

## CHAPTER LVIII.

### Krishnaraja Wodeyar IV.

#### **The proposals of the White Paper and their consideration by a Joint Parliamentary Committee.**

In the White Paper presented to Parliament the Government in England indicated their proposals with sufficient details for a new constitution for India mainly under three heads: (1) Provincial Autonomy (2) Federation (3) Responsibility at the Centre. These proposals were based on the assumption that there was to be a Federal form of Government with the Provinces of British India and the Indian States as members which necessitated the reconsideration of the Parliamentary Act of 1919 and the complete reconstruction of the Indian constitution established by that Act. Before proceeding further, certain peculiarities which existed regarding the Indian Federation may be noted. Federation elsewhere, as the White Paper said, resulted from a pact entered into by a number of political units each possessed of sovereignty or at least of autonomy and each agreeing to surrender to the new central organism which their pact created an identical range of powers and jurisdiction to be exercised by it on their behalf to the same extent for each one of them individually and for the Federation as a whole. In the Indian Continent however, British India was a unitary state the administrative control of which was centred in the Secretary of State in respect of all concerns which related to its government or revenues, and such powers as appertained to the Provincial Governments in India were derived through the Central Government by a species of delegation from this central authority and were exercised subject to its control. It followed that the Provinces had no original or independent powers or authority to surrender. The States, on the other hand, though they were under the suzerainty of the King-Emperor formed no part of His Majesty's dominions. Their contact with British India was maintained through the Governor-General who controlled the Political Department of the Government of India. Besides, the range of authority to be conferred upon the Federal Governmen

and the Legislature in relation to the States could only be determined by agreement with their Rulers, as they made it plain that they were not prepared to transfer to a Federal Government the same range of authority in their territories as was possible in the British Provinces. It therefore followed that the range of powers to be exercised by the Federal Government and the Legislature necessarily differed in relation to the two classes of units which were to compose the Federation. Accordingly it was proposed in the White Paper to set up a Federal Legislature consisting of elected representatives of British India and of the representatives of the Indian States appointed by their Rulers and a Federal Executive consisting of the Governor-General representing the Crown, aided and advised by a Council of Ministers responsible, subject to certain exceptions, to the legislature so composed and to endow these authorities with certain powers and functions in relation to British India and with such powers and functions in relation to the States as the State-members of the Federation formally accepted. Full liberty was reserved to the Crown to refuse to accept the accession of any State to the Federation, if it was sought on terms incompatible with the scheme of Federation to be embodied in the Constitution Act. After the Constitution Act was passed, the Indian States were to be allowed to join the Federation only after the Rulers of States representing not less than half their aggregate population and entitled to hold not less than half the number of seats to be allotted to the States in the Federal Upper Chamber executed Instruments of Accession. The Federation was to be brought into existence by means of a Royal Proclamation, but no such Proclamation was to be issued until the two Houses of Parliament presented an address to the Crown with a prayer for its promulgation.

The Federal Legislature was to be bicameral, the two Chambers possessing identical powers except that money Bills and votes of supply were to be initiated in the Lower Chamber and the range of functions of the Upper Chamber in relation to supply was to be less extensive than those of the Lower Chamber. The Lower Chamber or House of Assembly of the Federal Legislature was to consist of a maximum of 375 members, of whom 125 were to be

appointed by the Rulers of Indian States who were members of the Federation, the remaining 250 being representatives of British India. The Upper Chamber or the Council of State was to consist of a maximum of 260 members of whom 100 were to be appointed by the Rulers of the States-members of the Federation. The Governor-General was to be empowered to nominate not more than ten members (not officials), thus providing an opportunity of adding to the Chamber a small group of the type of elder statesmen.

Certain departments, namely, Defence, External Relations and Ecclesiastical Administration were to be regarded as 'Reserved' and were to be administered solely by the Governor-General, but he was to secure co-ordination in consultation as far as possible with his counsellors and responsible ministers. The defence of India was to an increasing extent to be the concern of the Indian people and not of the British Government alone. The ministers were to have the constitutional right to tender advice to the Governor-General who was to be guided by that advice. The Governor-General was to have power independent of his ministers to dissolve, prorogue and summon the legislature, the power to assent to or to withhold assent from Bills or to reserve them for the signification of the King's pleasure, power to summon a joint session of both Houses of the Legislature in case of emergency.

