

CHAPTER LIX.

Krishnaraja Wodeyar IV.

The Government of India Act of 1935 as passed by Parliament—Sir Mirza Ismail, Lord Willingdon and Lord Linlithgow on its future working.

On the basis of the White Paper and the report of the Joint Parliamentary Committee on it, the British Government framed a Bill for the reform of the Indian Constitution. This Bill after a stormy passage through the two Houses of Parliament received the Royal Assent on the 2nd August 1935 replacing the Act of 1919 except the preamble. This Act has been made applicable to the whole of British India as well as to such of the Indian States as will accede to the Federation, but is not to apply to such areas as are specified. For the purposes of the Act, British India is to be composed of eleven Governors' Provinces, namely, Madras, Bombay, Bengal, United Provinces, the Punjab, Bihar, Central Provinces and Berar, Assam, North-West Frontier Province, Orissa and Sind and with the modifications which may be made by the Governor-General, the Chief Commissioners' Provinces of British Baluchistan, Delhi, Ajmer-Merwar, Coorg and the Andaman and Nicobar Islands and the area known as Panth Piploda. Burma and Aden are to be separated from India and to have no connection in the future with its Government. The Indian States are classed under seventeen divisions, some of the States being individually regarded as divisions, while others come in groups.

The Act prescribes certain conditions to be fulfilled prior to the introduction of the Federation. In the first place, no initiative is to be taken till such number of States come forward as can claim half the number of seats in the Council of State, containing also not less than half the total population of all the States put together. It is then open to the King on an address being presented by both Houses of Parliament to approve of the Federation being introduced. At the same time, every Ruler of a State wishing to join the

Federation is placed under an obligation to execute an Instrument of Accession containing a declaration that His Majesty the King, the Governor-General, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation can exercise in relation to his State such functions as the Act might vest in them and this declaration is to be binding on his heirs and successors also. The obligation also rests on the Ruler to give due effect within his State to the provisions of the Act so far as they may apply to his State. The Instrument of Accession is to specify the matters which the Ruler accepts as those with respect to which the Federal Legislature may make laws for his State and in respect to which the executive authority of the Federation may be exercised, while in the Governors' Provinces such executive authority extends to all matters with respect to which the legislature of the Province has power to make laws. It is open to the Ruler of a State to extend the Federal functions specified in his Instrument of Accession with the consent of His Majesty. When any amendments are made in the provisions of the Act by Parliament, these amendments unless accepted by the Ruler of a State are not to be construed as binding on him. After the expiry of a period of 20 years from the date of the establishment of the Federation, if any Ruler who has not joined the Federation expresses a wish to join it, he can only do so if his request is supported by an address to the Governor-General by both the Houses of the Federal Legislature. The Governor-General may with the consent of the Ruler of a Federated State entrust to the Ruler or to his officers functions in relation to the administration of any law of the Federal Legislature and may also by inspection or otherwise satisfy himself that the administration on any Federal law is carried out in accordance with the policy of the Federal Government. The executive authority of the Ruler of a Federated State is to continue to be exercisable in that State in Federal matters except to the extent limited by any Federal law under the terms of the Instrument of Accession. The Federal Legislature is not empowered to make laws for a Federated State otherwise than in accordance with the Instrument.

The Federal Legislature is to consist of His Majesty represented by the Governor-General and two Chambers to be known as the Council of State and the Federal Assembly respectively. The Council of State is to consist of 156 representatives of British India and not more than 104 representatives of the Indian States. The Federal Assembly is to be composed of 250 representatives of British India and not more than 125 representatives of the Indian States. The number allotted to the Mysore State which stands next to Hyderabad is 3 in the Council of State and 7 in the Federal Assembly. The Council of State is to be a permanent body not subject to dissolution, but as near as possible one-third of the members are to retire in every third year. Every Federal Assembly is to continue for five years from the date appointed for its first meeting unless dissolved earlier. The Council of State is to choose two of its members as President and Deputy President and similarly the Federal Assembly two of its members as Speaker and Deputy Speaker and the two bodies are also to have power to fill up vacancies as often as they occur. The Governor-General is given power, except where he is satisfied that a matter affected Federal interests or British subjects, to make rules in consultation with the President or the Speaker for prohibiting the discussion of or the asking of questions on any matter connected with any Indian State other than a matter with respect to which the Federal Legislature has jurisdiction to make laws for that State. Similarly the Governor-General possesses power for prohibiting the discussion of or the asking of questions on any matter in connection with the relations between the King or the Governor-General and any foreign State or Prince, or regarding the personal conduct of the Ruler of any Indian State or any member of the Ruling Family.

