alone.

The adoption of a new policy towards the States after 1906 made it possible to extend the federal idea still further. The policy of politically isolating each State was definitely given up, and when after 1916 the idea of a conference of Princes was encouraged, the federal ideal did not appear to be unattainable. Even as early as 1914, Their Highnesses the Maharajahs of Baroda and Bikaner had envisaged a federal form of government as the only way to safeguard the interest of the States consistently with those of British India. The same view was put forward in the conference of Princes and ministers held at Bikaner in 1917. The federal form was favoured by all and was vigorously canvassed by the Princes as well as by the leaders of British India during the visit of Mr. Montagu. Lord Chelmsford and Mr. Montagu agreed with this view and wrote in their report, "Our conception of the eventual future of India is a sisterhood of States, self-governing in all matters of purely local or provincial interest . . . . In this picture there is a place also for the Native States. It is possible that they too will wish to be associated for certain purposes with the organization of British India in such a way as to dedicate their peculiar qualities to the common service without loss of individuality." But they could not re-

commend the immediate adoption of the ideal for more reasons than one and it remained one of acedemic interest only.

Still, the idea continued to influence the minds of the Princes. In a speech delivered on the occasion of a visit of Lord Reading to Alwar in March, 1922, H. H. the Maharajah said, "My goal is the United States of India, where every Prince and every State working out its own destiny in accordance with its own environment, its own tradition, history, and religion, will combine together for imperial purposes, each subscribing its little quota of knowledge and experience in a labour of love freely given for a higher and nobler cause." But so far as the British Government was concerned, the idea of a federal government including the Indian States as well as the provinces remained a very remote possibility. In his monograph, *India, A Federation?* Sir Frederic White only slightly touched on this aspect and said, "If India is about to move towards the goal of federation, the Indian States may well claim a share in the discussion, and a place in the eventual federation." . He refused to admit that the varied character of their governments and the contrast between their conditions and those of the provinces could prove a bar to such a federation.

The ideal, however, received greater attention when the question of further constitutional advance within British India was taken up. H. H. the Maharajah of Bikaner declared on September 8, 1928 that the ultimate solution and the only salvation of India lay in some kind of federation. H. H. the Maharajah of Patiala, as Chancellor of the Chamber of Princes, declared his conviction in a speech on the floor of the Chamber (February 13, 1929) in these words: "We believe that India will be a greater and a more prosperous land as a federation of autonomous States and provinces within the Empire than she will be outside the Empire." He further added, "Our one desire is to cement our relations with British India consistently with the due discharge of our duty to our States and our treaty obligations with Britain." Hence he was apprehensive lest a declaration by British India adopting complete independence as its political goal might hinder the "cultivation of those closer ties designed to lead up to the equitable adjustment of the interests of British India and Indian States on a federal basis."

This federal ideal did not attract the Princes alone but also the States subjects. In those States where democracy in some form

had taken root, the leaders of the people approved of the ideal. Hosakoppa Krishna Rao, a member of the Mysore Representative Assembly, wrote, "The highest ambition of not only the Indian States but also of the majority of the provinces is to be connected with the Government of India by a scheme of federation, guaranteeing equal partnership alike to all provinces and States/'

Hence, when various committees and commissions began to deliberate on the future form of government, they all agreed that the only possible solution lay in a federation. The Nehru Report, which included among its signatories British Indian politicians belonging even to the extreme left wing, recognized that "an Indian federation compatible as it will be with the maximum degree of autonomy in the local units, whether provinces or States, can be the only solid foundation for responsible government/' The Simon Commission also believed that "the easier and more speedy approach to the desired end can be obtained by recognizing the constitution of India on a federal basis in such a way that individual States or groups of States may have the opportunity of entering as soon as they wish to do so." It appeared to them that no other alternative could be equally effective and they recommended that the idea might be discussed

when the proposed conference (the Round Table Conference) took place.

But there still remained two difficulties. The first was the one raised by the Simon Commission that, so far as the provinces were concerned, the necessary conditions for bringing a fully federal constitution into being were not then present. The provinces had not become political entities. The second difficulty was more serious, and it was only a solution of this problem which could make possible an all-India federation including the States. This question was, will the Princes join the federation? The Princes had favoured the idea and canvassed it in political circles in 1918, but will they face the actual federation? Are the Princes prepared to yield some part of their sovereignty to the federal government? These questions haunted the minds of imperial as well as British Indian politicians. While leaving open the door for a closer union with British India, the Butler Committee clearly expressed its doubts on the question of the Princes joining the federation. It said, "But it has been borne in upon us with increasing power, as we have studied the problems presented to us, that there is need for great caution in dealing with any question of federation at the present time, so passionately are the Princes as a whole

attached to the maintenance in its entirety and unimpaired of their individual sovereignty within their States." The Simon Commission, too, held that an all-India federation was a distinct affair, and it recommended a 'Council for Greater India/ "consisting of representatives of British India and the Indian States, with powers of deliberation and consultation in matters of common concern, duly scheduled by mutual agreement." The authors of the Nehru Report were also sceptical about the readiness of the Princes to join such a federation and, hence, they added that "if such an all-India federation does not come about, at least a federation of the provinces should come about."

Even as late as September 20, 1930, the Government of India considered an all-India federation a distant ideal and wrote in their despatch on constitutional reforms: "We readily accept the ideal of an ultimate federation of all-India and agree with the [Simon] Commission that the Indian States and the provinces of British India preserve remarkable cultural affinities and are slowly working out a common destiny. We recognize the geographical, economic, and political unity of British India and the Indian States, but we share the repugnance of the Commission to pronounce dogmatic conclusions. The ideal

which has received general acceptance, and which we also accept, is 'some sort of federal arrangement/ Deep-seated difficulties arise from the heterogeneity of the units to be federally associated, and from the wide range of matters to be made subject to control from a common centre. A federation of all-India is still a distant ideal, and the form which it will take cannot now be decided/'

The answer lay with the Princes alone. They had accepted the proposals of the Simon Commission for a 'Council for Greater India/ with reservations as to proper safeguards in respect of its composition and procedure. The ideal of an all-India federation still appeared distant. On the eve of the Round Table Conference, the Princes talked only of the British connexion, stressed the sanctity of their treaties, engagements and *sanads,* and expressed their anxiety for the due recognition of their claims and their position in the future constitution, and, above all, for an equitable agreement between all the parties concerned. They remained silent on the question of an all-India federation and watched the course of events. And, hence, when at the very outset they accepted the federal idea at the invitation of British India and agreed to join the federation, it came as a great surprise to the world at large, and, it

may be added, even to the British Government, The causes which finally made the Princes agree to join the federation were more diverse and complicated than they would appear to casual observers. As such they need to be discussed and analysed at some length.

II.—WHY THE PRINCES ACCEPTED AN ALL-INDIA FEDERATION

The early months of 1930 saw the fortunes of the Princes at their lowest ebb. In spite of the fact that they had a Viceroy who was sympathetic and favourable to them, every thing was going against them. They found their position being definitely undermined by various forces and, morally also, they had lost much.

On the question of their relation with the British Government the findings of the Indian States Committee were decidedly contrary to their expectations. They had expected the recommendations of the Committee to improve their position and afford relief to them in their dire needs at a time of economic depression. But the Committee really proposed to make permanent all that was abominable to them. "If this view of paramountcy be accepted/' H. H. the Maharajah of Patiala bitterly complained, "the Crown and

its agents could claim any rights they chose to assert, and the States would have no right save those which the Crown's agents thought fit to leave to them. In other words, this view is only a re-statement, in less direct terms, of the claims put forward by Lord Curzon in his Bahawalpur speech, and implies the negation of treaties for which successive royal proclamations have professed scrupulous regard/' The Political Department, against which they had a whole series of grievances, continued to enjoy all the powers it had exercised till then. And last of all, the statement of the Committee that the Government of India was justified in interposing their authority and in overriding the interests of the States for the economic good of India as a whole put forward a very dangerous -doctrine and gave the Government of India powers which it had hitherto never exercised. The Princes felt that, so far as the question of paramountcy was concerned, the British Government was not disposed to yield an inch of ground to them. They realized the helplessness of their position. They had failed to obtain any substantial redress for their economic grievances and they could not obtain their due share of influence in shaping policy in matters of common concern.

British India was also aggrieved with the Princes. In 1924, when he was Home Member of the Government of India, Sir Malcolm Hailey had said that one of the many questions which proved a serious bar to further advance in responsible government in British India was the problem of the Indian States. The leaders of British India also felt the same thing, and the antagonized British India was turning out to be a serious menace to the States. For decades together, British India had been influencing the ideas of the subjects of the States. By a process of infiltration all sorts of ideas were reaching the States people. Moreover, when a series of political movements began in British India, they had their effect on the affairs of the States; the feverish zeal and activity of the people of British India spread their contagion to the States and were copied in their own way by the States subjects.

All this activity in the States was made possible by the condition of the States themselves. The progress of the States was well summarized by the Butler Report in these words: "Their efforts to improve their administration on the lines generally followed in British India have already in many cases been attended with conspicuous success. . . . Some of these reforms are still no doubt inchoate, or on paper, and some States are

still backward, but a sense of responsibility to their people is spreading among all the States and growing year by year. A new spirit is abroad. Conditions have very largely changed in the last twenty years." The progress was very slow and the Princes were not very keen about carrying out reforms even when they had been promised. In February, 1928, the Chamber of Princes had passed a resolution urging on the Princes the necessity for carrying out reforms in the States and remodelling their administration on a few essential principles. But the response was not very satisfactory, and the Conference of the Princes and ministers, held at Bombay in June, 1929, directed the attention of the Princes to the previous resolution of the Chamber and emphasized once again the supreme importance of giving full effect thereto. Moreover, while no attempt at real reform was being made in the States, the people were absorbing and adopting the nationalist and democratic ideals, which only emphasized the idea that the States were an anachronism. The heavy taxation on goods imported from abroad only went to make conditions worse. The tide of disaffection among the States subjects was definitely rising. The inauguration of the States Subjects' Conference, however unrepresentative it might

have been, definitely pointed to another possible source of danger for the Princes. The greatest harm that these conferences and similar bodies could do was to discredit them in the eyes of the public at large and to expose their weaknesses to the British Government. With the reiteration of the theory of paramountcy and an assertion of the unrestricted power of intervention by the Paramount Power, the discontent of their subjects only weakened the position of the Princes.

At this juncture, however, British India and its extreme wing of politicians came indirectly to the help of the Princes. The growing tide of discontent and the Civil Disobedience movement was embarrassing the Government of India. In a statement on the Simon Report issued to the press on July 17, 1930, the Princes expressed their confidence in Lord Irwin, "who though faced with serious difficulties within and without India, was persevering in his attempt to serve the best interests of India and Great Britain." It was evident that British India would not be satisfied with the advance proposed by the Simon Commission. At the same time, it was a foregone conclusion that no responsibility at the centre would be given unless and until the British Government was sure of a stable element in the central legislature. Further-

more, the problem of the States was proving a difficult riddle for the eminent constitution-makers. The seething discontent in British India once again raised the importance of the States, and the Government of India was not inclined to do anything to alienate the Princes. The British Government was evidently in a fix. The Round Table Conference had been summoned, but no basis on which the discussions could proceed had been found out. The extreme section of the British Indian politicians were non-co-operating, and the Princes had so far been preoccupied only with the theory of paramountcy, their own treaty-rights, and the economic grievances under which they had been labouring for a long time.

The moment seemed most opportune to the statesmen of the Indian States. They felt that by one stroke of bold policy the princely order could become the hero of the day, and could not only oblige the two other parties at the Bound Table Conference, but also increase their own importance and strengthen their own position. This one stroke of policy, which was expected to put an end to all their troubles, was the acceptance of the offer to enter an all-India federation. By joining the federation they would be able to supply the much-needed stable element in the federal

legislature, and at the same time the problem of the relations of the States with British India would be automatically solved. All the objections to extending responsibility to the centre would be surmounted. The British Government would find it possible to make a substantial advance towards responsible government and, thus, satisfy the people of British India. In this way, the States would oblige both the British Government as well as the British Indian statesmen. And in return for the sacrifice the Princes would have to make in joining the federation, they will be in a position to demand and gain all those points for which they had been asking so far without any effect. These points were:

(1) Complete and absolute guarantee for the maintenance of their treaty-rights, or in other words, the definition of paramountcy and restriction of the power of intervention.

(2) Adequate voice in the determination of all-India policies.

(3) Maintenance of their individuality and constitutional safeguards for the continuance of their vested rights and interests, which was expected to check all encroach-

ments of British India on the States.

Hence the Indian States Delegation came to the definite conclusion that federation would provide for them the best guarantee for the continued enjoyment of their rights. Moreover, they would not only be winning the goodwill of all, but would add much to their reputation: they would become the saviours of the Empire and also take their place among the great patriots of India who would be creating the modern united India.

Evidently, everything appeared favourable to the States. To add to the prestige and position of the Princes, the invitation came from British India. As has already been described, at the Round Table Conference Sir T. B. Sapru addressed a direct appeal to the States, couched in very cordial terms, which indicated a realization on the part of the British Indian leaders that a reasonable settlement of the Indian problem could only be achieved through the willing co-operation of the Princes. By accepting the invitation, the Princes gained morally. They seemed to have solved all their problems and hoped to gain all their demands. But the events that followed this momentous decision were to lead to a very different result. Once again disunity among their ranks was to neutralize

all the advantages gained by the Princes on November 17, 1930.

III.—FEDERATION, CONFEDERATION, OR STATUS QUO?

The first day of the Round Table Conference was really dramatic. The acceptance of an all-India federation by the Princes had revolutionized the situation. During the whole Conference the Princes stood fast to their acceptance of the federal idea. On the last day, H. H. the Maharajah of Patiala declared, "The main principle of federation stands acceptable, and I echo the confident hope expressed the other day by H. H. the Maharajah of Bikaner that by far the larger proportion of the States will come into the federal structure at once and that the remainder will soon follow." But they put forward two conditions of their own. They made it clear that the continued connexion of India with the British Crown and a guarantee of their rights under the new constitution were indispensable for their acceptance of a scheme of federation by them. These conditions were accepted by the Conference.

The details of the federal scheme were worked out in the various sub-committees appointed by the Conference, the most important of which was the Federal Structure

Committee, on which the Indian States Delegation was strongly represented. Through its efforts the Princes definitely secured two things:

(i) That the method by which the representatives of the States would be chosen, should be left solely to the Princes;

(ii) and that the allotment of seats to the different States should also be settled by the States among themselves.

The unanimity of the whole Indian Delegation on the question of an all-India federation came as a surprise to British statesmen. Though taken unawares at first, they soon began to see some advantage in the new situation. The decision on the question of federation was taken suddenly and this fact gave the British Delegation sufficient ground to ask for time and delay the final decision in regard to the new constitution based on the federal idea. The British Conservative Party had refused to agree to any particular scheme because the federal scheme was even then in a nebulous state. Moreover, soon after the preliminary spectacular scenes the Conference became an arena of controversy. The Princes, however, stood unanimously for the federal scheme, and the only discordant voice came

from the representative of the conservative Princes, H. H. the Maharajah of Rewa, who still advised caution and believed that it was yet too early to accept the federal idea finally. On one question the various British parties were unanimous, *viz.*, the question of the constitutional safeguards.

The Imperial Government kept the final decision to itself till the last day of the first session of the Round Table Conference. The one question on which all were most anxious to know the views of the Government was that of responsibility at the centre. During the last sitting of the Conference, H. H. the Maharajah of Patiala definitely declared: "We can only federate with a British India which is self-governing and not with a British India governed as it is at present/' More than once the Princes had made it perfectly clear that they would come into the federation only if a responsible government was established. Hence, when in his last speech at the first session of the conference, Sir T. B. Sapru was bold enough to ask for a definite decision conceding responsibility at the centre, and added that progressive Indians would agree to any reasonable constitutional safeguards if such responsibility was given, the Prime Minister announced the final decision of the Imperial Government in these words: "The

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view of His Majesty's Government is that the responsibility for the Government of India should be placed upon legislatures, central and provincial, with such provisions as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances, and also with such guarantees as are required by minorities to protect their political liberties and rights. . . . With a legislature constituted on a federal basis, His Majesty's Government will be prepared to recognize the principle of the responsibility of the executive to the legislature."

In his statement the Prime Minister made a declaration on behalf of the Imperial Government in which in addition to the question of responsibility of the executive to the legislature, he also included the following points, pertaining to the States:

(1) The central government to be bicameral and to take the form of a federation of all-India, embracing both the Indian States and British India.

(2) The precise form of the federal government to be determined after discussion with the Princes and the representatives of British India.

(3) The federal government to have only such authority over matters concerning the States as may be conceded by their rulers.

(4) Defence and external affairs to be reserved to the-Governor-General with necessary administrative powers.

(5) The Governor-General to be given power in case of emergency to maintain the tranquillity of the States and protect the constitutional rights of minorities.

At this stage the work of the Conference was suspended to consult public opinion in India and to see if the non-co-operating section of British Indian politicians would join the next session of the Conference. The Prime Minister summed up the position of the various delegates in his final speech of January, 1931, in which he said, "You have to go back to India, we have to go back to our OWQ public opinion. You have spoken here subject to reconsideration, subject to reaction which your public opinion will show to your work; we Government and Parliamentary representatives alike, have spoken in the same way and we must listen to reactions. We must explain and defend; we must also make ourselves the champions of

our findings and do our best to bring our people along with us in our pilgrimage of hope to their conclusion."

Hence, when the Conference broke up, no one was actually committed to anything though a beginning had been made. In order to safeguard their own position still further, the Princes put forward two conditions, which were accepted, *viz.*:—

(i) Each State should have the option of entering or remaining out of the federation.

(ii) The acceptance was provisional and the Delegation reserved to themselves full freedom of action in respect of the completed picture of the new constitution.

The States continued in their non-committal attitude even during the session of the Chamber of Princes held in March, 1931. In a resolution about the work at the Round Table Conference, the Chamber resolved to support in principle the scheme outlined at the Conference and authorized its representatives to carry on further discussions and negotiations with due regard to the interests of the States and subject to the final confirmation and ratification by the Chamber and each individual State.

The interest of the Princes during this session of the Chamber was centred on two things. The first of these was the question of the distribution of seats among the States *inter se* in the two houses of the federal legislature. This aspect of federation was so over-emphasized by the Princes, specially those who had begun to term themselves as belonging to the smaller States, that to them the acceptance or refusal to enter the federation mainly depended on the fact whether they would get individual representation or not. But so far nothing could be said with certainty as the actual number of seats in each house had not been decided upon. Hence the interest of the Princes was all the more naturally concentrated on the second point, *viz.*, the election of the Chancellor. The chasm among the Princes had been definitely widening. The leading Princes were not satisfied with the work done by H. H. the Maharajah of Patiala at the Conference and, hence, they decided that this time the Chancellorship should be conferred upon H. H. the Nawab of Bhopal, who had shown great ability and admirable zeal for work during the deliberations of the Conference and those of the Federal Structure Sub-Committee. H. H. the Maharajah of Patiala was not willing to giveyup his office. At the election

that followed very close voting took place, and the Nawab was successful in obtaining the high office by a majority of five votes only.

This put an end to the united front which the Princes had so far maintained, and they came to be divided into two definite camps. One of these was led by Their Highnesses the Maharajah of Bikaner and the Nawab of Bhopal, while the other followed the lead of Their Highnesses the Maharajahs of Patiala and Dholpur. Early in June, 1931, H. H. the Maharajah of Patiala released his note on 'Federation and the Indian States', in which he definitely opposed the entry of the Princes in an all-India federation. He sounded a note of warning and said that the federation was going to prove a serious menace to the States, and more specially to the so-called smaller States. He suggested, as an alternative, a scheme for an enlarged Chamber of Princes, in which all those rulers who so far had only the right to send 12 representatives would be represented individually and those who had no representation at all would also be represented. The enlarged Standing Committee of the Chamber was to sit with the permanent standing committee of both houses of the federal legislature of British India. Soon after the publication of this note, H. H. the Maharajah of Bikaner published his

reply to it and characterized the statement of EL H. the Maharajah of Patiala as more or less an electioneering gesture. This reply was % lengthy document, in which all the difficulties and dangers pointed out by H. H. the Maharajah of Patiala were answered. At the and of the month of June, there was convened an informal conference of the Princes at Bombay to meet the Indian States Delegation, which was to leave for the second Round Table Conference. All the leading Princes attended. It was, however, decided that the road to a federation or a confederation should be left open.

This *volte face* by H. H. the Maharajah of Patiala had its repercussions on the British Indian leaders, who thought that the States were repudiating the position they had first taken up. Besides, it weakened the position of the Princes in their dealings with the British Government. The division among their ranks was clear and definite, and the question of representation among the States *inter se* was developing into a serious problem, which induced a large number of the so-called smaller States to join hands with EL H. the Maharajah of Patiala. Hence, when Their Highnesses the Nawab of Bhopal, the Maharajah of Bikaner, and the Jam Sahib of Nawanagar, seconded by Sir Akbar Hydari

and other leading ministers, took up the all-important question of paramountcy, intervention by the Paramount Power and the sovereignty of the States, and began to negotiate with the India Office, they could not make much headway. The question of paramountcy was taken up also with the new Viceroy, Lord Willingdon, but nothing substantial came out of the discussion. In the words of the Viceroy, the result of the deliberations was "to remove many of the anxieties of theirs and to resolve most of their difficulties and confirm in a practical manner the assurance frequently given to them in the past of the inviolability and security of their position under their treaties, *sanads,* and engagements/' But, as H. H. the Maharajah of Alwar confessed, further discussion was necessary to reach a final issue. Evidently the Princes had failed to get their most important proposition accepted at the time when its acceptance would not have been very difficult.

The Indian States Delegation went to the second Round Table Conference with the idea of securing an irreducible minimum of essential safeguards for their entry into the federal scheme. The Indian National Congress had decided to participate in this conference and, hence, the number of dele-

gates was increased. At the Federal Structure Sub-Committee a scheme of confederation, prior to federation with British India, was put forward by Their Highnesses the Holkar and the Maharajah of Dholpur, Nawab Liaqat Hayat Khan, and Sir Prabhashanker Pattani, but it was only noted and no great attention was paid to it. The Committee went on to fill up the details of the scheme, over each item of which there was a good deal of discussion. But on many important points, *e.g.*, the position and powers of the federal legislature, the nature of the federal executive and its relationship to the federal legislature, no definite conclusions could be reached. In order to solve these questions, of admitted difficulty but paramount importance, it was decided to appoint committees, and in his statement the Prime Minister proposed to set up four committees, one of which was to examine the specific financial problems in some of the Indian States. The problem of distributing among the States whatever quota of seats might be allotted to them in the federal legislature was also to be solved. In his final statement made on December 1, 1931, the Prime Minister, this time as the head of the National Government, reaffirmed the policy embodied in his statement made at the end of the first Round Table Conference. He

definitely stated the view of the Cabinet that federation appeared to offer the only solution of India's constitutional problem. The policy thus stated was embodied in a White Paper in December, 1931.

The Princes returned to India without committing themselves to anything. They had failed to achieve much in respect of the question of paramountcy, and the mere assurance that the future constitution will be an all-India federation failed to satisfy them. They had begun to grow apprehensive about the possible complications that could arise during the course of further deliberations. Those who could see into the future were confident that the question of apportionment of the seats among the States *inter se* was going to prove a regular bone of contention. The already existing dissensions would come to the surface, and the whole order was expected to break up into a dozen or more small groups, each thinking of its own interest only. The Princes could not fully make up their minds in regard to entering the federation and even an eloquent appeal from Lord Sankey failed to induce them to come to a decision.

Some time after the session was over, the three fact-finding committees appointed by the Conference began to function. Another consultative committee met under the chair-

manship of the Viceroy, but no definite result could be achieved, and a third session of the Round Table Conference had to be staged.

In the meanwhile, the Princes had begun to feel the repercussions of their disunity on their existing affairs as also,on their future. H. H. the Jam Sahib of Nawanagar took up the rôle of a peace-maker, and in a conference held at Patiala on March 11, 1932, the two wings merged into one. A number of committees of ministers were appointed to go into the various questions relating to the federal constitution. On the all-important question of the office-holders, a compromise was reached, and it was decided to offer the Chancellorship to the peace-maker, the Jam Sahib himself. The only important work done at this session of the Chamber was to pass a resolution regarding the work of the Indian States Delegation to the Round Table Conference. It declared the willingness of the States to join an all-India federation on the assumption that the Crown would accept responsibility for securing to them the following guarantees:

(a) that the necessary safeguards would be embodied in the constitution;

(6) that under the constitution their rights arising from treaties or *sanads* or engagements would remain inviolate and inviolable;

(c) that the sovereignty and internal independence of the States would remain intact and would be preserved and fully respected and that the obligations of the Crown to the States would remain unaltered.

To secure this end, the Chamber authorized its representatives to carry on further negotiations in accordance with the mandate given to them at the informal meetings of the Princes. The mandate required, among other things, a series of safeguards to strengthen the position of the States, a prescribed proportion of representation for the States in the two houses, and a number of seats sufficient to secure individual representation for each of the existing and future members of the Chamber with a margin for the collective representation of those States which did not enjoy that status.

After the session of the Chamber, the Constitution Committee of the Ministers of the Indian States made its recommendations. It reported against the compatibility of any scheme of confederation prior to the federation with the essential plan of the Sankey scheme. On the question of the allocation of seats, it proposed equality as far as possible for each State in the Upper House and repre-

sentation on the basis of population in the Lower House, half a vote being put as the minimum for each member of the Chamber in each House. In May, 1932, the Princes met at Bombay and discussed this report and their decision was not greatly at variance with the findings of the Committee. But the so-called small and smaller States had began to feel that there was a possibility of their not getting individual representation, while those who only sent representative members to the Chamber opposed the criterion of allowing some consideration to members of the Chamber only. The one reply which was always given was given this time also: as yet nothing was definite.

The inability of the various delegates whether from the States or British India to come to a unanimous decision necessitated the calling of a third Round Table Conference. It was a smaller affair; the States were represented by the ministers only. These delegates tried to secure as many of the terms of the mandate as they could, but, obviously, they could not have everything their own way. After long deliberations, this final session of the Conference came to an end on December 24, 1932. The final conclusions arrived at by the Conference were embodied in a White Paper issued in March, 1933.

In the meanwhile, there was a question which needed to be fully thrashed out. It was that of federal finance. The States were greatly interested in it, specially because through it they hoped to get their economic grievances redressed. The Committee on Federal Finance, presided over by Lord Eustace Percy, took up the question of allocation of revenues. The States were not ready to levy the corporation tax unless and until a minimum sum of 8¼ crores per annum were put aside as provincial contributions to the federal government.

There was another financial committee, known as the Davidson Committee from its Chairman, the Rt. Hon'ble J. C. C. Davidson. It was sent out to India with a view to "clearing the ground for federation" by evolving a system of finances in relation to the Indian States entering into the proposed federal scheme. In its report the Committee pointed out that it could not provide for a uniform system of benefits and burdens between the States, or States and British India. It added that a policy of 'give and take* on both sides will alone solve the very difficult problem of federal finance in its relation to the States.

For a whole year, while the details of the federal scheme were being filled in, the

opinion of the Indian Princes was crystallizing more and more against it. The view of their Chancellor was also unfavourable. He had been in England during the sessions of the third Round Table Conference, had taken pains to study the whole question, and had also consulted eminent constitutionalists. He held that the scheme as it was finally outlined in the White Paper of 1933 was very different from that proposed at the first Round Table Conference in 1930-31, and it was definitely unsafe for the Princes to enter such a federation. While submitting a report on the work done at the third Round Table Conference, H. H. the Chancellor clearly stated his opposition to the federal scheme and pointed out the pitfalls of entering it. It was evident that participation in the federal scheme would involve sacrifices for the Princes without any corresponding advantages. All efforts to carry on the work of settling the question of paramountcy, which had been entrusted to H. H. the Nawab of Bhopal, had come to a standstill. Naturally, the Jam Sahib was for maintaining the *status quo.* He clearly said, "I hope that she [British India] will attain her aspirations; but hope she will do this without involving the States in her troubles/'

Hence, when soon after the publication of the White Paper the Chamber of Princes met,

it found the tide of opposition to the federation rising. The plans for the allocation of seats took definite form. With the acceptance of the idea of giving plural votes to the more important States, a grouping of smaller States became inevitable, and as the States to be grouped were present in large numbers, the troubles during the session increased from day to day. These Princes, who felt unfairly treated, blamed the leading Princes like Their Highnesses the Nawab of Bhopal and the Maharajas of Bikaner and Patiala for having betrayed their cause. And, thus, the ship of the Chamber of Princes was wrecked on the rock of the allocation of seats in the federal legislature. And worse things followed. H. H. the Maharajah of Kashmir had found the internal troubles in his State too serious to allow him to spare any time for the Chamber; H. H. the Nawab of Bhopal also withdrew from the Chamber refusing to hold any office or attend it any more. In the formal session, the Princes reiterated their ideas regarding the question of paramountcy and their terms for entering the federation. They expressed their disapproval of the Government's scheme for the allocation of seats.

It was in an atmosphere of disillusionment, dissatisfaction, and distrust that the Chamber closed its session on March 25, 1933.

The scheme of federation had killed the Chamber. Its leading personalities no longer commanded their former confidence. The The Princes ruling over the smaller States, who felt seriously aggrieved, left their former leaders who belonged to the group of the so-called bigger Princes and now gathered behind the leading Princes of their own class. But, obviously, these new leaders could not solve the big problems that were now to be faced. At a moment when the most important work confronted them, the Princes were disunited. The federal scheme was on the anvil and the British Government was slowly but steadily giving it a definite shape.

IV.—ON THE ANVIL

(1933-35)

The White Paper containing the proposals for Indian constitutional reforms was published in March, 1933. Opposition against it had evidently been growing, and the Viceroy thought it advisable to reassure the Princes. In his opening address to the Chamber of Princes on March 20, 1933, he said, "I would point out also that as made clear in paragraph 3 of the introduction it must not 'be assumed that the present proposals are in all respects so complete and final that a Bill

would contain nothing which is not covered by the White Paper/ and if Your Highnesses still wish to urge that further points relating to safeguards or other matters should also be included it is open to you to have them represented before the Joint Select Committee."

"The White Paper," says Keith, "was on the whole a fair reproduction of the results achieved, but it is quite fair to say that it was rather definitely drawn up in order to placate the volume of Conservative criticism which had been steadily growing ever since the conclusion of the first session of the Conference." The Princes had felt that the proposals contained a federal scheme in many respects different from that envisaged at the first Round Table Conference. The Committee of Ministers, which was appointed to examine the White Paper during the session of the Chamber in March, 1933, had reported at length on the safeguards that had been included and the points which had not been covered by the proposals and had also clearly indicated the extent to which the position of the Princes in the federation had become worse in comparison with their original idea. But the document so ably and elaborately prepared became more or less a document for

further guidance only and the Princes failed to gain much ground.

It was evident that the position of the Princes as a powerful factor in Indian politics had suffered a setback. The last session of the Chamber (March, 1933), had only resulted in making the disunity of the Princes more thoroughgoing. Even those groups which had for the last sixteen years solidly stood behind their eminent princely leaders, now broke up and those great Princes, who had gained a world-wide reputation, now led none else but themselves. The individual interests of groups undisguisedly dominated the situation. Each group of Princes hoped that it could gain its ends by pressing its claims separately. Little did they care to wait and ponder that even their small groups were not devoid of personal and local jealousies, nor did they pay attention to the age-old proverb : "Small minds and big Empires do not go together." The handful of less important Princes who in their first zeal took up the task of solving big problems on the whole lacked ability as well as able assistants to help them in their great task. The Princes as an order, save with a few brilliant exceptions, were full of their proverbial lethargy and were not interested even in problems involving questions of life and death for themselves.

Soon after the session of the Chamber, they became unmindful of the federal scheme and allowed things to drift. Therefore, when those few princes who were keenly interested in the problem of their future, pressed for amendments to the scheme, they could not command all the attention that their voice deserved. The British Government knew full well that these Princes who had led vast hordes in the past, had no following then. The Princes of Kathiawad had definitely announced that they would not join the federation.

Moreover, the British Government had by now strengthened its political position and its attitude stiffened not only towards the Indian National Congress and the extreme section of the British Indian politicians, but also in matters relating to the Princes. Once again the policy of intervention was resumed, and it was given a very plausible opening by the way in which many of the Princes had let matters drift in their States, thus inviting drastic changes. The troubles and the revolt of the subjects in Kashmir and Alwar led to armed intervention by the Government of India. The pressure of taxation on the subjects of these States was to be reduced. After the rebellion had been crushed, the Maharajah of Kashmir appointed a commis-

sion of inquiry and on its recommendations introduced a considerable measure of political reform within the State. In Alwar too after the rebellion was put down, it was found necessary to put the finances of that State in order, and the British Government had to assume control of the State, the Maharajah being asked to stay away. The two other cases of Jhabua and Dewas Senior complete the list of instances of the employment of its supreme authority by the Paramount Power.

The question of an all-India federation was also taken up in all earnestness by the British Government. Its attitude had become firmer. Lord Willingdon had made it plain to the Princes in clear and unmistakable terms that all their demands could not be accepted. He said, "Firstly, if such decisions are to be fair to all parties, they cannot accept the extreme view of any particular interest or section, and, secondly, His Majesty's Government are concerned only in obtaining a fair and reasonable settlement." And in this attitude, the Government was supported by the British Indian politicians. The White Paper had not been able to satisfy even the most moderate element in British India. They insisted on substantial modifications in the scheme and urged that it should be made more democratic. This last demand

of British India went against the wishes of the Indian States as the introduction of additional safeguards in response to the desire of the Princes went against the claims of British India. "By excluding paramountcy from the purview of the federal government/[1] wrote the *Servant of India,* the Liberal paper of Poona, "and by reserving the right to nominate their representatives to the federal chambers and reserving also the liberty to join the federation in only such matters as each Prince thought fit, the Princes have safeguarded, nay more than safeguarded, their special rights of sovereignty and integrity of their dynasties and the character of their administrations. Is it necessary to go further and deliberately weaken the Federation?"

The Government of India also took up the question of allocation of seats among the States. The failure of the Princes to come to an agreed solution had made it necessary for the Government of India to give its own award. The plan as proposed by the Government was later adopted only with a very few minor readjustments.

One thing, which however deserves notice, is that, as the work of constitution making progressed, the work of examining the details and making additional suggestions and proposals was entrusted to a body of

eminent ministers. Even those Princes who had spent all their life in dealing with political questions felt the vital importance of the matter and decided that the opinion of expert administrators and ministers should be taken into account. The most prominent among these were Sir Akbar Hydari, Sir C. P. Ramaswami Aiyer, Sir Mirza Ismail, Sir Manubhai Mehta, Sir V. T. Krishnama Chari, Nawab Sir Liyaqat Hayat Khan, Sahibzada K. A. H. Abbasi, and Mr. K. M. Panikkar. Even these eminent statesmen consulted leading jurists and constitutional experts in England. The Princes had realized that thus alone could their work be carried on in a more business-like way and with all the unanimity that was needed.

In the meanwhile, the British Government was pushing through its programme of constitution making. The Joint Select Committee of both Houses of Parliament was appointed. It was presided over by the Marquess of Linlithgow. It was empowered to invite Indians to act as Assessors, and 21 representatives from British India and 7 from the Indian States were called into consultation with the Committee. It held its first sitting on April 12, 1933, and after a series of consultations with the Indian Assessors, began hearing evidence. So far as the Princes

were concerned an exhaustive examination of witnesses from the Chamber of Princes and of some statesmen from the States took place and the various questions at issue and the additional points raised by the Princes were discussed at length. The evidence of the Right Hon. Sir Samuel Hoare, who was then Secretary of State for India, was most notable and it helped the understanding of the various aspects of the proposals.

After eighteen months of deliberations, the Joint Select Committee published its report on November 22, 1934. Though the Committee was free to consider the Indian constitutional problems *de novo*, it concentrated its attention on the proposals put forward by the Government in the White Paper. There were two elements in the Committee which dissented from the main body of the proposals. The first of these was the group of Labour Members who suggested a relaxation of the reservations at the centre and some additional amendments to make it possible for India to attain Dominion Status, and who proposed a reduction in the number of safeguards. The second group consisted of the die-hard Conservatives, who opposed even the limited transfer of responsibility at the centre, which had been conceded by the majority of the Committee. They proposed

that instead of the federal legislature there might be established only a Council of Greater India.

The majority of the Committee supported the federal scheme and the proposal to grant responsibility at the centre and autonomy to the provinces. But, as they were anxious to avoid a split in the ranks of the Conservative Party, the bulk of which was insistent on additional safeguards and restrictions on the power of the federal legislature, the authors of the majority report recommended additional safeguards. The supreme authority of the Imperial Parliament in Indian affairs was definitely assured. The executive power was vested in the Governor-General, and the Governor-General and the Governors were *U>* be given statutory personal powers *tot* safeguarding the essential functions of government. Even with these concessions to their point of view the majority of the Conservatives were not satisfied.

The Committee emphatically stated that responsibility at the centre, however limited, should be conceded, and they went on to add that the prospect of an all-India federation will disappear, perhaps for ever, but certainly for many years to come, if the main body of the proposals of the Committee were not accepted.

During the long period deliberations of the Committee and even after the publication of this report, vehement attempts were made by a section of the press in England led by Lord Eothermere and others, to wreck the federal scheme. They did all they could to persuade the Princes not to join the federation. It was even alleged that official pressure was being exerted by Lord Willingdon and his political assistants to force the Princes into the federation. In addition to this, a section of the Indian Princes, specially the Kathiawad group, declared, more than once, that they would have nothing to do with the federal scheme. They based their arguments on the views expressed by H. H. the Maharajah Jam Sahib Shri Ranjit Singh Ji of Nawanagar during the session of the Chamber in March, 1933. Unfortunately, the Jam Sahib had died within a few weeks of the close of that session of the Chamber. The main reason for the opposition of the Kathiawad group was the still unsettled problem of their maritime ports and the Viramgam Cordon.

