

LINGUISTIC PROVINCES AND REGIONAL ARRANGEMENTS

ONE of the most difficult problems in the framing of India's new Constitution will be to satisfy the demand for linguistic provinces and other demands of a like nature without creating a large number of new provinces. In the first place, it may be contended that the creation of new provinces is inconsistent with the Cabinet Delegation's statement of May 16; for, sub-clause (v) of paragraph 19 lays down that "provinces should have power to opt out of groups in accordance with the provisions of sub-clause (viii)", and sub-clause (viii) goes on to say that "such a decision shall be taken by the legislature of the province after the first general election under the new constitution". These statements may be held to imply that the integrity of the existing provinces is to be preserved at least until the first general election under the new constitution; for, otherwise, the new legislature will not be of the province and the right of opting out given to it will be defeated. It may, therefore, be urged that the existing boundaries of the several provinces are not to be disturbed under the new constitution, at least initially. But, whether permissible under the Cabinet Delegation's scheme or not, the creation of a number of new provinces with separate governmental heads etc., will mean an increase of expenditure as well as a fragmentation of financial resources. The problem will, therefore, arise how the desire for separation of distinct racial or linguistic areas can best be met without creating separate provinces. Similar problems have arisen elsewhere

and it is instructive to see how they were solved or sought to be solved.

I. HUNGARY BEFORE WORLD WAR I

Between the Compact of 1867 and end of World War I, Austria and Hungary were separate States under a common monarch. In Indian terminology, we may describe them as two provinces forming a loose Union. The head of the Union was styled "Emperor of Austria etc., and Apostolic King of Hungary"; the Union dealt with the three common subjects of foreign affairs, defence and finance. The Union executive consisted of three ministers—one for each of these common subjects—appointed by the Emperor-King. The Union legislature, if it may be so called, consisted of two delegations, one from Austria and the other from Hungary, each composed of 60 members, of whom 20 were chosen by the Upper and 40 by the Lower Chamber of each of the two provincial legislatures, the delegations being re-elected every year. The delegations were summoned to meet by the Emperor-King at least once a year. The two delegations sat separately except when they disagreed about any measure, in which case there had to be a joint session.

Turning now to Hungary as the "province", we find that the provincial head was, as already stated, the same as the head of the Union, being styled in that capacity as the King of Hungary. As head of the province, he had power to summon, adjourn and dissolve the provincial legislature (that is to say, the Hungarian Parliament) and to appoint the provincial ministers. The provincial legislature was composed of two Chambers, the Upper, known as the Table of Magnates and the Lower, known as the Table of Deputies. The Upper Chamber contained a large number of hereditary members as well as a certain number of others; the Table of Deputies contained 453 elected members.

Now comes a particularly interesting feature. Within the "province" of Hungary was the sub-province of Croatia inhabited mainly by the Croats, a race distinct from the Magyars of Hungary. This sub-province had its own legislature, the Croatian Diet, consisting of a single Chamber of 125 members. Certain subjects, including provincial finance, were reserved to the "provincial legislature" (that is, the Hungarian Parliament) as being of common concern to all parts of the province, including Croatia. Other subjects were left to the Croatian Diet. The head of the sub-province was the same as that of the province, namely, the King of Hungary, who in that capacity was styled King of Croatia. As head of the sub-province, he summoned, adjourned and dissolved the Diet and also appointed the Croatian executive. The Croatian Diet had the right to elect 40 members to the Lower Chamber of the provincial legislature (that is, the Hungarian Parliament) and three of the non-hereditary members of the Upper Chamber. The Deputies from Croatia in both these Chambers were chosen for the term of the Hungarian Parliament; but in case the Croatian Diet was dissolved earlier, they were elected afresh. Further, the provincial Cabinet, that is to say, the Hungarian Cabinet, always contained a member specially designated to supervise relations with Croatia. What was more, the provincial delegation, that is to say, the Hungarian delegation to the Union legislature, which, as already mentioned, consisted of 60 members, had to contain five Croats. Croatian was the official language in Croatia and the Croatian Deputies spoke in their native tongue in the Hungarian Parliament.

