

INDIA AND THE COMMONWEALTH—I

INDIA will before long have to decide what is to be her relationship to the British Commonwealth of Nations. This is an important but controversial question. On so momentous an issue everyone must form his own views.

Let me make it clear at the outset that any opinions which I may express here are entirely personal, coloured to a large extent by my own training and experience. Anyone whose official life has been spent mostly in the administration of justice and the study of constitutions is bound to have certain prepossessions, for in these spheres one sees English institutions and ideas at their best and is most conscious of what India owes to them. The supremacy of the law, the rule that every person must be presumed to be innocent until he is proved to be guilty, the maxim that you must hear the other side before you pronounce judgment—these and other principles which we almost take for granted in our courts of law today have come to us, at least in their present form, from England. In the working of the constitution, too, the English parliamentary system of government has become almost second nature to us. One of the most characteristic and admirable features of that system is that it not merely tolerates an Opposition, but welcomes it—indeed, regards it as so essential an element in the government of the country that the Leader of the Opposition is now paid a regular salary in England and in most of the Dominions. We have not yet copied this particular feature, but shall doubtless do so in due course. The same spirit shows itself

in the administration of justice—and here India has been glad to copy the example: when an accused is undefended, the State engages an advocate to defend him lest justice should suffer.

In the last analysis, all this springs from the recognition, not merely in theory but in daily practice, of the value of the human personality—from the realisation that your opponent may be in the right as often as yourself, that the prisoner in the dock may be obeying a higher law than that which the State seeks to enforce against him, and that accordingly the best hope of the State lies not in crushing all opposition but in respecting freedom of opinion. We here touch not only one of the basic features of the English conception of what ought to be the relations between the State and its subjects but also one of the ideals embodied in the preamble to India's new constitution. Reference has already been made at some length to the way in which these conceptions or ideals were put into practice in ancient India. (See the chapter "The Parliamentary System of Government in India"). The King was not only expected to have ministers, but also to act upon their advice. Also, the idea that the King must change his ministers from time to time, so as to make them acceptable to the people, was not only familiar in theory but was occasionally acted upon in practice. Again, in the conduct of the Buddhist Sangha (monastic order) the rules of business obtaining in legislative assemblies of today have been anticipated to an astonishing extent. Indeed, in one of the *Jātaka* stories—which go back in origin to the pre-Buddhistic period—the parliamentary procedure has been caricatured thus: "A bird is repeating a motion for the election of a Raja, evidently a republican Raja; he has done so twice and the motion was opposed by another member of the assembly saying 'wait please'. The opposer of the motion begged leave to make his speech, which was granted on condition that the speaker should state his reasons on the

principles of political science and law. The speaker gave his reasons and carried his opposition. The opposition was on the well-known republican ground that the proposed king (the owl) had not a pleasant presence".

Turning for a moment to another sphere, we find that the conception of the supremacy of the law was also familiar in ancient India. Never was the King placed above the law; again and again is the law declared to be above the King and as the King of Kings. The Coronation oath administered to the King ended with the promise: "I shall never be autocratic or arbitrary".

It would thus appear that the germs of the two fundamental conceptions, the supremacy of the law and the parliamentary system of government, are to be found in ancient India. They have grown up independently and are to be found today in a more developed form in England and the countries of the Commonwealth; in adopting them in her new constitution, India is not slavishly copying a foreign model, but is being true to her own best traditions.

Apart from ideological affinities, there is a powerful practical argument in favour of India's continuing to remain in the Commonwealth, at least for the present. We have not yet recovered from the formidable difficulties which followed in the wake of the partition of August 15, 1947. India has still vast and complicated problems requiring the whole of her attention—refugees, Kashmir, Hyderabad—and there are many who feel that this is no time for leaving the Commonwealth and venturing into the unknown, for she may thereby create for herself a new set of problems even more baffling. Moreover, until August 15, 1947, India had had no actual experience of what is called Dominion status in the fullest sense of the term and no opportunity of realising all that it implied; since that date the position has been entirely different. It is also a fact that the passing of the Indian Independence Act—and, one may add, of the Burma

Independence Act—has convinced many minds that the old ideas of British domination are dead and that a new chapter in Commonwealth relations is opening.