Soon after the publication of the report of the Joint Parliamentary Committee, H. H. the Nawab of Bhopal took the initiative and with the help of other leading Princes, who had been taking keen interest in the progress

of the federal scheme, appointed a strong committee consisting of some eminent ministers and counsel to examine the report. It was significant that, though H. H. the Maharajah of Patiala, the Chancellor, and some other members of the Standing Committee of the Chamber sent their ministers and took interest in the doings and decisions of this Committee, it had nothing to do either officially or directly with the Chamber, Sir Akbar Hydari took a prominent part in it and presided over its meetings. It first met at Bombay in December, 1934, and then again at Delhi in January, 1935. It thoroughly examined the Report in the light of expert legal opinion which they had obtained from England. But as no final view could be expressed before the publication of the text of the Bill, they made only tentative suggestions and comments as regards the scheme as evolved in the Report.

In the third week of January, 1935, the Chamber of Princes held its session. For the first time in the history of this body, the official session had to be postponed for a day as the required quorum of 30 Princes was pot present. Special calls and requests were addressed, and with great difficulty 30 Princes and representative members gathered together to make it possible for the Viceroy

to hold a formal session. Though officially no important questions were to be discussed, yet the problem of the future of the Indian States was to be discussed at the informal meetings. The number of ministers and other representatives of the Princes was large and for a couple of days the question was discussed at length. The opposition to the federal scheme and in a greater degree to the scheme of allocation of seats as proposed by the Government of India and embodied in the Joint Parliamentary Committee's Report, was expressed in unmistakable terms. But the same old reply was still given that the final picture was yet to come. And, hence, first at the informal meetings and, later, at its formal session, the Chamber passed a resolution reiterating its previous position. It once again informed the Government of India that the inauguration and the success of the federation would be possible only if the following two terms of the Princes were satisfied:

(1) Clear recognition of the sovereignty of the States and their rights under treaties and engagements.

(2) Prior settlement of the pending claims of individual States.

In the speeches delivered at the formal session, supporting, this resolution, it was

stated that while in some cases the Report showed a definite advance on the position assigned by the White Paper, in many others there was a change for the worse.

But While these discussions were being held openly another drama was being enacted behind closed doors, and sensational decisions Were being taken. The only Princes of note who had come to attend the session were Their Highnesses the Maharajahs of Patiala and Bikaner, H. H. the Maharajah of Jaipur joining later only for the formal session. As these two Princes were finding their position weakened, they insisted on a thorough revision of the personnel of the Standing Committee, because a strong united committee alone could restore the position of the Chamber as a power to be reckoned with. A scramble for the office of Chancellor and membership of the Standing Committee immediately began, and many of the leaders of the so-called smaller States pressed their claims. In order to enlist support on their behalf, these new leaders exploited the question of the reorganization of the Chamber and impressed on all those who could possibly be affected by the scheme that until and unless the latter supported their leaders and put them in these high offices, their future even in relation to the Chamber was dark and

indefinite. As the majority of the Princes attending this session belonged to the so-called smaller States these new leaders and well-wishers of the so-called smaller States began to enlist a strong following. Finding their position untenable, Their Highnesses the Maharajahs of Patiala and Bikaner decided to follow the example of their former colleague, H. H. the Nawab of Bhopal, in leaving the Chamber. At the last moment, however, better sense prevailed and a compromise was effected, but the Standing Committee could not be greatly strengthened. For the time being all seemed to be going on satisfactorily, but to those who could see through things, it was clear that a crisis in the affairs of the Chamber could not be long averted, and it inevitably came a year later.

A fortnight after the close of this last session of the Chamber, the text of the Government of India Bill and the proposed drafts of the Instruments of Accession and that on Instructions were published, and immediately the Committee of Ministers began to examine them. Expert legal opinion from England was also obtained. After full discussion and consideration of the text of the Bill during its meetings at Delhi, the Committee came to the unanimous opinion that "without satisfactory amendments on the lines indi-

oated, it would not be possible for them to recommend to their rulers and to the States generally the acceptance of the proposed scheme." This opinion was conveyed also to the Political Secretary of the Government of India through a letter written by Sir Akbar Hydari, dated the 21st February, 1935. A week later, an informal conference convened by H. EL the Maharajah of Patiala at Bombay accepted the opinion of the Committee and decided to inform the Government of India and the British Government that the Bill, as drafted, was unacceptable to them. The gathering at Bombay was impressive and practically all the Indian States were represented. H. H. the Nawab of Bhopal, who had initiated the meetings of the Committee of the Ministers, was also present.

The effect of this decision of the Princes was great. A way out of the *impasse* was not difficult to find and in consultation with legal experts and counsel in England and on the approval of the legal opinion by the leading ministers of the States, the British Government decided to make suitable modifications in the original text of the Bill in order to make it acceptable to the Princes. Substantial changes were made on two points, *viz.*, the sixth clause of the Bill and the provisions in case of a failure of the constitutional

machinery. The changes were of considerable, though not primary, importance. So far as the Princes were concerned, there were many other minors changes. Finally, with some other modifications in the House of Lords, which did not affect the position of the States, the Bill was passed by Parliament on July 24, 1985. On August 2,1935, it received the Royal Assent and became an Act. For convenience the Act was directed by the Government of India (Reprinting) Act, passed on December 20, 1935, to be reissued as the Government of India Act, 1935, and the Government of Burma Act, 1935. All the necessary changes in the numbering of the sections and a few minor mistakes in printing were corrected before reprinting them.

Thus, after many vicissitudes and shiftings of position, the British Government gave India a federal constitution, which is to form a united India, comprising within its orbit British India as well as the Indian States.

V.—CLEARING THE PATH TO A UNITED INDIA

The Government of India Act, 1935, has given India a federal constitution, but it has not resulted in an immediate federation. The exact date for inaugurating the federation

will be decided later on. But as this inauguration has been made dependent on two conditions, it becomes essential that they should be fulfilled. The most important condition is that rulers of States representing not less than half the aggregate population of the Indian States and entitled to no less than 52 seats in the federal Upper Chamber must have signified their desire to accede to the federation. For the accession, it is essential to draft the Instrument of Accession and get it approved and signed by the rulers. As regards the Instrument of Accession, a common draft of the main document has been made, which *shall* generally be acceptable to all the States; the special additional restrictions on the powers of the federal authorities or the claims pressed for by individual States and accepted by His Majesty shall be provided for in the schedules to be attached to the main document. A provisional draft Instrument of Accession had been published in March, 1935 (Cmd. 4843), but it was unacceptable to the Princes. In the light of their criticism and also in that of the final provisions of the Government of India Act of 1935, the original draft has been revised and a new draft is now being circulated to the Indian States individually with a view to an early discussion with the rulers thereof.

But the accession of the Princes does not depend merely on a satisfactory draft of the Instrument. Much depends on their goodwill. When the Joint Parliamentary Committee was sitting, it was more than once alleged that the Princes were being forced into the federation. This allegation was denied by the Princes in their statements to the press and also by their representatives appearing before the Committee. But Mr. Winston Churchill gave a very ingenious explanation of the term 'pressure*. He said, "Pressure is not necessarily illegitimate pressure. If I use an argument which has an effect upon you, that is legitimate pressure; and there is no doubt that when the Government of India and His Majesty's Government over here, the Viceroy and all the high ofl&cials of State are known to be anxious that the Princes should come in, the very loyalty of the Princes, their desire to fulfill what may be the general inclinations of the Imperial Government, constitute a form of pressure, not improper pressure, although, as I think, on this occasion unwisely applied/' One may question whether all that Mr. Churchill terms pressure, it does not matter whether it is legitimate and proper or is not so, should really be so described, but everybody who knows the psychology of the Princes

as an order and is familiar with the trend of their thoughts and the condition of the States, will admit that Mr. Churchill has correctly diagnosed the chief consideration which is taking the Princes to the federation. **One** would, however, like to add two more to that pointed out by Mr. Churchill and they **are,** first, the idea that federation has become inevitable and there is no way out of it **and,** secondly, the lack of unity among the Princes. The Princes have ceased to think together and, hence, each ruler thinks that when others will join it, why should he not also do the same.

But when all is said and done it cannot be denied that the British Government feels that a solution of the long-drawn-out problem of the Indian States is over-due, and the only solution which appears to solve all the difficulties is this federal scheme. It is this conviction which explains its anxiety to see the federal scheme through. It wants to appease the Princes and to see that at least the required number of Princes sign their Instruments of Accession to make it possible to inaugurate the Federation. But, as **has** been previously explained, clear recognition of the sovereignty of the States and of their rights under treaties and engagements **and a** prior settlement of the pending claims of

individual States has been put forward by the Princes as the two indispensable conditions of their joining the federation. Under the first demand, they wanted a definition of paramountcy. During the viceroyalties of Lord Irwin and Lord Willingdon they had pressed for it, but nothing had been achieved. Since the first day of the Round Table Conference they had been reiterating their demand. In his momentous speech at that Conference, EL H. the Maharajah of Bikaner had stated the position of the States and their attitude towards the question of paramountcy in definite terms. But the question was always postponed, till at the last moment, when in March, 1935, they demanded once again a definition of paramountcy as a condition precedent to their acceptance of the Government of India Bill, they were clearly told that it was a matter which did not arise in connexion with the Bill and that they should not expect to secure any concessions in regard to paramountcy as the *quid pro quo* for their entry into the federation.

The Government of India was, however, willing to accede to their second demand. One big question which was creating much opposition against federation, was the claim of the Kathiawad States to a share in the customs duties. They claimed exemption

from customs duty on the goods meant for the Indian States, specially when the goods were destined for their own ports. In 1927, the Government of India offered some terms for the settlement of the dispute, but the late Maharajah Jam Sahib did not accept it. The matter was referred to a court of arbitration consisting of Lord Dunedin alone. The findings of the arbitrator were accepted by both parties and, in 1934, a settlement was effected.

The other specified grievance was the much-vexed question of the Berars. The controversy for their retrocession had been going on for a long time and was settled in 1902, when Lord Curzon effected a settlement with the Nizam. The present Nizam decided to reopen the question, hoping that in return for his war-time services the Government might reconsider the matter. But Lord Reading gave an uncompromising reply. After 1930, however, when the Nizam gave his full support to the federal scheme a new agreement in respect to the Berars became essential. The Nizam wanted his sovereignty to be established over the Berars, but the tract had been ruled by the British Government for eighty years and since 1902 was a part of the Central Provinces. It had been enjoying the full fruit of the Montagu-Chelmsford reforms. The settlement effected

was announced by Lord Willingdon in a speech during his visit to the State of Hyderabad in 1933. He said, "While His Majesty's Government on their part reaffirm his [the Nizam's] sovereignty over the Berars, His Exalted Highness on his part would, on the bringing into force of the contemplated Constitution Act, or such parts of that Act as become applicable to the provinces of British India, be prepared to accede to federation in respect of his territories known as the Berars." It was also decided that "specific provisions be made to give some real as well as ceremonial effect to the sovereignty of the Nizam." The policy of the Government of India during these years has been to give back all those residency areas about which some dispute had existed in the past. During recent years there have been many such retransfers of territories, *e.g.*, the Camp Bazar area of Indore, the Nowgong area in Central India and Bangalore in Mysore.

An additional effort was made by the Government of India to please the Princes by passing the Indian States (Protection) Bill in 1934. A campaign against the Princes had been going on in British India and a section of the press was maintaining itself by its earnings through attacks on the Princes and their administration. The object of the Bill

was explained by the Home Member, Sir,, Harry Haig, in a speech before the Legislative Assembly. He said, "This Bill says that the administration of the States is to be protected, and they are entitled to be protected against subversive attacks from beyond their own border. This is not only an obligation which we owe them, but an obligation we owe to the peace of India as a whole—the peace of British India as well as of the Indian States. . . ."

But one supreme need of the day—unity among the Princes, was fast disappearing. While the future constitution has been decided upon, the traces of the past are being rapidly wiped out. The one great advantage that they had gained during the period of transition—the benefit of common deliberations—does not exist any longer. It is true that in February, 1935 a vast assembly of ministers and representatives of practically all the Indian States had gathered together in Bombay, but the number of Princes present there was very small and even among them there was no spirit of co-operation. It was a sad anticlimax to the position in the years 1927-30, when time and again the Princes had gathered together and personally discussed their political problems. But a lower point was yet to be reached. The patched up understanding among the various groups in

the Standing Committee could not be continued and the affairs of the Committee were at a standstill. The non-co-operation of the States with the Chamber was complete. It extended even to matters financial, and soon the financial position of the Chamber, so far as the Secretariat of the Chancellor was concerned, reached its lowest ebb. The utter disregard shown by the various members of the Standing Committee made it impossible for H. H. the Maharajah of Patiala to convene any meetings of the Committee and in disgust he resigned. Some weeks later H. H. the Maharajah of Bikaner also resigned from the membership of the Standing Committee. No session of the Chamber could be convened early in 1936. Things have come to a deadlock and no one can tell whether sessions of the Chamber will be held in the future. It is to be seen whether there will be a full quorum at all if any session is held. It would not be very far from the truth to say that a majority of the Princes believe that the necessity for the Chamber no longer exists and it is no use making efforts to revive the Chamber, which is dying a natural death.

The crisis in the history of the Chamber has removed the only platform where Princes from all parts of India could meet together and discuss the problems of the States. Its

disappearance made an early settlement of the question of paramountcy impossible, and it is no exaggeration to say that to the majority of the Princes this question does not appear to be of great moment. The only question which is possibly occupying them is that of the accession to the coming federation. For full six years they had been postponing their final decision on the plea that the final picture was yet to be seen. But now it is well-nigh over a year that the final picture has been placed before them. They have received their draft Instruments of Accession and will soon be called upon to make their final choice. No such decision should be taken without a thorough understanding of the new constitution and its implications. In his speech before the Chamber in January, 1935, H. H. the Maharajah of Patiala correctly summed up the whole problem when he said: "If I may respectfully say, the issue is not so simple as others imagine. We have a heavy and tremendous responsibility placed on us. We have to consider the sacred trust handed over to us by our ancestors; we have to think of the generations to come and see that it is not said of us that we lightly signed away our States, prerogatives and privileges which the courage, foresight and wisdom of our forefathers had bequeathed to us."

The future is yet in the lap of gods and one cannot go farther than make a guess at the possible trend of events. But before attempting to anticipate the shape of things to come, it is essential to examine the main details of the new regime.

PART TWO
THE COMING PRESENT

CHAPTER ONE

THE CROWN IN RELATION TO THE INDIAN STATES

I.—THE THEORY OF DIRECT RELATIONS WITH THE CROWN

ONE POINT ON which the British Government was fully agreed with the Indian States and their counsel was the theory of their direct relationship with the Crown. This view Was accepted by the British Government, and as it forms the basis of the new constitution, it is essential to examine the theory at some length.

For a long time the Princes as a class, and specially the more important of them, had been claiming that they should be put in direct touch with the Central Government at Delhi and not asked to correspond and deal through the Provincial Governments. The authors of the Montagu-Chelmsford Report accepted this proposition, and it was finally adopted by the Government of India. The years which followed the publication of the Report saw the complete readjustment of the relations of the Central Government with all the States of India.

This was, however, only their preliminary demand. Soon they were claiming that their

relations were with the Crown and not even with the Government of India. The first clear statement of this new theory was made by Tukoji Rao Holkar III, the ex-Maharajah of Indore, in a letter written in connexion with the recommendations contained in chapter X of the Montagu-Chelmsford Report. He wrote: "Before proceeding further it is necessary to invite full attention to the basic truth that His Highness' treaty relations are with the British Government maintained in India by His Excellency the Viceroy as the representative of His Majesty the King-Emperor. An autonomous government of India controlled by elected or nominated representatives of British India is not the power with which His Highness' ancestors entered into treaty or political relations. To such a government His Highness has never owed and never can owe any obligation nor can British India or its would-be autonomous government rightly advance any claim to occupy in political relations to His Highness the position accorded by treaty to His Majesty and his Government. With an autonomous government presided over by a Governor-General, British India can but occupy with regard to Indore the position of a sister State like Gwalior or Hyderabad, each absolutely independent of the other and having His Majesty's Government as the

connecting link; between the two____It would be necessary when an autonomous government for British India comes into existence to treat it as a sister and neighbouring State and to insist on His Highness' rights to deal direct with His Majesty's representative in India or His Majesty's Government in London rather than become a part or co-ordinate factor in the machine of autonomous government of British India. This would be in consonance with and befitting the position of His Highness as an independent ally of the British Government."

But the theory thus propounded remained unheeded till the year 1924, when Sir Malcolm Hailey raised the problem of the Indian States in connexion with the question of further political advance in British India. He said: "Are they [the Indian States] to be dependent on the Crown or are they to be controlled by the new government responsible only to the Indian legislature instead of a government responsible to the British Parliament? Will they accept ?" The question thus raised clashed seriously with the interests of British India, which felt indignant at the prospect of finding in the Indian States a serious obstacle to its political advance, and, consequently, later propounded a theory quite opposed to the views expressed by His Highness the ex-Maharajah of Indore.

As a result of these discussions the theory of the direct relationship of the States with the Crown began to attract the serious attention of constitutionalists. In his book, *The Constitution, Administration and the Laws of the Empire,* Professor Keith discussed the theory and wrote : "It is important to note that the relations of the Native States, however conducted, are essentially relations with the British Crown and not with the Indian Government and that this fact presents an essential complication, as regards the establishment of responsible government in India. It is clear that it is not possible for the Crown to transfer its rights under a treaty without the assent of the Native States to the Government of India under responsible government."

Hence, when Sir Leslie Scott and his colleagues gave their 'Joint Opinion*, they practically completed the theory first propounded by the ex-Maharajah Holkar and later supported by Professor Keith. The 'Joint Opinion' stated the case of the Princes thus: "The mutual rights and obligations created by treaty and agreement are between the States and the British Crown. The Paramount Power is the British Crown and no one else; and it is to it that the States have entrusted their foreign relations and external and internal security. It was no accidental or

loose use of language, when on the threshold of dealing with the subject of the Indian States, the Montagu-Chelmsford Report described the relationship as a relationship to the British Crown; for the treaty relations of the States are with the King in his British or, it may be, in his imperial capacity, and not with the King in the right of any one of his Dominions. The contract is with the Crown as the head of the executive government of the United Kingdom, under the constitutional control of the British Parliament."

It, however, admits that "the States cannot dictate to the Crown the particular method by which, or servants through whom, the Crown should carry out its obligations. So long as these obligations are fulfilled, and the rights of the States respected, the States have no valid complaint. This liberty is necessarily subject to the condition that the agency and machinery used by the Crown for carrying out its obligations must not be of such a character as to make it politically impracticable for the Crown to carry out its obligations in a satisfactory manner. The obligations and duties which the parties to the treaties have undertaken require mutual faith and trust."

Lastly, the 'Opinion' goes on to assert that "not only is the British Crown responsible for the defence and security of the States and the

conduct of their foreign relations, but it has undertaken to discharge these duties itself. The British Crown has this in common with a corporation that by its nature it must act through individuals; but where it has undertaken obligations and duties which have been thus entrusted to it by the other contracting party in reliance on its special characteristics and reputation, it must carry out those obligations and duties by persons under its own control, and cannot delegate performance to independent persons, nor assign to others the burden of its obligations or the benefit of its rights. So the British Crown cannot require the Indian States to transfer the loyalty which they have undertaken to show to the British Crown, to any third party, nor can it, without their consent, hand over to persons who are in law or fact independent of the control of the British Crown, the conduct of the States' foreign relations nor the maintenance of their external or internal security."

The position thus stated by the eminent counsel for the Princes was readily accepted by the Butler Committee. It reported: "We agree that the relationship of the States to the Paramount Power is a relationship to the Crown, that the treaties are of continuing and binding force as between the States which made them and the Crown/* "We feel bound,

however/' it further added, "to draw attention to the really grave apprehension of the Princes on this score, and to record our strong opinion that, in view of the historical nature of the relationship between the Paramount Power and the Princes, the latter should not be transferred without their own agreement to a relationship with a new government in British India responsible to an Indian legislature/'

The Simon Commission also agreed with this view of the Butler Committee and wrote: "But we must at once emphasize its recommendation that the Viceroy, and (not as at present) the Governor-General in Council, should be the agent of the Paramount Power in its relations with the Princes. This would involve, as the Report points out, an amendment of the existing statute law, for section 33 of the Government of India Act operates to vest this function technically in the Governor-General in Council. The actual change in practice would not, therefore, be very great, although it is important."

The Government of India also accepted these recommendations when in its "Despatch on proposals for Constitutional Reform" it wrote: "Whatever legal or constitutional arguments might be advanced to the contrary, it is in practice essential that the obligations of the Crown towards the Indian States should

continue to be discharged through an agent whom the Crown is able fully to control. Any invasion or limitations of the autonomy of the States must come not from the Government of British India, but from the representative of the British Crown to whom alone the Princes admit allegiance."

This acceptance of the theory of direct relationship of the Indian States with the Crown on the part of the British Government marks an important epoch in the history of the Indian States. It, however, raised the new problem as to what changes in the machinery of the present Government of India should be devised to carry into practice the theory of direct relationship. The despatch of the Government of India discussed a number of alternatives, but all of them were literally brushed aside by the new situation which arose on the acceptance of the federal idea by the Indian Princes.

The federal scheme also proceeds on the assumption that the relations of the States are directly with the Crown. In his statement to the first Round Table Conference on January 19, 1931, the Prime Minister said: "The connexion of the States with the federation will remain subject to the basic principle that in regard to all matters not ceded by them to the federation their relations will be with the

Crown acting through the agency of the Viceroy/'

The position was further reiterated in **the** White Paper of 1933. It provided that "except to the extent to which the ruler of a State has transferred powers and jurisdiction, whether by his Instrument of Accession or otherwise—and, in the case of a State which has not acceded to the Federation, in all respects—the relations of the State will be with the Crown represented by the Viceroy, and not with the Crown represented by the Governor-General as executive head of the Federal Government. Accordingly, all powers of the Crown in relation to the States, which are at present exercised by the Governor-General in Council, other than those which fall within the federal sphere will after federation be exercised by the Viceroy as the Crown's representative." The new situation in respect to the relations of the States with the Crown, which will be created on the inauguration of the Federation based on these principles will be examined in detail in the next chapter.

In conclusion, it can well be asserted that this acceptance by the British Government of the theory of direct relationship with the Crown made it possible for the Princes to accept and enter the 'Federation of India*. It may sound paradoxical, but it does state the

true facts. It appeared at the outset that by putting forward this theory the Princes were putting obstacles in the path of British India and, hence, it was vehemently opposed. But the actual result of the acceptance of the theory was just the opposite. Once the Princes were assured that their dynastic matters and questions involved in the claims and rights of paramountcy were not subject to the popular vote of India as a whole, they agreed to fall in line with British India to create a united India in the form of a 'Federation of India/

II.—DURING THE TRANSITION

"We have spoken above," wrote the authors of the Joint Parliamentary Committee's Report, "of the rights, authority and jurisdiction of the Crown in and over the territories of British India. But the Crown also possesses rights, authority, and jurisdiction elsewhere in India, including those rights which are comprehended under the name of paramountcy. All these are at present exercised on behalf of the Crown, under the general control of the Secretary of State, by the Governor-General in Council." The rise of various factors has made a clear demarkation of these two aspects of the powers of the Crown essential. The British Government has

accepted the proposition that the relations of the Princes are with the Crown and are in no way connected with the executive head of the British Government in India. Again, the nature of the Government of India Act, which will now be enforced by parts, will radically alter the whole situation. Hence the present arrangements for conducting the relations of the States are sure to be altered with any change in the constitution. It is neither possible, nor compatible with the acceptance of the new theories to continue the present state of affairs even under the new constitution.

The new constitution will not be enforced all at once, but only by instalments. The inauguration of the Federation of India, which is the ultimate and final goal, can be achieved only through a stage of transition. The first instalment of the new constitution will be enforced under the Order-in-Council sanctioned by the King-Emperor on July 3, 1936. It orders that the whole of the Act other than Part II and some other sections expressly mentioned by the Order, will come into force from April 1, 1937. Thus the character of the present Government of India will be radically changed and the provinces will **become** autonomous units.

With the beginning of the change in the Government of India, the relations of the Crown with the States will also change. As suggested in the Joint Parliamentary Committee's Report, all the powers in its relations to the States, hitherto exercised by the Governor-General in Council, will revert in their entirety to the hands of the Crown, and for the period of transition the Governor-General will be made solely responsible for the control of these relations. Thus the Crown will officially, legally, and even constitutionally assume a dual capacity in relation to Indian affairs as a whole. The powers vested in the Governor-General in Council by sec. 313 for the period of transition will not include powers of the Crown in its relations with the Indian States, but will be limited to those relating to British India only. The powers in relation to the Indian States will be given to the Governor-General separately and will not be governed by the provisions of the Act.

The change which will thus be brought about will be an important one, though it is not going to affect the present procedure. The change will be a formal one and will merely affect the legal and constitutional aspect; but it will also mark the end of the long established anomalous position of the States and as such April 1, 1937 is bound to be an important date

in the history of the States. The connexion of the States with the Governor-General in Council, the executive head of British India, will cease on that day. Further changes in some cases are bound to come about with the inauguration of the Federation, which will be noted in the next section. All that has to be said here is that this proposed severance of the relations of the States with the Governor-General in Council is expected to make the whole situation clear and simplify it for the changes still impending.

This complete separation of the direct relations of the States from British India will result in leaving the States quite unaffected by the establishment of provincial autonomy. The other items in the new constitution, which are going to affect the federated States, will begin to operate in relation to such States only after the inauguration of the Federation. There is, however, one solitary case where a State will be involved in the new constitution even prior to its signing of the Instrument of Accession. The question of the Berars has been settled with the Nizam and the settlement is going to affect its position in relation to British India. The position of the Berars was thus summarized by the Joint Parliamentary Committee : "It [the Berars] is administered with, but not as part of the Central Provinces. **The**

inhabitants elect a certain number of representatives, who are then formally nominated as members of the Central Provinces legislature; and legislation both of that and of the central legislature is applied to the Berars through the machinery of the Foreign Jurisdiction Act/' But as a result of prolonged negotiations, "an arrangement has now been made between the Government of India and His Exalted Highness [the Nizam], where-by, without derogation from His Exalted Highnesses sovereignty, the Berars shall be administered as part of a new province to be known as the Central Provinces and the Berars." This change is going to be effective from April 1, 1937, when provincial autonomy will be established. The Berars will no longer be ruled under the Foreign Jurisdiction Act, and, for all practical purposes save a few, it will be considered part of British India, and its subjects will be included within the term His Majesty's subjects. The few reservations are :

(1) The sovereignty of the Nizam over the Berars will continue to exist and shall not be affected by these administrative changes.

(2) For the purpose of any oath of allegiance from the Berari subjects there will be a reference to the Nizam.

(3) The qualifications of the voters for the provincial legislature or **for** the Council of State will be those included and stated in the agreement.

(4) It will be the special responsibility of the Governor of the Central Provinces and the Berars to secure that a reasonable share of the revenues of the province is expended in or for the benefit of the Berars.

These provisions will continue so long as that agreement is in force. "We think," states the Joint Parliamentary Committee's Report, "that the successful working of provincial autonomy in the Central Provinces will owe much to His Exalted Highness's wise and far-seeing action."

Lastly, it deserves to be noted that, though the separation of the British Indian provinces from the Indian States will be complete, their geographical unity will not make possible a total lack of contact between the two. Hence, during the transition and even after the inauguration of the Federation, it will be a special responsibility of the Governor of each province to protect the rights of the Indian States and the rights and dignity of their rulers. The Joint Parliamentary Committee

suggested that "the special position of the Berars should be recognized by requiring the Governor (of the Central Provinces and the Berars), through his Instrument of Instructions, to interpret his special responsibility for 'the protection of the rights of any Indian State' as involving *inter alia* an obligation upon him, in the administration of the Berars, to have due regard to the commercial and economic interests of the State of Hyderabad." Any action taken by the Governor in carrying out such special responsibilities will be in his own discretion.

The Governor-General in Council will also be enjoined to take care of the special responsibility for "the protection of the rights of any Indian State and the rights and dignity of the ruler thereof."

These changes are merely preliminary to more sweeping ones, specially in the case of the relations of the States with British India. These further changes, which will come with the inauguration of the Federation, can well be noticed now.

III.—AFTER THE INAUGUJRATION OF THE FEDERATION

With the inauguration of the Federation, all the States of India will be divided into two distinct classes; the federated States and the

non-federating States. One condition precedent to the inauguration of the Federation is that the "rulers of States representing not less than half the aggregate population of the States and entitled to not less than 52 seats in the federal Upper Chamber must have signified their desire to accede to the Federation/' And it seems impossible that all the States without a single exception will join the Federation prior to its inauguration, and, hence, the distinction on the basis of their relations with the Federation is sure to arise.

The non-federating States will continue to be wholely under and in relation to the Crown and will have nothing to do with the Federation. Keith states their position thus: "A State, which does not accede is in theory unaffected by the federation. Indirectly, of course, federation must affect deeply every State. The grant of responsible government to adjacent provinces must stimulate ambitions in the States." To the Federation of India the territories of the non-federating States will be foreign territories, and one cannot say with certainty as to how and through what channel any contact between these non-federating States and the Federation of India will be established. The geographical intermingling of the territories of these States with that of the Federation is sure to make some means of

contact necessary. Most probably these relations will be included under the head of external affairs and will be under the direct control of the Governor-General, who shall act in his discretion. The Crown, which had established such relations with each State, will be able to direct that they be used for the federal purpose also. The cases of extradition of offenders and others wherein there might be some conflict between the non-federating States and a province or any other part of British India, may be quoted as some probable examples wherein this problem might arise. Leaving aside these new problems, the relations of these non-federating States with the Crown will continue to be as they will remain during the period of transition save as regards minor formal and constitutional changes in the appointment and position of the representative of the Crown.

The situation of the federated States will be a novel one. They will enjoy the benefits or the disadvantages of a dyarchy in their own administration. They will be under the dual control of the Crown and the Federation of India. Their relations with the Federation, the federal executive, federal legislature, federal court, and other federal component units will all be examined in their proper place and it will be shown that the relations of the

States with the Federation will be limited to those matters only in which they federate. The control of the federal authority in any State shall be by virtue of the Instrument of Accession signed by its ruler, but subject always to the terms thereof and for the purposes of the Federation only. The Act, therefore, asserts no other authority over any State save such as follows from its freely executed instrument. The residuary powers will thus vest in the federating Indian States. "Outside these limits," stated the Joint Parliamentary Committee, "the autonomy of the States and their relationship will not be affected in any way by the Constitution Act."

Thus the problem of conducting the relations of the Crown with the Indian States arises. The fact that the Governor-General will be the constitutional and executive head of the Federation of India, an independent political unit, raises its own complications. While discussing the problem of the agency through which the Crown should exercise its powers in relation to the States, the Joint Parliamentary Committee wrote : "But clearly they [these relations of the States with the Crown] cannot under the new constitution be exercised on behalf of the Crown by any federal authority, save in so far as they **fall** within the federal sphere, and only then when

they affect a State which has acceded to the Federation. The White Paper proposes that (subject to the exception which we have mentioned) they should in future be exercised by the representative of the Crown in his capacity as Viceroy; and that in order to put the distinction beyond doubt, the office of Governor-General should be severed from that of Viceroy. We agree with what we conceive to be the principle underlying this proposal .....We agree that there must a legal differentiation of function in the future; and it may well be that His Majesty will be pleased to constitute two separate offices for this purpose/'

The British Government accepted the suggestion and in pursuance of the same separated the two offices. Thus the Government of India Act, 1935 provides in section 285 that "subject, in the case of a federated State, to the provisions of the Instrument of Accession of that State, nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State." It further makes clear that any power connected with the exercise of the functions of the Crown in its relations with the Indian States shall be exercised in India, if not by His Majesty, by his representatives and by a person acting under the authority of such a representative.

The exercise of such functions will not be assigned to the Governor-General of India but to His Majesty's Representative, a new office which is created for the exercise of these functions of the Crown. Such a representative will be appointed by His Majesty by a commission under the Royal Sign Manual. His duties and powers in connexion with those functions will be such as may be assigned by His Majesty.

The question arises as to whether with the separation of office it is necessary to appoint a separate person to each of the two offices. The Joint Parliamentary Committee stated its view on the point thus: "We assume that the two offices will continue to be held by the same person, and this being so, we think that the title of Viceroy should attach to him in his double capacity. This suggestion involves no departure from the underlying principle of the White Paper that, outside the federal sphere, the States' relations will be exclusively with the Crown." The Act accepts the first suggestion of the Committee and provides that His Majesty may appoint one person to fill both the offices, *viz.*, the Governor-General of India and His Majesty's Representative; but it has not given His Majesty's Representative the suggested designation of Viceroy. Thus, once again, the term Viceroy will continue to be

used without its being legally and formally recognized.

One cannot say with absolute certainty but it seems probable that one and the same person will be appointed to hold the two offices. The fact that during the period of transition the Governor-General will be solely responsible for the control of the relations between the Crown and the States points to the above-mentioned possibility.

The Act, however, does not give us much idea of the details regarding the working of the office of His Majesty's Representative. It only touches those few points wherein he will have to come into contact with or depend on the Governor-General of India or other federal officers. His Majesty's Representative is authorized to arrange with the Governors of the provinces for the discharge by the latter and their officers of functions appertaining to the Representative. In some cases^the States could not yet be brought into direct relationship with the Central Government. Hence it will render possible the continued employment of Local Governments for relations with the States, where reasons geographical or political recommend such a course.

His Majesty's Representative will not only exercise the rights of paramountcy and other functions in relation to the States but will also

have to arrange for the fulfilment of the obligations of the Crown. The King's Representative will not control any forces and, hence, in case of necessity he is empowered to requisition the aid of the armed forces for the due discharge of his functions from the Governor--General in the exercise of the executive authority of the Federation. Section 286 calls upon the Governor-General to cause the necessary force to be employed accordingly. "In this respect", Keith points out, "it is clear that special importance attaches to the combination of the office of Representative and Governor-General, for, if the two parts were in different hands, there might be grave possibilities of friction, the Governor-General doubting if his federal responsibilities were consistent with the proposed use of the forces. As it is, the combination of offices must be deemed sufficient to ensure that policies shall be made consistent with the double form of obligation on either. It may be noted that the Commander-in-Chief is Commander-in-Chief in India, not in British India only (section 4)."

For carrying out all these functions of the Crown and to provide for the whole department which will work under the authority and guidance of His Majesty's Representative vast sums of money will be needed. The Act provides that all the sums that may be thus

required to meet the expenses which will have to be incurred by His Majesty's Representative in discharging his duties and those functions, shall be paid to His Majesty by the Federation each year whether on revenue account or otherwise. The payment of any customary allowances to members of the family or servants of any former ruler of any territories in India will be made by His Majesty's Representative and will be included in such sums as will be charged on the Federation. The extra expense involved in employing the federal force on requisition from His Majesty's Representative will be classed as expenses of the Crown in relation to the States. All the expenses on this head thus incurred by His Majesty in discharging the functions of the Crown in its relations with the Indian States, shall be expenditure charged upon the revenues of the Federation. As suggested by the Joint Parliamentary Committee, this head of expenditure will not be submitted to the vote of the federal legislature.

His Majesty's Representative shall receive from the Indian States on behalf of the Crown cash contributions and payments in respect of loans and other payments due from them, which had so far been received by and formed a part of the revenues of the Government of India. If so directed these revenues shall be

placed at the disposal of the Federation. The Crown, however, reserves the right to remit at any time the whole or any part of any such contributions or payments. Section 147 of the Act provides for the remission of the contribution of any federated State on conditions which will be dealt with at length when discussing the federal finances.

There is, however, another matter in relation to the States, wherein the British Government had decided to settle all doubts which might arise with the inauguration of the Federation. There are some special cases of jurisdiction being enjoyed by the Crown in certain areas in the States, *e.g.*, at Secunderabad. This jurisdiction is based on the paramountry powers of the Crown. The Foreign Jurisdiction Act of 1890 (53 and 54 Vict, c.37) and the King's Order-in-Council of June 11, 1902, together with the notifications published under it by the Governor-General in Council, regulate the administration of these areas. So far the Berars were also being ruled under these powers, but now as a result of the agreement between the Government of India and the Nizam it will be excluded from this jurisdiction. As regards other such areas the Act provides a complete system. If a State is federated, what will be the position of such areas within it? Section 294 provides that the

Crown may in signifying its acceptance declare that the federal authority shall not apply to such areas; due notice should be given to the ruler before he executes his Instrument of Accession that the acceptance will contain such a declaration. But no such notice will be given in respect of any areas which are under the Crown's jurisdiction solely in connexion with a railway. By a later agreement between the Crown and the ruler, the Crown may relinquish its powers and jurisdiction in relation to any such area or part, and the federal authority may be extended on such terms as may be specified in a supplementary Instrument of Accession. Except where such a declaration by His Majesty has been made on the inauguration of the Federation, any authority of the Crown under the Foreign jurisdiction Act, 1890, or otherwise, shall become exercisable in the federated State by the federal authorities, including the railway authority, except in so far as any agreement may be made under Part VI of the Act for the administration of federal legislation by the ruler of the State. In the matters concerned, the law in force in the State will be deemed to be the federal law only so far as it can be re-enacted by the federation under the powers delegated by the Instrument of Accession. If this part of the law is not re-enacted, amended

or repealed by the federal legislature, it shall cease to have effect after five years from the date when the accession of the State becomes effective.