To summarise, if we may call Austria-Hungary of the pre-1914 era a Union, Hungary a province of the Union, and Croatia a sub-province of Hungary, the relations between the Union, the province and the sub-province were briefly these:

- (1) The Union, the province and the sub-province had a common head, the Emperor-King.

- (2) Each had its own legislature and executive dealing with its own subjects.
- (3) The sub-province had a special minister in the provincial Cabinet.
- (4) The sub-province had its own contingent of members, both in the provincial legislature and in the Union legislature.
- (5) The sub-province had its own official language.

It is interesting to note that besides Austria and Hungary, the Union contained the territory of Bosnia and Herzegovina. It was found impracticable to divide this territory between Austria and Hungary and neither half of the monarchy would have consented to its annexation as a whole by the other. The administration of the territory was, therefore, made a joint affair—a Union subject under the Union Finance Minister.

II. IRELAND UNDER THE GOVERNMENT OF IRELAND ACT, 1920

The Government of Ireland Act, 1920, which divided Ireland into Northern Ireland and Southern Ireland, proved a dead letter in Southern Ireland (because the South objected to partition) and has survived in Northern Ireland only in a modified form. Nevertheless, the scheme of the Act is interesting and well worth examination, for it may work where there is a common desire for separation.

The Act divided Ireland into two parts, six counties in the north-east forming Northern Ireland and the remaining 26 counties forming Southern Ireland. The proportion of Protestants to Catholics in Northern Ireland was about 2 : 1 and in Southern Ireland about 1 : 19. Each part had its own legislature with certain limited powers. Speaking broadly, defence, foreign affairs, foreign trade, customs duties and currency were among the subjects not included therein. In addition, there was a Council of Ireland for the whole of

Ireland. It consisted of a nominated President and 40 elected members, 20 from the legislature of Northern Ireland and 20 from the legislature of Southern Ireland. This Council had legislative power in respect of certain subjects of common concern requiring uniform administration, such as railways, fisheries and contagious diseases of animals.

Both parts of the island had a common local executive head, the Lord Lieutenant, and he had a Privy Council of Ireland to aid and advise him in the exercise of his functions. But—and this was the most interesting feature of the scheme—there were separate Cabinets for Northern Ireland and Southern Ireland, each Cabinet being described as an Executive Committee of the Privy Council of Ireland. The Lord Lieutenant was to be advised by the Cabinet of Northern Ireland in regard to the affairs of Northern Ireland and by the Cabinet of Southern Ireland in regard to the affairs of the South. If we may translate this scheme into current Indian phraseology, the United Kingdom of Great Britain and Ireland formed a Union, of which Ireland was a province. Defence, foreign affairs, foreign trade, customs and currency were among the Union subjects. The province had two sub-provinces, Northern Ireland and Southern Ireland. The executive head of the Union was His Majesty the King, that of the province and of each of the sub-provinces was a Lord Lieutenant appointed by His Majesty. Each sub-province had its own legislature and its own Cabinet to deal with its own list of subjects, and the province had, in addition, a legislature to deal with provincial subjects of common concern to both the sub-provinces. The two Cabinets formed committees of a single Privy Council for the whole province. Further, each sub-province had its own contingent of members in the Union Parliament.

Which were the subjects of common concern? Three were enumerated in the Act itself, namely, railways, fisheries and the administration of the Diseases of Animals Act; others

could be added by identical Acts of the two sub-provincial legislatures.

The imposition and collection of customs duties and certain other taxes was a function of the Union. The provincial share of the amount collected was to be calculated and, after certain deductions, to be apportioned between the sub-provinces by a joint Exchequer Board consisting of two members appointed by the Union Treasury and one member appointed by each of the sub-provincial treasuries and a chairman appointed by the head of the Union.