I may mention here that during my recent visit to the U.S.A. and other countries, I tried to sound several disinterested persons as to their views on this subject. None of them, of course, ventured to offer advice, but they indicated their mind sufficiently by asking the question: "What has a big country like India to fear from remaining within the Commonwealth?"

There are, however, certain points in this connection which require examination:

- (1) Whether India is described as a 'Republic', or a 'Commonwealth', in the preamble to her new constitution—a point which is still to be decided by the Constituent Assembly—it is clear that in the actual provisions of the constitution, as already settled by the Constituent Assembly, there is no mention of His Majesty. The head of the Indian Union is an elected President in whom all executive authority is vested and in whose name all executive action is to be taken. In this sense, the constitution is of the republic type and the question arises whether there is room within the Commonwealth for a State with such a constitution.
- (2) In view of the treatment of Indians in certain Dominions of the Commonwealth, would it not be better for her to sever the British connection?
- (3) We have now the beginnings of a World State in the United Nations. If India adhere to a particular group or *bloc* such as the Commonwealth, would it not conflict with her loyalty to the larger organisation?
- (4) Assuming that India wishes to remain within the Commonwealth, what changes in the definition of what is now called Dominion status, or in the name of the units of the Commonwealth which at present

are described as Dominions, would be necessary or desirable?

We may deal with a part of the last question first. After a long process of evolution, the Dominions have now become, to all intents and purposes, sovereign States and may well be called "sovereignties" within the Commonwealth. Amongst the recognised meanings of the term "sovereignty" is "a territory existing as an independent State". The term "Dominion" contains a hint of domination by some outside authority and may now perhaps be replaced with advantages by the term "sovereignty" which means, or is capable of meaning, a sovereign State, whatever may be the character of its constitution. India, under her new constitution, can appropriately be described as a sovereignty.

To turn now to the other questions. First, is there room within the Commonwealth for a State with a republican form of constitution? The conception of the Commonwealth, never static, has developed considerably within the last decade. In 1937, after the republican Constitution of Eire came into operation, the British Government announced that they were prepared to treat the new constitution as not affecting a fundamental alteration in the position of the Irish Free State (which was thereafter to be described as Eire), as a member of the British Commonwealth of Nations. Indeed, Professor Keith, writing in 1938, observed: "If no place can be found in the British Commonwealth for republics, then the enduring character of the Commonwealth may well be doubted". During World War II, when France was about to fall, she was in effect offered a place in the Commonwealth in spite of being a republic. In the course of the debate in the House of Commons on the Indian Independence Bill on July 15, 1947, the Member for Wood Green (Mr. Beverley Baxter) said:

"The one thing we have to realise is that the British Empire and Commonwealth like all vital living things is subject to

change, and that no matter what side of the House we sit upon, it would be a great mistake to imagine that this is the last alteration, or that more changes will not come. I sometimes think of the Empire, and I do not mean this entirely frivolously, as a club. We here, and the Dominions and the Commonwealth countries, are the ordinary senior members. We also have county members, as one might call the colonies. We also have week-end members—Eire might almost qualify as a week-end member of the club—and I am not certain that we have not got foreign members.

“The Argentine might be considered, or might have been considered a short time ago, as one of the foreign members of the British Empire.

“I am not at all certain if America made application in a proper form and got a proper seconder and proposer, we may not admit her as a foreign member of the British Empire. I only say this because we should tune our minds to the fact that this is a changing organ. We should not shut our eyes to any development.”

It is thus clear that the conception of the Commonwealth has been steadily growing and has now reached a stage when even States with a republican constitution may well be given a place therein. This would of course involve a change in the well-known definition of the word “Dominions” as “autonomous communities within the British Empire equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, *united by allegiance to common ideals and by a common citizenship* and freely associated as members of the Commonwealth”. The italicised words require a little explanation. It has already been mentioned that there are certain fundamental conceptions or ideals which may be said to be common, both to the Commonwealth and to India: the conception of the supremacy of the law as distinct from the Fascist conception that the State is a law unto itself; the conception that opinion should be free and that the State should