The Governor-General's special responsibilities related to the prevention of grave menace to the peace or tranquillity of India or any part thereof; the safeguarding of the financial stability and the credit of the Federation; the safeguarding of the legitimate interests of the minorities; the securing to the members of the Public Services of any rights provided for them by the constitution and the safeguarding of their legitimate interests; the protection of the rights of any Indian State; the prevention of commercial discrimination; and any other matter which affected the administration of any other departments.

In a constitution created by the federation of a number of separate political units and providing for the distribution of powers between a Central Legislature and Executives of the federal units

on the other, a Federal Court was, in particular, needed to interpret authoritatively the Federal constitution itself. It was most convenient to entrust to a tribunal independent of Federal, Provincial and State Governments the ultimate decisions of questions concerning the respective spheres of these authorities. Such a tribunal was in any event required in order to prevent the conflict of decisions which might otherwise arise if the various High Courts and State Courts interpreted the constitution in different senses and made the law uncertain and ambiguous.

Regarding the inclusion in the Constitution Act of a series of declarations commonly described as a statement of 'fundamental rights' designed to secure either to the community in general or to specified sections of it rights or immunities to which importance was attached, His Majesty's Government though they saw serious objections to giving statutory expression to any large range of declarations of this character, yet were of opinion that certain provisions of that kind such, for instance, as the respect due to the personal liberty and rights of property and the eligibility of all for public office regardless of differences of caste or religion should appropriately find a place in the Constitution Act.

The Joint Parliamentary Select Committee held its first sitting on 12th April 1933 with the Marquis of Linlithgow, the present Viceroy of India, as chairman. The Indian delegates took their final leave of the committee on 16th November 1933. During this interval the committee examined a mass of very diverse evidence, oral and written, presented on forty-eight different days by over 120 witnesses—ex-Governors of Provinces, representatives of Service and Women's organisations, Communal and Commercial Delegations, retired officials and a number of other persons English as well as Indian and an ex-Cabinet Minister who all submitted themselves to extensive interrogation at the hands of the members of the committee and of the Indian delegates. The crowning event in this record investigation was the performance of Sir Samuel Hoare, the Secretary of State for India, who took the witness-box on no less than 19 separate occasions and explained, defended and elaborated the White Paper proposals for a total

period of over 75 hours, during which he answered more than 5000 questions. On 28th July the last occasion on which Sir Samuel Hoare appeared as a witness, remarkable tributes were paid to him by the Marquis of Salisbury and Mr. M. R. Jayakar for placing himself so unreservedly for examination at the hands of the committee. Mr. Jayakar said that considerable satisfaction must have been felt in India with the way in which the Secretary of State had acquitted himself.

The Joint Parliamentary Committee in drawing up its report took the report of the Statutory Commission as its starting-point in dealing with the proposals of the British Cabinet. As regards the federation of Indian States with the British Provinces, the Joint Committee agreed with the observation contained in the White Paper that the Indian States possessed sovereign rights of their own, while the British Provinces formed part and parcel of British India as a whole without any exclusive rights. The Joint Committee recognised that the unification of the country which could be achieved by an All-India Federation would confer added strength, stability and prosperity to the federating units as a whole. For want of such unification, several of the Ruling Princes though firm friends of British rule, had sometimes felt their friendship tried by the decisions of the Government of India running counter to what they believed to be the interests of their States and their peoples. Under a Federal Government the Indian Princes might be expected to give steadfast support to a strong Central Government and to become helpful collaborators in policies which they had sometimes in the past been inclined to criticise or even obstruct. Another argument in favour of a Federal form of Government was the economic condition of India as it existed. As the economic life of India developed, the formulation of suitable economic policies securing harmonious working for the whole of the country was being put to an ever increasing strain. For instance, any imposition of internal indirect taxation in British India involved with few exceptions the conclusion of agreements with a number of States for concurrent taxation within their frontiers, or in default of such agreement the establishment of some system of customs