These, in brief outline, were the regional arrangements which prevailed at one time in Hungary and were at one time contemplated in Ireland. It may be possible to adapt them to Indian conditions so as to meet, to a considerable extent, the desire for linguistic provinces without the actual creation of new provinces. Briefly, where an existing province contains distinct racial or linguistic areas, they can be made sub-provinces within the province on the analogy of Croatia in Hungary before World War I or the two parts of Ireland under the Act of 1920. Taking, for example, the case of Madras, we may consider some such scheme as the following:

- (1) Madras will continue as a single province with its existing boundaries.
- (2) For the more convenient transaction of the business of the provincial government, the territories of the province will be divided into two sub-provinces, North Madras and South Madras, and the district of Madras (comprising the city and its neighbourhood)—the district of Madras being "joint territory" between the two sub-provinces.
- (3) Each sub-province will have its own legislature and its own Cabinet to deal with its own affairs.
- (4) Affairs of joint concern, such as the administration of the Madras district, will be dealt with by a joint legislature containing an equal number of members from

the sub-provincial legislatures *plus* an appropriate number from the district of Madras and by a joint Cabinet containing an equal number of members from the sub-provincial cabinets *plus* one minister from Madras district. All the legislatures, whether separate or joint, will be regarded merely as branches, for certain special purposes, of the provincial legislature, and similarly all the Cabinets, whether joint or separate, will be regarded as committees, for special purposes, of the provincial Council of Ministers. The Cabinets may be chosen on the Swiss plan, all the legislatures and Cabinets having the same fixed term.

- (5) The executive head of the province will also be the executive head of the sub-province. For convenience we may continue to call him the Governor, although he may no longer be appointed by the Crown as at present.
- (6) The Governor will be advised by the Cabinet of North Madras in affairs relating solely to North Madras; by the Cabinet of South Madras in the affairs of the South; and by the joint Cabinet in affairs of joint concern. But all executive action will be expressed to be taken in the name of the Governor of the province and be deemed to be the executive action of the Government of the province. How and by whom he is advised on a given matter is a domestic detail with which the public outside has no concern.
- (7) Similarly all legislation, whether enacted by the legislature of a sub-province or by the joint legislature, will be described as and deemed to be legislation of the provincial legislature. Through which particular set of legislators the provincial legislature acts for a given purpose is again a domestic detail.
- (8) Which subjects are to be regarded as matters of joint concern and which are to be regarded as the sole

concern of each sub-province will be prescribed by the rules of business to be made by the Governor on the advice of the joint Cabinet.

- (9) Each sub-province may have its own official language or languages.
- (10) Provincial representation in the Upper Chamber of the Union legislature will be apportioned between the sub-provinces and the district of Madras in the ratio, say, of 2 : 2 : 1. Thus, if the province of Madras should be entitled to send 20 members to the Union Council of State, eight will be from North Madras, eight from South Madras and four from the district of Madras. In the Lower Chamber, the representation will probably be based on population and no special rule of apportionment will be needed.

Such are the broad outlines of the plan. It has several advantages:

- (a) It meets to a large extent the demand for separate linguistic provinces. By extending or reducing the list of joint subjects, the degree of separation can be varied in either direction to any desired extent, so that the scheme is flexible.
- (b) It avoids unnecessary overhead expenditure.
- (c) It can be extended to the administration of excluded or partially excluded areas within a province; of the predominantly Muslim and the predominantly non-Muslim areas in Bengal and the Panjab; of the two valleys and the hill districts in Assam; and, generally speaking, of distinct racial or other areas in any province.
- (d) It does not create new provinces and is indeed no more than a particular way of administering existing provinces.