In all other cases, the powers of the Crown in a State shall remain unaffected. The Crown will have the power to relinquish such authority. The Order-in-Council of June **11,** 1902 and all delegations, rules, and orders **are** reaffirmed and declared to be in full force until the Order-in-Council is amended or revoked by a subsequent order. It is further enacted that an order under the Act of 1890 may validly authorize judicial or administrative authorities to act in respect of a State even when situated outside the State. The appeal on such cases tried by a British court in **a** federated State will lie to the Federal Court. The Crown can, however, still determine by what courts British subjects and subjects of foreign countries shall be tried in respect of offences committed in Indian States.

Outside these provisions the Government of India Act, 1935 is silent about the exercise of the function of the Crown in its relations with the Indian States. The White Paper had definitely stated that with the powers of the Crown in relation to the States outside **the** federal sphere, the Constitutional Act will not be concerned. The Act, however, does enjoin

it to be a special responsibility of the Governor-General and also of the various provincial governments to protect the rights of any Indian State and the rights and dignity of the ruler thereof. "We have already expressed the view," wrote the Joint Parliamentary Committee, "that this special responsibility only applies where there is a conflict between rights arising under the Constitutional Act and those enjoyed by a State outside the federal sphere. It may be necessary for the Governor-General to deal with such a conflict not only in his capacity as the executive head of the Federation but also in his capacity as the representative of the Crown in its relations with the States; but his special responsibility must necessarily arise in the first capacity only, his action in the second capacity being untouched in any way by the Constitutional Act."

Moreover, "external relations/* which will be a federal subject, though a reserved one, will not include relations with the Indian States in matters in which they have not agreed to federate. "Such matters/' says the Joint Parliamentary Committee, "will be dealt with personally by the Viceroy as a representative of the Crown. It follows from this that any State matter which a ruler has not accepted as federal in the case of his State will not be subject to discussion in the federal or

a provincial legislature, unless the Governor-General or the Governor, considers that British Indian interests are affected/'

Thus, with the inauguration of the Federation, the non-federating States will attain in all matters without any exception and the federated States, in all matters not expressly ceded to the Federation, what the Indian States had long desired, *viz.*, direct relation^ with the Crown through the Viceroy, and the protection promised in their treaties and engagements have been affirmed in a manner which, according to Lord Willingdon, should satisfy the most doubtful amongst thie Princes.

But the constitutional position of the Princes in respect to the functions of the Crown in its relations with them does not undergo a substantial change. Though no indication is given in any constitutional document save a slight reference in the Report of the Joint Parliamentary Committee, it seems that the whole of the present Political Department will be separated from the Government of India and will be put under the Representative of His Majesty and the political officers will carry out these functions of the Crown under the authority of the Representative. The Princes have gained one point, *viz.*, the establishment of their direct relations

with the Crown, but they have failed to make the Political Department responsible to them. The Joint Parliamentary Committee definitely says that "the right to tender advice to the Crown in this regard will lie with His Majesty's Government."

The only way in which the Princes as a body can make their voice heard and their opinions considered by the Political Department and, further, by His Majesty's Representative, as its supreme head, is through the only constitutional body of the Indian Princes, *viz.*, the Chamber of Princes. In some quarter doubts are expressed whether the existence of the Chamber of Princes is compatible with the inauguration of the Federation or is at all necessary after that event. Such ideas are evidently based on a mistaken conception of the functions of the Chamber of Princes. It is a deliberative, consultative, and advisory body. Omitting all the details of ordinary routine, its chief functions are:

(i) To initiate in accordance with the rules of business proposals and to make recommendations relating to the preservation and maintenance of treaties, and of the rights and interests, dignities and powers, privileges and prerogatives of the Princes

and Chiefs, their States and the members of their families;

(ii) To discuss and to make representations upon matters of imperial or common concern, and subjects referred to the Chamber for consideration by the Viceroy:

After a careful examination of the matters in which the States may federate, it is perfectly clear that there will still be many things which will not come within their scope and that in all these matters the States will deal with the Representative of His Majesty. Leaving aside the internal affairs of individual States or their rulers or the relations of individual States with His Majesty's Representative, there will be many question which will be of common concern to all the States. The problem of paramountcy, the question of political practices, the details of the status, dignity and *izzat* of the States on ceremonial occasions and many other like matters can be dealt with by the Princes through the Chamber. It is evident that the effect of the unanimous opinion of the Princes in such matters is sure to carry weight with His Majesty's Representative. Hence it should be clearly realized that the existence of the Chamber of Princes is not only compatible with the Federation but becomes all the more necessary with its estab-

lishment. In the exercise of the functions of the Crown in its relations to the Indian States, not only will the Crown derive advantage from the "prudent counsels and considered advice of the Chamber/' but the Princes are also sure to gain a lot.

It is a pity that various circumstances have resulted in an *impasse* in the affairs of the Chamber and the deadlock seems to be leading that body to an untimely end. But it should be clearly realized that if no efforts are made by the Princes to revive it,—it hardly matters whether in its present or some reorganized form—the interests of the Princes in their relations with the Crown may seriously suffer in the future.

When speaking at the first Round Table Conference, H. H. the Maharajah of Bikaner clearly stated the possible situation of the States when once the federal government is established, in the following terms. He said: "We claim that in the questions which arise concerning the purely internal! affairs of the States their case should not go by default. The King's Vicegerent in India is even now burdened with many and grievous responsibilities, which will now be weighted under the new system of government. . . . We think that it will be impossible for any man, however able, amid these grave preoccupations, to give

adequate personal attention to these questions affecting the States which come up for day to day decision and for which he will be directly responsible to the Crown. For these reasons some of us press for the appointment of an Indian; States Council, to work with the Political Secretary and to advise the Viceroy of the day." The establishment of any such Council is not yet thought of by the Crown and the lack of unity among the Princes has put an end to all possibilities of its establishment in the near future. Hence, unless and until the Princes can close their ranks, restore some form of unity among themselves, and once again begin to deliberate together, they should expect nothing but a definite decline in their importance, status, dignity and *izzat,* ever-increasing restrictions on their remaining powers and sovereignty, a gradual decline in their claims and rights, and, above all, a slow but steady eclipse of their dynasties.

CHAPTER TWO

THE INDIAN FEDERATION

I.—THE UNIFICATION OF INDIA

"His MAJESTY'S GOVERNMENT has taken note of the fact," announced the Prime Minister on January 19, 1931, "that the deliberations of the Conference have proceeded on the basis, accepted by all the parties, that the Central Government should be a Federation of All-India, embracing both the Indian States and British India in a bi-cameral legislature." And the Government of India Act, 1935 gives the precise form and structure of the new federal government. "The essential principles of the new federation," says Keith, "were obviously derived from those in operation in Canada and Australia, both of which Dominions owed much to federalism in the United States. Continental models furnished little that could be adopted, for the problem was new." The result was that "the form of constitution embodied in the Act is unique and in many respects illogical in theory. It is regarded as 'a typical British compromise\"

The unique character of the Federation of India was the result of two fundamental facts, the disparate nature of the federating units

and the peculiar relationship of the Crown to India as a whole. No two constitutions in the world can ever be alike, but in the case of India the differences were greater, and peculiarities—historical as well as political—contributed to the creation of a strange type of federation. Obviously, the problems that had to be faced were quite new, and no analogy could be searched out to help the constitution-makers in their great as well as difficult task.

The Federation of India at its inauguration will include ten Governor's provinces and Indian States representing not less than half the aggregate population of the States and entitled to not less than 52 seats in the **federal** Upper Chamber, the rulers of which States have signified their desire to accede to the Federation. The Federation will also include the 'Chief Commissioners' provinces.'

Thus the federating units which will constitute the Federation can be classed into two separate divisions: British Indian provinces and the Indian States. "None of the units to be federated," says Keith, "had international status of any kind *inter se*, but on the one hand the provinces had been under the strict control of the Central Government and **were** now to be accorded a wider autonomy, while on the other the States had definitely to accept the restrictions of a federal system in place of

a vague and varying measure of control by the Crown."

The constitution of British India and the development of its government has been on unitary lines. It is true that the federal ideal was envisaged more than once for British India after the publication of the Montagu-Chelmsford Report. Nevertheless the constitution brought into force by the Government of India Act, 1919 was only 'a unitary constitution contemplating federalism', and even the Simon Commission felt that "the necessary conditions for bringing a federal Constitution into being are not yet present." "The provinces", it argued, "must first become political entities" and added, "notwithstanding the measure of devolution on the provincial authorities which was the outcome of the Act of 1919, the Government of India is and remains in essence a unitary and centralized government, with the Governor-General in Council as the key-stone of the whole constitutional edifice."

Hence the grant of provincial autonomy was sure to necessitate a readjustment at the centre. Even if it is admitted that provincial autonomy might have been the outcome of provincial development and the idea of federal form of union of autonomous provinces would eventually have originated from the provinces,

the fact that this development is coming from the centre and that the provinces federating had in the past been merely subordinate units of the Central Government and not so many independent States desiring not unity but union, are bound to leave their mark on the relations which will exist between the federal government and the federating provinces under the new federation.

As against this the other group of federating units consists of the Indian States. Though they all differ widely from one another in their size, relations with the Paramount Power, internal political development, status, and dignity, "the one feature common to them all is that they are not part, or governed by the law, of British India." Besides, notwithstanding the intervention of the Paramount Power, which has varied according to circumstances and can be summed up only in vague terms, they all possess some internal sovereignty, however diverse might be its measure in different instances, and individual unity and status. The Princes had felt aggrieved at even what restrictions the Paramount Power imposed on them and, hence, the Butler Committee rightly felt that "there is need for great caution in dealing with any question of federation at the present time, so passionately are the Princes as a whole attached to the

[maintenance in its entirety and unimpaired of their individual sovereignty within their States." Naturally, the Princes were not inclined to join any federation unless and until some of their essential demands were accepted.

It was really fortunate that the British Government did not accept the British Indian view of the relationship between the States and British India. Acceptance of that view would naturally have resulted in the development of a relationship as between a suzerain power and feudatories between the two Indias, and, then, any future development of India on the basis of an all-India federation embracing the States as well as British India would have been impossible. It is not possible to imagine the federation of a suzerain and its feudatories, and still less a federal scheme which can create a union while at the same time maintaining the feudal relationship. A forced acceptance of this position by the Princes and the resulting line of demarcation between the British Indian people and the Indian States subjects would have poisoned the whole national life of India for ever.

B<it *#he British Government not only refused to accept the British Indian view of its relationship with the States, but also decided that if at all a federation should come into

existence, it must be an all-India system embracing the States also. The Joint Parliamentary Committee believed that "the unity of India on which we have laid so much stress is dangerously imperfect so long as the Indian States have no constitutional relationship with British India." Moreover, the economic ties which exist between the States and British < India are such that they cannot be ignored." Lastly, the Committee agreed with the Statutory Commission in thinking that "a responsible British India centre is not a possible solution of the constitutional problem, or would, at most, only be possible at the price of very large deductions from the scope of its responsibility."

Consequently, when the question of an all-India federation was taken up, some difficulties had to be encountered with. "The main difficulties," wrote the Joint Parliamentary Committee, "are two: that the Indian States are wholly different in status and character from the provinces of British India, and that they are not prepared to federate on the same terms as is proposed to apply to the provinces/' The Committee definitely proposed that in their judgment "it is desirable, if not essential, that the same Constitution Act should make provision both for the establishment of autonomy in the provinces and also for the

establishment of the federation", even though the establishment of provincial autonomy was likely to precede the inauguration of the Federation. It further considered the States to be an essential element in an all-India Federation and approved of the proposal in the White Paper that no proclamation inaugurating the all-India Federation should be issued until the rulers of States, representing not less than half the aggregate population of the States and entitled to not less than 52 seats in the federal Upper Chamber, have signified their desire to accede to the Federation.

The result was an obvious anomaly, a federation composed of disparate constituent units, in which the powers and authority of the Central Government will differ as between one set of constituent units and another. Keith very clearly sums up these abnormal features when he writes: "Thus, while the provinces are subject to a single system applicable to all, the States are definitely exempt from the application of a number of federal powers of legislation, unless they expressly accept them, which is not expected to be the case. In the same way the executive authority of the Federation is uniform in regard to the provinces, but it may vary as regards the States. Moreover, both as regards federal legislative and executive authority, there may

be variations between States, though naturally a certain uniformity is intended. The States again differ from the provinces in the essential fact that in each case adhesion is voluntary, while the provinces have federation imposed from above."

Obviously, the Indian States have greatly influenced the form of the Federation of India. But their influence is not limited to that alone. The problem of the Indian States has also made it necessary to make its formation compatible with their legal and constitutional position, and the method and the extent to which they would federate depended on this fact.

II.—THE FEDERATION AND THE INDIAN STATES : THE METHOD OF THEIR ACCESSION

"The connexion of the States with the Federation," declared the Prime Minister, "will remain subject to the basic principle that in regard to all matters not ceded by them to the Federation their relations will be with the Crown acting through the agency of the Viceroy." Such a federal constitution was to be evolved out of the present system of government in India. "The dominion and authority of the Crown extends over the whole of British India and is exercised subject to the

conditions prescribed by the existing Government of India Act." Besides, "the Crown also possesses rights, authority and jurisdiction elsewhere in India, including those rights which are comprehended under the name of paramountcy. All these are at present exercised on behalf of the Crown, under the general control of the Secretary of State, by the Governor-General in Council."

In order to reconstitute the whole system in India on the principles laid down by the Prime Minister in his announcement of January 19, 1931, the Government of India Act, 1935, enacts that all those rights, authority and jurisdiction pertaining or incidental to the government of the territories in India for the time being vested in the King-Emperor, or exercisable by him in or in relation to any other territories in India, whether heretofore exercisable 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, will all be resumed by His Majesty the King-Emperor. All these will then be grouped into two divisions. In the first group will be those powers, which are connected with the exercise of the functions of the Crown in its relations with Indian; States.

In the second group will be the powers relating to federation and other parts of India, which will include those powers also, which are vested in the Crown for the federal purpose by the federated States by the provisions of their Instruments of Accession.

The first group of powers will remain vested in the Crown and, if not exercised by His Majesty, shall be exercised in India only by His Majesty's Representative or those acting under his authority, while the second set of powers will be divided between the Governor-General of India and other authorities and officials as directed by the Government of India Act, 1935. The supreme authority in India, so far as the Federation is concerned, will be the Governor-General of India. Though for the sake of convenience one and the same man might be both the Governor-General of India and the Representative of His Majesty, the two offices will be quite distinct from each other, and the appointment to each will be made by His Majesty by a separate commission under the Royal Sign Manual.

Thus, in matters ceded to the federal government, the Indian States will be under the Governor-General of India. "Subject in the case of a federal State to the provisions of the Instrument of Accession of that State, nothing

in this Act affects the rights and obligations of the Crown in relation to any Indian State," which will be directly under the control of His Majesty's Representative. The details of the office of His Majesty's Representative and of the financial provisions for the upkeep of his office and department, and some other provisions of the Act relating to the relations of the States with His Majesty's Representative will be discussed when dealing with the relations of the Crown with the Indian States.

So far as the States are concerned, the only document which will govern their relationship with the federal executive and other federal authorities, is the Instrument of Accession. Section 6 of the Government of India Act gives us the details of its contents and other related questions. The original wording of clause 6 of the Government of India Bill was not acceptable to the Princes, and they refused to federate if the clause was not suitably amended. It had to be amended and, before being finally passed by the Imperial Parliament, was duly approved of by the Princes and ministers of many important States as being acceptable to them.

The accession of a State to the Federation will be effected by the King's acceptance of an Instrument of Accession executed by the ruler personally for himself and for his heirs and

successors. The Instrument should **declare** that he accedes to the Federation as established under the Act, with the intention that His Majesty the King-Emperor, the Governor-General of India, the federal legislature, the federal court, and any other federal authority established for the purposes of the federation shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the federation, exercise in relation to his State such functions as may be vested in them by or under the Act. He should also assume the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable under his Instrument of Accession. Thus a Prince accedes to the Federation by virtue of his Instrument of Accession and not of the Act. No Acts passed by the British Parliament have validity within the borders of any Prince's territories, and as such this Act can also assert no authority over the State save such as follows from the Prince's freely executed Instrument.

It must, however, be noted that once an Instrument of Accession is signed and accepted by His Majesty, it irrevocably and permanently limits a Prince's sovereignty to the extent to which he accedes to the Federation. The right of secession **from** the

Federation is not granted to any of the States-members. The Act is silent on this point, but Sir Samuel Hoare made it clear when giving his evidence before the Joint Parliamentary Committee. A ruler might, by a supplementary Instrument executed by him and accepted by His Majesty, extend the functions of the federal authorities in relation to his State but he could in no case diminish it. The Act, however, provides one exception where a signed Instrument of Accession may lapse, and a ruler may be deemed not to have acceded to the Federation even when he had signed the Instrument of Accession and the King had declared his assent to the same, *viz.*, when an Instrument of Accession is made conditional on the establishment of the Federation on or before a specified date and the Federation is not established within that time-limit.

The Instrument must specify the matters in which the federal legislature may make laws for the State as also any limitations of that legislative power and of the federal executive power. By a subsequent Instrument duly executed by the ruler and duly accepted by His Majesty the extent of federal powers can be extended. Thus the residuary powers so far as the States are concerned will remain with the States. The Instrument of Accession as well as any supplementary Instrument should

be signed by the ruler himself. All other acts in a State in its relation to the Federation may be done by any person for the time being exercising the powers of the ruler of the State.

Each instrument of accession must provide that a number of provisions of the Act in Schedule II (given as Appendix B to the next chapter) may be amended without affecting the State, unless accepted by a State by mean's of a supplementary Instrument of Accession.

His Majesty, however, reserves the right to refuse to accept any Instrument of Accession if it appears to him that its terms are inconsistent with the scheme of federation. The Joint Parliamentary Committee suggested that the lists of subjects accepted as federal by rulers willing to accede to the Federation ought to differ from one another as little as possible, and the deviations from the standard list should be regarded in all cases as exceptions and not be admitted as of course. Such exceptions should only be admitted if the State can justify it when invited to do so on the score of special conditions affecting that State. The Committee also stressed that, as far as possible, the Instrument of Accession should in all cases be in the same form, even though the lists of subjects might not be identical. "The interpretation of federal rights in a State may well turn on wording,

and it would embarrass the courts if they had to construe Instruments differing verbally." A provisional draft of the general form of the Instrument of Accession was drawn up and published in a Parliamentary Paper (Cmd. 4843, pp. 43-44) but the Princes objected to its form as well to some of its terms. It has since been revised in the light of the Government of India Act, 1935 and of the criticisms directed against it. The revised draft (given as Appendix A. to this chapter) is now ready and is being circulated among the States individually with a view to early discussion with the rulers.

According to the proposed revised draft, every Instrument of Accession of a State shall consist of two parts: the main document and its schedules. First of all there shall be the text as given in the draft Instrument duly signed and affirmed by the ruler of the State. It might or might not contain any of the additional clauses, which may be inserted only in proper cases. These additional clauses refer to any agreements made by the ruler of the State for administering the federal laws in that State, the exclusion of the operation of sections 130-33 of the Act referring to interference with water supplies, and the territories within a State to be governed under section 294(1) by the British Government.

Attached to this main document there shall be some schedules, and clause 8 of the Instrument definitely states that "the schedules hereto annexed shall form an integral part of the Instrument/' Clause 3 provides that the first schedule shall specify the matters with respect to which the federal legislature may make laws for this State and also states the limitations to which this power of the federal legislature is to be subjected. The second schedule shall contain the necessary particulars to enable due effect being given to the provisions of sections **147** and **149** of the Act. The insertion of the additional paragraphs may necessitate the addition of some schedules. One may be necessary for giving the terms of any agreement agreed upon between the ruler of a State and the Governor-General of India, regarding the administration of the federal laws in the State. Another might contain the list of areas which might be governed according to section 294 (1).

The revised draft of the Instrument of Accession duly embodies all the principles enunciated by the British Government and embodied in the Government of India Act, 1935. Its terms safeguard the autonomy of the States against any encroachments, define the powers of the federal legislature, and exactly limit the authority of the federal executive.

Clause 7 clearly lays down the position and authority of the British Parliament in respect of and over the Indian States.

But when once the Instrument is accepted, it is final and the validity of any such document after the establishment of the Federation will not be questioned. Copies of the Instrument or the supplementary Instrument and His Majesty's acceptance thereof shall be laid before Parliament. Judicial notice of all these documents shall be taken by all courts.

As has already been stated, the Federation can be inaugurated only when a certain number of States have acceded to it. The Act provides that the States which do not federate before the inauguration may do so within twenty years of that event, and during this period the federal legislature is given no power over such accession. Such requests of a ruler shall be transmitted to His Majesty through the Governor-General. But thereafter no such requests shall be transmitted unless both chambers of the federal legislature have addressed the King praying that the State may be admitted to the federation. "The period is somewhat long," remarks Keith, "but no doubt any later accessions may be weighed by the Crown in the light of feeling in the legislature, though it has no formal *locus standi*."

III.—THE INAUGURATION OF THE FEDERATION

The inauguration of the Federation depends on the accession of a required number of States. When once that term is satisfied, each of the two Houses of the British Parliament must present an address to the King in that behalf; and only then might the King appoint a day on which the Federation of India shall be inaugurated. The proposal to make an address from both Houses of Parliament a condition precedent to the Federation was justified by the Joint Parliamentary Committee in these words : "We approve this proposal, because Parliament has a right to satisfy itself not only that the prescribed number of States have in fact signified their desire to accede, but also that the financial, economic, and political conditions necessary for the successful establishment of the Federation upon a sound and stable basis, have been fulfilled."

The Committee had also noted that the establishment of autonomy in the provinces was likely to precede the establishment of the Federation, and they further added that this interval should not be longer than was necessitated by administrative considerations. Hence the Act provides that it be brought into force by parts and in pursuance of that provi-

sion His Majesty has ordered by an Order-in-Council dated July 3, 1936, (The Government of India—Commencement and Transitory Provisions—Order, 1936) that the provisions of the Act, other than those of Part II thereof and other than those specially mentioned in the Order, should come into force from April 1, 1937. The Government of India Act, 1919 will be automatically repealed with the introduction of provincial autonomy, and the constitution and powers of the Central Government with its legislature will be governed, till the inauguration of the Federation, by the provisions contained in Part XIII of the Government of India Act, 1935 as modified by the Order-in-Council mentioned above.

But the period of transition does not affect the affairs of the States, save as regards a readjustment of their relationship with the Government of India and in the settlement of the question of the Berars. As these adjustments are based on the problem of the relationship of the States with the Crown, they will be discussed in that connexion. The real contact of the States with the other federating units, the provinces, and with the newly created federal authorities will be established only on the inauguration of the Federation and, then too, it will be limited to the federating States only.

IV.—FEDERATION AND RESPONSIBLE GOVERNMENT IN INDIA

The Federation of India is not only unique, because of its abnormal features resulting from the differing powers and authority of the Central Government over the different federating units, but it also makes clear one point. It implies that the term 'Federation' merely connotes a special form of organization among various component units, and should in no case be confounded with the nature of its government. In the past, whenever any federations were established they created responsible or independent governments. The federal governments in Switzerland and U.S.A. were brought into being by the union of separate independent units and in their federated forms created independent states. The federations of Canada and Australia were created by the union or reorganization of colonies which had already been enjoying responsible government. In Canada the system of responsible government had permanently triumphed in 1848, while the British North America Act, which brought into existence the present federal government there, was enacted nineteen years later. Similarly, in Australia, the bill for the establishment of the Commonwealth of Australia

was passed in 1900, but many of the States, which later composed the Commonwealth, had enjoyed responsible government even since 1855. Naturally, the Central Governments which were established in Canada and Australia after the inauguration of the federations were responsible governments. Hence federal governments have come to be considered as synonymous with responsible governments; the constitution of India's Federation is an exception to that general conception.

At the first session of the Round Table Conference the Princes had made clear that they could only federate with a British India which was self-governing. H. H. the Maharajah of Bikaner was quite explicit on this point and said : "With regard to responsibility at the Centre, I desire to offer my wholehearted support for the same. The Princes have made it clear that they cannot federate with the present Government of India and we are not going to make any sacrifices and delegate any of our sovereign powers unless and until we can share them honourably and fully with British India in the federal executive and legislature. We cannot come in with responsibility to Parliament, though we realize the necessity for safeguards and guarantees, specially during the transitory period, which is another matter." Obviously,

the Princes, too, desired what British India most yearned for, *viz.*, responsible government, with certain very essential safeguards which were to continue only during the period of transition.

The British Government accepted the position with some modifications and the Prime Minister announced : "The view of His Majesty's Government is that responsibility for the government of India should be placed upon legislatures, central and provincial, with such provisions as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances, and also with such guarantees as are required by minorities to protect their political liberties and rights. In such statutory safeguards as may be made for meeting the needs of the transitional period, it will be a primary concern of His Majesty's Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through the new constitution to full responsibility for her own government/'

Political events and changing circumstances led to the strengthening of the safeguards and a concentration of the real power in the hands of the Governor-General and the Imperial Parliament. The new constitution

framed by the Government of India Act, 1935, does not in any way give what the Princes asked for. Keith emphatically declares that full responsible government is denied in a greater measure in the Federation.

The supreme authority vests in the Parliament. The preamble of the Government of India Act, 1919, which has been retained for this act also, definitely says: "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." It is just in accordance with this spirit that the power to alter the constitution is entirely vested in the Home Government and the British Parliament. In matters of reserved subjects, *viz.*, defence and foreign relations, and in all matters in which either the Governor-General or the Governor acts in his own discretion or individual judgment he is responsible to the Secretary of State. The control of the Home Government, responsible to the Imperial Parliament, is not limited to federal affairs only, but the Joint Parliamentary Committee asserts that the right to tender advice to the Crown in exercise of its functions in its relations with the Indian States will also lie with His Majesty's Government.

Moreover, the Central Government **under,** the constitution will be much stronger, even though it will be a federal government, when compared to the existing Central Government which is unitary in its character and as such is expected to be all the more strong. This position was admitted even by the Joint Parliamentary Committee. The establishment of dyarchy at the centre, the constitutional provision of the non-votable items among those of expenditure and, above all, the series of special responsibilities and matters in which the Governor-General is expected to act in his own discretion, go a long way to cut at the root of what little responsibility has been granted. In the same way, the special responsibilities of the Governors also restrict, though to a lesser extent, the autonomy of the provinces.

The Imperial Parliament does, however, feel gratified that it has once again reiterated its promise to grant responsible government to India by retaining the preamble of the Government of India Act, 1919, which states that

(1) It is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the pro-

gressive realization of responsible government in British India as an integral part of the Empire; and

(2) Progress in giving effect to this policy can only be achieved by successive stages.

But the new constitution does not posses any seed for its automatic development towards a really responsible government, nor does it mark the various steps by which that goal will be achieved. One can agree with the Simon Commission that "the working of a constitution under a time limit inevitably breeds certain evils[5]", but one cannot see why any constitution, and specially one which is obviously more or less a stage towards a further goal, should be devoid of any machinery for further development.

The Joint Parliamentary Committee felt the need for flexibility in the constitution, "so that opportunity may be afforded for the natural processes of evolution with a minimum of alteration in the constitutional framework itself/' "We are also impressed/' it, however, went on to add, "with the advantage of giving full scope for the development in India of that indefinable body of understanding of political instinct and of tradition, which Lord Bryce, in the passage which we have quoted, postulates as essential to the working of our consti-

tution. The success of the constitution depends, indeed, far more upon the mannei and the spirit in which it is worked than **upon** its formal provisions." But as the Committee itself previously admitted, "experience has shown only too clearly that a technique which the British people have thus painfully developed in the course of many generations is not to be acquired by other communities in the twinkling of an eye; nor when acquired is it likely to take the same form as in Great Britain, but rather to be moulded in its course of development by social conditions and national aptitudes." And while such a technique cannot be acquired at an early date, the conventions of the constitution will begin to take shape from the first day. One may admit that, so far as the provinces are concerned, the conventions might influence and mould the formal framework of the constitution. But in the case of the Central Government the dyarchy is likely to hamper all such development. Its past failure in the provinces can well point to its possible failure in the central sphere. Again, one must realize that not even these conventions of the constitution can do much to make the central federal system really responsible to the legislature. One thing, however, is beyond dispute. The feature which is supreme in a federal system

is the constitution itself. People may differ about the extent to which the Government of India Act of 1935 establishes responsible government in India, there cannot be two opinions on the point that it does establish a federal system.

CHAPTER THREE

THE FEDERAL CONSTITUTION

I.—ITS FEDERAL NATURE

THE NEW CONSTITUTION for India is essentially federal in nature and exhibits all the characteristics of a federal government in spite of some abnormal features noticed in the previous chapter. Its development and growth, the conditions of its working, its aims—all fulfil the required essentials. The two conditions which a federal state requires for its formation are that the countries must be capable of union and that there must exist a federal sentiment. No one can deny that geographically India is one and indivisible and its partition, specially into the States and British India, is arbitrary and is in no **way** based on any deep cleavage which could stand in the way of their coming together. The history of India does record its unity under various empires in the past, and thus India does feel inspired to achieve a political **union** of all its component units. Culturally **and** socially too the unity of India is unassailable. But at the same time it must be admitted **and** definitely accepted that the course of political events during the last two centuries **has**

resulted in the erection of political barriers and growth of States which possess political organization, unity, and status of their own and are not willing to give these up now. The growth of provincialism among the people of the various provinces, based on their own vernaculars, past history, and separate political organization, has evidently given internal unity to each of these provincial units and will further be developed when in the near future they will gain the status of autonomous states, which they have long been claiming. Thus, while the separatist tendencies do exist, the feeling and desire for union is also there, and even the staunchest advocates of the individuality of the component units of the Federation like the Indian Princes, have felt in the past the need for a union between them and British India. Since 1918 they have been pressing for some organization or method for common deliberations between the two Indias on matters of common concern. The existence of the federal spirit cannot be denied. Even the extreme section of the Indian National Congress accepted this form of union by accepting the Nehru Report, which recommended the federal form and gave it the name of the 'Commonwealth of India'. It was also accepted by Mahatma Gandhi when he agreed to go to the second Round Table Conference.

"A federal state," writes Dicey, "is a political contrivance intended to reconcile national unity and power with the maintenance of 'state rights'." "From the notion," he further adds, "that national unity can be reconciled with state independence by a division of powers under a common constitution between the nation on the one hand and the individual states on the other, flow the three leading characteristics of completely developed federalism—the supremacy of the constitution, the distribution among bodies with limited and co-ordinate authority of the different powers of government, the authority of the courts to act as interpreters of the constitution." And all these characteristics are fully present in the federal constitution of India.

The constitution envisaged by the Government of India Act, 1935 and the other documents supplementing it, is supreme, and the Federation of India derives its existence from the constitution. All the powers that will be exercised therein by the federal authorities and the federal officers will be on the basis of the provisions of this Act. Obviously enough the constitution is, as it should be, a rigid written constitution, and all possibilities of its amendment are definitely and strictly restricted.

Then again, there has been drawn up an elaborate division of powers between federal and provincial governments; in the case of the Indian States it will be made by the various Instruments of Accession. The fact that the division of power will differ with each unit, and the residuary jurisdiction will not vest with the same body in every case, do not in any way detract from this federal characteristic of the division of powers. Besides, the interpretation of the constitution will rest with the courts.

Two characteristics of the new constitution of India may, however, be put forth as being incompatible with federalism. Firstly, it may be argued that the central government established by the new Act is too strong to let the constitution become truly federal, and hence it is more akin to the Union of South Africa. But in reality this is not the case. The emergence of a strengthened central government is the outcome of two factors. The Joint Parliamentary Committee definitely recommended such a central government as essential for protecting the new constitution from one of the inherent defects of federalism, *viz.*, weakness of the central government. It was considered all the more desirable because a unitary central government which was already weak, was to be turned into a federal

government, and, thus, there was a possibility of the centrifugal tendencies becoming much stronger than was permissible in a federal constitution. The possibility of a breakdown of the federal constitution in the future as a result of these centrifugal tendencies had to be averted. Again, the fact that the final responsibility yet rests with Parliament has also contributed to this result. But the strengthened centre does not in any way detract from the federal nature of the constitution. So far as the Indian States are concerned, they will not be greatly influenced by the central government; the interference or influence of His Majesty's Representative is obviously outside the scope of the federal scheme. Besides, the autonomy of the provinces will not be greatly affected by the strong centre. As the Joint Parliamentary Committee remarks, even without responsibility at the centre, the powers of the provincial governments would not have been affected. "In India/' says Keith, "the Governors of the provinces are subject to the control of the Governor-General subject to the approval of the Secretary of State, in all matters in which they are required to act at their discretion or in their individual judgment." Thus, the final authority does not in a way vest with the central government but somewhere else and as such, though in theory

the central government is vested with strong control over the provinces, in reality it will not be so. The Governor-General is to be made to look after the provinces only because, being the man on the spot, he could better judge and take into consideration all the facts; but, as has been already stated, he will have to obtain the approval of the Secretary of State.

Secondly, it might be urged that the lack of full responsibility in the federal legislature, and the existence of a body superior to it, are serious drawbacks in the federal nature of the new constitution. But in reply it can well be asserted that according to a strict interpretation of constitutional law this objection cannot stand. The legal result of this lack of responsibility and the existence of a superior authority over the federal legislature will be to make the legislature a non-sovereign law-making body. But Dicey is definitely of opinion that "every legislative assembly existing under a federal constitution is merely a subordinate law-making body, whose laws are of the nature of bye-laws, valid whilst within the authority conferred upon it by the constitution but invalid or unconstitutional if they go beyond the limits of such authority." From the legal and constitutional point of view, it does not matter much whether the supreme authority vests in the Parliament of Great

Britain, in the constitution itself, or the people at large, for whatever be the case, the federal legislature does remain a non-sovereign body. Though long before the year 1931 in practice, and since then in theory too, the sovereignty of the United Kingdom and the supremacy of the British Parliament in the internal affairs of Canada and Australia had ceased, its existence during the early years of the federations cannot be denied. The imperial control in internal affairs existed and extended to the amendment of the constitution and the position of the Governors; and judicial appeals from the federal courts to the Privy Council were permitted. The conduct of foreign affairs and the defence of these federal Dominions were then the concerns of the Imperial Parliament only.

Hence one cannot help agreeing with Keith when he says of the Indian federal constitution that "it is truly federal, and therefore it differs essentially from the constitution of the Union of South Africa, which, under a semblance of federalism due to historical causes, is essentially unitary."

II.—THE AMENDMENT OF THE CONSTITUTION

"Nothing in this Act," provides the Government of India Act, 1935, "shall be taken to

empower the federal legislature, or any provincial legislature, except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law amending any provisions of this Act, or any Order-in-Council made thereunder____" (section 110). The Joint Parliamentary Committee believed that it was not practical politics to confer constituent powers on the central or provincial legislatures there and then. "With a constitution," it pointed out, "necessarily so framed as to preserve so far as may be a nice balance between the conflicting interest of Federation, States and Provinces, of minority and majority, and indeed, of minority and minority, and with so much that is unpredictable in the effects of the interplay of these forces, it is plain that it would be a matter of extreme difficulty to devise arrangements likely to be acceptable to all those who might be affected. . . . We do not think that the question is one of immediate importance, since we should have felt bound in any event to recommend that the main provisions of the Act should remain unaltered for an appreciable period, in order to ensure that the Constitution is not subjected at the outset to the disturbances which might follow upon hasty attempts to modify its details." "As was inevitable in the circumstances," Keith remarks,

"the Act confers on the Federation no general constituent power, nor does it give any authority to the provinces, such as is enjoyed by the provinces of Canada and the States of the Commonwealth to mould their own constitution in detail, within the federal framework." Thus the power to change the constitution is vested only in the Imperial Parliament.

But this power of the Imperial Parliament to amend the constitution is also limited, because in the form of Indian States there are units in the Indian Federation over which it has no authority and to which its Acts are not applicable. The Government of India Act, 1935, cannot also assert any authority over any State save such as follows from the Instrument of Accession freely executed by its ruler. Clause 7 of the draft Instrument of Accession states the position by asserting that "nothing in this Instrument shall be construed as authorizing Parliament to legislate for or exercise jurisdiction over this State or its ruler in any respect. Hence any amendment which is likely to affect the terms of any Instrument of Accession, will create difficulties and, legally, either the amendment will not be applicable to the States or it will invalidate the Instruments of Accession executed by the rulers of the States and accepted by His

Majesty. Therefore, except when the States are ready to alter their own Instruments of Accession and accept the new provisions affecting their original Instrument by agreeing to execute supplementary ones, the scope of the amendments of the constitution by Parliament is limited to the subjects mentioned in the Second Schedule (given as Appendix B to this chapter). On May 26, 1935, speaking in favour of the Government amendments to Clause 6, the Attorney-General said, "Any amendment of a protected provision (not comprised in Schedule II) will give a State the right to reconsider its position, because the Instrument of Accession was made upon a certain basis and an amendment or alteration of a protected provision has changed that basis." This would mean the creation of a very difficult situation, for the Parliament cannot think of making any amendments in a protected provision without first obtaining the consent of the federated States, and any such move without the consent of the federated States will seriously endanger the federal constitution itself.