The executive authority of the Federation is to be exercised on behalf of the King by the Governor-General. Any powers connected with the exercise of the functions by the Crown in its relations with Indian States, if not exercised by the King, are to be exercised by his representative who is however to be the same person as the Governor-General acting in a dual capacity.

There is to be a Council of Ministers not exceeding ten in number to aid and advise the Governor-General in the exercise of his functions, except in matters where he has discretionary power. The Governor-General's ministers are to be chosen and summoned by him, to be sworn as members of the Council and to hold office during his pleasure. A minister who for any period of six consecutive months is not a member of either chamber of the Federal Legislature is to cease to be a minister at the expiration of that period.

There is to be a Federal Court with a Chief Justice and a number of puisane judges limited to six to start with. No person is qualified to be a judge of this court unless he has for at least five years been a judge of a High Court in British India or in a Federated State, or is a barrister or pleader of ten years standing including those in the Federated States. In the case of the Chief Justice however, he is to be a barrister or a pleader of 15 years standing. The Federal Court is to sit at Delhi and at such other place or places as the Chief Justice may fix with the approval of the Governor-General. The Federal Court is given exclusive jurisdiction in any dispute between any two or more of the following parties of the Federation—any of the Provinces or any of the Federated States when the dispute involves any question whether of law or fact on which the existence or the extent of a legal right depends, subject to certain limitations. An appeal lies to the Federal Court from any judgment or other order of a High Court in British India, if the latter certified that any substantial question of law as to the interpretation of the Act or any Order-in-Council made under its authority is involved. An appeal also lies to the Federal Court from a High Court in a Federated State on the ground that a question of law has been wrongly decided being a question concerning the interpretation of the Act or of an Order-in-Council, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or has arisen under an agreement made in relation to the administration in that State of a law of the Federal Legislature. In these matters appeals lie to the King without the

leave of the Federal Court and in any other matter with such leave. Where the Federal Court in the exercise of its jurisdiction requires the aid of the civil or judicial authorities in a Federated State, a letter of request is to be sent to the Ruler of the State. The law declared by the Federal Court or by any judgment of the Privy Council is to be binding on all courts in Federated States also so far as they are applicable. A High Court in a Federated State is to be one which the King has declared to be so in communication with the Ruler of the State.

This Act of Parliament evoked bitter opposition in England and roused little enthusiasm in India, though it must be acknowledged that it marks a distinct advance both for British India as well as for the Indian States on the Act of 1919. With the larger electorate leading to wider political training and with extended ministerial responsibility, the new Act may be taken to concede a larger measure of self-government. As far as the Indian States are concerned, the Act may be considered to be a distinct gain to them as it secures to them a voice in the Central Government of India in the settlement of all concerns common to them and the British Provinces. At the meeting of the Representative Assembly at Mysore in June 1935 Sir Mirza Ismail expressed his opinion in favour of accepting the Act and of giving it a fair trial.

On the 16th September 1935 Lord Willingdon addressed a joint meeting of the Legislative Assembly and of the Council of State and took occasion to refer to the Government of India Act. He drew attention to two of the broad features of the new constitution. The Act for the first time would, he said, consolidate the whole of India, State and British, for purposes of common concern under a single Government; India for the first time would become after the Federation was introduced one great country. The second broad feature was that the Government of India under the new constitution would draw their authority by direct devolution from the Crown just as the Dominion Governments did. They would cease to be agents and would stand for as full political and juristic personalities exercising the functions of His Majesty.

On the 23rd September 1935 the Marquis of Linlithgow who has now succeeded Lord Willingdon as Viceroy, speaking at a luncheon at the International Grocers' Exhibition held in London said that though there were still men of weight and experience who regarded the changes to be introduced with doubt, if not fear, he did not entertain such doubts but, on the other hand, considered that the situation must be faced with resolution and without any backward glances.