Among the defects of the plan is that it does not provide for a case where the linguistic or other area is spread over

two or more provinces. But even in such a case, the demarcation of the portions of the area in each province, which the plan compels, would be a useful step towards their subsequent integration when the creation of new provinces becomes possible. Meanwhile, even if they are in different provinces for the time being, they can act together by mutual agreement in cultural and social matters, implementing the agreement, if necessary, by identical Acts of their respective legislatures.

The plan suggested above, on this subject, may at first sight seem cumbrous, although the actual provisions in the constitution necessary to give effect to it are very few. The detailed arrangements will, in fact, have to be secured, not by provisions in the constitution itself, but by rules of business framed under the constitution. If any particular arrangement is found to be needlessly cumbrous, it can be altered immediately by altering the relevant rule of business, no amendment of the constitution being required.

An alternative plan is suggested by an analysis of the governmental machinery in the United Kingdom. For this purpose, it is useful to study the administrative arrangements that obtained in that country, say, in 1912, when the whole of Ireland was still a part of the United Kingdom. In the United Kingdom Cabinet of 1912, there were 15 members concerned with domestic administration. Of these, only four dealt with subjects of common concern and exercised their administrative powers uniformly in each of the three parts of the United Kingdom, *i.e.*, England (including Wales), Scotland and Ireland. Of the rest, three were exclusively English officials in the sense that their functions were confined to England; one (the Secretary of State for Scotland) had functions only in Scotland; one (the Chief Secretary to the Lord Lieutenant) had functions only in Ireland; others had some functions in one part and some in more than one. But all fifteen were members of one Cabinet, responsible to one Parliament. There was, besides, another member in a

peculiar position: the Secretary of State for India. His functions related to the administration of territory not included in the United Kingdom at all and not sending any representatives to Parliament. He was, therefore, provided with a Council designed to give him the necessary local knowledge, and although responsible to Parliament, he could not act, in certain matters, except with the concurrence of a majority of the Council.

On the legislative side also, although in theory there is but one Parliament, in practice there is some measure of regionalism. Thus all Bills relating exclusively to Scotland are referred, after second reading, to a Grand Committee consisting of the whole body of Scottish members, with the addition of 15 others specially appointed for each Bill. Moreover, although the legislature itself is unitary, the resulting legislation is not; for example, out of 458 public Acts passed during the decade 1901-1910, only 252 applied uniformly to the whole of the United Kingdom. [See Marriott's *Mechanism of the Modern State*, Vol. I, pp. 166, 167.]

Let us apply this plan to a province like Assam and consider the arrangements that would result. Assam comprises two sharply-contrasted valleys, the Assam Valley and the Surma Valley, besides certain tracts forming the "excluded areas" and certain other tracts forming the "partially excluded areas" of the Government of India Act of 1935. The "excluded areas" in Assam do not send any representatives to the provincial legislature and are, to that extent, in the same position as India with respect to the Parliament of the United Kingdom. Proceeding on the United Kingdom analogy, we should, therefore, have for Assam some such arrangements as the following :

- (1) There would be a single Cabinet responsible to the provincial legislature.
- (2) Some members of the Cabinet would deal with subjects of common concern to all parts of the province and

would, in respect of these subjects, exercise functions over the whole province, including the excluded and partially excluded areas as well as the two valleys.

- (3) There would be a minister or group of ministers for the Assam Valley to deal with the other subjects for that valley; similarly there would be another minister or group of ministers to deal with the same subjects for the Surma Valley; so too, a minister for the partially excluded areas and a minister for the excluded areas. These last-mentioned areas are not likely to require more than a single minister each.
- (4) As the excluded areas are not represented in the provincial legislature, the minister for those areas might be provided with a council of advisers with local knowledge, whose concurrence might be made obligatory in certain matters.
- (5) Legislation relating exclusively to one or more of the four regions might, by convention, be committed exclusively to representatives of the affected region or regions, representatives of the other regions refraining from taking part in the proceedings at any stage.

These arrangements do not involve the creation of new provinces, but only constitute a particular mode of administering an existing province.