Parliament, however, does possess full authority to make laws and amend the constitution so far as its relates to and affects British India only, save when such amendments were likely even indirectly to affect thfc

relations of the States **and** British India *inter se.* A list of such subjects, wherein amendments can be made without affecting **the** accession of a State, is given in the Second Schedule of the Act, and it will be a term in each of the Instruments of Accession that no such amendment made by Parliament, unless accepted by a State by a supplementary Instrument of Accession, shall extend the functions exercisable by any federal authority in relation to the State. Keith is of opinion that clause (5) of section 6 is bound to cause much trouble in future. He says, "In view of the improbability of any early amendment of the exempted portions by Parliament the provision is probably of no immediate importance, but it may prove to raise very difficult questions, should it later be desired to alter the provisions excepted from the general rule. Thus apparently any change as regards the position of the Governor-General towards the issue of external affairs and defence would not be consistent with the position of the States. The Act is silent as to the position in such an event; it would certainly be open to any State to argue that such action was equivalent to a breach of the Instrument of Accession but there is no legal means provided under which the State could attain redress. On the other hand, from the point of view of

British India, it may seem that a complete bar to full responsibility is presented/'

"At the same time," the Joint Parliamentary Committee went on to add, "we are satisfied that there are various matters which must be capable, from the beginning, of modification and adjustment by some means less cumbrous and dilatory than amending legislation in Parliament." The Government of India Act restricts the scope for any such amendment to the following four items:—

(1) The size and composition of the federal legislature and the method of choosing its members or their qualifications.

(2) Similar subjects relating to the provincial legislature.

(S) Qualifications of women voters or extension of franchise to women.

(4) Qualifications of voters.

Of these only the first item directly affects the States and the Act makes certain exceptions in regard to the same and provides that no such amendment should vary the proportion between seats in the two federal houses, nor should it vary the proportion between the numbers of seats alloted to British India and the Indian States *inter se.* It further adds that the provisions of Part II of the First Schedule (given as Appendix D to Chapter

Four) of this Act shall not be amended without the consent of the ruler of any State which **will** be affected by the change.

As regard the procedure by which the amendments are to be made, the Committee opined that the employment of Orders-in-Council, with power to modify subsequently by the same method, is both necessary and appropriate. For proposing to make any such amendment, the initative may be taken either by Indian legislatures or by His Majesty in Council. A distinction is, however, made as regards the time-limit before which such an amendment must be proposed. His Majesty in Council can propose the amendment at any time, but the Indian legislature cannot do so before the expiration of ten years from the establishment of the Federation or provincial autonomy, save in case of amendments affecting the qualifications of women voters or the extension of the franchise to them.

"It is, of course, competent for any legislature in India," asserted the Joint Parliamentary Committee, "to pass a Resolution advocating a constitutional change, with a request that its Resolution should be forwarded to His Majesty's Government for consideration, and for this no provision in the Constitution Act would be required." But on its suggestion, the Act made definite provi-

sions regarding the procedure in such cases. Section 308 provides that such a motion should be limited only to the four items already stated and that it should be proposed in each chamber only by a minister on behalf of the council of ministers. The motion can propose an amendment of the provisions of the Act itself or those of Or ders-in-Council giving any details about the above-mentioned items. When such a proposal is passed by the chambers of the legislature, federal or provincial, on a motion proposed in like manner, the legislature may present to the Governor-General or the Governor, as the case may be, an address for submission to His Majesty, praying that His Majesty may be pleased to communicate the resolution to Parliament. The Secretary of State shall, within six months after the resolution is so communicated, cause to be laid before both Houses of Parliament a statement of action which it may be proposed to take thereon. The Governor-General or the Governor acting at his discretion, shall transmit therewith to the Secretary of State a statement of his opinions as to the proposed amendment and, in particular, as to its effect on the interest of any minority, the views of the minority and a statement about the attitude of the majority of that minority's

representatives in the legislature, and his report too will be laid before Parliament.

Even when no such address is submitted, His Majesty can act on his own initiative. Unless such an amendment is of a minor nature, the Secretary of State must take steps for ascertaining the views on the one hand of the governments and legislatures in question, and on the other of the minority affected as of the majority of the representatives of that minority in the legislatures.

On the authority of His Majesty's Government, the Government of India issued a statement on July 3, 1935, pointing out the necessity for such powers. The two reasons put forward by the Government were as follows:

> "(a) It is impossible to foresee when necessity may arise for amending minor details connected with the franchise and the constitution of the legislatures and for such amendment it would clearly be disadvantageous to have no method available short of a fresh amending Act of Parliament; nor is it practicable statutorily to separate out such detail from more important matters such as those covered by the terms of the Communal Award.

(6) It might become desirable in the event of unanimous agreement between communities in India, to make modifications in the provisions based upon the Communal Award, and for such agreed changes it would also be disadvantageous to have no other method available than an amending Act of Parliament/'

The Government of India further added that within the range of the Communal Award no change will be proposed by His Majesty's Government unless it had been agreed between the communities concerned.

The procedure for making an amendment by an Order-in-Council is given in section 309. The draft of any such order shall be laid before Parliament. On consideration, the draft may be amended and the final draft agreed to by both Houses. Both Houses of Parliament may then present an address to His Majesty to make the order as recommended by them, and only then shall His Majesty make that order. In urgent cases when Parliament is not sitting, the order may be made without laying it before Parliament, but any such order shall cease to have effect after 28 days from the day when the House

of Commons first sits, if the order is not approved of by both Houses within that period. In the same way, His Majesty can revoke or vary any previous Order-in-Council except when expressly provided by the Act to the contrary.

III.—INTERPRETATION OF THE CONSTITUTION

The federal constitution is by its nature rigid, and one of its chief essentials is the division of powers between the federal and provincial or state governments. Hence it becomes essential not only to define the limits of powers of each unit in respect to the individual citizen but also between the central government and the various units or the various units *inter se.* The constitution supplies an answer to each and everyone of such difficulties or problems which might arise, and a federal constitution always stands in need of correct interpretation from an impartial court, which can decide all doubtful questions. The court thus sees that no encroachment is made by any party on the rights of other units or governments. "In India," writes Keith, "the constitutional issues will be dealt with partly by the High Courts, partly by the Federal Court, but the final interpretation of the constitution will always rest

with the Privy Council, from which appeals cannot be shut out by any Indian legislation/'

The position of the States in relation to the constitution is peculiar. The Act is applicable to them only through their Instruments of Accession. Hence, in relation to any State, the constitution is not limited merely to the Government of India Act, 1935 and the Orders-in-Council made thereunder but also includes the Instruments of Accession and any agreements that may be made by the States under Part VI of the Act in relation to the administration in that State of the law of the federal legislature.

Hence any question of interpretation of the constitution in relation to a federated State will also involve the interpretation of any one or more of these documents. The necessity for such an interpretation can arise only in two types of cases; when a federated State claims a power or jurisdiction in respect of any individual or a private body of such persons on the basis of the constitution and the latter refuses to accept any such power or jurisdiction alleging that the document has not been correctly interpreted; or when a conflict might arise between the powers and jurisdiction of a federated State on one side, $nd another federated State or any British

Indian province or the Federation itself on the other.

In relation to any individual a question might arise about the court of a State having wrongly interpreted the constitution in deciding any question of its jurisdiction, of the State, or its power or authority in relation to that person or persons. In such cases the only remedy open to the individual is to appeal against the final decision of the highest court of the State. Though the opinion of the court of the State is challenged, the State is not a party to the affair. In such cases the Federal Court enjoys appellate jurisdiction over the High Courts of the States. The High Court of a federated State will be accepted as such only when His Majesty has, after communication with the ruler of the State, declared it to be a High Court. Though the Joint Parliamentary Committee allowed appeals to be submitted to the Federal Court even from other State courts, where there was no High Court, the Government of India Act restricts the scope and says that the appeals will lie from a High Court. It is bound to raise some difficulties in case of a federated State which cannot afford to maintain one, or has no powers to create a High Court within its own borders which might be declared a High Court by His Majesty.

These appeals from the High Courts of federated States will lie only on the ground that a question of law has been wrongly decided, being a question concerning the interpretation of any of the various documents mentioned above. Such an appeal shall be by way of a special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may require a case to be so stated, and may return any case so stated in order that further facts may be stated therein. The view of the Federal Court in all such cases is final and will be binding on the courts of the federated States. The Act is not clear as to whether any second appeal can lie to His Majesty in Council from the decisions of the Federal Court on its appellate side; if they are allowed, they shall lie only by leave of the Federal Court or of His Majesty in Council.

But wherever a federated State is a party to a dispute and the parties to the dispute include either the Federation, or any of the provinces, and the matter of dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends and concerns the interpretation of any of the various documents relating to the State mentioned above, and if the agreement under which the dispute arose does not provide

against any such jurisdiction, the matter will be dealt with by the Federal Court on its original side. The jurisdiction of the Federal Court in such cases will be exclusive, and it shall not pronounce any judgment other than a declaratory one. An appeal from any decision of the Federal Court in such a case will lie to His Majesty in Council. According to the original draft of the Bill such appeals could lie only with leave of the Federal Court or of the Privy Council. This was contrary to the recommendations of the Joint Parliamentary Committee and was later amended, and the requirement to take leave was dispensed with in all cases relating to the Federated States. The law declared by the Federal Court and the Privy Council in such cases will be binding on all courts in the federated States.

These provisions relating to the Federal Court are regarded as being of the highest importance to the States inasmuch as the Federal Court is considered to be the bulwark of the constitution, and will be relied upon not only to prevent any undue extension of the powers of the Federation at the expense of the States but will also safeguard the position of a federated State from undue encroachments by other federating units. Since its early stages the Princes had stressed the need for some such bulwark and they feel that the

provisions, as they stand today, adequately protect the interests of the States, and that the Federal Court is armed with sufficient powers to play its proper part in the constitution.

IV,—PROVISIONS IN CASE OF BREAKDOWN OF THE FEDERAL GOVERNMENT

If at any time the Governor-General is satisfied that the Government of the Federation cannot be carried on in accordance with the provisions of the Act, he may act in his discretion and issue a Proclamation declaring that his functions to the extent specified by him shall be exercised by him in his discretion, and assuming to himself all or any of the powers vested in or exercisable by any federal body or authority other than the Federal Court. He may modify or suspend the operation of any provisions of the Act in relation to any federal body or authority, other than the Federal Court, to the extent he might deem necessary. Any such Proclamation may be revoked or varied by a subsequent Proclamation. A Proclamation issued by the Governor-General must be communicated to the Secretary of State, who shall lay it before each House of Parliament. The Proclamation, except when it is revoking a previous one, shall cease to operate at the end of six months

unless both Houses of Parliament approve of its continuance, in which case it shall remain in force for a further period of twelve months. Any law made by the Governor-General during the period when a Proclamation is in force, shall remain in force for two years after the expiry of the Proclamation unless it is sooner repealed or enacted by the federal legislature, and such a law will be styled as federal Act or law, or that of the federal legislature. So far as the federated States are concerned clause 5 of the draft Instrument of Accession definitely includes all laws made by the Governor-General under section 45 within the term laws of the federal legislature', and, hence, they shall be as binding on the States as any other federal law.

The original clause in the Bill, when it was introduced in the House of Commons, contained only these provisions and did not even limit the effect of the approval by Parliament to an extension of the Proclamation to one year only. The Princes, however, objected to the terms of the clause as it then stood. They were not ready to enter a federal constitution under which it would be possible that the powers which they were prepared to surrender to federal organs over which they had a certain measure of control, should become vested for an indefinite period in a single person,

who would for all intents and purposes become a dictator. They required some machinery whereby these dictatorial powers could only be exercised for a limited time; and they further required that, if the breakdown continued at the expiration of this period, the powers transferred by the States should revert to the Princes.

In order to meet these objections the effect of the approval of Parliament was first of all limited to one year only, with the result that the direct rule of the Governor-General will come under examination before Parliament at least once a year. There was, however, added one more important sub-section, *viz.*, (4) to the section 45. It provides in the first place that government under a proclamation shall not continue for more than three years. If before the expiration of the three years the breakdown ceases, the constitution will be automatically restored *in toto,* and no other question will arise. If, however, at the end of the three years' period it is seen that restoration of the existing constitution is impossible, the Government through Parliament will be faced with the task of amending the Act. But the sub-section definitely provides that nothing in it shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of

a State. Inasmuch as the necessary amendments will almost inevitably affect the protected provisions of the Act *(viz.*, the provisions not mentioned in the Second Schedule) and as these cannot be amended by Parliament without affecting the accession of the States, the Government will, if they wish to amend these provisions, be obliged to enter into consultation and negotiations with the States, The Solicitor-General on May 27, 1935, supporting the Government amendment to clause 45 said: "This amendment would safeguard the rights of the States in exactly the same way as they are safeguarded in Schedule I I , namely, if in the amendment, which Parliament makes, it alters the protective clauses which affect the States, then their Instruments of Accession are voided. They need not go out automatically, but they have a right to say, 'This is a different federation/ Negotiations will take place, but in the last resort they have the right to say, 'In spite of your negotiations, this is not the federation which we joined and, therefore, our accession is no longer a valid instrument'." Obviously enough, any possibility of an unwarrantable use of the powers under section 45 is extremely unlikely, both for political reasons and because the administrative difficulties involved would be very great.

CHAPTER FOUR

THE FEDERAL EXECUTIVE

I.—THE GOVERNOR-GENERAL

THE EXECUTIVE AUTHORITY of the Federation shall be exercised on behalf of His Majesty by the Governor-General directly, or through officers subordinate to him; and, of course, its exercise will be subject to the provisions of the Act. The Governor-General of India will be appointed by His Majesty by a commission under the Royal Sign Manual. His powers are thus defined in the Act:

(1) All such powers and duties as are conferred or imposed on him by or under this Act; and

(2) Such other powers of His Majesty, not being connected with the exercise of the functions of the Crown in its relations with the Indian States, as His Majesty may be pleased to assign to him.

It is noteworthy that the second provision makes it perfectly clear that His Majesty cannot assign to the Governor-General of India, in his capacity as Governor-General, any of the Crown's functions in its relation with the

States. Those functions can only be assigned to His Majesty's Representative.

The Third Schedule of the Act provides that the Governor-General should be paid an annual salary of Rs. 2,50,800; and in addition to that he shall receive such allowances for expenses in respect of equipment and travelling and also for enabling him to discharge conveniently and with dignity the duties of his office.

To suit the changed situation a new Instrument of Instructions to the Governor-General will be laid before both Houses of Parliament, which it is proposed to recommend to His Majesty to issue to the Governor-General. No further proceedings shall be taken in relation to the Instrument unless an address has been presented to His Majesty by both Houses of Parliament praying that the Instrument may be issued. Any later Instrument amending or revoking an Instrument previously issued, shall also be issued only after similar formalities have been gone through. The validity of anything done by the Governor-General shall not be called into question on the ground that it was not in accordance with the Instrument of Instructions issued to him. In February, 1935 a draft Instrument of Instructions to the Governor-General (given as Appendix C to this chapter)

was presented to Parliament (Cmd. 4805) by the Secretary of State for India, as illustrating the contents of the document which the Government had in mind. "Though approved by Parliament," says Keith, "the Instructions remain a prerogative instrument; and, if responsible government develops, it will do so under their terms."

II.—THE FEDERAL EXECUTIVE

Subject to the provisions of the Government of India Act, 1935, the executive authority of the Federation extends to the matters with respect to which the federal legislature has power to make laws. This power, however, does not extend to any provincial subject unless it is expressly provided for by the Act. In respect to any federal State, the authority extends to matters in which the federal legislature can make laws for it. Its exercise in each State will be subject to such limitations as might be specified in the Instrument of Accession of the State. In all these federal affairs too, the executive authority of the ruler of a federated State shall continue to be exercisable, except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the exclusive authority of the ruler by virtue of a

federal law. Thirdly, the federal executive can raise in British India on behalf of His Majesty naval, military, and air forces, and can control the management of all the forces paid for from the Indian treasury. It cannot however, enlist any one who is not a subject of His Majesty or a native of India or of territories adjacent to India. Further, it cannot grant commissions to any one in any of these forces unless such power is granted to the Governor-General by His Majesty. Lastly, the federal executive can exercise such rights, authority, and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance, or otherwise in and in relation to the tribal area.

All this federal authority is vested in the Governor-General and shall be exercised by him or through officers subordinate to him on behalf of the Federation. For the administration of these federal affairs a system of dyarchy has been introduced at the centre. British Indian politicians demanded responsibility at the centre, while the Princes too demanded it as one of the conditions precedent to their joining the Federation. The British Government was not willing to grant full responsibility at the centre and, hence, it divided all federal affairs into two divisions, reserved departments and those transferred to

the control of the federal legislature. Again, to further restrict the control of the legislature in respect to the transferred subjects, a series of safeguards were introduced in the form of special responsibilities of the Governor-General in which he is called upon to exercise his individual judgment and act in his discretion.

The group of reserved departments which will be administered directly by the Governor-General in his discretion, includes defence, ecclesiastical affairs, functions in or in relation to the tribal areas, and external affairs. The term 'external affairs', however, does not include the relations between the Federation and any part of His Majesty's dominion. 'These matters," asserted the Joint Parliamentary Committee, "will therefore remain outside the ministerial sphere and the Governor-General's responsibility with respect to them will be to the Secretary of State and thus ultimately to Parliament." As the Governor-General could not undertake in person so great an administrative burden, the Act provides that he may appoint Counsellors, not exceeding three in number, who might assist him in the exercise of those functions. These Counsellors shall have right to speak in and take part in the proceedings of either Chamber or in the joint sessions but shall have

no right to vote in any chamber, except in the Council of State, where they might vote only when nominated by the Governor-General. The salaries and the conditions of service of these Counsellors may be prescribed by His Majesty in Council.

In the administration "of the Reserved Departments, in matters involving the special responsibilities and in all those matters wherein the Governor-General is called upon to exercise his individual judgment and to act in his own discretion, he shall be under the general control of and shall comply with such particular directions, if any, as may from time to time be given to him by the Secretary of State. It will, of course, be the duty of the Secretary of State to see that he does not give any directions which require the Governor-General to act in any manner inconsistent with the Instrument of Instructions issued to him by His Majesty. Thus, where the responsibility does not rest with the Indian legislature, it rests with the British Parliament acting through the Secretary of State. The responsibility of Parliament in Indian matters is formally expressed by the provisions of the Act. "This is," says Keith, "a marked innovation on Dominion usage/'

The administration of all other federal subjects, not included in the Reserved

Departments, are also entrusted to the Governor-General, who shall administer them with the aid and advice of a Council of Ministers not exceeding ten in number, except where the Act makes it compulsory for the Governor-General to exercise his own judgment. In case a question arises as to whether a matter is one wherein the Governor-General should exercise his individual judgment or not, the decision of the Governor-General in his discretion shall be final and the validity of his decision shall not be called in question. Moreover, whatever advice any minister might have tendered to the Governor-General shall not be inquired into in any court.

It is essential for a minister that he should be a member of either chamber of the federal legislature; if he is not a member and does not become one within a period of six consecutive months he shall cease to hold office. The salaries of the ministers shall be settled by the Governor-General acting in his discretion, until determined by the federal legislature, but it may not be varied while a minister is in office. "Presumably it is accepted that the Lower House must determine the tenure of office of the ministry/'

The Governor-General is empowered to exercise his discretionary powers in choosing, summoning, and dismissing the ministers.

Obviously, in theory, the composition of the ministry and the extent to which the Governor-General might act on the advice of the ministers depend on the Governor-General himself. But it is proposed to instruct him on all these points by means of the Instrument of Instructions. "Under the White Paper proposals," wrote the Joint Parliamentary Committee, "the Governor-General is to be directed by his Instrument of Instructions to include 'as far as possible', in his ministry, not only members of important minority communities but also representatives of the States which accede to the Federation .....We can scarcely doubt that State representation will always be regarded by the States themselves as an essential element in every administration.....Few [federations], if any, have in practice found it possible to constitute an executive into which an element of territorial representation does not in some sense enter.....Moreover, the limitation of the functions of the federal executive to matters of essentially all-India interest is calculated to minimize the dangers of both communal and territorial representation."

On the important question of relationship of the ministry with the Governor-General on one side and the Counsellors on the other, the Instrument of Instructions is expected to throw

much light, "Though approved by Parliament/' writes Keith, "the Instructions remain a prerogative instrument, and, if responsible government develops, it will do so under their terms." "His [Governor-General's] Instrument of Instructions/' the Joint Parliamentary Committee suggested, "will direct him to be guided by the advice of his ministers in the sphere in which they have the constitutional right to tender it, unless in his opinion one of his special responsibilities is involved, in which case he will be at liberty to act in such manner as he judges requisite for the fulfilment of that special responsibility even though this may be contrary to the advice Which his ministers have tendered." "The Instrument," the Committee further went on to add, "will direct him to appoint as his ministers those persons who will best be in a position collectively to command the confidence of the legislature; and this direction, taken in conjunction with the proposals which We have set out, is, as we have said elsewhere, the correct constitutional method of bringing into existence a system of responsible government. We observe that ministers are to advise the Governor-General in the exercise of powers conferred on him by the Constitution Act (other than powers relating to the reserved subjects, Chief Commissioners' provinces and

matters left to his discretion); and we assume therefore that they will not be entitled to advise him in the exercise of any prerogative powers of the Crown which may be delegated to him, presumably in the Letters Patent constituting the office." "Curiously enough," Keith points out, "no mention is made of the normal case of refusing advice, when the ministry no longer represents the will of the majority of the legislature or in some cases of the people."

While discussing the problem of the relationship between the Counsellors and the ministry, the Joint Parliamentary Committee suggested that "we hope nevertheless that the Counsellors, even if they cannot share in the responsibility of ministers, will be freely admitted to their deliberations—and indeed that there will be free resort by both parties to mutual consultation. It would indeed be difficult, if not impossible, to conduct the administration of the Department of Defence in complete aloofness from other departments of government; and the maintenance of close and friendly relations with departments under the control of ministers can only increase its efficiency. We understand the intention of His Majesty's Government to be that the principle of joint deliberation shall be recognized and encouraged by the Governor-

General's Instrument of Instructions. We warmly approve the principle, and we think that it will prove a valuable addition to the machinery of government, without derogating in any way from the personal responsibility of the Governor-General for the administration of the Reserved Departments."

The Governor-General's duties require him to appoint a Financial Adviser and an Advocate-General for the Federation. The former will help the Governor-General in discharging his special responsibility for safeguarding the financial stability and credit of the Federal Government, and also to give advice to the Federal Government upon any financial matters whenever he is consulted. Though in appointing him, in determining his salary and his staff, and in dismissing him the Governor-General shall act in his discretion, he is required to consult his ministers as to the person to be selected when once it is decided that such an appointment is to be made.

The Advocate-General shall also be appointed and dismissed by the Governor-General and the latter shall determine his salary and his staff. In all these matters he shall exercise his individual judgment. But no person can be appointed as Advocate-General unless he has the qualifications

essential for a judge of the Federal **Court.** He shall advise the Federal Government on all legal matters and perform all such duties that might be assigned to him by the Governor-General. In the performance of his duties, he shall have right of audience in all courts in British India, and in cases in which federal interests are concerned in all courts of any federated State.

All executive action of the Federal Government shall be expressed to be taken in the name of the Governor-General, and all orders and other instruments made and executed in his name, once authenticated according to the rules made by the Governor-General, cannot be called in question. The Governor-General is required to make rules of business for the Federal Government, and for the allocation among ministers of the business, except in matters where the Governor-General is called upon to act in his discretion. The Governor-General can direct any minister or secretary to transmit to him all such information in matters which he might specify in the rules and specially in all those matters where any special responsibility of the Governor-General is involved or even appears to be involved; in determining all these matters the Governor-General shall act in his discretion.

"The difficulties of dyarchy," says Keith, "were clearly exposed in the provinces under the Act of 1919, and there is no reason to suppose that they will not be repeated in the Federation. As will be seen, the composition of the legislature is adapted to render it very difficult to secure the basis of an effective ministry, and that may assist the Governor-General to secure the assertion of the great authority vested in him. The position of the ministry is deeply affected by the exclusion from its control of the most important expenditure, that on defence, and it may well prove that through this limitation of power responsibility cannot be established effectively."

III.—THE SPECIAL RESPONSIBILITIES OF THE GOVERNOR-GENERAL

The Governor-General's authority in all federal matters is made supreme in three ways: reservation of all important subjects, his being asked to act in his discretion in a number of matters, and, lastly, by entrusting him with some special responsibilities, wherein he is not only called upon to act in his discretion to safeguard a certain number of special right and powers, but also to act to carry out special instructions. In all these

matters the Governor-General is responsible to the Secretary of State only.

The matters in which the special responsibility is entrusted to the Governor-General are—

(a) The prevention of any grave menace to the peace and tranquillity of India or any part thereof.

(b) The safeguarding of the financial stability and credit of the Federal Government.

(c) The safeguarding of the legitimate interests of minorities.

(d) The securing to and to the dependents of persons who are or have been members of the public services, or any rights provided or preserved for them by or under the Act, and the safeguarding of their legitimate interests.

(e) The securing in the sphere of executive action of the purposes which the provisions of Chapter I I I of Part V of the Act are designed to secure in relation to legislation.

(/) The prevention of action which would subject goods of the United Kingdom or of Burmese origin imported into India to discriminatory or penal treatment.

(g) The protection of the rights of any Indian State and the rights and dignity of the ruler thereof.

(h) The securing that due discharge of his functions with respect to matters in which he is by or under the Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any action taken with respect to any other matter.

In all these matters wherein, if and in so far as any special responsibility of the Governor-General is involved, he shall, in the exercise of his functions, use his individual judgment as to the action to be taken.

The question automatically arises as to how the Governor-General will exercise his powers in respect to these responsibilities. "It is not expected/' says Keith, "that the Governor-General shall feel it right to determine all matters of special responsibility in accordance with his personal preference; that would impose on him too great a burden, and interfere too seriously with ministerial authority." Hence, when provision was made for three Counsellors though only two could be sufficient to carry on the work of the Reserved Departments, fear was expressed that the third Counsellor might be appointed

and be placed in charge of the special responsibilities of the Governor-General and he might thus develop into what may be described as a super-minister, whose activities might take the form of interference with the work of responsible ministers. While discussing this question the Joint Parliamentary Committee wrote: "It is impossible to forecast with any accuracy the volume of work involved in the Governor-General's administrative responsibilities, and it may well be that the appointment of a third Counsellor will be found necessary; but, if we may respectfully say so, the notion that there is a danger of his becoming a 'super-minister' seems to us altogether fantastic. To speak of a Counsellor being 'placed in charge of the special responsibilities of the Governor-General' is wholly to misapprehend the conception of the special responsibilities embodied in the White Paper, which do not set apart a governmental or departmental sphere of action from which ministers are excluded or even one in which the Governor-General has concurrent powers with his ministers." Keith correctly says, "But the responsibilities mark out a sphere in which refusal to accept the advice of ministers and decision to order otherwise will be constitutional."

"If in exercise of his rights in these matters/' he goes on to add, "the Governor-General refuses advice, what is the position of ministers? The answer clearly is that having accepted office under the constitution which gives such powers, they should remain in office when the Governor-General acts according to his plain duty under the constitution. They have this safeguard against error on the part of the Governor-General that in action under the Act in his discretion or individual judgment he is subject to the instructions of the Secretary of State, provided that he satisfies himself that any direction he may wish to give is not inconsistent with the Instructions. Relief can therefore be obtained, if the Governor-General is in error, by an appeal, as in the classical case in 1892 in New Zealand when ministers remained in office on the refusal of the Governor to add members to the upper chamber, until the Governor was advised by the Colonial Secretary to accept their advice. They can, of course, resign office, but it would be difficult to justify such action in view of their having taken office in full knowledge of the restrictions on their **powers/'**

CHAPTER FIVE

THE FEDERAL LEGISLATURE

I.—THE TWO CHAMBERS

THE FEDERAL LEGISLATURE of the Federation of India shall consist of His Majesty, represented by the Governor-General, and two chambers known respectively as the Council of State and the House of Assembly. By some representatives of British India a suggestion was put forward that the federal legislature should consist of a single chamber only. "We recognize/' the Joint Parliamentary Committee remarked on this suggestion, "that there is much to be said for this proposal also, but on the whole we do not feel able to reject the view which was taken by the Statutory Commission and which has been also consistently taken by, we think, the great bulk of both British and Indian opinion during the whole course of the Round Table Conferences, that the federal legislature should be bicameral. Certainly a reversal of this view would be distasteful to nearly all, if not all, the Indian States."

The Council of State shall consist of 156 representatives of British India, 150 being

elected and 6 being nominated by the Governor-General in his own discretion, and not more than 104 representatives of the Indian States. The House of Assembly, called the Federal Assembly in the Act, shall consist of 250 representatives of British India and not more than 125 representatives of the Indian States. The representation shall be according to rules laid down in the First Schedule.

The Council of State shall be a permanent body and shall not be subject to dissolution, but as near as may be one-third of its members shall retire in every third year. The distribution of seats for purposes of the triennial election in British India is laid down in the First Schedule. In respect to the first appointment of the representatives to fill the seats in the Council of State, the Governor-General in his discretion shall by order make provision for securing that approximately one-third of the persons appointed by rulers entitled to separate representation shall be appointed to fill seats for three years, approximately one-third to fill seats for six years, and approximately one-third to fill seats for nine years.

The Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and the expiration of the period of five years shall operate as a dissolution of the Assembly.

The chambers of the federal legislature shall be summoned to meet at least once in every year, and the period that might intervene between the last sitting of one meeting and the first sitting in the next should in no case be twelve months or more. Thus practically annual sessions are provided for. The Governor-General can in his discretion summon either chamber or both, prorogue them or dissolve the Federal Assembly. The period within which the chambers shall be summoned to meet for their first session shall be specified by His Majesty's proclamation establishing the Federation.

The Governor-General may in his discretion address either chamber or both together in a joint session. He may also send messages to either chamber whether in respect to a bill then pending in the legislature or otherwise, and it shall be essential for the chamber receiving such a message to consider with all convenient dispatch any matter which they are required to take into consideration.

Every Minister, every Counsellor, and the Advocate-General shall have the right to speak in and to take part in the proceedings of either chamber, any joint sitting of the chambers, and any committee of the legislature of which he may be named a member, but he shall be

entitled to vote in the chamber only if elected or nominated a member thereof.

The Council of State shall elect its President and Deputy President, while the Federal Assembly will choose its Speaker and Deputy Speaker. Whenever any of these offices fall vacant, the chamber concerned will choose another to fill the vacancy. Approval of the Governor-General is not requisite. The President or the Speaker, as the case may be, shall vacate his office only if he ceases to be a member of that chamber, or resigns his office by sending in a written statement to the effect to the Governor-General. He can also be removed by the chamber to which he belongs if a resolution is passed by a majority of all the members of the chamber, but such a resolution cannot be moved unless at least fourteen days[5] notice has been given of the intention to move it. If the office of the President or the Speaker is vacant his Deputy will perform the duties of his chief, and if the office of the Deputy is also vacant the Governor-General may in his discretion appoint any one to act in that office. During a period of absence of the President or the Speaker, his Deputy will act; but if the Deputy Is also absent, such person as may be determined by the rules of procedure of the chamber or as may be determined by the

chamber itself will act. Their salaries shall be fixed by Act of the federal legislature, and until so fixed the Governor-General shall determine them. The Council of State is a permanent body, but the Federal Assembly can be dissolved, and the Act provides that the Speaker shall not vacate his office even when the Assembly is dissolved, until immediately before the first meeting of the Assembly after dissolution.

The presiding officer in both the chambers has a casting vote only. The questions at any sitting or joint sitting of the chamber shall be determined by a majority of votes, except in case of a resolution to remove the presiding officer. The legislature shall have power to act even if there is any vacancy in its membership. Its proceedings shall be valid even though it is discovered subsequently that some unqualified person has sat and voted. The quorum of either chamber is settled at one-sixth of the total number of its members, and it shall be the duty of the presiding officer to adjourn the chamber or to suspend the meeting until at least the quorum is full.

II.—THE INDIAN STATES* REPRESENTATION IN THE FEDERAL LEGISLATURE

The Indian States are not directly interested in the representation of British

India in the federal legislature save in one thing, *viz.*, that the ruler or a subject of an Indian State is also qualified to be chosen as a representative of British India to fill a seat in the federal legislature if he possesses all the other qualifications essential for a member of British India. The federated States shall enjoy this right without any proviso, but in the case of a non-federated State, it is essential for the candidate that he should be eligible to be elected to the Legislative Assembly of that province. It is not proposed to deal with the method, qualification, etc., for the representatives of British India, but only to give the details of representation of Indian States in the federal legislature.

The allocation of seats among the States *inter se* was a serious problem and when the White Paper was issued in 1933 the question was under discussion. Till then the Princes hoped to settle the question among themselves, but as they failed to come to any unanimous decision, the Governor-General propounded a scheme which was embodied in the Report of the Joint Parliamentary Committee and was Later, with only few modifications, accepted by Parliament. "It proceeds on the principle that the allocation of seats among the States should, in the case of the Council of State, take account of the relative rank and import-

ance of the State as indicated by the dynastic salute and other factors, and, in the case of the House of Assembly, should be based in the main on the population." Thus, while many of the big States have been given plural voting, smaller ones have been grouped together. ?

The Act settles that all the States taken together will at the most have 104 seats in the Council of State and 125 in the Federal Assembly; and each State or group of States shall obtain as many seats as are assigned to it in the table of seats, which has been reproduced in Appendix D to this chapter. In case of grouping, all the constituent States of the group will enjoy equal rights save in three special cases; thus, if in a group there are 4 States, each State gets £ vote, and if there are only two, each obtains half a vote. The three exceptions are:—

(1) Group No. 9 of Division XI. The group consists of Panna, Bijawar and Ajaigarh. The Act provides that Panna will get half a vote while the other two will get J each.

(2) Group No. 1 of Division X V I combines Mayurbhanj and Sonepur into one for their representation in the Council of State. The Act provides that Mayurbhanj will get two-thirds of a vote and Sonepur one-third only,

(3) Group No. 3 or Division IX. It consists of Pudukkottai, Banganapalle and Sandur. The Act gives Pudukkottai three-fifths of a vote and the other two only one-fifth each.

The accession of the States is optional, and since it is laid down that only the ruler of a State can sign the Instrument of Accession, it does not seem probable that all the States will accede to the Federation prior to its inauguration. The reason of a ruler's minority or a similar circumstance might stand in the way in some cases, while others might think of waiting for some time before they accede. But the Act makes it essential that rulers of States representing not less than half the aggregate population of the States and entitled to not less than 52 seats in the Council of State must have signified their desire to accede to the Federation before it is inaugurated. For the purpose of this provision the First Schedule provides detailed rules. All the seats assigned to States enjoying separate representation will be automatically filled by its accession. In the case of a group, if the rulers of at least one-half of the States included in a group to which only one seat is assigned in the Council of State, accede to the Federation, the rulers so acceding shall be reckoned as being entitled together to choose one member of the Council of State. To take

a concrete case, in the group of Barwani, Alirajpur and Shahpura, if Alirajpur and Shahpura accede to the Federation and Barwani does not, Alirajpur and Shahpura shall be reckoned as being entitled together to chose one member of the Council of State. In Division XVII all the States not mentioned in any of the preceding divisions, but which were States on January 1, 1935 and were either included in any of the six Agencies or were in political relations with the Governments of the Punjab or Assam, are given two seats in the Council of State. If sufficient States accede to the Federation to entitle them to appoint one or two members in the Federal Assembly they shall be entitled to choose one member for the Council of State. If they can choose three or more, they shall be entitled to fill both the seats of the Council of State. In reckoning the population of each acceding State the figure given in the last column of the table will be accepted and the total population given at the end of the table will be taken as final; in reckoning the population of the States in Division XVII, such figures as the Governor-Getieral may determine in his discretion shall be accepted as final.

The scheme makes provision for the representation of all the States of India. But it may well be the case that all will not accede.

Consequently the White Paper proposed that **any** such vacancies should for the time being remain unfilled. The States urged before the Joint Parliamentary Committee that this arrangement would operate, in relation to the British Indian portion of the legislature, to the prejudice of those States which have in fact acceded. The Committee accepted that there was substance in the objection. Though they refused to allocate to the States which acceded the total representation of those holding back, they recommended that the representatives of ihe States which have acceded should be Empowered to elect additional representatives ân both houses up to half the number of States' feeats (including those States whose rulers are minors) which remain unfilled. They further added that this weightage should cease to operate when, as a result of accessions, 90% of the seats allocated to the States are filled, and in any event at the expiration of twenty years from the establishment of the Federation. The British Government accepted the suggestions of the Joint Parliamentary Committee *in toto* and added that the persons appointed by the rulers of the States to fill seats in that chamber may from time to time appoint persons not exceeding one-half of the number of seats so unfilled as additional members **of that** chamber. These additional members

shall be appointed to fill their seats **for a** period of one year only.

For calculating the number of seats remaining unfilled for this purpose the First Schedule provides that a seat in either chamber allotted to a single State shall remain unfilled until the ruler of that State accedes to the Federation. In the case of a group of States entitled to fill one seat only in any chamber the seat shall remain unfilled until the rulers of at least one-half of those States have acceded. To take a concrete case, one group includes Dewas (Senior) and Dewas (Junior) for the Council of State, while for the Federal Assembly Dhar is also included with these States in the same group. Now, if Dewas (Senior) and Dhar do not accede and Dewas (Junior) alone does so, the individual seat of Dhar in the Council of State will remain unfilled, but the seat assigned to the two branches of Dewas will be filled because one-half of the States have acceded; but in the Federal Assembly the seat assigned to all these three will remain unfilled and, though Dewas (Junior) accedes, it will be counted as unfilled, because more than half the States in the **group** have not acceded. In Division XVI of the table of seats, States included in the groups 9 and 10 have the right to fill jointly **three** seats in the Federal Assembly. Unless **and**

until two States in a group accede, all the seats will remain unfilled, until four have acceded two of the three seats shall remain unfilled, and until six have acceded one of the three seats shall remain unfilled.