duties. With certain exceptions, the States were themselves free to adopt internal customs arrangements of their own which could not but impede the flow of trade and even at the maritime ports situated in the States the administration of the tariffs was imperfectly co-ordinated with that of the British Indian ports. The tariff policies in which every part of India was interested were laid down by the Government of India and the British Indian Legislature in which no Indian State had a voice. Even where the Government of India had adequate powers to impose internal indirect taxation or to control economic development as in the cases of salt and opium, the use of those powers had caused much friction and had often left behind a sense of injustice. Moreover, as matters stood then, a common Company Law, a common Banking Law, a common body of legislation on Copy Right and Trade Marks, a common system of communications were alike impossible.

On these grounds the Parliamentary Committee expressed the opinion that an All-India Federation had solid advantages viewed from all sides. In acceding to the Federation however, the Indian States, the committee said, should be assured of a real voice in the determination of policies. The Princes had clearly expressed that they were willing to enter the Federation only on the condition that the Federal Government was responsible to the Legislature and not an irresponsible one. The Parliamentary Committee agreed with the proposal in the White Paper that when the Ruler of a State signified his intention to the Crown to join the Federation, he should be required to execute an Instrument of Accession and this instrument was to be regarded as enabling all matters accepted as Federal by him to be brought under the jurisdiction of the Federal authorities under the new constitution, but outside these limits the autonomy of the States and their relations with the Crown were not to be affected in any way. The Instrument of Accession was to be in all cases in the same form, though it might be recognised that the list of subjects accepted by the Rulers as Federal need not be identical in the case of every State. This list of subjects however was to differ as little as possible from one another and a Ruler who desired in his own case to except or to reserve subjects

in the standard list of Federal subjects ought to be invited to justify the exception or reservation of certain subjects by the existence of treaty rights or because he had long enjoyed special privileges.

Similarly no Royal Proclamation was to be issued until the Rulers of States representing not less than half the aggregate population of the States and entitled to not less than half the seats to be allotted to the Federal Upper Chamber signified their desire to accede to the Federation. The Parliamentary Committee also agreed that the Proclamation should be issued on the King being petitioned by both Houses of Parliament inasmuch as Parliament had a right to satisfy itself not only that the prescribed number of States had 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 had been fulfilled. In matters where the Crown possessed rights, authority and jurisdiction in Native States, including those rights which were comprehended under the name of Paramountcy which did not fall within the Federal sphere, there should be a legal differentiation of functions in the future in non-federal matters, the title of Viceroy being attached to the Governor-General on the understanding however that the offices of both the Viceroy and the Governor-General were to be held by one and the same person. Outside the Federal sphere, the States relations were to be exclusively with the Crown and the right to tender advice to the Crown in this regard was to lie with His Majesty's Government.

It was accepted by the Joint Committee that the representatives of the States were to be appointed by the Rulers concerned, the relative rank of the representatives in the Council of State depending on the dynastic salute and other factors and in the case of the House of Assembly, in the main, on the population. Where matters were of exclusively British Indian concern, the States representatives were not to be prohibited from exercising their own judgment in supporting a ministry with whose general policy they were fully in agreement, or from withholding their support to a ministry whose policy they disapproved. The Joint Committee

considered that the true solution of the problem lay not in a statutory prohibition but that the matter should be regulated by the common sense of both sides and by the growth of constitutional practice and usage. The Joint Committee further were of opinion that while every Act of the Federal Legislature regulating any subject which had been accepted by a State as a Federal subject would apply *proprio vigore* in that State, yet this jurisdiction of the Federal Legislature in the States would not be exclusive. Where however there was a conflict between a State law and a Federal law in any matter accepted by the State as Federal, the latter was to prevail. The Parliamentary Committee accepted that a Federal Court was an essential element in a Federal Constitution as it was at once the interpreter and the guardian of the constitution and a tribunal for the determination of disputes between the constituent units of the Federation.

The Select Committee completed their report in October and presented it to Parliament in the same month.