In Division XVII all the States included therein will be divided into five groups, one seat in the Federal Assembly being deemed to be allotted to each of the groups, and no such seat in the Federal Assembly shall be filled unless the rulers of at least one-half of the States in the group have acceded. Similarly, so long as three seats in the Federal Assembly remain unfilled, only one seat in the Council of State will be filled. The seats which remain unfilled because the required number of States in a group have not acceded, will be counted as unfilled.

It is, therefore, possible that many such seats might remain unfilled and many States might not get their right to representation even though they have acceded to the Federation. The Act provides that His Majesty in Council may by order vary the table of seats by transferring any State from one group of States specified in the table to any other group if it is considered expedient to do so with a view to reducing the number of seats, which by reason of the non-accession of a State or States would remain otherwise unfilled.

Similar changes can also be effected **with a** view to associating in separate groups States whose rulers do, and States whose rulers do not, desire to make appointments jointly instead of by rotation in the Council of State. But such variations will be made only when His Majesty is satisfied that such a change will not adversely affect the rights and interests of any State. The three States, *viz.,* Panna, Mayurbhanj and Pudukkottai, which will enjoy weightage in relation to the other States of their group, shall not be transferred to another group unless the rulers of these States have agreed to relinquish the special privilege of weightage enjoyed by them.

The representatives of the States will be appointed by the rulers of the States concerned. A person shall not be qualified to be appointed to fill a seat in either chamber of the federal legislature allotted to one or more States unless he is a British subject, or the ruler or subject of a federated State. In order to become a member of the Council of State it is further necessary that he should not be less than thirty years of age, but in case of the Federal Assembly the age bar is twenty years only. The age restrictions do not apply to a ruler exercising ruling powers who can take his seat in either house immediately he begins to exercise such powers. Some States which

may not be able to federate when the Federation is inaugurated because its ruler was a minor and, hence, could not exercise ruling powers, might be declared as exceptional oases, and any named subject or all subjects of such a State might be declared by the Governor-General in his discretion to be qualified to be appointed to fill a seat in either chamber of the federal legislature. But such a declaration will cease to hold good immediately the ruler comes of age and begins to exercise ruling powers. Any person who is appointed to serve as a member of the federal legislature, if otherwise duly qualified, shall be eligible to be appointed to serve for a further term.

The Schedule supplies the details of the method of representation of the various States forming a group for the purpose of representation in either or both chambers of the federal legislature. The Joint Parliamentary Committee recommended that it would contribute to the selection of better qualified States* representatives in the federal legislature if adjacent States, at any rate those not entitled to continuous individual representation, were grouped together regionally for the selection of joint representatives in the federal legislature, who would retain their seats throughout its full term. So far as the Federal Assembly is

concerned, this view was fully embodied, but in respect to the Council of State, it was left to the goodwill of the rulers of the States themselves. Hence it has been provided that a seat in the Council of State shall be filled by each of the rulers of the States constituting that group appointing a person in rotation to fill that seat. It is, however, added that rulers of all the States forming that group may, by mutual agreement between the various States constituting the group and on approval by the Governor-General in his discretion, jointly appoint a person to fill that seat in the Council of State. But in the Federal Assembly the the rulers of States constituting the group shall always jointly appoint a person to fill the seat allotted to that group. In all cases of joint representation, whenever the rules agree to it for the Council of State and always in the Federal Assembly, the person to be appointed jointly by the group shall be chosen by means of votes of the various States, each State of the group having one vote except Panna, Mayurbhanj, and Pudukkottai, which shall have two, two, and three votes respectively. In case of equality of votes the choice shall be determined by lot or otherwise in a manner as may be prescribed.

In the case of States in the Eastern States Agency included in the groups 9 and 10 of

Division XVI, three seats are assigned to each group in the Federal Assembly, and they shall be filled by the rulers of States which have acceded in the manner prescribed, provided that one seat shall be filled if two or three States in the group accede, two shall be filled if four or five accede, and all the three will be filled when six or more accede.

In the case of States comprised in Division XVII, all the States will be divided into five groups and each seat in the Federal Assembly will be assigned to each group, and so long as only two seats are filled in the Federal Assembly only one seat in the Council of State will be filled. These seats may be filled in a manner prescribed by the rules.

The period for which a person might be appointed to fill a seat shall be in the case of a person appointed to fill a seat in the Federal Assembly until the dissolution of the Assembly; and any person appointed to fill a seat upon the occurrence of a casual vacancy shall also be appointed for the remainder of the period for which his predecessor was appointed.

In the case of a person appointed to fill a seat in the Council of State the period differs in each case. In the case of a person appointed to fill a seat in the Council of State by the ruler of a State entitled to separate representa-

tion the normal period shall be nine years, except of course in the case of the first appointments in the Council, when the Governor-General in his discretion shall make by order provision that all such members be divided into approximately three equal groups, the first being appointed for three years only, the second for six years, and the third for nine years. In the case of a group of States where the ruler of each State is appointing in rotation, the appointment will be for one year only save as regards the three exceptions, *viz.*, Panna, Mayurbhanj and Pudukkottai, the rulers of which will be able to appoint their representative for two, two, and three years respectively. If, however, the rulers of all the States in a group which have acceded to the Federation agree to appoint their representative jointly, that representative shall be appointed for three years only. If, however, some of the States in a group agree to joint representation, the joint representative shall be member for a period equal to the aggregate of the periods for which each of them might in rotation have appointed a person to hold that seat or three years, whichever may be the shorter period. Any representative appointed in any other manner to fill a seat in the Council of State shall be appointed for a period of three years only.

To make the whole point clear, take for instance the group of Akalkot, Phaltan, Jath, Aundh, and Ramdurg. Now, if all the five States federate and unless and until any of them decide to be represented jointly, each of the five States will appoint its representative in the Council of State in rotation for one year only, and thus after an absence of full four years the representative of each State will sit in the Council. If, however, all the five States decide to be represented jointly and the agreement is approved of by the Governor-General, the joint representative of the five States will sit in the Council for three years and will have to be re-elected or re-nominated after the expiry of that period. But if only four of the five States decide to be represented jointly and, say, Ramdurg decides not to join in this joint representation, the joint representative of the four States will also be sitting for three years and for one year after that the separate representative of Ramdurg will sit. The separate representatives of the four States would have sat for four years, but the Act definitely provides that this period of joint representation should in no case exceed three years. If on the other hand only three States, say, Akalkot, Phaltan, and Jath, decide to be jointly represented, their joint representative shall also sit for three years but before he takes

his seat a second time in the Council, two years must elapse during which the separate representatives of the other two States, Aundh, and Ramdurg, will sit in the Council by turns. But if only two States decide on joint representation, their joint representative will sit for two years only and will be appointed once again only after the three remaining have had their turns.

If, however, there is a casual vacancy during the term of a member, his successor shall be appointed only for the remainder of the period for which his predecessor was appointed.

The First Schedule finally empowers the Governor-General in his discretion to make rules for carrying into effect the provisions of Part II of the Schedule and, in particular, with respect to—

(a) The times at which and the manner in which appointments are to be made, the order in which rulers entitled to make appointments in rotation are to make them and the date from which appointments are to take effect;

(6) The filling of casual vacancies in seats;

(c) The decision of doubts or disputes arising out of or in connexion with any appointment; and

(d) The manner in which the rules are to be carried into effect.

III.—MEMBERS OF THE LEGISLATURE

Once the representatives of various States are appointed to fill certain seats in the legislature, they are on a footing of equality with other members. Every member has to take an oath, or an affirmation in lieu, before he can sit in either chamber. The different forms of oath or affirmation provided for by the Act for a ruler or a subject of an Indian State are given in Appendix E to this chapter. The oath or affirmation made by the subject of a State only specifies the capacity in which he does so and it in no way derogates from the direct obligation and general allegiance to his ruler.

No person can be a member of both chambers, and in the case of a person who is chosen a member of both chambers, the rules made by the Governor-General in his discretion for such cases shall provide that he should vacate one of them. A member would cease to be member if he resigns his seat by sending in a written resignation to the Governor-General, or if he is absent from the chamber without its permission for sixty days, and the chamber

declares his seat vacant, or if he is subject to any of the following disqualifications:

(1) He holds an office of profit under the Crown, not being ministerial office, or membership of a service of the Crown retained while serving in a State.

(2) He is of unsound mind and stands so declared by a competent court.

(3) He is an undischarged insolvent.

(4) He is convicted or is being sued for election offences declared by an Order-in-Council or a federal Act to disqualify.

(5) He is punished with transportation or imprisonment for not less than two years, unless a period of five years or less prescribed by the Governor-General in his discretion has elapsed since his release.

(6) He has failed to submit a return of electoral expenses, unless five years have elapsed since the last date when the return should have been lodged, or the Governor-General in his discretion has removed the disqualification. This disqualification shall take effect after the expiration of one month or any other period so prescribed by the Governor-General from the date when such return should have been lodged.

No person who is serving a sentence of imprisonment or of transportation for a criminal offence, can be chosen a member of

either chamber. If a person who is disqualified under heads (4) and (5), is a member of any chamber on the date of disqualification, he shall not be allowed to sit, or to vote in any chamber though his membership will be preserved until three months have elapsed from the date thereof, or if an appeal or petition of revision has been filed within these three months until that appeal or petition has been disposed of. Any person who is disqualified for membership or is prohibited from sitting or voting as a member and yet sits and votes as a member, shall be liable to a penalty of Rs. 500 per day to be recovered as a debt due to the Federation.

A suggestion was brought to the notice of the Joint Parliamentary Committee that provision should be made in the Constitution Act for the vacating of his seat by a member of the legislature appointed by the ruler of a State if called upon to do so by notice in writing from the ruler, but the Committee refused to accept this idea and wrote: "We conceive that a State representative although he is nominated and not elected holds his seat on precisely the same tenure as an elected representative from British India and no distinction should be made between the two." Obviously enough, when Keith says, "though appointed for definite periods of time, the power of resignation

could no doubt be insisted on by any ruler **who** desired to change his nomination," he merely refers to moral pressure and not to any constitutional provision. If a ruler wants his nominee to resign before the period of his membership is over and if the nominee refuses to resign, there is no provision in the Act by which the ruler can force him to do so.

"The privileges of members," says Keith, "are specifically limited." The members of either chamber, as well as those who have a right to speak in and take part in the proceedings of either chamber, are all assured freedom of speech, which in its turn is subject to the provisions of the Act and to the rules and standing orders regulating the procedure of the legislature. A member cannot be sued in a court for anything said or a vote given in the legislature nor in respect of any reports, papers, etc., published by or under the authority of either chamber. Other privileges enjoyed by the former legislature will be continued until defined by an act of the federal legislature. This Act does not empower the federal legislature to confer on either chamber or both sitting together or on any committee or officer of the legislature the status of a court, or any punitive or disciplinary powers other than that of removing or excluding persons infringing the rules or standing orders

or otherwise behaving in a disorderly manner. "The power/[1] says Keith, "of committing for contempt persons who refuse to give evidence or produce documents before committees of the chamber is thus denied, and it was only under pressure in Parliament that the Act was amended to authorize legislation to inflict penalties on conviction by a court of persons refusing to give evidence or produce papers, and the Governor-General in his individual judgment is to make rules safeguarding confidential matters from disclosure and regulating the attendance of persons who are or have been civil servants. The power is doubtlessly necessary; it represents the limits observed in practice in these matters in the British Parliament."

The members of either chamber shall be entitled to such salaries and allowances as are payable to the members of the Legislative Assembly until they are determined by an Act of the federal legislature.

IV.—LEGISLATIVE PROCEDURE

The proceedings in the federal legislature shall be conducted in the English language, but the rules of procedure of either chamber and also those of joint sittings should provide that persons unacquainted or insufficiently

acquainted with the English language may use another language.

The rules for regulating its procedure and the conduct of its business shall be made by each chamber. But the Governor-General in his discretion shall, after consultation with the President or the Speaker, as the case may be, make rules in respect to following matters:

(1) For regulating the procedure in matters affecting the functions, in which he has to act in his discretion or to exercise his individual judgment.

(2) For securing the timely completion of financial business.

(3) For prohibiting the discussion of, or the asking of question on any matter connected with any Indian State outside the federal sphere except when the Governor-General in his discretion allows it as affecting federal interests or a British subject.

(4) Forbidding except with the previous consent of the Governor-General in his discretion, discussion on questions in respect to:

(a) any matter connected with relations between the **Crown**

or the Governor-General **and** any foreign prince or State.

(b) matters connected with tribal areas except in relation to estimates of expenditure, or any excluded areas.

(c) his action in his discretion in relation to any provincial affair.

(d) the personal conduct of the ruler or a member of the ruling family of any Indian State.

In all such cases where there may be a conflict between the rules made by a chamber and those by the Governor-General, the latter shall prevail. The Governor-General after consultation with the President and the Speaker shall also make rules for joint sittings and for communication between the two chambers and shall include all those provisions which he may in his discretion think fit. Until new rules are made, the rules in force in respect to the Indian legislature shall be applicable subject to all those modifications and adaptations that may be made therein by the Governor-General in his discretion.

The Act, however, places two statutory restrictions on discussion in the legislature. First, it provides that no discussion shall **take**

place with respect to **the** conduct **of any judge of** the Federal Court or a High Court in **the** discharge of his duties. This privilege **extends** to the judges of those High Courts of **the** federated States too which have been declared as such for the purposes of the Act by the Governor-General. 'This drastic limitation of power/[5] Keith remarks, "is deemed necessary to preserve the independence of the judiciary; in fact, in the British Parliament criticism of judges is drastically limited by convention." Secondly, the Governor-General may in his discretion certify that the discussion of any bill or any of its specific clauses, or any amendment to it, introduced or proposed to be introduced in the legislature, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, and if he in his discretion directs that no proceedings shall be taken in respect to that bill, clause, or amendment, it shall be given effect to.

The courts, too, are debarred from questioning the validity of any alleged irregularity of procedure. The acts of any officer or member of the legislature in exercise of the powers that might be vested in him by or under the Act for regulating procedure or the

conduct of business shall not be subject ta the jurisdiction of any court.

Though the Act empowers the chambers to make their own rules of procedure it definitely says that they should be subject to the provisions of the Act itself, and it goes on to make certain provisions in respect to legislative procedure. Except in case of financial bills, a bill may originate in either chamber, and it should normally require the assent of both chambers either without amendment or with such amendments only as are agreed to by both chambers.

A bill pending in the legislature shall not lapse by reason of the prorogation of the chambers. A bill pending in the Council of State, which has not been passed by the Federal Assembly, shall not lapse on a dissolution of the Assembly. But a bill pending in the Federal Assembly or which having been passed by the Federal Assembly is pending in the Council of State shall lapse on a dissolution of the Assembly, except when it has been passed by the Council of State and is pending in the Assembly, or it has been passed in the Assembly and is pending in the Council of State and prior to the dissolution the Governor-General has notified his intention to summon the chambers to a joint session. The Governor-General may notify his intention to

summon them to a joint session, when after a bill has been passed by one chamber and transmitted to the other chamber,

(a) the bill is rejected by the other chamber; or

(b) the chambers have finally disagreed as to the amendments to be made in the bill; or

(c) more than six months have elapsed from the date of the reception of the Bill by the other chamber without its being presented to the Governor-General for his assent,

Provided that the bill has not lapsed by reason of a dissolution of the Assembly. In reckoning the period of six months, no account will be taken of the period during which the legislature is prorogued or during which both chambers are adjourned for more than four days. The Governor-General can notify his intention to the chambers by a message, if they are sitting, or by a public notification, and when once such a notification has been made the chambers shall not proceed further with the bill. The Governor-General may, after six months from the date of his notification, summon the chambers to a joint sitting at any time in the next session, and the chambers shall meet accordingly.

Similarly, the Governor-General can also by a similar notification notify his intention to summon the two chambers to a joint session if he is satisfied that there is no reasonable prospect of a bill, relating to finances or to any matter which affects the discharge of functions in which he is required to act in his discretion or to exercise his individual judgment, being presented to him for his assent without undue delay. But in this case he can summon the chambers to meet in a joint sitting at any date, whether in the same session or in the next. In all matters relating to the summoning of the chambers to a joint sitting, the Governor-General shall act in his discretion.

Whenever a joint sitting of the two chambers is held, the President of the Council of State shall preside and in his absence any such person as may be determined by the rules of procedure made by the Governor-General in his discretion for such sittings. The only amendments which can be put forward at such sittings are those which have been made necessary by lapse of time or arise out of any amendments proposed by one House but rejected by the other. On all questions as to whether an amendment is admissible or not the ruling given by the person presiding over the sitting shall be final. The decisions on the bills will be taken by a majority of the

members of both chambers voting. All the bills with such amendments that could be proposed and were accepted in such a sitting, when passed, shall be deemed to have been passed by both chambers.

When a bill has been passed by the chambers, it must be presented to the Governor-General, who shall in his discretion, either assent or refuse to assent or reserve the bill for the signification of His Majesty's pleasure. He may in his discretion also return the bill to the chambers with a message to reconsider it as a whole or any of its specified provisions, or to introduce any such amendments as he might think desirable, and the chambers shall reconsider the bill accordingly. In case of a bill reserved for the signification of His Majesty's pleasure, it shall not become an Act of the federal legislature but shall drop unless the Governor-General notifies the Royal assent within twelve months from the date of presentation. Any Act which has been assented to by the Governor-General may be disallowed within twelve months from the date of the Governor-General's assent, and from the date of the notification of such disallowance the Act shall become void; it shall not, however, invalidate any action taken while the Act was in force. Assent to a reserved bill and disallowance of a bill assented to by the

Governor-General shall be expressed by Orders-in-Council.

The Act makes special provision for legislation on, and the consideration of, financial matters. The Governor-General shall every year cause to be laid before both chambers the 'annual financial statement' which shall contain a statement of the estimated receipts and expenditure of the Federation for that financial year. It will show the sums which are charged upon the federal revenues and those which are required to meet other expenditure proposed to be made from the revenues of the Federation. The statement will distinguish the expenditure on revenue account from other expenditure, and also point out the sums which are included, because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities. The sums which are charged on the federal revenues and are not as such subject to the vote of the legislature, include the following nine items :

(a) The salary and allowances of the Governor-General and other expenditure relating to his office.

(6) Debt charges including interest, sinking fund, redemption, and cost of raising loans.

(c) The salaries and allowances of Ministers, Counsellors, the Financial Adviser and his staff, the Advocate-General, and the Chief Commissioners.

(d) The salaries, allowances, and pensions of judges of the Federal Court and the pensions of judges of the High Courts.

(e) Expenditure for the purpose of the discharge by the Governor-General of his functions with respect to the reserved subject, *viz.*, defence, external affairs, the tribal areas, administration of any other area and ecclesiastical affairs (the expenses under the last head should not exceed 42 lakhs exclusive of pensions).

(/) Sums payable to His Majesty in respect of the functions of the Crown in its relations to the Indian States.

(g) Any grants for excluded provincial areas.

(h) Any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal.

(i) Any other expenditure charged on the federal revenues by the Act or any Act of the federal legislature.

In all cases of doubt whether any proposed expenditure falls within expenditure charged on the federal revenues or not, the Governor-General shall decide in his discretion.

The various items which are included in the list of expenditure charged on the federal revenues, shall not be submitted to the vote of the federal legislature, but it is open to either chamber to discuss the excluded items, save those affecting the Governor-General and those payable to His Majesty in respect to his functions in relation to the Indian States.

All other items of expenditure shall be submitted in the form of demands for grants, to the Federal Assembly and then to the Council of State, and no such demand for a grant will be made except on the recommendation of the Governor-General. Either chamber shall have power to assent to, to reject, or to reduce any demand. Whenever the Assembly rejects or reduces a demand it shall be dropped or the diminished sum shall be asked for from the Council unless the Governor-General were to direct that the full grant or some other less amount may be submitted to the Council. In case of disagreement of the two chambers on grants, a joint sitting might be convened and the decision of the majority shall be deemed to be the decision of the two chambers.

When all the grants have been made and discussions have taken place the Governor-General shall authenticate by his signature a schedule specifying:

(i) The sums charged on the federal revenues which should not exceed the sum shown in the annual financial statement;

(ii) The grants made by the chamber;

(Hi) Any additional sums included by the Governor-General. The Act empowers him to include under this head only such sums, which were originally asked for from the chambers and were refused or reduced by them, but which he considers necessary for the due discharge of any of his special responsibilities.

This authenticated schedule must be laid before the chambers, but shall not be open to discussion or vote therein. It shall afford the sole authority for expenditure unless any supplementary grant is made. The supplementary statement of expenditure must be laid before the chambers and shall be subject to the same procedure as was the original statement. The control of the legislature over expenditure is obviously limited to that comparatively limited amount of the revenue which remains after the unvotable expendi-

ture charged on the federal revenues are defrayed, and if any act of the legislature in its efforts to control the expenditure does not conflict with or affect the special responsibilities of the Governor-General.

The federal legislature is, however, denied all initiative in respect to financial bills. Any bill or amendment which makes provision for

(a) imposing or increasing any tax, or

(6) regulating the borrowing of money, giving of any guarantee or in affecting any financial obligations of the federal government, or

(c) charging any expenditure on the federal revenue or increasing the amount of any such expenditure,

shall not be introduced in the Council of State. They shall be introduced in the Federal Assembly only when they are recommended by the Governor-General. In the same way, it is provided that no bill which might involve expenditure from the federal revenues if enacted, shall be passed by either chamber unless recommended by the Governor-General. Any bill which provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licenses, or fees for services rendered, shall not be deemed to be a financial bill.

V.—LEGISLATIVE POWERS OF THE GOVERNOR-GENERAL

The Governor-General constitutes an essential part of the federal legislature, but he has been granted some additional powers which are not necessarily all emergency powers. The additional legislative powers of the Governor-General are of three kinds:

(a) to promulgate ordinances during the recess of the federal legislature;

(b) to promulgate in his discretion an ordinance at any time;

(c) to enact in his discretion a Governor-GeneraPs Act.

The Governor-General is, however, not empowered even under these powers to promulgate an ordinance or pass an Act in respect tc matters in which the federal legislature is nol competent to enact a law and shall be void tc that extent. These ordinances and Acts oi the Governor-General shall have the same force and effect, and shall be subject to disallowance by His Majesty in the same mannei as an Act of the federal legislature.

The Governor-General can promulgate ai ordinance during a recess of the legislature or the advice of ministers if he is satisfied thai circumstances exist rendering immediate

action necessary. But before promulgating such an ordinance,

(a) he must act in his discretion if his previous consent were necessary to introduce a bill with similar provisions in the federal legislature, or

(b) he must take instructions from His Majesty, if he would have reserved a bill with similar provisions for the signification of His Majesty's pleasure.

Such an ordinance must be laid before the federal legislature and shall cease to operate at the end of six weeks from the reassembly of the legislature, unless sooner disapproved by resolutions of both chambers, or withdrawn by the Governor-General himself.

In matters involving the exercise of discretion or individual judgment of the Governor-General he is empowered either to promulgate ordinances or to enact permanent legislation. Any ordinance which he thus promulgates shall be in force at the most for six months and can be further extended to another six months by a subsequent ordinance. Any such subsequent ordinance should be communicated forthwith to the Secretary of State and must be laid before each House of

Parliament. The Governor-General may, however, withdraw **any** ordinance at **any** time.

But whenever the Governor-General thinks of enacting a permanent legislation, **he** shall explain by means of a message to both the chambers the circumstances which render such legislation essential. He may send with the message the bill with the necessary provisions which he has enacted forthwith. In his discretion he may attach only a draft of the bill which he considers necessary and shall enact it as a Governor-General's Act at any time after the expiration of one month from the date of the message. During this period either chamber may present an address to the Governor-General with reference to the bill or to any amendments suggested to be made therein. The Governor-General shall take into consideration any such address and may enact either the original bill unaltered or with any necessary amendments. Every Governor-General's Act shall be communicated forthwith to the Secretary of State and must be laid by him before each House of Parliament.

Clause 5 of the proposed draft of the Instrument of Accession expressly provides that all the laws and ordinances promulgated by the Governor-General under these sections, *viz.,* **42-44,** and those under the emergency

powers assumed under section 45 in case of the breakdown of the federal constitution shall all be applicable to all the federated States as if these were enacted by the federal legislature.

CHAPTER SIX

LEGISLATIVE POWERS

1.—DISTRIBUTION OF POWERS

EVERY FEDERATION IS a union of separate units enjoying full internal autonomy. Hence one essential condition of every such union is the distribution of legislative powers between the federal government and the various units, with a provision for residuary powers, which are sometimes vested in the federal government and sometimes allowed to remain with the federating units. In the Federation of India, the various federating units can be put into two distinct classes: the British Indian provinces and the Indian States. The political position of each class in relation to the Federation is different, and, naturally, their powers and relations also vary. Hence, when dealing with the distribution of powers between the federal legislature and those of the federating units, it becomes necessary to divide the federating units into two definite categories and deal with the division of powers in respect to each separately.

The Indian States form the first of these categories and though even among them there are variations, the position of all of them in

relation to the Federation will be the same and the variations will be of degree only. They surrender a definite number of subjects for federal control and by means of the Instrument of Accession vest the Federation with a definite measure of their former authority. Their accession to the Federation and the application of the Government of India Act, 1935 to them shall be by virtue of their Instruments and, hence, these Instruments shall form the basis of the division of power. "Nothing in this Act shall be construed as empowering the legislature to make laws for a federated State otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein/' Obviously the residual powers of legislation vest with the States. Section 104, which vests the residual powers of legislation in the Governor-General, does not apply to the States, for whatever is not surrendered to the Federation by the Instrument of Accession remains vested in the State.

Subject to these provisions the federal legislature can make laws for any federated State. The list of subjects to be surrendered to the Federation by the States shall be made up from those given in the 'Federal Legislative list', given in Appendix F to this chapter. But in respect to the implementing of treaties **and**

agreements with other countries the federal power is restricted to those laws only which the federal legislature has power to make for a federated State by virtue of the Instrument of Accession. In all other matters legislation for giving effect to international agreements in the federated States can be enacted only with the prior consent of the ruler of the federated State affected thereby. Any law passed by the federal legislature on the basis of its power to implement treaties and agreements with other countries may be repealed by the federal legislature, and if such a treaty or agreement ceases to be operative, it may be repealed in respect to a federated State by that State also.

The federating States have the concurrent right to legislate on federal subjects also, and the State law will continue until a federal law has been passed and even then the former will be void only to the extent that it is repugnant to the latter. No State law, passed after the federal law, has power to amend, alter, or annul any provisions of the latter and shall be void to the extent it is repugnant to the federal law.

The federal Acts may have extra-territorial operation also in relation to:

(1) British subjects and servants of the Crown in any part of India;

(2) British subjects domiciled in any part of India wherever they may be;

(3) Persons on ships or aircraft registered in British India or any federated State wherever they may be;

(4) In the case of matters in which the federation may legislate for a federated State, to subjects of that State wherever they may be; or

(5) In the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of and persons attached to the force, wherever they may be.

It is clear that the extra-territorial effect of federal laws in relation to matters under heads (1) and (2) cannot be extended in the federated States to matters not accepted by them as federal and the courts of the federated States cannot be called upon under these provisions to enforce federal laws on British subjects whilst in State territory. Federal laws applying to British subjects in respect of matters not accepted by the States as federal would only be given effect to in a State to the same extent as existing Indian laws are, *i.e.*, only to the extent that by the rules of private international law effect is given to laws having an extra-territorial operation. As regards federal legislation upon a subject-matter not

accepted by that State, a federated State is juristically a foreign country *vis-it-vis*- the Federation, and, naturally, no obligation would be imposed upon the State by the legislation as such, although the fact of such legislation may in certain circumstances be a relevant consideration in applying the principles of private international law. Again, the third head does not confer any power of legislation in respect to ships and aircraft registered in a federated State and persons on board even when within the territory of the registering State. It will have extra-territorial operation only and does not confer any powers of legislation which are not conferred by other sections of the Act.

This completes the provisions given in the Government of India Act, 1935 in respect to the distribution of legislative powers between the Federation and the Indian States. Those referring to the distribution of powers between the Federation and the second group of federating units, *viz.*, the British Indian provinces, are however numerous and very elaborate. "The province, on the other hand," says Keith, "is given no extension of power; it resembles the provinces of Canada which are restricted deliberately to legislation in the province." It is worth noting that the Governor-General in his discretion can issue a 'Proclamation of Emergency' to a province

only and not in respect to the Indian States io which this emergency provision is not applicable.

When the representatives of the Indian States in the federal legislature will discuss and vote on matters of strictly British Indian concern or of the provinces only, one point of contact will be established between the two. Naturally, the Politicians of British India objected to this position, specially when they are constitutionally debarred from discussing matters strictly relating to the internal affairs of the Indian States. They urged that a special provision ought to be included in the Act prohibiting the States' representatives from voting on matters of exclusively British Indian concern, and suggested a number of ways to secure this to the Joint Parliamentary Committee. On the other hand, the States have made it clear that they have no desire to interfere in such matters as it would not be in their interest to do so. The Committee thought that there should be no such statutory prohibition, and as the British Government accepted that view the Act does not contain any such provision. The Committee, however, suggested that the matter should be regulated by common sense on both sides and by the growth of constitutional practice and usage.

IL—RESTRICTIONS ON LEGISLATIVE POWERS

"In the case of India," remarks Keith, "there are certain further limitations of an absolute character, and in certain other cases, in complete deviation from Dominion practice but in accord with Indian precedent, legislation is forbidden without the previous sanction given in the discretion of the Governor-General."

The Act reasserts the authority of Parliament over British India and has specially laid down three absolute restrictions on the powers of the federal legislature. The Act does not empower it to make any law

(a) affecting the sovereign or the royal family, or the succession to the Crown, or the sovereignty, dominion, or suzerainty of the Crown in any part of India, or the law of British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of prize or prize courts; or

(b) amending any provision of this Act, or any Order-in-Council made thereunder, or any rules made under this Act by the Secretary of State, or by the Governor-General or a Governor in his discretion, or in the exercise

of his individual judgment, except as specifically provided by the Act itself; or

(c) derogating from any prerogative right of His Majesty to grant special leave to appeal from any court, except as specifically provided by the Act itself.

Any Act passed repugnant to these provisions shall of course be invalid.

In other cases the prior sanction of the Governor-General in his discretion is necessary, and only then can an Act be passed by the federal legislature. These cases include any bill or amendment which

(a) repeals, anlends, or is repugnant to any Act of Parliament extending to British India; or

(b) repeals, amends, or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor; or

(c) affects matters as respects which the Governor-General is, by or under this Act, required to Act in his discretion; or

(d) repeals, amends or affects any Act relating to any police force; or

(e) affects the procedure for criminal proceedings in which European British subjects are concerned; or

(/) subjects persons not resident in British India to greater taxation than persons resident in British India, or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled therein; or

(g) affects the grant of relief from any federal tax on income in respect of income taxed or taxable in the United Kingdom.

These provisions for prior sanction only supplement other similar provisions in the Act. Besides, the grant of such prior sanction cannot preclude the Governor-General from refusing his assent to any bill or reserving it. But the omission of prior sanction does not invalidate any Act of the federal legislature if assent to it has been given by the Governor-General or by His Majesty.

The Government of India Act, however, goes on to make provisions with respect to discrimination, taxation, and like matters which are mainly of British Indian concern. The only provision among these which affects the federated States is section 116 (2). When

restricting the powers of the federal or provincial legislatures in discriminating against companies incorporated in the United Kingdom and carrying on business in India in the matter of bounties for the encouragement of trade and industry payable out of the revenues of the Federation or of a province, it provides that either legislature can impose as regards new companies certain conditions which have to be satisfied before they become eligible for bounties. The conditions operate as much in favour of the federated States as of British India. One can add that such a provision is a just concession to the States. The bounties will be payable out of the federal revenues to which the State will also contribute, and it was but equitable that the permissible conditions should operate equally in favour of British India as in favour of the States.

CHAPTER SEVEN

ADMINISTRATIVE RELATIONS BETWEEN THE FEDERATION, THE PROVINCES, AND THE STATES

I.—THE FEDERATION AND A FEDERATED STATE

IN ALL MATTERS in which a federated State concedes its authority by virtue of its Instrument of Accession or any agreement made thereunder that State shall be under the Federation. Hence it becomes essential that the executive authority of every federated State should be so exercised as to secure respect for all those laws of the federal legislature which apply to that State. This is, however, enjoined on the federal executive that it should exercise its authority in a federated State with due regard to the interests of that State.

The Governor-General is empowered to entrust, conditionally or unconditionally, to the ruler or his respective officers, functions in relation to any matter to which the executive authority of the Federation extends. Before conferring any such power, the consent of the ruler of the federated State concerned should be taken. By means of an Act, which extends to a federated State, the federal legislature can

also confer powers and impose duties upon the State concerned. The State may by agreement decide upon sums that shall be paid by the Federation to the State concerned, to meet the extra costs of administration incurred by the State in connexion with the exercise of the powers and duties conferred or imposed upon the State or officers or authorities thereof, whether by the Governor-General or by the federal legislature. In default of any such agreement such sums shall be paid as may be determined by an arbitrator appointed by the Chief Justice of India.

For the administration of federal laws in a State, which apply therein, it is provided that an agreement may also be made with any State, and must be made if the Instrument of Accession so stipulate that the functions in relation to them be exercised by the ruler or his officers. But every such agreement must empower the Governor-General to satisfy himself in his descretion, by inspection or otherwise, that the administration conforms to federal policy. If the Governor-General is not satisfied, he may in his discretion issue the necessary directions to the ruler. All courts shall take judicial notice of such agreements made under section 125.

In all matters in which the federal executive is empowered to exercise its authority in

a federated State by virtue of a federal law which applies therein, it is essential for the executive authority of that federated State to see that the exercise of the federal authority is not impeded or prejudiced. Whenever the Governor-General finds that the ruler of a State has failed to fulfil his duty in this respect, he shall consider any representation that may be made by the ruler concerned and then in his discretion issue such directions to the ruler as he thinks fit. "Fortunately/' observes Keith, "the earlier proposal under which in such cases the authority of the Representative of the Crown in relation to the States would have been invoked has been dropped in favour of direct action by the Governor-General." But, whenever a question of the existence of any such authority in respect of any matter or of the extent of the same arises, on the motion of the Federation or the ruler, it may be referred to the Federal Court on its original side.

The Act, however, goes on to give details about the relations of the Federation with the federated States in respect of the various questions connected with wireless broadcasting, and makes it necessary that the federal laws with respect to it should give effect to those provisions. It is provided that the Federal Government shall not unreasonably refuse to entrust to the ruler of the federated

State functions enabling the ruler to construct and use transmitters in his State, or to regulate, and impose fees for the construction and use of transmitters and the use of receiving apparatus in the State. But this does not concede any power to a ruler to regulate the use of transmitting or receiving apparatus when provided or authorized by the Federal Government itself. The Federal Government can impose its own conditions, including terms of finances, when entrusting functions in respect to broadcasting to the ruler. But in respect to the matters broadcast, the Federal Government will not be able to impose any restrictions; the Governor-General is, however, empowered to impose such conditions on a ruler if they appear necessary to him for the discharge of his functions in his discretion or individual judgment, or for the prevention of any grave menace to the peace or tranquillity of India or any part thereof. All questions regarding the grant of functions or the conditions imposed shall be determined by the Governor-General in his discretion.

II.—A FEDERATED STATE AND OTHER FEDERATING UNITS

The Act does not give any details regarding the relations between a federated State and

other federating units, *viz.*, other federated States or British Indian provinces except in case of interference with water supplies. It also provides that the ruler of a State may also exclude application of these provisions by declaring to that effect in his Instrument of Accession. It further excludes the jurisdiction of all courts including the Federal Court also, from entertaining any suit or action in respect to such matters if action might have been taken under these provisions by the ruler of a State, the government of a province, or the Governor-General.

Whenever a federated State finds that its interests or those of its inhabitants are likely to be affected by

(a) any executive action or legislation taken or passed or proposed to be taken or passed; or

(b) the failure of any authority to exercise any of their powers,

by any other federating unit, including any other federated State, it might complain to the Governor-General. Similar complaints might be lodged against a federated State by the government of a Governor's province also.

Whenever the Governor-General regards the complaints as serious he shall appoint a commission of experts in irrigation, engineering, administration, finance or law, to investi-

gate the case and to report to him. The Governor-General can also in his discretion, appoint similar commissions, when any action or inaction of a federated State affects a Chief Commissioners' province.

The commission shall investigate the matter referred to them and on their request the Federal Court shall help them in such investigations by making such orders or issuing such letters of request as they may make or issue in the exercise of the jurisdiction of the Court. In presenting the report, the commission shall, after setting out the facts make such recommendations as they think proper. The Governor-General can ask for further explanations or may even refer it back to the commission for further investigation. On receiving the report of the commission, the Governor-General in his discretion shall give his decision on the case, unless the State affected requests the Governor-General, prior to his giving the decision, that His Majesty in Council be requested to decide the case. On an application by either party affected by the decision or order, the Governor-General may vary his own decision or order, if after a reference to and a report from the commission he deems it necessary to make such a change.

Whenever any of the parties affected asks for a decision of His Majesty in Council before

the Governor-General has given his decision, His Majesty in Council shall decide the case, and all applications relating to such decision shall be referred by the Governor-General to His Majesty in Council. An appeal may, however, lie on the decision of the Governor-General with His Majesty in Council. His Majesty in Council may vary his own order or decision, or that of the Governor-General, if he considers it proper to do so.

Effect shall be given to all such orders by His Majesty in Council or the Governor-General, and these decisions shall override every other law whether it be federal, provincial, or of a federated State. Such orders shall fix the amount of any expenses or costs and shall give directions as to the government or persons by whom the expenses of the commission and other costs are to be paid, and the order so far as it relates to expenses or costs may be enforced as if it were an order made by the Federal Court.

CHAPTER EIGHT

THE FEDERAL COURT AND THE FEDERATED STATES

I.—THE FEDERAL COURT AND ITS JUDGES

THERE SHALL BE a Federal Court for the Federation of India, consisting of a Chief Justice of India and such number of other puisne judges as His Majesty thinks necessary, but the number of puisne judges shall not exceed six until an address is presented by the federal legislature praying for an increase. A judge of the Federal Court shall be appointed by His Majesty by Warrant under the Royal Sign Manual, and shall hold office until he is sixty-five years of age, resigns his office, or is removed by His Majesty by Warrant under the Royal Sign Manual for misbehaviour or when on a reference by the Crown the Judicial Committee of the Privy Council recommends his removal on the ground of infirmity of mind or body.

A judge of the Federal Court must have been either

(a) for five years a judge of a High Court in British India or in a federated State, or

(5) a barrister of England or Northern Ireland, **or** a member of a Faculty of Advocates in Scotland **of at least** ten years standing, or

(c) for ten years a pleader of a High Court in British India or in a federated State or of two or more such courts in succession.

But no one shall be appointed Chief Justice of India unless he, has fifteen, instead of ten, years of qualification, and unless he is a barrister, an advocate, or a pleader, or was one when first appointed a judge. But in case of a vacancy in the office of the Chief Justice, the Governor-General may in his discretion appoint any other of the judges of the Court to act for the time being. In counting the period of standing, all the period during which the person held judicial office after obtaining the required legal qualifications shall be included. Every judge of the Federal Court is required to take an oath or affirm in the prescribed form before the Governor-General or any other person appointed by him for the purpose. The special form of judicial oath or affirmation, prescribed for a subject of an Indian State is given in Appendix G to this chapter.

His Majesty in Council shall fix the salaries, allowances for travelling and equipment*

and rules for leave and pension of the judges of the Federal Court; but no reduction in the emoluments shall be made after his appointment. The Court shall sit at Delhi or at such other places as the Chief Justice may with the approval of the Governor-General appoint from time to time.

II.—THE FEDERAL COURT AND ITS JURISDICTION

The jurisdiction of the Federal Court in respect to the federated States is three-fold, *i.e.*, advisory, original, and appellate. The Governor-General may in his discretion refer to the Federal Court and obtain its opinion upon matters of law of public importance. When thus called upon to advise, the Federal Court shall, after the necessary hearing, deliver in open court the opinion of the majority of the judges; and any dissenting judge may also deliver his dissenting opinion. The Federal Court shall send a report, along with such opinion, to the Governor-General.

On its original side, the Federal Court is empowered to hear disputes in which a federated State is a party only when it refers to matters arising out of the interpretation of the constitution, *i.e.*, the Act, and other allied documents, *viz.*, the Orders-in-Council and the Instrument of Accession of the State.

It can, however, deal with disputes arising under any agreement made under Part VI in relation to the administration in that State of a federal law, or any other question which concerns a matter in which the federal legislature has power to make laws for the State. The Act further extends the original jurisdiction of the Federal Court to all those disputes which arise under an agreement made after the establishment of the Federation with the approval of His Majesty's Representative between that State and the Federation or a province. But no such extension of this jurisdiction will be allowed unless and until the agreement expressly provides that the original jurisdiction of the Federal Court shall extend to such a dispute. This provision for the extension of the original jurisdiction of the Federal Court has been expressly included to encourage the States to refer to the Federal Court questions arising under agreements relating to non-federal matters also. When exercising its original jurisdiction the Federal Court shall not pronounce any judgment other than a declaratory judgment.

On all such judgments of the Federal Court an appeal shall lie to His Majesty in Council. But in matters relating to the interpretation of the Act, the Orders-in-Council, the Instruments of Accession, or an agreement in

relation to the administration in any State of a federal law, appeals will lie without leave. Appeals over decisions on agreements relating to non-federal matters can be brought only by leave of the Federal Court or of His Majesty in Council.

The appellate jurisdiction of the Federal Court over the decisions of High Courts in the federated States has been limited by the Act to questions of law concerning the interpretation of the Act, an Order-in-Council, the Instrument of Accession of that State, or concerning any agreement in relation to the administration in that State of a federal law. The procedure in such appeals shall be by way of a special case to be stated for the opinion of the Federal Court by the High Court, or required to be so stated by the Federal Court. The Joint Parliamentary Committee had recommended that such appeal should lie only with the leave of the Federal Court or that of the High Court of a State, but they had refused to accept the view-point of the States when the latter urged that the refusal of a State court to grant leave to such an appeal should be treated as final. The Act does not make it necessary that leave should be taken before bringing such appeals to the Federal Court. The Federal Court may require the High Courts of the federated

States to state a case if it thinks it necessary to give its opinion over any such case and as such it will dominate over the State courts. It is further empowered to return a case so that additional facts may be stated therein.

Whenever the Federal Court reverses the judgment of the High Court of a federated State, it shall be necessary for the High Court to give effect to the decision of the Federal Court.

The Joint Parliamentary Committee had felt that the appellate jurisdiction should be extended to civil cases also to include the interpretation of federal laws by a High Court of a federated State or any State court. "It is essential," the Committee added, "that there should be some authoritative tribunal in India which can secure a uniform interpretation of federal laws throughout the whole of the Federation." But the States objected to any such extension of the appellate jurisdiction of the Federal Court and the provision was not embodied in the Act. Keith regrets the absence of such jurisdiction and powers and adds that it is only indirectly that the Federal Court may influence the interpretation of the federal laws by means of its interpretation of such a law in a provincial case, which ought in future to guide the State court. "It may be

doubted/' he further adds, "if this is at all an effective assurancer for uniformity/'

In two other matters also the Act expressly extends the jurisdiction of the Federal Court to the federated States.

(1) When corporation tax is levied by the Federation in a federated State, the ruler of any such State may elect that in lieu of the tax, a contribution as nearly equivalent as may be to the net proceeds which such a tax would yield might be paid by the State to the federal revenues. The ruler of any such State may appeal to the Federal Court that the amount so determined is excessive and the Court shall reduce the amount accordingly.

(2) An appeal shall lie to the Federal Court from the decisions of the Railway Tribunal, whenever it involves a question of law.

In both these cases the decision of the Federal Court shall be final and no appeal is allowed on its decision. In the second case, however, the Federal Court may, on application for the purpose, if satisfied that in view of an application in the circumstances it is proper so to do, vary or revoke any previous order made by it.

III.—AUTHORITY OF THE FEDERAL COURT AND ITS RULINGS

When any law declared by the Federal Court and by any judgment of the Privy Council refers to the application and interpretation of the Act, any Order-in-Council, and any matter in which the federal legislature has power to make laws in relation to the State, it shall be binding on all courts in any federated State.

All authorities, civil and judicial, throughout the Federation, including those in every federated State, shall act in aid of the Federal Court. The Federal Court is empowered in respect to the federated States to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or in respect to costs of and incidental to any proceedings therein except those made on appeal. All such orders made by the Federal Court shall be enforceable by all courts and authorities in every part of any federated State, as if they were orders duly made by the highest court exercising such jurisdiction in that part of the State. But the Federal Court cannot claim any such right in respect to the federated State when it is acting under any jurisdiction granted by the federal legislature under section 206 of the Act, wherein the federal legislature is empowered

to enlarge the appellate jurisdiction of the Federal Court in respect to British India.

Whenever the Federal Court requires a case to be stated or re-stated by, to remit a case to, or order a stay of execution in a case from a High Court in a federated State, or requires the aid of the civil and judicial authorities in a federated State to enforce any of its orders or in any other case, the Federal Court shall cause letters of request in that behalf to be sent to the ruler of the State, and the ruler shall cause such communication to be made to the High Court or to any judicial or civil authority as the circumstances require. Thus it will also be necessary for the State courts or any other authority in the State to enforce all those judgments delivered by the Federal Court on its original side, which affect the State.

Lastly, if any commission, appointed to investigate any complaint regarding interference with water supplies, requests the Federal Court to assist it, the Federal Court shall do so by making such orders and issue letters of request for the purpose of the proceedings of the commission as they make or issue in the exercise of the jurisdiction of the Court.

CHAPTER NINE

THE FEDERAL FINANCES AND THE FEDERATED STATES

I.—UNRAVELLING THE TANGLED WEB

THE GOVERNMENT OF India Act, 1935 does not merely lay down provisions to provide the Federation of India with sufficient finances, it also tries to set right the tangled web of financial adjustments between the Indian States, British India, and the Crown.

The one great complaint of the Indian Princes in the past had been that their economic interests had been disregarded whenever they clashed with those of British India or of the British Government. When in 1919 the Princes drew up a list of the various points regarding which they had grievance against the British Government, the majority of these points were found to relate to real inroads upon the economic interests and life of the States. But the demand for a readjustment of the economic claims was left unheeded till the appointment of the Butler Committee in November, 1927, which was called upon "to inquire into the financial and economic relations between British India and the States

and to make any recommendations that the Committee may consider desirable or necessary for their more satisfactory adjustment." But the Committee did not enter into details and merely dealt in a general way with points of general interest.

The position was, however, complicated by two new facts, *viz.*, the acceptance of the theory of direct relationship of the States with the Crown and the acceptance of the federal idea. While the acceptance of the federal idea solved many difficult problems and automatically removed many questions from the list of matters in dispute, it also gave rise to new problems which were not easy to solve, but whose solution was essential before the inauguration of the Federation. Of these questions, that of federal finance was particularly difficult. The acceptance of the proposition that the treaties, engagements, and *sanads* had been made with the Crown removed all payments etc., made by the States to the British Government from the scope of federal finance, because they were due to the Crown and not to any other political body. Moreover, even if one took it for granted that the Crown might make these sums available to the Federation and thus save the States from the additional burden of making payments to the Federation, the federal principle that the

burden should be spread over all the units in precisely similar manner could not be fully carried into practice. All the States did not pay tribute to the British Government, not did all of them enjoy the same immunities and privileges. The acceptance of the theory of direct relationship removed all possibilities of the revival of any idea that by payment of tributes, now known as 'cash contributions', the States had entered into feudatory relations with British India. On the other hand, the acceptance of the federal scheme gave the States a voice in all matters of all-India concern.

To deal with the complicated question of federal finance, there was appointed a sub-committee by the Federal Structure Committee during its second session. Later, it was, however, thought necessary that a further inquiry into the financial aspect of the problem of the Indian States in relation to the Federation should be made; and the Indian States Enquiry Committee (Financial) was appointed for this work. It was required to report on tha following issues :

"(1) To review the origin and purpose of all 'cash contributions' with a view to advising whether they should be reduced or eventually extinguished in the manner contemplated in

paragraph 18 of the Report of the Federal Finance Sub-Committee or must be regarded as outside the scope of that recommendation as being for special and local purposes or by way of payment for material assets, such as land still in the possession of the contributing States;

"(2) In regard to territories ceded (this term does not include the leased territory of Berar) by certain States to the British Government in return for specific military guarantees;

(a) to compile a list of such territories;

(b) having regard both to the circumstances of the original cession and to the financial and other conditions now obtaining, to express an opinion as to whether any financial adjustment should be made in favour of the State concerned as a part of the terms of the Federation; and if so to make specific recommendations.

"(3) In regard to the varying measure of privileges or immunities in respect of customs and salt enjoyed by certain States;

(a) to investigate the position in each State with a view to determining the value of the ascertained existing rights in question;

(b) to express an opinion as to what compensation it would be worth while for the Federal Government to offer in return for the relinquishment of the special privileges, which each State now enjoys or such modifications thereof as may appear to the Committee to be an essential preliminary to federation. In framing such terms it would be open to make allowances for any contributions of special value which the States in question might have made, or be making to the resources of the Indian Government/'

The Committee was allowed to take such facts also into account which are not specially mentioned in their terms of reference, but have so close a bearing upon the matter remitted on them that they cannot disregard them.

The Committee carried out its investigations and, after a full inquiry, made its recommendations which are too voluminous to be summarized in a short chapter. The policy

of the British Government has been greatly influenced by these recommendations in the past, and the report will most probably be the basis of the negotiations for financial relations in the future also. It is obvious that the British Government will be influenced by the views of the Committee in deciding upon the acceptance or rejection of any possible demands by the Princes in respect of their contributions, privileges, and immunities as well as any territories ceded by them.

In its third report the Federal Structure Committee had recommended that a settlement of the question of 'cash contributions' from the States and of their ceded territories was essential before the inauguration of the Federation. The third Round Table Conference accepted the recommendation of the Indian States Enquiry Committee and opined that exceptional and unequal cash contributions contravene the fundamental principle of the federal revenues and as such have no permanent place in a system of federal finance. In respect to the question of ceded territories the Conference believed that credit for them should rank *pari passu* with credits in respect of cash contribution for purposes of adjustments. As regards the privileges or immunities enjoyed by individual States, the Conference was of opinion that if the value of

any such item were not set off by any special contribution, that State must retain the balance in its favour, in whole or in part, on ite entry.

In giving effect to the recommendations of this report the constitution-makers were faced with two difficulties. As the British Government had accepted the theory of direct relationship with the Crown, the Crown alone could negotiate with the States in order to bring about a settlement of their financial problems. It was further considered essential that the position of all the federated States in relation to the Federation should not only be definite but should as far as possible also be similar. The Princes were insisting that all the pending claims of individual States should be settled prior to their entry into the Federation. The British Government cut the Gordian knot by dividing the whole financial tangle into two parts. It provided that the Crown should proceed to settle with the States the questions of financial readjustments, contributions, ceded territories, and the like, and clearly define the position of each State and the extent of its obligations and privileges in its Instrument of Accession. And it was only on the basis of this definition, which was to be accepted by the Federation, that the provisions

of the Act in relation to federal finance were to become applicable to the Stated.

II.—THE CROWN AND THE INDIAN STATES

The Government of India Act, 1935 fully applies, not only in theory but in practice as well, the principle of direct relationship of the States with the Crown. The financial provisions complete the partition effected between the Government of India and the Representative of the Crown in the early sections of the Act.

Every year the Federation shall pay to His Majesty all those sums that may be required by His Majesty's Representative for the due discharge of the functions of the Crown in its relations to the States. These sums shall include the following items also :

(1) All the customary allowances to members of the family or servants of any former ruler of any territories in India.

(2) Any payments that may be made to any State by virtue of any financial readjustments or any payments made for any ceded territories as a result of some agreement between the State and the Crown.

(3) Any payments heretofore made to **any** State by the Governor-General in Council or by any Local Government under any agreements made with that State before the passing of the Government of India Act, 1935.

(4) Any sums ordered to be paid by the Secretary of State by way of **debt,** damages, or costs in any proceedings relating to contracts in connexion with the functions of the Crown in its relations with Indian States, or any costs or expenses incurred by him in or in connexion with the prosecution or defence thereof.

The sum thus paid to His Majesty shall be charged on the federal revenues or, in the case of item 3, on the revenues of the corresponding province, and shall not be subject to the vote of the federal or provincial legislature. Such sums as may be required from time to time out of those thus charged shall be paid to His Majesty's Representative, whenever he requires, whether on revenue account or otherwise.

All the cash contributions and payments made by Indian States, which had hitherto formed part of Indian revenues, shall now be

received by His Majesty, and it will be only when he so directs that they shall be placed at the disposal of the Federation. His Majesty is empowered to remit at any time the whole or part of any such contribution or payments. As all these payments shall be made even in the future directly to the Crown and shall not directly from part of the federal revenues, it would not be difficult to remit them at any time. But the Act also lays down the basis on which any remission of the cash contribution paid by a State can be made by the Crown when giving its assent to the Instrument of Accession of that State. It shall be an essential condition that an Instrument of Accession should contain such particulars as may be necessary for giving due effect to all such and any other financial readjustments carried out between the State and the Crown; it should also contain details to determine the value of any privilege or immunity from time to time if its value is fluctuating or uncertain. An Instrument devoid of all such details can be rejected by His Majesty as being unsuitable for acceptance.

The Act defines a 'cash contribution' as meaning

"(#) periodical contributions in acknowledgment of the suzerainty of His Majesty, including contributions

payable in connexion with any agreement for the aid and protection of a State by His Majesty, and contributions in commutation of any obligation of a State to provide military assistance to His Majesty, or in respect of the maintenance by His Majesty of a special force for service in connexion with a State, or in respect of the maintenance of the total military force or police, or in respect of the expenses of an Agent;

"*(b)* periodical contributions fixed on the creation or restoration of a State or on a re-grant or increase of territory, including annual payments for grants of land or perpetual tenure or for equalization of the value of exchanged territory;

"*(c)* periodical contributions formerly payable to another State but now payable to His Majesty by right of conquest, assignment, or lapse."

If any State agrees to federate, His Majesty may, in signifying his acceptance of the Instrument of Accession of the State, agree to remit over a period not exceeding twenty years from the date of the accession of the State to the Federation any cash contributions payable by

that State. His Majesty may be pleased to reconsider the case of any such cash contribution, the liability for which has before the passiUg of the Act been discharged by the payment of a capital sum or sums. The remission in such a case shall take the form of repayment either by instalments or otherwise of the capital Sum or sums paid by the State to the Crown. But no Such remission shall be made by virtue of any such agreement with the Crowii, Save in so far as the contribution exceeds the Value Of any privilege or immunity enjoyed by the State.

Where any territories have been voluntarily ceded to the Crown by a State before the passing of the Act

(a) in return for specific guarantees, or

(b) in return for the discharge of the State from the obligation to provide military assistance,

afid that State agrees to accede to the Federation,, in signifying his acceptance of the Instrument of Accession of that State, His Majesty may direct that the State shall be paid SUch Sums as in the opinion of His Majesty ought to be paid in respect to any cession. But ifi respect of territories ceded in return for spefcifio military guarantees, no such direction lor payment shall be made unless those guarantees are Waived by the State. But in

fixing the amount Of any payments in respect of ceded territories account shall be taken of the value of any such privilege or immunity.

Every such agreement for remission or every direction for any payment shall contain one essential condition that no such remission or payment shall be made until the provinces have begun to receive motleys from the Federation relating to taxes on income. The provinces shall, in any case, begin to receive such money after March 31, 1942. The Act also provides that any such remission shall be completed before March 31, 1947.

The Act defines the term 'privileges' or 'immunities' as meaning "any such right, privilege, advantage or immunity of a financial character as is hereinafter mentioned, that is to say:—

(a) rights, privileges, or advantages in respect of, or connected with, the levying of sea customs or the production and sale of un-taxed salt;

(b) sums receivable in respect of the abandonment or surrender of the right to levy internal customs duties or to produce or manufacture salt, or to tax salt or other commodities or goods in transit, or sums receivable in lieu of grants of free salt;

(c) the annual value to the ruler of any privilege or territory granted in respect of the abandonment or surrender of any such right as is mentioned in the last preceding paragraph;

(d) privileges in respect of free service stamps or the free carriage of State mails on government business;

(e) the privilege of entry free from customs duties of goods imported by sea and transported in bond to the State in question; and

(/) the right to issue currency notes,

not being a right, privilege, advantage or immunity surrendered upon the accession of the State, or one which, in the opinion of His Majesty, for any other reason ought not to be taken into account for the purposes of this chapter (Part V I I , Chapter 1.)/'

Thus, in bringing about a settlement of the cash contributions, *viz.,* the tributes, the Act differentiates between the various forms of inter-State tribute. "The inter-State tributes/' the Davidson Committee pointed out, "include those paid direct by one State to another, those collected by and paid through the British Government, and those assigned to the British Government. Such payments, whether retained or assigned, are inconsistent

with the idea of a federation of equal units, and contravene the principle of equality of burden." The Davidson Committee was given a mandate only to report on the inter-State tributes which had been assigned to the British Government, but they felt great difficulty in coming to any decision as regards these also. The creditor States who had once assigned them to the British Government, now expressed a desire that they should be re-assigned to them. The Committee, however, felt that all these inter-State tributes were anti-federal. After recognizing the reluctance on the part of the creditor States to surrender such tributes, they went on to add, "we can, for our own part, only record a hope that a generous policy on the part of the creditor States will ensure that these payments disappear along with those due to the British Government. If the acknowledgment of status is considered of more importance than the payments themselves, we may observe that in circumstances of this kind the tender of some formal token is a well-established practice in India, and might reasonably be substituted for the payment in cash." It was but natural that the British Government should make provision in the Act for those cash contributions only which it was free to remit. But one cannot understand the line of reasoning on the

strength of which these creditor States ask th* Britjupfc Government to remit any contributions due from them and at the same time refuse to remit the contributions due to themselves, Jt can never be too strongly urged that in the best interests of the Federation all forms of interstate tribute should be abolished and, though no one can legally object to the differentiation made by the British Government, the fact remains that it is likely to create new problems and cause much mischief in the future. It is to be hoped, though it might be no more than a pious hope, that the British Government would intervene and secure the abolition of all such forms of tribute. It would only be in the fitness of things if the British Government called upon the creditor States to remit these tributes before it agreed to remit the contributions due to itself from the creditor States.

The basic principle underlying the provisions relating to immunities or privileges and to the remissions of cash contributions is that no State should be unduly favoured or unduly burdened. Full regard must be paid while making any remissions or payments to the privileges and immunities enjoyed by the State, and the remission should not be allowed in such a manner that the advantage gained fry the privilege or immunity is neutralized by

the burden of such contributions as are retained. Again, when some immunities or privileges might not have been otherwise taken into account, section 149 provides that when paying or distributing any part of the net proceeds of any of the federal taxes to the federated States, if the immunity or privilege is in respect of any former or existing source of revenue from a duty or tax, similar to one now levied by the Federation, the value of such immunity or privilege enjoyed by the State be set off against the payment or distribution to be made by the Federation to that State. As in some cases the value of some privileges or immunities will be fluctuating, it is provided that Schedule II to be attached to the Instrument of Accession shall contain the necessary details so that proper valuation might be made from time to time. Clause 4 of the draft Instrument of Accession also makes definite provision to the same effect.

Besides, the Act provides that all those lands, buildings, and property shall vest in His Majesty for purposes of the exercise of the functions of the Crown in its relations with Iudian States, which

(1) were used for that purpose immediately before April 1, 1937, except under any tenancy agreement, or

(2) were intended or formerly intended to be so used and are certified by His Majesty's Eepresentative to have been retained for such purposes or for more advantageous sale or otherwise.

The term 'property' shall not include any moneys which were held in public account of the Governor-General in Council as they shall vest in His Majesty only for the purposes of the government of the Federation. In case of doubt about any property under the control of the Secretary of State, he shall have power to determine as to whether it vests in the Crown for this purpose or not. In all other cases of doubt, His Majesty in Council shall finally determine the issue.

Finally, the Act provides that any contract made before April 1,1937, by or on behalf of the Secretary of State in Council solely in connexion with the exercise of the function of the Crown in its relations with Indian States, shall after that date have effect as if it had been on behalf of His Majesty and all references to the Secretary of State in Council shall be construed accordingly. All proceedings in respect of such contracts can be brought by or against the Secretary of State instead of by or against the Secretary of State in Council. In all such suits pending in any court on April 1,

1937, in which the 'Secretary of State in Council* is a party the term 'Secretary of State' shall be deemed to have been substituted instead of the former one.

All contracts made after April 1, 1937, on behalf of His Majesty solely in connexion with the exercise of the said functions of the Crown shall be legally enforceable by or against the Secretary of State if it could have been so enforced by or against the Secretary of State in Council.

All expenses that may have to be incurred or have to be paid to the other party in connexion with any proceedings arising out of such contract shall be deemed to be sums required for the discharge of the functions of the Crown in its relations with the Indian States and shall be charged from the federal revenues. Any sums received by the Secretary of State by virtue of any such proceedings shall be paid or credited to the Federation.

III.—THE FINANCIAL RELATIONS BETWEEN THE FEDERATION AND THE FEDERATED STATES

The revenues of the Federation include all revenues and public moneys raised or received by the Federation, except the net proceeds of any tax and duty, which are assigned in part or whole, and also those which relate to **the**

Federal Railway Authority. The Federation is specifically empowered to raise and collect the following duties and taxes:

(1) Duties in respect of succession to property other than agricultural land, such stamp duties as are mentioned in the Federal Legislative List, terminal taxes on goods or passengers carried by railway or air, and taxes on railway fares and freights.

(2) Taxes on income,, excluding those on agricultural income and those on corporations.

(3) Corporation tax.

(4) Salt duties, federal duties of excise and export.

These taxes will be levied even within the federated States. But the right of the Federation to levy these taxes does not affect any duties or taxes levied in any federated State otherwise than by virtue of an Act of the federal legislature applying in the State. It is clear that the right of the Indian States to levy land customs duties is not affected by the provisions of the Act. But as the problem of these internal customs barriers is of vital importance to the States as well as to the Federation it would be worth while quoting what the Joint Parliamentary Committee wrote on the question.

"It is greatly to be desired/' it wrote, "that States adhering to the Federation should, like

the provinces, accept the principle **of internal*** freedom for trade in India and that the Federal Government alone should have power to impose tariffs and other restrictions on trade. Many States, however, derive substantial revenues from customs duties levied at their frontiers on goods entering the State from other parts of India. These duties are usually referred to as internal customs duties, but in many of the smaller States are often more akin to octroi and terminal taxes than to customs. In some of the larger States the right to impose them is specifically limited by treaty. We recognize that it is impossible to deprive States of revenue upon which they depend for balancing their budgets and that they must be free to alter existing rates of duty to suit varying conditions. But internal customs barriers are in principle inconsistent with the freedom of interchange of a fully developed Federation, and we are strongly of the opinion that every effort should be made to substitute other forms of taxation for these internal customs. The change must of course, be left to the discretion of the States concerned as alternative sources of revenue become available. We have no reason for thinking that the States contemplate any enlargement of the general scope of their tariffs and we do not believe that it would be in their interest to

enlarge it. But in any case we consider that the accession of a State to the Federation should imply its acceptance of the principle that it will not set up a barrier to free interchange so formidable as to constitute a threat to the future of the Federation and, if there should be any danger of this, we think that the powers entrusted to the Governor-General in his discretion would have to be brought to bear upon the States/'

Out of the total sums collected by the Federation under the four different heads given above, the cost of collection shall be deducted first of all and the net proceeds under each shall be determined. The authority of the certificate of the Auditor-General of India, as; regards the figure of the whole or part of the net proceeds attributable to any area, shall be final.

But all the net proceeds, under the four heads in any financial year shall not be included in the revenues of the Federation. The Act makes definite proposals in respect to each head of revenue.

(1) Out of the net proceeds of the sums collected under the first head the proceeds attributable to Chief Commissioners' provinces shall alone be included in the federal revenues. All the remaining sums shall be assigned to and distributed among the pro-

vinees and the federated States according to the principles formulated by act of the federal legislature.

But the federal legislature is empowered to increase these duties by a surcharge for federal purposes, and all the proceeds from such surcharge shall form part of the revenues of the Federation.

(2) Out of the net proceeds of the taxes under the second head, first of all will be deducted those attributable to the *(a)* Chief Commissioners' provinces; (6) to taxes payable in respect of federal emoluments and pensions out of the revenues of the Federation and of the Federal Railway Authority. Of the remaining sums only a prescribed percentage, which cannot be increased, shall be assigned to and distributed among the provinces and the federated States as may be prescribed. The percentage was decided at 50 by the Government of India (Distribution of Revenues) Order, 1936 dated the 3rd July,, 1936. This order also settles the percentage of distribution of this part among the various provinces *inter se.* This allocation does not allow for the participation of the States, and whenever any State comes into federal income-tax and thus qualifies for a share in the residual tax a problem might arise. Sir Otto E. Niemeyer suggested that any such adjust-

ment should not involve an alteration in the prescribed percentages but should rather operate to affect the total to which the percentages apply just as it would operate to increase the initial amount of that total.

The federal legislature is also empowered to increase the said taxes by a surcharge for federal purposes and the whole proceeds of any surcharge shall form part of the federal revenues. Whenever any such surcharge is imposed and if there are any federated States in which taxes on income are not leviable by the Federation, the federal legislature shall provide that such a State must pay a contri bution to the federal revenues. The amount may be prescribed so as to represent as nearly as possible the net proceeds of such surcharge if it could be levied.

(3) Tax under the third head shall not be levied in any federated State until ten years after the establishment of the Federation. Even then the ruler of any State may demand that instead of levying the tax a contribution shall be payable, equivalent to the net proceeds which such a tax would yield. In such a case the Auditor-General shall calculate the sum of a contribution from the information which must be supplied to him by the ruler of the State. The Federal Court is given the final authority on appeal to determine in any year

claims by a ruler that the sum fixed is excessive.

(4) As regards the sums collected under this head, it is left to the federal legislature to determine whether the whole or any part may be distributed to the provinces and the federated States. An exception is, however, made in case of proceeds from export duty or jute or jute products, out of which one-half or any greater proportion determined by His Majesty in Council are to be assigned to the provinces or federated States, in which jute is grown in proportion to the respective amounts of jute grown therein. By the Government of India (Distribution of Revenues) Order, 1936, His Majesty in Council has prescribed the proportion which is to be assigned as 62£%, the remaining 37½% are to be retained by the Federation.

"As regards the other sources of taxation," adds Keith, "no conditions are imposed by law. The Federation can impose in addition to the taxes above-mentioned, customs duties, taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies, and taxes on the capital of companies."

To safeguard the provinces and the federated States the Act provides that previous sanction of the Governor-General in his

discretion shall be essential before the introduction in either chamber of the federal legislature of any measure which proposes to (1) impose or vary any tax or duty in which provinces are interested; or (2) varies the meaning of the expression 'agricultural income' as defined for the purposes of the enactment relating to Indian income-tax; or (3) affects the principles on which moneys are or may be distributed to provinces or States; or (4) imposes any such federal surcharge over heads (1) and (2) mentioned before.

The Governor-General is directed that before he gives his sanction to a proposal imposing a surcharge on either head, he should satisfy himself that all practicable measures for otherwise increasing the proceeds of federal taxation or the portion thereof retainable by the Federation would not result in the balancing of federal receipts and expenditure on revenue account in that year.

The Act, however, definitely states that if any federated State enjoys an immunity or privilege in respect of any former or existing source of revenue from a duty or tax, and if it had not been otherwise taken into account, then that privilege or immunity shall be set off against any such payment or distribution when the Federation imposes a similar duty or tax, and in any year when it proposes to pay

or distribute any of its proceeds to the federated State. The details to enable the Federation to value any such privilege or immunity at any time, shall be given in Schedule II attached to the Instrument of Accession of every State. The Act further empowers the federal legislature to provide for the manner in which the proceeds of any duty or tax and the amount of any contribution are to be calculated, for the times in each year and the manner at and in which any payments are to be made, when such proceeds of any duty or tax are or may be assigned to any province or State, or a contribution is or may be made to the revenues of the Federation by any State.

These are the permanent provisions made regarding the federal finances and regarding its relations with the provinces and the federated States. But it was felt necessary to make some transitory provisions, which may hold good only for the period when the Federation will require more finances to organize itself and to meet the additional expenditure required by reason, *inter alia*, of an increase in the size of the legislatures and electorates, or the establishment of the Federal Court, and, above all, to pay subventions to deficit provinces. Again, the States also urged that they will also need some additional money

during the years immediately following their accession and asked that they be relieved of some burden of federal taxation during those years to meet the preliminary expenses zessential on joining the Federation.

To meet the wishes of the States it was provided that the corporation tax shall not be levied by the Federation in any federated State until ten years have elapsed from the establishment of the Federation. To meet the requirements of the Federation, it is provided that the Federation may retain certain portions of the moneys assigned to the provinces and the federated States from the net proceeds of the taxes on income (Head No. 2). For the first five years from April 1, 1937, in addition to sums the Federation is constitutionally authorized to retain, it is allowed to retain

(a) whole or part of the money assigned to the provinces and the federated States, and

(6) any other sums to be brought into account by the Federation so far as they do not exceed thirteen crores of rupees.

For a further period of five years from April **1, 1942,** the Federation is allowed to retain each year out of the money assigned to the provinces and the federated States, a sum less than that retained in the preceding year by an amount

equal to the sum to be retained in the last **year,** *viz.*, the year 1946-7. The period is prescribed by the Order-in-Council dated July **3,1936 and** cannot be reduced by any subsequent Order-in-Council, but the Governor-General in his discretion is empowered to direct that in any year after April 1, 1942, the sums to be retained in that year shall be sums retained in the preceding year, and the prescribed period of five years shall be correspondingly extended. **But** the Governor-General is asked not to give any direction unless

(a) he has consulted such representatives of federal, provincial, and State interests as he may think desirable, and

(b) unless he is satisfied that the maintenance of the financial stability of the Federal Government requires him to do so.

Besides, the Act provides for the mutual exemption of property belonging to the Federation or the ruler of a State from State or federal taxation. Thus, property vested in His Majesty for purposes of the government of the Federation shall, save in so far as any federal law may otherwise provide, be exempt from all taxes imposed by any federated State. In return, the ruler of **a** federated State shall not be liable to federal

taxation in respect of lands or buildings situate in British India. Again, any exemption from taxation enjoyed as of right at the passing of the Government of India Act by the ruler of an Indian State in respect of any Indian Government Securities issued before that date shall not be affected by the provisions of the Act. It, however, lays down two exceptions in respect of which no such exemption shall be granted, *viz.:*

(1) Any trade or business of any kind carried on by or on behalf of the ruler of a federated State in any part of British India, any operations connected therewith, any income arising from it or any property occupied for that purpose; and

(2) Any lands, buildings or income being the personal property or personal income of the ruler of that State.

Finally, the Federation may, subject to such conditions as it may think fit to impose or unconditionally, grant loans to any federated State or so long as the limits fixed under section 162 (relating to borrowing by the Federal Government) are not exceeded give guarantees to it in respect of any loans raised.

CHAPTER TEN

THE FEDERAL RAILWAY AUTHORITY AND THE INDIAN STATES

THE BRITISH GOVERNMENT accepted the recommendation of the Joint Parliamentary Committee that subject to the control of policy by the Federal Government and the legislature, an independent Federal Railway Authority should be established and it should be entrusted with the administration of railways in India. The Government of India Act, 1935 provides in its Eighth Schedule the details of the constitution of such an Authority. The Authority is called upon to act on business principles, due regard being had by it to the interests of agriculture, industry, commerce, and the general public.

The executive authority of the Federation to regulate, construct, maintain, and operate railways is thus vested in the Authority and this power extends also to the carrying on of or to the making of arrangements to carry on, in connexion with any federal railways, such undertaking^ as the Authority may deem expedient. In case of a federated State this extention of authority is always subject to any

federal or existing Indian law, or to the relevant provisions of the law of any federated State; but this proviso does not limit the provisions of Part VI of the Act regulating the relations of the Federation with the federated States. The Authority is not empowered to acquire land for the purpose of railways, which function shall be performed by the Federal Government on behalf of and at the expense of the Authority. The Act, however, does not provide as to how land shall be acquired for the purpose of railways from the federated States.

The Authority is empowered to make working arrangements with any Indian State and to carry them out, if the State owns or operates any railway in India or in territories adjacent to India. Such arrangements shall deal with the persons by whom and the terms on which any of the railways with which the parties are concerned shall be operated.

The Act makes it obligatory for the Authority to pay an Indian State all the expenses incurred by it for the maintenance of order on the federal railway premises. Any question which may arise between the Authority and the State as to any expenses thus incurred, shall be determined by the Governor-General in his discretion.

Besides, there is a further obligation on the Railway Authority and every federated State to afford mutual traffic facilities and to avoid unfair discrimination etc. It shall be the duty of both the parties to exercise their powers in relation to their respective railways in a way so as to afford all reasonable facilities for the receiving, forwarding, and delivering of traffic upon and from those railways, including through traffic, and also to secure that there shall be no unfair discrimination, nor unfair and uneconomic competition between two railway systems by the grant of undue preference or otherwise. The Authority can also, in exercise of any executive authority of the Federation, give any direction to a federated State or impose an obligation on it to afford certain facilities. This executive authority of the Federation extends to inter-change of traffic, maximum or minimum rates and fares, and station or service terminal charges only.

The Governor-General in his discretion is empowered to make rules prescribing cases wherein the Authority and any federated State should be required to give due notice of any proposal for constructing a railway, or for altering the alignment or gauge of a railway, and to deposit plans of such a proposal.

It is not improbable that in the sphere of railways disputes may arise between the Authority and a federated State. The Joint Select Committee attached great importance to this question and urged strongly that the Constitution Act should provide for and regulate the machinery for arbitration proceedings in such disputes. Accordingly, the Govefnment of India Act, 1935 provides for a Railway Tribunal, which shall hear and decide all such disputes. A complaint to the Tribunal shall be made in the three following cases :

(1) The Authority or a federated State may complain that the other party has not carried out its obligation in respect to mutual traffic facilities to avoid unfair discrimination, etc.

(2) Any federated State may complain that any direction given or obligation imposed by the Authority in the exercise of the executive authority of the Federation unfairly discriminate against the railways of the State or impose unreasonable obligations.

(3) In order to construct any new railways or to alter the alignment or gauge of a railway due notice of such a proposal should be given to the Governor-General. The Governor-

General shall have right in his discretion to certify whether, for reasons connected with defence, effect should or should not be given to the proposal. The rules shall provide that except when any such certification has been made, objection to the proposal may be lodged by the Authority or by a federated State, whosoever might be affected by the proposal, on the ground that carrying out of the proposal will result in unfair or uneconomic competition with the railway of the party objecting. Save when no objection is lodged or when an objection was lodged but withdrawn within the prescribed time, the Governor-General shall refer the question to the Railway Tribunal. The proposal shall not be proceeded with, save in accordance with the decision of the Tribunal as to whether it ought to be carried into effect, either with any modifications approved by the Tribunal or without any such modification.

The Railway Tribunal shall consist of one president and two other members. **The**

president shall be one of the judges of the Federal Court and shall be appointed for that purpose by the Governor-General in his discretion after consultation with the Chief Justice of India. He shall be appointed for a definite period not less than five years and shall be eligible for reappointment. He shall cease to be president as soon as he ceases to be a judge of the Federal Court. The Governor-General may, however, in his discretion after like consultations appoint temporarily any other judge to act as president for the time being in his place, if he is temporarily unable to act. The other two persons on the Tribunal shall be selected by the Governor-General in his discretion to act in each case from a panel of eight persons appointed by him in his discretion. Only such persons shall be appointed cfri the panel as possess railway, administrative, or business experience. These persons shall be paid such remunerations as may be determined by the Governor-General in his discretion. All the administrative expenses of the Railway Tribunal, which shall include all such remunerations, shall be charged on the federal revenues. The Governor-General shall in his discretion decide as to what sums should be included in respect of such administrative expenses in any estimate of expendi-

ture to be laid by him before the federal legislature.

The president may, with the approval of the Governor-General in his discretion, make rules regulating the practice and procedure of the Tribunal and the fees to be taken in proceedings before it. Any fees or moneys taken by the Tribunal shall form part of the federal revenues.

In all matters in which the Railway Tribunal has been granted jurisdiction by the Act, it shall have exclusive original jurisdiction. Only on questions of law can an appeal lie to the Federal Court from the decisions of the Tribunal, and the decision of the Federal Court shall be final, no second appeal being allowed. If, however, on an application made for the purpose, either the Tribunal or the Federal Court is satisfied that in view of an alteration in the circumstances it is proper to vary or to revoke any previous order made by it, it may do so.

In exercising its jurisdiction, the Tribunal is empowered to make such orders, including interim orders, orders varying or discharging a direction or order of the Authority, orders for the payment of compensation or damages and of costs and orders for the production of documents and the attendance of witnesses, as the circumstances of the case may require.

The Act enjoins it as the duty of the Authority, of every federated State, and of every other person or authority affected by any such order to give effect to the order.

The Authority is further empowered to undertake the performance of any functions in relation to railways in an Indian State which has not federated, if His Majesty's Representative for the functions of the Crown in its relations with Indian States entrusts it to the Authority and to the extent to which it is so empowered.

CHAPTER ELEVEN

MISCELLANEOUS

ALL THE PROVISIONS affecting the Indian States have now been dealt with in some connexion or other; there are, however, some which could not be included under any of those heads.

Firstly, the Act provides that with the approval of the Governor-General the High Commissioner for India in the United Kingdom may, on such terms as may be agreed, undertake to perform on behalf of a federated State functions in connexion with the business of the State and, in particular, in relation to the making of contracts as the State may like to make.

Secondly, in section 257, the Act makes special provisions as to the Political Department. The section provides that all persons holding any office, wholly or mainly connected with the exercise of the functions of the Crown in its relations with the Indian States before April 1, 1937, shall continue to hold office or posts subject to like conditions of service as to remuneration, pensions, or otherwise as theretofore or not less favourable conditions. Again, anything which might,, but for the passing of

the Act, have been done by or in relation to the Secretary of State in Council shall be done by or in relation to the Secretary of State, acting with the concurrence of his adviser after April 1, 1937.

Lastly, there arises the question of the position of Indian States subjects within the Federation. As has already been pointed out, the federal constitution is not bound to be democratic. It merely provides for a certain form of union and, hence, to criticize it on the ground that it does not provide for any democratization of the administration of the federated States, would be wholly beside the point. In the three Round Table Conferences the British Indian Delegation pressed for including a declaration of fundamental rights in the constitution itself, which was definitely opposed by the Indian States as they believed that it was bound seriously to affect their internal autonomy, and they made it clear that if any such declaration were made, it was not to apply in State territories. The Joint Parliamentary Committee also opposed the idea of including any such declaration in the Act on more grounds than one, both legal and practical, and the Act does not contain any such declaration. Obviously, the subjects of the Indian States are left to themselves to

make their efforts for the introduction of democratic institutions in the States.

But the Government of India Act, 1935 does provide in more than one place that in federal affairs nobody should be subjected to discrimination merely because he is the subject of a federated Indian State. Thus, as a British Indian subject is made eligible for being appointed a representative of a federated State, so also is a ruler or any subject of a federated State made eligible to vote for and to be elected a member of the federal or provincial legislature if he possesses the other qualifications. But the ruler or a subject of an Indian State which has not federated cannot claim such a right and he should possess provincial qualifications before he can think of the federal legislature.

Again, the rulers or subjects of federated States are given equal rights with British Indian subject so far as the civil services are concerned. Section 262 definitely enacts that the ruler or a subject of a federated State shall be declared eligible to hold any civil office under the Crown in India in connexion with the affairs of the Federation. But similar rights to the ruler or a subject of a non-federated State can be granted only by a declaration by the Governor-General, the

Governor of a province, or the Secretary of State, as the case may be.

Besides, section 116 definitely provides that when restricting the powers of the federal and provincial legislatures in discriminating against companies incorporated in the United Kingdom and carrying on business in India, in the matter of bounties for the encouragement of trade and industry payable out of the revenues of the Federation or of a province, either legislature can impose as regards new companies certain conditions which have to be satisfied before they become eligible for such bounties. The conditions operate as much in favour of the federated States and their subjects as they do in favour of British India and its people.

Further, section 135 makes the representatives of Indian States eligible to participate in the work of any inter-provincial council.

There are only two matters in which the subjects of any federated State do not enjoy equal rights with those of British India. The first of these is that of medical qualifications; under section 119 no privilege for States subjects, whether qualified in British India or in the States, could be insisted upon. In the White Paper it was suggested that the provisions as to medical qualifications should extend to subjects of Indian States also. But as the

more important Indian States signified that they might be unwilling to admit practitioners holding United Kingdom qualifications to practice in their territories,, the privilege had to be restricted to British India only, as any such privilege could be claimed only on the basis of complete reciprocity. Secondly, British Indian subjects enjoy exclusive privilege under section 298, whereby they cannot be debarred from carrying on any business or profession on racial or religious grounds. This privilege can also be extended to the federated States, but only on the basis of complete reciprocity, which the States are unable to accord.

EPILOGUE

THE FUTURE

I

THINGS TO COME

HISTORY SUPPLIES us an account of the events of the past. Politics gives us an analysis of the constitution of a state, its nature, its government, and questions of like nature. It can point out to us the best form of organization suited for a state, or how best to reconcile the different conflicting factors into one body politic. But where politics fails, history succeeds. More than once the best constitutions and schemes for government have broken down because they failed correctly to forecast coming evente and provide for future contingencies and needs. Here it is that history comes in as an indispensable aid; and history will cease to be of any use if it cannot help us to see into the future.

The one factor, however, which makes it impossible for politics and difficult for history to anticipate coming events is human nature,—that complex and incalculable thing. But even these uncertainties and difficulties have never deterred men from trying to see the future. They have recourse to every possible expedient which can help them to satisfy this overpowering curiosity of theirs, and it is but the

exercise of a natural bent of the human mind. The same urge impels those who are concerned with this particular question to anticipate the future of the Indian States. The Princes have all along been anxious to protect their dynasties, their systems of administration, their individuality, and, above all, their internal sovereignty in the new regime. The future constitution of India is before us and has already been examined in detail. Many doubts and difficulties still remain. There are still many things which are not amplified in the Act. The constitution itself is new to India. Above all, misgivings regarding the future is a thing which haunts vested interests at all times and, more especially, during an age of transition. Though a constitution has been given to India, one can never be quite sure that it is the final thing. Politics and human life know no finality.

But still the unknown has its lure which no man can resist, and one is tempted to sit and gaze at the clouds, trying to pierce through them to that full and clear view of events, which lies hidden from him. He cannot make any prophecies, but can only state his impressions as to what probable course history will take during the years to come. In the virgin field of the future of the Indian States, the material for a peep into the

future is supplied by their past, the tendencies in modern India, movements in the States' polity, and a thorough study of those unseen forces which are shaping the destiny of the States. A number of tendencies are developing unnoticed and unchecked, and they have given sufficient indications to thoughtful people of their existence. A series of new forces are acting and reacting, and a correct and proper understanding of their strength and effort becomes essential for a reasonably accurate forecast of the final result.

This forecast is no picture of the state of affairs as it should be, but only of what appears to be the most probable course calculated from certain given facts. It is probable that many of the possibilities might not appear to be very safe or happy so far as the future of the States, of their rulers, and of their dynasties is concerned, but one does feel that they are coming, and the only remedy for them lies in a thorough study of the whole problem in order to find out the right path and to avoid untoward results. A constructive programme, a broad-minded view,, and, above all, the right type of statesmanship, but no obstructionist tactics nor desperate opposition will solve the difficulties of the Princes.

The first and foremost problem which faces the States today and will await the deci-

sion of the Princes in the near future is that of their accession to the Federation. It can be definitely asserted that the majority of the States, if not all, will accede to the Federation in the near future. Many reasons will lead to this result. The call and the needs of the Empire will carry many Princes into the federal fold. The ardent desire of the British Government will influence many others. To some the Federation will appear inevitable and, there being no way out of it, they will join it as being the will of the Almighty. The accession of brother Princes will pull many others into the orbit. There will be some who will accede to the Federation because it is expected to afford them some economic relief or to lead to some decrease in the possibilities of unnecessary intervention by the Paramount Power. Last but not least, there may be just a couple of Princes who will accept the Federation from patriotic motives. Knowingly they will join the Federation and sacrifice)their absolute power and autocratic will, because it will give unity to their mother country. It appears certain that within twenty years after the inauguration of the Federation, India will become one unit, 'the Federation of India/ the only possible exceptions being the tracts held by other European nations like the French, the Portuguese, and the Dutch.

The accession to the Federation raises the question of the probable position of the States within the Federation itself. The Princes have fought hard for the recognition and acceptance of many important safeguards to protect their identity, individuality, rights, and privileges. The most essential of these have been embodied in the constitution and cannot be amended without the consent of the Princes themselves. Again, any extension of the scope of federal legislation will not be possible without the express consent of the ruler of a State. Yet all those who are acquainted with the history of the various federations in the world, are aware of the fact that in spite of all constitutional safeguards and provisions, the authority of the federal government is bound to grow. A federal union becomes possible only as a result of strong centripetal forces. These centripetal forces thus gain momentum and tend to bring the various component units more and more under the central government. In the case of the All-India Federation, there is a rigid written constitution, and these forces will exhibit themselves in four different ways.

First, the interpretation of the Instruments of Accession has been left to the Federal Court and it is very likely that a constructive interpretation of these documents will be made. It has been clearly stated that the

terms of an Instrument will be acceptable to the Crown only if they are compatible with the federal spirit. This belief is likely to carry weight with the courts and the resulting effect will be a strengthened and extended control of the Centre. Secondly, in order to solve problems of jurisdiction and remove many causes of continuous friction, there may follow wide delegation of powers from the Federal Government. It will be necessary to ensure a thorough working and application of the federal laws; and it will most probably be the case with many of the smaller States that they might not find it possible to administer these things or other powers which might be delegated to the States by the Federal Government, with such efficiency as the Federal Government will want them to be done, and the possible outcome is easily forecasted. Thirdly, as time passes, there is bound to be greater cohesion among the various States grouped together into one unit for federal purposes. The present rules for their representation in the upper house necessitate yearly changes, which will prove troublesome in addition to being instrumental in reducing in a great measure the importance and influence of their representatives. Better understanding between the various members of the group will follow. It should not come

as a surprise if at some later date a readjustment of the grouping itself is undertaken. The geographical factor is bound to prevail in the end, and the grouping of States hundreds of miles apart with widely divergent interests, as in the instance of Jaisalmer and Kishangarh, is sure to break down. Lastly, the growth of conventions of the constitution is bound to influence the spirit of the constitution itself. These will fill many gaps, add details, and modify some of the original ideas underlying the provisions of the constitution. These conventions will begin to grow from the first day of the inauguration of the Federation and will be modelled, perhaps unconsciously, on the lines prevailing in other federations. In India! today the centripetal forces are very strong and are gaining strength very rapidly. It is impossible to conceive that they will not leave their impress on these conventions.

The danger to the supreme position of the rulers is bound to arise from many other causes also, which will not necessarily be antecedent to their accession to the Federation. The British Indian provinces will receive provincial autonomy on April 1, 1937, and this will raise the desires and expectations of the subjects of the Indian States. They will naturally desire to be associated with the administration of the State to which they

belong. It may be urged that in Europe, the home of modern democracy, the democratic form of Government is already an exploded doctrine, Great Britain alone being a rare exception; and many important States are reverting to dictatorships or returning to the monarchical form of Government. But it should be clearly realized that whatever be the trend elsewhere, India appears to have made her choice for democracy. The desire for responsible self-government on the part of British India has greatly influenced the line of thought of the subjects of the States in the past, and this influence is sure to grow with the future advance there. Even if one succeeds in stopping all outside interference and efforts to stir up agitation in the States, some degree of responsible self-government cannot long be denied to the subjects. One great reason which may accelerate their demand will be the economic pressure on the people. The high standard of efficiency of the administration will involve heavier taxation and the cry of 'no taxation without representation* is sure to become the slogan of the subjects. Their association with the administration will evidently mean reduction in the absolute power and autocratic will of the rulers. The position of the rulers within their States may in its essentials became somewhat akin to that of

the Throne in Great Britain. But it is most unlikely that the rulers will part with their powers without a struggle. The contest will, of course, be peaceful, but the British Government can hardly help and side with the rulers in resisting the demands for political reforms of the States subjects or in imposing an autocratic rule upon them for all time. The recent case of Kashmir definitely shows the trend of the policy which the British Government will follow. This will be a contingency in which the Federal Government will have no voice, but it cannot be denied that its sympathies will be with the subjects rather than with the ruler. This is a fact which will exert a powerful moral influence.

It would perhaps be too imaginative a flight into the future to talk of a time when democratic institutions will have been established within all the States. But, whenever that day might come, one possible result will be a movement among the different States for geographical readjustment of the territories of the various States, or even for an amalgamation of a couple of coterminous States into one State. The example of the unification of Italy is notable, and it exactly points to us the possible line of action the people of the various States might take. In Italy there existed independent states ruled by autocratic

kings, and the people were held in subjection. The situation in India will be much easier than what it was in Italy. The political ties and bonds, which will grow with the inauguration of the All-India Federation, and the great nationalistic ideals are bound to carry the people by storm. Moreover, it must be admitted that only a very small percentage of the States can claim a great historical past and real political and cultural unity which could save them from being amalgamated with others. The utter failure of the Princes to create local patriotism by means of political histories of their States and their dynasties is bound to react on the future. The all-India outlook of the States subjects is growing and is definitely displacing all thoughts and ideas of their loyalty to their rulers and more so to the political organization or unit which has existed for no more than a couple of centuries and to which they are connected either by birth, by their descent, or some such tie. The all-India ideals are sure to be encouraged by economic pressure which will increase with the establishment of the Federation. The development of such an extreme situation is not likely to arise within a century or so, and much depends on other political events in India and also on the policy the Princes will follow in respect to their subjects. But when-

ever this position will arise, the barriers which mark out the boundaries of the various small States will break down and the people of these States will combine to create a great and powerful State. It will, more or less, be an extension, or rather a strengthened and organized form of a confederation prior to federation, which was suggested by H. H. the Maharajah of Patiala in 1931. But the union that will result in future will not be simply a combination of many States, but will lead to a complete effacement of many small States to give place to one great State.

The last but in no way the least important question is that of the future of the Chamber of Princes. If we omit the question of the inauguration of the Federation, the one thing which is attracting the greatest amount of attention from the Princes today is this problem. The establishment of the Chamber came about only after hard and strenuous efforts on the part of some Princes and repeated demands for such a body by many of them. The body was inaugurated by a Royal Proclamation. But today it does not count among its enthusiastic participants and supporters even those who laboured hard for its establishment. The Princes who hold its high offices today do not command that respect and confidence which the Chancellor and the members of the

Standing Committee of the Chamber of Princes are expected to wield. A crisis has come in its affairs and it has proved fatal. For all practical purposes today the Chamber has become extinct, and it is yet to be seen whether its present Chancellor will ever be replaced by another fully-elected Chancellor.

The opinion as regards the future of the Chamber is divided. One group of Princes honestly believes that the Chamber is no longer needed. It was created to deal with the big problems which will now be solved by the inauguration of the Federation. Its purpose has been served and it is no use making any efforts to revive it. But on the other hand, there are yet a few Princes who still believe that the establishment of the Chamber was a decided gain for the Princes and, hence, they should not allow the Chamber to die an unnatural death. Even admitting that it might have no important function to fulfil in the future, to allow it to become extinct because of the internal dissensions among its various members would simply make the Princes the laughing-stock of the world.

There is yet a third group among the Princes, in which one can find strange bedfellows. It consists of all those Princes who are not concerned about the future of the Chamber. These are those Princes who have

never felt interested or who did not wish to take interest even in its early stages. They are now joined by those also who were once its most enthusiastic supporters, but **who** through personal rivalries or by force of circumstances have ceased today to take any interest in it or have left it for good. Many of the Princes included in this category would be willing to take an active interest if a scheme for its reorganization is taken up. But it appears a certainty that neither the Princes now in power, so far as the Chamber is concerned, nor the majority of the members of the Chamber will favour any scheme for its reorganization, which might be proposed by the bigger Princes.

When in 1919 the membership of the Chamber was being decided upon, all the Princes enjoying full sovereign rights within their States were allowed to become its members in their own right. It was an age when the proposition of reading all the treaties together prevailed and when even the practices appropriate in the case of the lesser chiefs were being applied to the greater Princes. But the sixteen years which have elapsed since the establishment of the Chamber, have seen a decided improvement in the position of the greater Princes. The allocation of seats in the two federal houses among the

Princes *inter se* has definitely established distinctions between the various States.

Moreover, from their experience of the working of the Chamber, these greater Princes have found that many of the so-called smaller Princes do not attach due importance to the question of Paramountcy. On the other hand, the bigger Princes feel that at times the so-called smaller Princes have proved to be a decided handicap. A majority of the latter Princes on the Standing Committee during later years has made that body quite incapable and completely useless to take up and deal with such questions. The greater Princes believe that but for such incapacity of the Standing Committee at a most vital period in the history of the States, they could have got the problem of paramountcy settled to their satisfaction. During these years of destiny, though the Princes held the most advantageous political position, the continued opposition of the so-called smaller States and the consequent disunity among their ranks definitely undermined their position and resulted in the wasting of a great opportunity. Hence they are not willing to come to the Chamber in its existing form. They honestly believe that any further acquiescence in their present position in the Chamber will set at nought the advantage that they have gained by the scheme of

the allocation of seats in the federal legislature. The only possibility of their return is on a reorganization of the Chamber on lines which will ensure due recognition of their importance.

Such is the present position. The question 'What next?' automatically arises. Now-a-days some efforts are being made to bring together the Princes and restore unity. Will these efforts succeed? One does not feel any hesitation in giving definite replies to these questions. Let it be definitely understood that any scheme for the restoration of unity among the Princes or for a revival of the Chamber in its present form is bound to fail. One does feel the absence of a great personality like H. H. the late Jam Sahib of Nawanagar, the great Ranji, among the Princes. The one thing essential for finding a way out of the present *impasse* is to realize the changing state of things. It must be admitted that the lack of a great personality or real statesmanship among the so-called smaller Princes who have captured the Chamber today, makes it impossible for them to take a broad view of things. Only by a really statesman-like move can they hope to gain the goodwill and confidence of not only those whom they have alienated, but also to bring amidst their ranks all those who have so long stood aside and have not taken any

interest in its affairs. Unless and until the so-called smaller Princes are ready to yield to the greater Princes there will not be any compromise. It is a bitter pill to swallow for the smaller Princes, but let them realize that even if they do not accept it, this inequality, at least in matters of relative political importance, has come to stay. They might move heaven and earth, but cannot change the allocation of seats in the federal legislature.

It can definitely be asserted that the so-called smaller Princes would not yield an inch unless and until the British Government were to intervene and persuade them to accept the change in their relative political importance. Thus it seems the present Chamber of Princes will soon become extinct. All efforts to revive it in its present form will fail. And if a scheme of its reorganization is ever taken up and is accepted by the Government of India, the reorganized Chamber will be boycotted, this time by these smaller Princes. But so far as the bigger Princes will be concerned, they will take more active interest in its affairs.

There is, however, another possibility open. If it does happen that no reorganization of the present Chamber of Princes is undertaken—and it appears impossible that the British Government will not intervene to save a body inaugurated by Royal Proclamation—

one can be quite certain that, after allowing the present Chamber to become extinct, the bigger Princes will make a move to form themselves into another body, consisting mainly of the bigger Princes; and they will try for its recognition by the British Government. During the dyarchy which is going to be introduced in the affairs of the States, the questions pertaining to their relations with the Crown, which affect all the States equally, will still remain to be decided after common consultations. Their past experience has taught these Princes the great lesson that a united stand by them will improve their position and gain for them solid advantages. Hence they are bound to decide upon the formation of some such body wherein they might come together and decide questions of common concern, even if it were merely informal and unrecognized by the Crown or the federal constitution. One should not be surprised if during the years to come this body becomes very influential and is later not only recognized, but is also allowed to control and conduct the general policy of the Crown towards the States. Thus alone can the Princes gain the position which they have been striving for since 1918, *viz,,* self-government in all matters relating to the States.

To conclude, one does feel certain that but for the reorganization of the Chamber or the establishment of some such body as has been suggested above, it would be simply impossible for the Princes to retain their importance. The tide of democracy is evidently rising in India and the development of these ideals within the States will throw the Princes into the dark corner of obscurity. Here once again history comes to our help and reminds us of the words of Clarendon about Oliver Cromwell. "Cromwell's greatness at home," he said, "was merely a shadow of his greatness abroad/' The Princes will be able to retain their importance, some of their powers, and, above all, the proud heritage of their past if only they can keep themselves in the forefront of imperial affairs, take prominent part in all-India politics, or, at least, gain sufficient importance and esteem to command the confidence of their brother Princes.

All these are mere forecasts, simply conjectures of an idle mind. Will they come "true? How far will they be falsified? The writer will not, however, dare to give any reply to these questions. All that he can tell his readers is to wait and watch.

II

A SCHEME FOR STRENGTHENING AND REORGANIZING THE CHAMBER OF PRINCES

THE TRAGIC FAILURE of the present Chamber of Princes is a well-known fact, and nothing would be gained by denying that today its influence has reached its lowest ebb. More than once in the past plans for its reorganization were suggested, but none of them received any great support. It would not be very far from the truth to say that the failure of these efforts on the one hand and the ever-increasing suspicions in the minds of the so-called smaller Princes on the other, led to the present *impasse.* But it is one of the crying needs of the day that the Princes should stand united, and, hence, the need for a strong Chamber of Princes is keenly felt. It is a certainty that in its present form it can never gain strength, nor can it ever receive support and confidence of the most important Princes of India. It is also evident that its weakness during the immediate past has done definite harm to the cause of the Princes, and it is clear that if things are allowed to drift it may become a serious menace to the Princes themselves. It is high

time that once again a great effort were made to come to an agreed solution of this serious problem.

The need for a strengthened Chamber of Princes enjoying the confidence of all the Indian Princes will be all the more appreciated when the Federation of India is inaugurated and the representatives of the Indian States will take their seats beside their British Indian colleagues. If the Princes want to be a decisive factor in federal affairs, they must come together and take a united stand at least on all matters relating to the Indian States. At that time the Princes will be called upon to deal with two different sets of problems. First, leaving aside special individual cases, it would be essential for the Princes or rather for the States to chalk out a definite policy in respect to all matters pertaining to their relations with the Crown. Secondly, in all matter in which the States are interested and in respect to which the federal legislature has power to enact laws for the federated States, the States will have to decide upon a definite policy and the line of action to be followed in each case and to be adopted by the representatives of the States in the federal legislature.

It seems impossible that the Standing Committee of the Chamber of Princes, as it is now constituted, will be able to deal with all

such matters; its decisions will in no case be accepted or followed by all the States. Similarly, it appears certain that any committee, like the Hydari Committee, cannot come to the rescue of the Princes. It is neither fully representative nor is it constituted on any regular basis or plan. Again, it is responsible to none superior to it. It could well pronounce upon the draft Government of India Bill, but its decision on matters of policy shall not be accepted by all the States. In order to safeguard the interests of the States under the new regime, it becomes essential either to create a new body or to reorganize and strengthen the present Chamber. Obviously, the latter scheme will be of the greatest advantage to the Princes and the States.

Any scheme for a reorganization of the Chamber should not only take note of the defects in the present system and constitution, but should also make an effort to meet the new situation and circumstances that have arisen and in many cases changed the whole state of things. The Government of India Act, 1935 has not only changed many relative values but has also given definite shape to many facts which had hitherto remained unsettled. When proposing any scheme for the reorganization of the Chamber, the allocation

of the seats to the various States *inter se* in the federal legislature cannot be wholly overlooked. The defects in the constitution of the Chamber are quite glaring. The equality of votes among all of its members and the decisions on any question by a majority of votes cast obviously reduced all the States to an equal political standing, no regard being paid to the relative political importance of the States. Naturally the most important Princes non-co-operated. With the assertion of their right to vote and the development of democratic feeling in the institution, its resulting evils have also crept in and the non-co-operating group has increased in number during the last few years. This non-co-operation by the bigger and more important Princes has cut deep at the root of the importance of the Chamber and, naturally, its Standing Committee has become weak and carries no influence.

One cannot draft a scheme which will meet with no opposition whatever, for a few dissenting voices will ever be present. An effort, however, is being made here to reconcile the various claims made and meet the points raised by the different parties and groups among the Princes. In order to meet the wishes of all the sections concerned the chief

essentials of a revised constitution of the Chamber should be:

(1) Equality of status of all the States enjoying full sovereign rights within their States;

(2) Due weightage and importance to, and full recognition of the political importance of, the bigger States;

(3) Due recognition of the claims of those States which are not members of the Chamber of Princes, but whose importance has been accepted and recognized by special representation in the federal legislature and which have not been included in Division XVII of the table of seats in the federal legislature.

(4) A strong, well-advised working body.

The one reason why all the plans in the past failed to gain support was that they made no effort to reconcile the first three essentials, which are obviously in conflict with one another but none of which can be dispensed with if any agreed scheme is to be found out. The present misunderstanding between the bigger and smaller Princes is based on the belief that equality of status cannot go hand in hand with due recognition of differing political importance.

There appears to be only one way to solve this difficult problem. The present Chamber pf Princes should be retained in its present form, but it should be deprived of its power to vote on various measures and to elect the various office-holders. These powers should be vested in another body to be newly created and constituted on the basis of the relative political importance of the various States, which may be called the 'Council of Princes'. Thus equality of status will be maintained by all the sovereign Princes of India sitting in one and the same Chamber of Princes in their own right, while due recognition of their relative importance will be made by their position in the Council of Princes.

When once the Chamber of Princes has been deprived of its power to vote^ it can safely be slightly enlarged in order to give due recognition to the claims of some of the States. The claims of many such States for a full seat in the Chamber have been pending before the Standing Committee for many years past and as yet no final decision has been arrived at about them. If any of them are to be created full-power States, His Majesty can grant the necessary powers and create them full-power Princes with full sovereign rights within their own States. All others who may not be included in such a list of additional new

members in their own right, but who had so far enjoyed the right to send their representative to the Chamber and who have not been included in Division XVII of the table of seats in the Act should be given some promotion from their present position. They can be formed into smaller groups of threes and fours according to their relative importance and allowed to elect someone out of their group. Thus the distinction between sovereign and non-sovereign States will continue to exist. Obviously, in such a scheme no objections can be effectively raised either about these additional members and other smaller States swamping the Chamber or about an obliteration of distinctions between sovereign and non-sovereign States.

The reorganized Chamber will thus be a deliberative body only discussing questions relating to the States. Its members will be empowered to express their views, but no votes will be taken. It may, however, be made a rule by a convention, rather than by a clause in the constitution, that save in special cases of emergency, the Council of Princes may not take up a question for discussion before it has been submitted and discussed in the Chamber of Princes. This convention will not only give due importance to the Chamber, but will also acquaint the Council of Princes with the

views of the Princes in general as also with all possible opposition and objections to any measure.

The real power will thus remain with the Council of Princes, which should consist of thirty Princes nominated, elected, or permanently appointed on it, according to the proposals given below. It should be reconstituted every third year and should meet at least twice a year. It shall elect the Chancellor and the Standing Committee, shall vote and finally express its view on all measures after fully deliberating over them.

The Standing Committee, including the Chancellor and the Pro-Chancellor, shall carry on the full work of the Chamber and the Council of Princes and shall entirely replace the present Standing Committee of the Chamber of Princes. The Standing Committee should meet at least once in four months. To advise and to help it, to discuss all great problems relating to the States, and also to formulate the policy and line of action for the States representatives in the federal legislature it shall be essential to appoint a permanent Council of Ministers. This Council of Ministers will not only be, more or less, a body of experts, but will also practically do all the preliminary work on all important measures and shall always be subject to instructions from the

Standing Committee of the Princes. These two bodies, *viz.*, the Standing Committee of the Princes and the Council of Ministers, will supply the urgent need for a strong working body for the Princes.

Thus, under the new revised constitution, there shall be three bodies: (1) The reorganized Chamber of Princes; (2) a newly created Council of Princes; and (3) a Standing Committee of Princes helped and advised by a permanent Council of Ministers. And this scheme will embody all the four essentials noted above. The details of the constitution of each body may now be stated.

In reorganizing the Chamber of Princes, its membership should be increased by four members and these additional seats should be given to the States which are not entitled to membership in their own right. A distinction should be made between the States which are given separate representation in the federal legislature and those which are put in Division XVII of the table of seats; the members elected by the former class should be termed 'group members[5] and the latter 'representative members/ Thus the former class will get the better representation to which they are entitled. This addition of four members is not likely to make a serious difference to the composition of the Chamber

of Princes. Thus, under the new scheme, the Chamber of Princes shall consist of the following 125 members:

Princes who are members in their own right in 1937	109
Group members representing the nine groups of States	9
Representative members elected by other ruling chiefs	7
Total	125

The nine groups, which shall return one member each, shall be as follows:

(1) Nagod and Baraunda.
(2) Bhor, Sandur, and Akalkot.
(3) Jamkhandi, Miraj (Senior), Miraj (Junior), and Kurandvad (Senior).
(4) Phaltan, Jath, Aundh, and Ramdurg.
(5) Sonpur, Patna, and Kalahandi.
(6) Keonjhar, Dhenkanal, Nayagarh, Talcher, and Nilgiri.
(7) Gangpur, Bamra, Saraikela, Baud, and Bonai.
(8) Bastar, Surguja, Raigarh, and Nandgaon.
(9) Khairagarh, Jashpur, Kanker, Korea, and Sarangarh.

The seven representative members shall be elected from the seven constituencies consisting of the following States :

(1) Pataudi, Kalsia, and Daijana.
(2) Baghal, Baghat, Balsan, Bashahr, Bhajji, Bija, Darkauli, Dhami, Jubbal, Keonthal, Kothar, Kumharsain, Kunihar, Mailog, Mangal, Nalagarh, Sangli, and Taroch.

(3) Lakhtar, Sayla, Chuda, Vala, Lathi, Muli, Bajna, Patdi, Tharad, Pol, Kadma, Bhadarwa, and Wao.

{4) Jasdan, Manavadar, Than-Devli, Vadia, Virpur, Malia, Kotda-Sangani, Jetpur, and Bilkha.

(5) This shall consist of two Deccan States and all the States of Central India, *viz.,* Surgana and Savnur, and Keri, Kaniadhana, Sarila, Bihat, Garauli, Gaurihar, Bankapahri, Bijna, Dhurwai, Tori, Fatehpur, Jigni, Lugasi, Alipura, Naigawan Rebai, Jaso, Kothi, Sohawal, Bhaisundha, Pahra, Paldeo, Taraon, Kamta Rajaula, Kurwai, Muhammadgarh, Piploda, Jobat, Kathiwada, Mathwar, Ratanmal.

(6) Udaipur, Sakti, Kawardha, Chhuikhadan, Chang Bhakar, and Rairakhol.

(7) Khandpara, Daspalla, Hindol, Athmallik, Ranpur, Narsingpur, Athgarh, Pal-Lahara, Baramba, Tigiria, and Kharsawan.

The details regarding the elections of each of these groups and constituencies can be later decided upon.

The Council of Princes shall consist of thirty-four Princes and the Viceroy shall preside over its sessions also. The thirty-four seats shall be distributed thus among the various Princes:

17 seats—One seat each to be given permanently to the following 17 States which have been given *more than one seat* in the federal upper house, *viz.,* Hyderabad, Mysore, Kashmir, Gwalior, Baroda, Travancore, Cochin, Udaipur, Jaipur, Jodhpur, Bikaner,

Indore, Bhopal, Rewa, Kolhapur, Patiala, and Bahawalptir.

2 seats for the representatives to be elected by the *six* remaining 17-gun salute States.

3 seats for the representatives to be elected by the *seventeen* 15-gun salute States.

3 seats for the representatives elected by *sixteen* 13-gun salute States.

3 seats for the representatives to be elected by *thirty* States enjoying the 11-gun salute.

1 seat for the representative elected by the *twenty-three States* enjoying the 9-gun salute.

1 seat for the representative to be elected by the *16 group members and representative members* of the Chamber of Princes.

This makes a total of 30 seats. The remaining four seats may be filled by these thirty members co-opting any other members of the Chamber of Princes, whose presence they would consider to be useful and helpful in the interests of the States. All the representatives shall be elected for a period of three years only. The members to be co-opted shall be appointed for a period of one year only. Any seat thus filled by election or co-option shall become vacant if the sitting member dies or resigns his seat, and a new member shall be co-opted or elected for the remainder of the term of the member whose seat has fallen vacant.

The Council of Princes shall elect its Chancellor and Pro-Chancellor from its members for a term of one year only. A group member

or a representative member shall also be eligible for any such election if he is a member of the Council of Princes. Any other Prince who is a member of the Chamber of Princes in his own right but is not a member of the Council of Princes, can also be elected Chancellor or Pro-Chancellor, but in that case it should become necessary for the Council to co-opt him as its member. The Standing Committee shall consist of seven Princes to be elected yearly by the Council of Princes. The Council of Ministers shall consist of about twenty ministers, half of whom shall be nominated by the Council of Princes and the other half elected by the Indian States Representatives in the federal legislature.

It is obvious that, though this scheme tries to meet all existing points of view, it shall demand some sacrifice on the part of those Princes who have effectively wielded their power to vote and affect the decisions of the Chamber so far. Let these Princes who are called upon to make this little sacrifice realize that in general their interests are identical with those of the bigger Princes. On all important matters of common concern the bigger Princes have much more to lose than the smaller ones. Again, in regard to individual details neither the Chamber of Princes nor any other body can do anything and to do

all that may be necessary the States shall have to act on their own behalf. It is also clear that any alienation of the bigger Princes and attempt to force them out of the Chamber of Princes will only result in inducing them to create a separate organization of their own, while the smaller Princes who might capture the Chamber of Princes would not be able to use their powers effectively. Their voice will not carry the necessary weight nor command attention, and they might even find their own ranks divided by mutual jealousies and internal discord. Consequently, the sacrifice on the part of the so-called smaller Princes appears to be inevitable and unavoidable. They cannot for long hope to retain their present power. Would it not be an act of wise statesmanship to conciliate the bigger Princes by accepting a workable scheme which will give effect to their point of view and thus gain their goodwill and confidence which can be used to the best advantage of all ?

APPENDICES

Appendix A.

Draft Instrument of Accession (Revised).

Appendix B.

Schedule Giving Provisions Which Can Be Amended Without Affecting the Accession of the States.

Appendix C.

Draft Instrument of Instructions to the Governor-General.

Appendix D.

Table of Seats of the Indian States in the Federal Legislature.

Appendix E.

Forms of Oath or Affirmation by a Member of the Federal Legislature.

Appendix F.

The Federal Legislative List.

Appendix G.

Form of Judicial Oath.

APPENDIX A

DRAFT INSTRUMENT OF ACCESSION (REVISED)

(See Part II, Chapter II, p. 214.)

[A provisional draft Instrument of Accession was originally published as a Command Paper (Cmd. 4843). It has since been revised in the light of the Government of India Act of 1935 and of the criticisms directed against it. The revised form reproduced below is being circulated among the Indian States individually with a view to an early discussion with the rulers.]

THE INSTRUMENT OF ACCESSION

OF . . . . FULL NAME AND TITLE.

Whereas the proposals for the establishment of a Federation of India composing such Indian States as may accede thereto and the provinces of British India constituted as autonomous provinces have been discussed between the representatives of His Majesty's Government, of the Parliament of the United Kingdom, of British India and of the Rulers of the Indian States.

And whereas those proposals contemplated that the Federation of India should be constituted by an Act of the jParliament of the United Kingdom and by the accession of Indian States.

And whereas provision for the constitution of the Federation of India has now been made in the Government of India Act of 1935, but it is by that Act provided that the Federation shall not be established until such date as His Majesty may, by proclamation, declare and such declaration cannot be made until the requisite number of Indian States have acceded to the Federation.

And whereas the said Act cannot apply to any of my territories save by virtue of my consent and concurrence signified by my accession to the Federation.

Now therefore I, [full name and title, ruler of . . .], in the exercise of my sovereignty in and over my said State, for the purpose of co-operating in the furtherance of the interests and welfare of India by uniting in a federation under the Crown by the name of Federation of India with the provinces called Governor's Provinces and with the provinces called Chief Commissioners' Provinces and with the Rulers of other Indian States, do hereby execute this my Instrument of Accession and

(i) I hereby declare that, subject to His Majesty's acceptance of this Instrument, I accede to the Federation of India as established under the Government of India Act of 1935 (hereinafter referred to as "the Act") with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of this, my Instrument of Accession, but subject always to the terms thereof and for the purposes only of the Federation, exercise in relation to the State of . . . . (hereinafter referred to as "this State") such functions as may be vested in them by or under the Act.

(2) I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

(3) I accept the matters specified in the first schedule hereto as the matters with respect to which the Federal Legislature may make laws for this State and, in this Instrument and in the said first schedule, I specify the limitations to which the power of the Federal Legislature to make laws for this State and the exercise of the executive authority of the Federation in this State are respectively to be subject. Where under the first schedule hereto the power of the Federal Legislature to make laws for this State with respect to any matter specified in that schedule is subject to a limitation, the executive authority of the Federation shall not be exercisable in this State with respect to that matter otherwise than in accordance with and subject to that limitation.

(4) The particulars to enable due effect to be given to the provisions of sections 147 and 149 of the Act are set forth in the second schedule hereto.

(5) Reference in this Instrument to laws of the Federal Legislature include reference to Ordinances promulgated, Acts enacted and laws made by the Governor-General of India under sections 42 to 45 of the Act inclusive.

(6) Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or save as provided by this Instrument, or by any law of the Federal Legislature made in accordance with the terms thereof, the exercise of any of my powers, authority and rights in and over this State.

(7) Nothing in this Instrument shall be construed as authorizing Parliament to legislate for, or exercise jurisdiction over this State or its ruler in any respect. Provided that the accession of this State to the Federation shall not be affected by any amendment of the provisions of the Act mentioned in the second schedule thereto and the references in this Instrument to the Act shall be construed as references to the Act as amended by any such amendment ; but no such amendment shall, unless it is accepted by the Ruler of this State in an Instrument supplementary to this Instrument, extend the functions which by virtue of this Instrument are exercisable by His Majesty or any Federal authority in relation to this State.

(8) The schedules hereto annexed shall form an integral part of this Instrument.

(9) This Instrument shall be binding on me as from the date on which His Majesty signifies his acceptance thereof, provided that if the Federation of India is not established before the day of . . . . Ninteen hundred and . . . ., this Instrument shall, on that day, become null and void for all purposes whatsoever.

(10) I hereby declare that I execute this Instrument for myself, my heirs and successors, that accordingly any reference in this Instrument to me, or to the Ruler of this State, is to be construed as including a reference to my heirs and successors. This Instrument of Accession [then follows the attestation to be drawn with all due formality appropriate to the declaration of a Ruler.]

ADDITIONAL PARAGRAPHS

[The following are additional paragraphs for insertion in proper cases.]

(a) Whereas I am desirous that functions in relation to the administration in this State of laws of the Federal

Legislature which apply therein shall be exercised by the Ruler of this State and his officers and the terms of an agreement in that behalf have been mutually agreed between me and the Governor-General of India and are set out in the schedule hereto, now therefore I hereby declare that I accede to the Federation with the assurance that the said agreement will be executed and the said agreement, when executed, shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

(b) **The provisions contained in part VI of the Act with respect to interference with water supplies, being sections 130 to 133 thereof, inclusive, are not to apply in relation to this State.**

(c) Whereas notice has been given to me of His Majesty's intention to declare in signifying his acceptance of this my Instrument of Accession that the following areas are areas to which it is expedient that the provisions of sub-section (1) of section 294 of the Act should apply : now therefore I hereby declare that this Instrument is conditional upon His Majesty making such a declaration.

APPENDIX B

PROVISIONS OF THIS ACT WHICH MAY BE AMENDED WITHOUT AFFECTING THE ACCESSION OF A STATE

(See Part II, Chapter III, p. 236.)

Part I.

in so far as it relates to the Commander-in-Chief.

Part II, Chapter II.

save with respect to the exercise by the Governor-General on behalf of His Majesty of the executive authority of the Federation, and the definition of the functions of the Governor-General ; the executive authority of the Federation ; the functions of the council of ministers, and the choosing

and summoning of ministers and their tenure of office ; the power of the Governor-General to decide whether he is entitled to act in his discretion or exercise his individual judgment ; the functions of the Governor-General with respect to external affairs and defence ; the special responsibilities of the Governor-General relating to the peace or tranquillity of India or any part thereof, the financial stability and credit of the Federal Government, the rights of Indian States and the rights and dignity of their Rulers, and the discharge of his functions by or under the Act in his discretion or in the exercise of his individual judgment; His Majesty's Instrument of Instructions to the Governor-General ; the superintendence of the Secretary of State ; and the making of rules by the Governor-General in his discretion for the transaction of, and the securing of transmission to him of information with respect to, the business of the Federal Government.

Part II, Chapter III.

save with respect to the number of the representatives of British India and of the Indian States in the Council of State and the Federal Assembly and the manner in which the representatives of the Indian States are to be chosen ; the disqualifications for membership of a Chamber of the Federal Legislature in relation to the representatives of the States ; the procedure for the introduction and passing of Bills ; joint sittings of the two Chambers ; the assent to Bills, or the withholding of assent from Bills, by the Governor-General ; the reservation of Bills for the signification of His Majesty's pleasure; the annual financial statement ; the charging on the revenues of the Federation of the salaries, allowances and pensions payable to or in respect of judges of the Federal Court, of expenditure for the purpose of the discharge by the Governor-General of his functions with respect to external affairs, defence, and the administration of any territory in the direction and control of which he is required to act in his discretion and of the sums payable to His

Majesty in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States; the procedure with respect to estimates and demands for grants; supplementary financial statements; the making of rules by the Governor-General for regulating the procedure of, and the conduct of business in, the Legislature in relation to matters where he acts in his discretion or exercises his, individual judgment, and for prohibiting the discussion of, or the asking of questions on, any matter connected with or the personal conduct of the Ruler or ruling family of any Indian State; the making of rules by the Governor-General as to the procedure with respect to joint sittings of, and communications between, the two chambers and the protection of judges of the Federal Court and State High Courts from discussion in the Legislature of their conduct.

Part II, Chapter IV.

save with respect to the power of the Governor-General to promulgate ordinances in his discretion or in the exercise of his individual judgment, or to enact Governor-General's Acts.

Part III, Chapter I.

The whole chapter.

Part III, Chapter II.

save with respect to the special responsibilities of the Governor relating to the rights of Indian States and the rights and dignity of the Rulers thereof and to the execution of orders or directions of the Governor-General, and the superintendence of the Governor-General in relation to these responsibilities.

Part III, Chapter III.

save with respect to making of rules by the Governor for prohibiting the discussion of, or the asking of questions on, any matter connected with or the personal conduct of the Ruler or ruling family of any Indian State, and the protection of judges of the Federal Court and State High Courts from discussion in the Legislature of their conduct.

Part III, Chapter IV.

The whole chapter.

Part III, Chapter V.

The whole chapter.

Part III, Chapter VI.

The whole chapter.

Part IV.

The whole part.

Part V, Chapter I.

save with respect to the power of the Federal Legislature to make laws for a State ; the power of the Governor-General to empower either the Federal Legislature or Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act ; any power of a State to repeal a Federal law, and the effect of inconsistencies between a Federal law and a State law.

Part V, Chapter II.

save with respect to the previous sanction of the Governor-General to the introduction or moving of any Bill or amendment affecting matters as respects which the Governor-General is required to act in his discretion ; the power of Parliament to legislate for British India or any part thereof, or the restrictions on the power of the Federal Legislature and of Provincial Legislatures to make laws on certain matters.

Part V, Chapter III.

The whole chapter.

Part VI.

save in so far as the provisions of that Part relate to Indian States, or empower the Governor-General to issue orders to the Governor of a Province for preventing any grave menace to the peace or tranquillity of India or any part thereof.

Part VII, Chapter I.

in so far as it relates to Btirma.

Part V I I , Chapter I I .

save with respect to loans and guarantees to Federated States and the appointment, removal and conditions of service of the Auditor-General.

Part V I I , Chapter I I I .

save in so far as it affects suits against the Federation by a Federated State.

Part V I I I .

save with respect to the constitution and functions of the Federal Railway Authority ; the conduct of business of the Authority and the Federal Government, and the Railway Tribunal and any matter with respect to which it has jurisdiction.

Part I X , Chapter I .

in so far as it relates to appeals to the Federal Court from High Courts in British India ; the power of the Federal Legislature to confer further powers upon the Federal Court for the purpose of enabling it more effectively to exercise the powers conferred upon it by this Act.

Part I X , Chapter I I .

The whole chapter.

Part X.

save with respect to the eligibility of Rulers and subjects of Federated States for civil Federal office.

Part X I .

The whole part.

Part X I I .

save with respect to the saving for rights and obligations of the Crown in its relations with Indian States ; the use of His Majesty's forces in connexion with the discharge of the functions of the Crown in its said relations ; the limitation in relation to Federated States of His Majesty's power to adapt and modify existing Indian laws ; His Majesty's powers and jurisdiction in Federated States, and resolutions of the Federal

Legislature recommending amendments of this Act or Orders-in-Council made thereunder ; and save also the provisions relating to the interpretation of this Act in so far as they apply to provisions of this Act which may not be amended without affecting the accession of a State.

Part XIII.

The whole part.

First Schedule.

The whole schedule, except Part II thereof.

Third Schedule.

The whole schedule.

Fourth Schedule.

save with respect to the oath or affirmation to be taken or made by the Ruler or subject of an Indian State.

Fifth Schedule.

The whole schedule.

Sixth Schedule.

The whole schedule.

Seventh Schedule.

any entry in the Legislative Lists in so far as the matters to which it relates have not been accepted by the State in question as matters with respect to which the Federal Legislature may make laws for that State.

Eighth Schedule.

The whole schedule.

Ninth Schedule.

The whole schedule.

Tenth Schedule.

The whole schedule.

APPENDIX C

THE DRAFT INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR-GENERAL

(See Part II, Chapter IV, p. 253.)

[Section 13 of the Government of India Act, 1935 requires that the Secretary of State shall lay before Parliament the draft of any Instructions (including those amending or revoking previous ones) which it is proposed to His Majesty to issue to the Governor-General. The following draft Instrument of Instructions to the Governor-General was presented to Parliament in February, 1935 (Cmd. 4805) by the Secretary of State for India as illustrating the contents of these documents which the Government had in mind. The Instrument will play an important part in establishing constitutional practice under the Government of India Act.]

Whereas by Letters Patent bearing even date We have made effectual and permanent provision for the Office of Governor-General of India :

And Whereas by those Letters Patent and by the Act of Parliament passed on [2nd August, 1935] and entitled the Government of India Act, 1935 (hereinafter called "the said Act"), certain powers, functions and authority for the government of India and of Our Federation of India are declared to be vested in the Governor-General as Our Representative :

And Whereas, without prejudice to the provision in the said Act that in certain regards therein specified the Governor-General shall act according to instructions received from time to time from Our Secretary of State, and to the duty of Our Governor-General to give effect to any instructions so received, We are minded to make general provision regarding the manner in which Our said Governor-General shall execute all things which, according to the said Act and said Letters Patent, belong to his Office and to the trust which We have reposed in him :

And Whereas by the said Act it is provided that the

draft of any such Instructions to be issued to Our Governor-General shall be laid by Our Secretary of State before both Houses of Parliament:

And Whereas both Houses of Parliament, having considered the draft laid before them accordingly, have presented to Us an Address praying that Instructions may be issued to Our Governor-General in the form which hereinafter follows:

Now Therefore We do by these Our Instructions under Our Sign Manual and Signet declare Our pleasure to be as follows:

A.—INTRODUCTORY

I. Under these Our Instructions, unless the context otherwise require, the term "Governor-General" shall include every person for the time being administering the Office of Governor-General according to the provisions of our Letters Patent constituting the said Office.

II. Our Governor-General for the time being shall, with all due solemnity, cause Our Commission under Our Sign Manual, appointing him, to be read and published in the presence of the Chief Justice of India for the time being, or in his absence other Judge of the Federal Court.

III. Our said Governor-General shall take the oath of allegiance and the oath for the due execution of the Office of Our Governor-General of India, and for the due and impartial administration of justice, in the form hereto appended, which oaths the Chief Justice of India for the time being, or in his absence any Judge of the Federal Court, shall, and is hereby required to, tender and administer unto him.

IV. And We do authorise and require Our Governor-General, by himself or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold office as a member of the Council of Ministers the oaths of office and of secrecy hereto appended.

V. And We do further direct that every person who under those Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. And Whereas great prejudice may happen to Our service and to the security of India by the absence of Our Governor-General he shall not quit India during his term of office without having first obtained leave from Us under Our Sign Manual or through one of Our Principal Secretaries of State.

B.—IN REGARD TO THE EXECUTIVE AUTHORITY OF THE FEDERATION

VII. Our Governor-General shall do all that in him lies to maintain standards of good administration; to encourage religious toleration, co-operation and goodwill among all classes and creeds; and to promote all measures making for moral, social and economic welfare.

VIII. In making appointments to his Council of Ministers Our Governor-General shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature, to appoint those persons (including so far as practicable representatives of the Federated States and members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

IX. In all matters within the scope of the executive authority of the Federation, save in respect of those functions which he is required by the said Act to exercise in his discretion, our Governor-General shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the said Act committed to him or with the proper discharge of any of the functions which he is otherwise by the said Act required to exercise on his individual judgment; in any of which cases our Governor-General shall, notwithstanding his Ministers' advice, act in exercise of the powers by the said Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not

to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

X. It is Our will and pleasure that in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federation Our Governor-General shall in particular make it his duty to see that a budgetary or borrowing policy is not pursued which would, in his judgment, seriously prejudice the credit of India in the money markets of the world, or affect the capacity of the Federation duly to discharge its financial obligations.

XI. Our Governor-General shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Federal Legislature, and those classes who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare on joint political action in the Federal Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor-General shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and he shall be guided in this regard by the accepted policy prevailing before the issue of these Our Instructions, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

XII. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the said Act and the safeguarding of their legitimate interests Our Governor-General shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the said Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XIII. The special responsibility of Our Governor-General for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V [which deals with discrimination] of the said Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the said Act.

XIV. In the discharge of his special responsibility for the prevention of measures which would subject goods of United Kingdom origin imported into India to discriminatory or penal treatment, Our Governor-General shall avoid action which would affect the competence of his Government and of the Federal Legislature to develop their own fiscal and economic policy, or would restrict their freedom to negotiate trade agreements whether with the United Kingdom or with other countries for the securing of mutual tariff concessions ; and he should intervene in tariff policy or in the negotiation of tariff agreements only if, in his opinion, the main intention of the policy contemplated is by trade restrictions to injure the interests of the United Kingdom rather than further the economic interests of India. And we require and charge him to regard the discriminatory or penal treatment covered by his special responsibility as including both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products ; and Our Governor-General's special responsibility extends to preventing the imposition of prohibitory tariffs or restrictions, if he is satisfied that such measures are proposed with the aforesaid intention. It also extends subject to aforesaid intention, to measures which, though not discriminatory or penal in form, would be so in fact.

At the same time in interpreting the special responsibility to which this paragraph relates Our Governor-General shall bear always in mind the partnership between India and the United Kingdom within Our Empire which has so long subsisted and the mutual obligations which arise therefrom.

XV. Our Governor-General shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Federal legislature shall become law, which would imperil the economic life of any State or affect prejudicially any right of any State heretofore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter in respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects.

XVI. In the framing of rules for the regulation of the business of the Federal Government Our Governor-General shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Minister in charge of the Finance Department shall be consulted upon any proposal by any other Minister which affects the finances of the Federation ; and further that no reappropriation within a Grant shall be made by any Minister otherwise than after consultation with the Finance Minister ; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers.

XVII. Although it is provided in the said Act that the Governor-General shall exercise his functions in part in his discretion and in part with the aid and advice of Ministers, nevertheless it is Our will and pleasure that Our Governor-General shall encourage the practice of joint consultation between himself, his Counsellors and his Ministers. And seeing that the Defence of India must to an increasing extent be the concern of the Indian people it is Our will in especial that Our Governor-General should have regard to this instruction in his administration of the Department of Defence ; and notably that he shall bear in mind the desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian officers to Our Indian Forces, or the employment of Our Indian Forces on service outside India.

XVIII. Further, it is Our will and pleasure that, in the administration of the Department of Defence, Our

Governor-General shall obtain the views of Our Commander-in-Chief on any matter which will affect the discharge of the latter's duties, and shall transmit his opinion on such matters to Our Secretary of State whenever the Commander-in-Chief may so request on any occasion when Our Governor-General communicates with Our Secretary of State upon them.

XIX. And we desire that although the financial control of Defence administration must be exercised by the Governor-General at his discretion, nevertheless the Federal Department of Finance shall be kept in close touch with this control by such arrangement as may prove feasible, and that the Federal Ministry and, in particular,* the Finance Minister shall be brought into consultation, before estimates of proposed expenditure for the service of Defence are settled and laid before the Federal Legislature.

C.—IN REGARD TO RELATIONS BETWEEN THE FEDERATION, PROVINCES AND FEDERATED STATES

XX. Whereas it is expedient, for the common good of Provinces and Federated States alike, that the authority of the Federal Government and Legislature in those matters which are by law assigned to them should prevail:

And whereas at the same time it is the purpose of the said Act that on the one hand the Governments and Legislatures of the Provinces should be free in their own sphere to pursue their own policies, and on the other hand that the sovereignty of the Federated States should remain unaffected save in so far as the Rulers thereof have otherwise agreed by their Instruments of Accession :

And whereas in the interest of the harmonious cooperation of the several members of the body politic the said Act has empowered Our Governor-General to exercise at his discretion certain powers affecting the relations between the Federation and Provinces and States:

It is our will and pleasure that Our Governor-General, in the exercise of these powers, should give unbiased consideration as well to the views of the Governments of Provinces and Federated States as to those of his own Ministers, whenever those views are in conflict and, in particular, when it falls to him to exercise his power to issue orders to the Governor of a province, or directions to

the Ruler of a Federated State, for the purpose of securing that the executive authority of the Federation is not impeded or prejudiced, or his power to determine whether provincial law shall regulate a matter in the sphere in which both Legislatures have power to make laws.

XXI. It is our desire that Our Governor-General shall by all reasonable means encourage consultation with a view to common action between the Federation, Provinces and Federated States. It is further Our will and pleasure that Our Governor-General shall endeavour to secure co-operation of the Governments of Provinces and Federated States in the maintenance of such federal agencies and institutions for research as may serve to assist the conduct by Provincial Governments and Federated States of their own affairs.

XXII. In particular we require Our Governor-General to ascertain by the method which appears to him best suited to the circumstances of each case the views of Provinces and of Federated States upon any legislative proposals which it is proposed to introduce in the Federal Legislature for the imposition of taxes in which Provinces or Federated States are interested.

XXIII. Before granting his previous sanction to the introduction of a Bill into the Federal Legislature imposing a Federal surcharge on taxes on income, Our Governor-General shall satisfy himself that the results of all practicable economies and of all practicable measures for increasing the yield accruing to the Federation from other sources of taxation within the powers of the Federal Legislature would be inadequate to balance Federal receipts and expenditure on revenue account ; and among the aforesaid measures shall be included the exercise of any powers vested in him in relation to the amount of the sum retained by the Federation out of moneys assigned to the Provinces from taxes on income.

XXIV. Our Governor-General, in determining whether the Federation would or would not be justified in refusing to make a loan to a Province, or to give a guarantee in respect of a loan to be raised by a Province, or in imposing any conditions in relation to such a loan or guarantee, shall be guided by the general policy of the Federation for the time being as to the extent to which it is desirable that borrowings on behalf of the Provinces

should be undertaken by the Federation ; but such general policy shall not in any event be deemed tot prevail against the grant by the Federation of a loan to a Province or a guarantee in respect of a loan to be raised by that Province, if in the opinion of Our Governor-General a temporary financial emergency of a grave character has arisen in a Province, in which refusal by the Federation of such grant or guarantee would leave the Province with no satisfactory means of meeting such temporary emergency.

XXV. Before granting his previous sanction to the introduction into the Federal Legislature of any Bill or amendment wherein it is proposed to authorise the Federal Government to give directions to a Province as to the carrying into execution in that Province of any Act of the Federal Legislature relating to a matter specified in Part II of the Concurrent Legislative List appended to the said Act, it is our will and pleasure that Our Governor-General should take care to see that the Governments of the Provinces which would be affected by any such measure have been duly consulted upon the proposal, and upon any other proposals which may be contained in any such measure for the imposition of expenditure upon the revenues of the Provinces.

XXVI. In considering whether he shall give his assent to any Provincial law relating to a matter enumerated in the Concurrent Legislative List, which has been reserved for his consideration on the ground that it contains provisions repugnant to the provisions of a Federal Law, Our Governor-General, while giving full consideration to the proposals of the Provincial Legislature, shall have due regard to the importance of preserving substantially the broad principles of those codes of law through which uniformity of legislation has hitherto been secured.

D.—MATTERS AFFECTING THE LEGISLATURE.

XXVII. Our Governor-General shall not assent in Our name to, but shall reserve for the signification of Our pleasure, any Bill of any of the classes herein specified, that is to say :—

(a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India ;

(b) any Bill which in his opinion would, if it became law so derogate from the powers pf the High Court of any Province as to endanger the position which these Courts are by the said Act designed to fill ;

(c) any Bill passed by a Provincial Legislature and reserved for his consideration which would alter the character of the Permanent Settlement ;

(d) any Bill passed by a Provincial Legislature regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III, Part V of the said Act [which deals with discrimination].

* * * *

[In the House of Lords on July 18, 1935 the Marquess of Zetland, without committing himself to the exact wording, said that at the end of paragraph XXVII he would propose to insert some such words as these—

"In considering whether or not he shall assent in Our name to any Bill other than a Bill of any of these classes enumerated in the foregoing sub-paragraphs Our Governor-General shall without prejudice to his power to withhold his assent upon any ground whatsoever have special regard to the effect of the Bill upon any of his special responsibilities."]

* * * *

XXVIII. It is further Our will and pleasure that if an Agreement is made with His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the said Act, Our Governor-General in notifying his assent in our name to any Act of the Legislature of the Central Provinces and Eterar which has been reserved for its consideration, shall declare that his assent to the Act in its application to Berar has been given on Otir behalf and in virtue of the provisions of Part III of the said Act in pursuance of the Agreement between Us and His Exalted' Highness the Nizam.

XXIX. It is Our will that the power vested by the said Act in Our Governor-General to stay the proceedings upon a Bill, clause or amendment in the Federal Legislature in the discharge of his special responsibility for the* prevention of grave menace to peace and tranquillity shall

not be earercfeed unless, in his judgment, the public discussion of the Bill, clause or amendment would itself endanger peace and tranquillity.

XXX. It is Our will and pleasure that in choosing the representatives of British India for the seats in the Council of State which are to be filled by Our Governor-General by nominations made in his discretion, he shall, so far as may be, redress inequalities of representation which may have resulted from election. He shall, in particular, bear in mind the necessity of securing representation for the Scheduled Castes and women ; and in nominations made for the purpose of redressing inequalities in relation to minority communities (not being communities to whom seats are specifically allotted in the Table in the First Part of the First Schedule to the said Act) he shall so far as may seem to him just, be guided by the proportion of seats allotted to such minority communities among the British Indian representatives of the Federal Assembly.

E.—GENERAL

XXXI. And finally, it is Our will and pleasure that Our Governor-General should so exercise the trust which we have reposed in him that the partnership between India and the United Kingdom within Our Empire may be furthered, to the end that India may attain its due place among Our Dominions.

APPENDIX D

TABLE OF SEATS OF THE REPRESENTATIVES OF INDIAN STATES IN THE FEDERAL LEGISLATURE

(See Part II, Chapter V, p. 275.)

1. States and Groups of States.	2. No. of Seats in Council of State.	3. States and Groups of States.	4. No. of Seats in the Federal Assembly.	5. Population
	DIVISION I.			
Hyderabad	5	Hyderabad ...	16	14,436,148
	DIVISION II.			
Mysore	3	Mysore	7	6,557,302
	DIVISION III.			
Kashmir	3	Kashmir	4	3,646,243
	DIVISION IV.			
Gwalior	3	Gwalior	4	3,523,070
	DIVISION V.			
Baroda	3	Baroda	3	2,443,007

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1, States and Groups of States.	2. No. of Seats in Council of State.	3. States and Groups of States.	4. No. of Seats in the Federal Assembly.	5. Population
	DIVISION VI.			
Kalat	2	Kalat	1	342,101
	DIVISION VII.			
Sikkim	1	Sikkim		109,808
	DIVISION VIII.			
1. Rampur	1	1. Rampur	1	465,225
2. Benares	1	2. Benares	1	391,272
	DIVISION IX.			
i. Travancore	2	1. Travancore ...	5	5,095,973
2. Cochin	2	2. Cochin	1	1,205,016
3. Pudukkottai		3. Pudukkottai		400,694
Banganapalle }	1	Banganapalle } ...	1	39,2i8
Sandur }		Sandur }		13,583

1. States and Groups of States.	2. No. of Seats in Council of State.	3. States and Groups of States.	4. No. of Seats in the Federal Assembly.	5. Population
DIVISION X.				
1. Udaipur	2	1. Udaipur	2	1,566,910
2. Jaipur	2	2. Jaipur	3	2,631,775
3. Jodhpur	2	3. Jodhpur	2	2,125,982
4. Bikaner	2	4. Bikaner	1	936,218
5. Alwar	1	5. Alwar	1	749,751
6. Kotah	1	6. Kotah	1	685,804
7. Bharatpur	1	7. Bharatpur ...	1	486,954
8. Tonk	1	8. Tonk	1	3i7,36o
9. Dholpur	1	9. Dholpur ...	1	254,986
10. Karauli	1	Karauli ...		140,525
11. Bundi	1	10. Bundi ...	1	216,722
12. Sirohi	1	Sirohi ...		216,528
13. Dungarpur	1	11. Dungarpur ...	1	227,544
14. Banswara	1	Banswara ...		260,670
15. Partabgarh, Jhalawar	1	12. Partabgarh, Jhalawar ...	1	76,539 107,890
16. Jaisalmer, Kishangarh	1	13. Jaisalmer, Kishangarh ...	1	76,255 85,744

1. States and Groups of States.	2. No. of Seats in Council of State.	3. States and Groups of States.	4. No. of Seats in the Federal Assembly.	5. Population
DIVISION XI.				
1. Indore	2	1. Indore	2	1,335,089
2. Bhopal	2	2. Bhopal	1	729,955
3. Rewa	2	3. Rewa	2	1,587,445
4. Datia	1	4. Datia	1	158,834
5. Orchha	1	Orchha		314,661
6. Dhar	1	5. Dhar	1	343,430
7. Dewas (Senior), Dewas (Junior)	1	Dewas (Senior), Dewas (Junior)		83,321, 70,513
8. Jaora, Ratlam	1	6. Jaora, Ratlam	1	100,166, 107,321
9. Panna, Samthar, Ajaigarh	1	7. Panna, Samthar, Ajaigarh	1	212,130, 33,307, 85,895
10. Bijawar, Charkhari, Chhatarpur	1	8. Bijawar, Charkhari, Chhatarpur	1	115,852, 120,351, 161,267

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1. States and Groups of States.	2. No. of Seats in Council of State.	3. States and Groups of States.	2. No. of Seats in the Federal Assembly.	5. Population
11. Baoni, Nagod, Maihar, Baraunda	 1	9. Baoni		19,132
		Nagod		74,589
		Maihar	 1	68,991
		Baraunda J		16,071
12. Barwani		10. Barwani	... 1	101,963
Ali Rajpur	 1	Ali Rajpur >		141,110
Shahpura J		Shahpura J		54,233
13. Jhabua "j		n. Jhabua 1		145,522
Sailana >	 1	Sailana >	1	35,223
Sitamau J		Sitamau J		28,422
14. Rajgarh]		12. Rajgarh "j		134,891
Narsingarh >	 1	Narsingarh >	1	H3,873
Khilchipur J		Khilchipur J		45,583
	DIVISION XII.			
1. Cutch	 1	1. Cutch	 1	514,307
2. Idar	 1	2. Idar	 1	262,660
3. Nawanagar	 1	3. Nawanagar	... 1	409,192

1. States and Groups of States.	2. No. of Seats in Council of State.	3. States and Groups of States.	4. No. of Seats in the Federal Assembly.	5. Population
4. Bhavnagar	1	4. Bhavnagar	1	500,274
5. Junagarh	1	5. Junagadh	1	548,152
6. Rajpipla Palanpur	1	6. Rajpipla Palanpur	1	206,114 264,179
7. Dhrangadhra Gondal	1	7. Dhrangadhra Gondal	1	88,961 205,846
8. Porbandar Morvi	1	8. Porbandar Morvi	1	115,673 113,023
9. Radhanpur Wankaner Palitana	1	9. Radhanpur Wankaner Palitana	1	70,530 44,259 62,150
10. Cambay Dharampur Balasinor	1	10. Cambay Dharampur Balasinor	1	87,761 112,631 52,525
11. Baria Chhota Udepur Sant Lunawada	1	11. Baria Chhota Udepur Sant I/Unawada	1	159,429 144,640 83,531 95>i62

1. States and Groups of States.	2. No. of Seats in Council of State.	3. States and Groups of States.	4. No. of Seats in the Federal Assembly.	5. Population
12. Bansda, Sachin, Jawhar, Danta	 1	12. Bansda, Sachin, Jawhar, Danta	... 1	48,839 22,107 57,261 26,196
13. Dhrol, Limbdi, Wadhwan, Rajkat	 1	Dhrol, Limbdi, Wadhwan, Rajkot		27,639 40,088 42,602 75,540
	DIVISION XIII.			
1. Kolhapur	 2	1. Kolhapur	... 1	957,137
2. Sangli, Savantvadi	 1	2. Sangli, Savantvadi	... 1	258,442 230,589
3. Janjira, Mudhol, Bhor	 1	3. Janjira, Mudhol, Bhor	... 1	110,379 62,832 141,546
4. Jamkhandi, Miraj (Senior), Miraj (Junior), Kurandvad (Senior), Kurandvad (Junior)	 1	4. Jamkhandi, Miraj (Senior), Miraj (Junior), Kurandvad (Senior), Kurandvad (Junior)	1	114,270 93,938 40,684 44,204 39,583

1. States and Groups of States.	2. No. of Seats in Council of State.	3. States and Groups of States.	4. No. of Seats in the Federal Assembly.	5. Population
5. Akalkot, Phaltan, Jath, Aundh, Ramdurg	 1	5. Akalkot, Phaltan, Jath, Aundh, Ramdurg	... 1	92,605 / 58,76i / 91,099 / 76,507 / 35,454
	DIVISION XIV.			
1. Patiala	 2	1. Patiala	... 2	1,625,520
2. Bahawalpur	 2	2. Bahawalpur	... 1	984,612
3. Khairpur	 1	3. Khairpur	... 1	227,183
4. Kapurthala	 1	4. Kapurthala	... 1	316,757
5. Jind	 1	5. Jind	... 1	324,676
6. Nabha	 1	6. Nabha	... 1	287,574
7. Mandi, Bilaspur, Suket	 1	7. Tehri-Garhwal	... 1	349,573
8. Tehri-Garhwal, Sirmur, Chamba	 1	8. Mandi, Bilaspur, Suket	... 1	207,465 / 100,994 / 58,408
9. Faridkot, Malerkotla, Loharu	 1	9. Sirmur, Chamba	... 1	148,568 / 146,870
		10. Faridkot, Malerkotla, Loharu	... 1	164,364 / 83,072 / 33*338

1. States and Groups of States.	2. No. of Seats in Council of State.	3. States and Groups 3.	4. No. of Seats in the Federal Assembly.	5. Population
		DIVISION XV.		
1. Cooch Bihar	... 1	1. Cooch Bihar	... 1	59<>,886
2. Tripura }	... 1	2. Tripura ...	... 1	382,450
Manipur }		3. Manipur ...	... 1	445,6o6
		DIVISION XVI.		
1. Mayurbhanj }		1. Mayurbhanj	... 1	839,603
Sonpur F	... 1	2. Sonpur ...	... 1	566,924
2. Patna }		3. Patna ...	... 1	566,924
Kalahandi j	... 1	4. Kalahandi	... 1	5i3,7i6
3. Keonjhar]		5. Keonjhar ...	... 1	460,609
Dhenkanal [		6. Gangpur ...	... 1	356,674
Nayagarh [... ...	... 1	7. Bastar ...	... 1	524,721
Talcher [		8. Surguja ...	... 1	501,939
Nilgiri J		9. Dhenkanal		284,326
4. Gangpur		Nayagarh		142,406
Bamra		Saraikela		143,525
Saraikela >.	... 1	Baud		135,248
Baud		Talcher		69,702
Bonai J		Bonai		80,186

3 for whole group

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1.	2.	3.	4.	5.
States and Groups of States.	No. of Seats in Council of State.	States and Groups of States.	No. of Seats in the Federal Assembly.	Population
5. Bastar, Surguja, Raigarh, Nandgaon	1	Nilgiri		68,594
		Bamra		151/H7
6. Khairagarh, Jashptir, Ranker, Korea, Sarangarh	1	10. Raigarh, Khairagarh, Jashpur, Kanker, Sarangarh, Korea, Nandgaon	3	277,569 157,400 193,698 136,101 128,967 90,886 182,380
		DIVISION XVII.		
States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule	2	States not mentioned in any of the preceding Divisions, but described in paragraph 12 of this Part of this Schedule. ...	5	3,032,197
Total population of the States in this Table:				78,981,912

APPENDICES

APPENDIX E

FORMS OF OATH OR AFFIRMATION

(See Part II, Chapter V, p. 288.)

1.

Form of oath or affirmation to be taken or made by a member of a legislature who is the ruler of an Indian State :

" I , A. B., having been elected (or nominated or appointed) a member of this Council (or Assembly), do solemnly swear (or affirm) that I will be faithful and bear true allegiance in my capacity as Member of this Council (or Assembly) to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

2.

Form of oath or affirmation to be taken or made by a member of a legislature who is a subject of the ruler of an Indian State:

" I , A. B., having been elected (or nominated or appointed) a member of this Council (or Assembly), do solemnly swear (or affirm) that saving the faith and allegiance which I owe to C. D., his heirs and successors, I will be faithful and bear true allegiance in my capacity as Member of this Council (or Assembly) to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

(Schedule 4, forms 2 and 3).

APPENDIX P

FEDERAL LEGISLATIVE LIST

(See Part II, Chapter VI, p. 310.)

1. His Majesty's naval, military, and air forces borne on the Indian establishment and any other armed force

raised in India by the Crown, but being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments ; any armed forces which are not forces of His Majesty ; but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment ; central intelligence bureau ; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

*r"2. Naval, military and air force works ; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

^3. External affairs ; the implementing of treaties and agreements with other countries ; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

v. 4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

^ 6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wireless, broadcasting and other like forms of communication ; Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

w 10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation save in so far as Federal law otherwise provides, and as regards property in a federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

11. The Imperial library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. **The Benares Hindu** University **and the Aligarh** Muslim University.

14. The Survey of India, the Geological, Botanical, and Zoological Surveys of India ; Federal meteorological organisations.

15. Ancient and historical monuments; archaeological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom ; pilgrimages to places beyond India.

18. Port quarantine ; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railways ; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and terminal charges, interchange of traffic and the respomsibihty of railway administrations as carriers of goods and passengers ; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railway as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation ; the provision of aerodromes, regulation and organisation of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trademarks and merchandise marks.

28. Cheques, bills of exchange! promissory notes and other like instruments.

29. Arms ; firearms ; amunition.

30. Explosives.

31. Opium, so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including' banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oil-fields.

36. Regulation of mines and oil-fields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State ; Government insurance, except so far as undertaken by a Federated State, or, by virttte of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdiction of members of police force belonging to any part of British India to any area in another Governor's Province or Chief

Commissioner's Province but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be ; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal legislature, subject to the provisions of this Act and of any Order-in-Council made, thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly ; the salaries, allowances and privileges of the members of the Federal Legislature ; and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this List.

43. Inquiries and statistics for the purposes of any of the matters in this list.

44. Duties of customs, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics ; non-narcotic drugs ;

(c) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph *(b)* of this entry.

46. Corporation tax.

47. Salt.

48. State lotteries.

49. Naturalisation.

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

52. Ranichi European Mental Hospital.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this

list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income.

55. Taxes on the capital value of the assets, exclusive of agricultviral land, of individuals and companies ; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance prwies and receipts.

58. Terminal taxes on goods TT age carried by railway or air ; taxes on railway ifa M g lights.

59. Fees in respect of any of ti ,ters in this list, but not including fees taken in any

Me 7, list 1)„

APPENDIX G

FORM OF OATH FG JUSTICE AND JU

R CF DGEs

327,

(See Part II, Chapter VIII, p. w

Form of judicial oath or affirmation to be made by a subject of the ruler of an Indian S

" I , A. B., having been appointed C (or a judge) of the Court, d swear (or affirm) that saving the faith and which I owe to C. D., his heirs and sue will be faithful and bear true allegiance in cial capacity to His Majesty the King, Em India, His heirs and successors, and tha faithfully perform the duties of my office to tne bey t of my ability, knowledge and judgment."

(Schedule 4, form 5).

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