be governed in accordance with public opinion freely expressed; and so on. Neither India nor any other unit of the Commonwealth should find any difficulty in rendering allegiance to these ideals not merely in theory but in practice. The other matter that requires to be explained is the reference to a common citizenship. A step towards securing a common citizenship for the units of the Commonwealth has already been taken in the new British Nationality Bill which is now (at the time of writing) before the Parliament of the United Kingdom. Under this Bill every person who, by the law of any of the units of the Commonwealth, that is to say, Canada, Australia, New Zealand, South Africa, Newfoundland, India, Pakistan, Southern Rhodesia and Ceylon, is a citizen of that unit, automatically becomes a British subject. As a matter of nomenclature "Commonwealth citizen" or "citizen of the Commonwealth" would, for obvious reasons, be a better term than "British subject" from India's point of view. But in any case we have here the beginnings of a common citizenship which, when properly developed, may well become a bond of union between the units of the Commonwealth.

It is interesting to note that in ancient India the Guptas are said to have risen to power by their alliance with the republican Licchavis, whose name was jointly inscribed with that of Chandra Gupta I on the imperial coins. Thus we have here an instance of a republic in partnership with an empire.

We may now turn to the second question, which arises out of the present position of Indians in some of the Dominions. This is an issue on which India will have to fight with all her might and main, whether she remains in the Commonwealth or not. Many countries outside the Commonwealth are in the same case: it is, therefore, hardly to be expected that the position of Indians would improve by India's severance of the British connection. Indeed, the reverse may well be the case. If India continues in the Commonwealth, she would be

in a better position to fight for a common citizenship with full civil rights and no racial discrimination. There is a growing consciousness in England and perhaps elsewhere that the British Commonwealth, as at present constituted, consists for the most part of persons who are not of the British or any European race and that any form of racial discrimination should be strongly discouraged as being disruptive of the Commonwealth. A sign of the times may be seen in a recent incident in London, when the managing director of a restaurant refused to supply a meal to a West African lecturer of London University. The matter was raised in the House of Commons, when the Food Minister said: "The very serious character of the incident has been brought home to the managing director who now understands the grave injury done to the interests of the British Commonwealth by any form of racial discrimination". Another sign pointing in the same direction, though not connected with the British Commonwealth, is to be found in a still more recent ruling (May 3, 1948) of the United States Supreme Court that restrictive real estate agreements which bar coloured persons from all-white neighbourhoods cannot be enforced by State or Federal Courts, as such enforcement would be contrary to the Bill of Rights. In fact the idea of human rights is on the march throughout the world and its progress can in no way be impeded by India's continuing to be within the Commonwealth.

There remains the question whether India's adherence to the Commonwealth will weaken the United Nations Organisation. Whatever may have been the position at one time of the members of the Commonwealth in respect of foreign affairs, the position now reached is that they enjoy complete freedom in this as in other respects. Eire remained neutral throughout World War II and, in spite of this, in the case *Murray v Parkes*, the Lord Chief Justice of England said in 1942 that he was not aware that Eire had ever expressly

exercised its right to secede from the Commonwealth, even if there was such a right. Equally significant is the fact that even Canada remained neutral for nearly a week after the United Kingdom had declared war on Germany in September 1939: and during this week, Canadian neutrality appears to have been recognised, not only by the United States of America but even by Germany herself. Apparently, then, neutrality in a British war is compatible with continued membership of the Commonwealth. It will be remembered that the Cabinet Mission's plan of May 16, 1946, refers to "the attainment of independence by British India whether inside or outside the British Commonwealth", implying thereby that there may be a completely independent State inside the Commonwealth. The very name "Indian Independence Act" given by Parliament to the statute establishing the Dominion of India lends further support to this view. Again, during the last autumn session of the Assembly of the United Nations on the question of the partition of Palestine, Canada, South Africa and Australia voted for partition, India and Pakistan against partition, and the United Kingdom remained neutral. It is, therefore, clear that a State, by being a member of the Commonwealth, does not sacrifice any part of its freedom in respect of its foreign affairs. Membership of the Commonwealth is now compatible with complete independence and a member is free to take whatever line it chooses on any particular question, even in the international sphere. So long as there is no doubt that the States of the Commonwealth are what they are described to be, "autonomous communities, in no way subordinate one to another in any aspect of their domestic or *external affairs*", there is no reason for fearing that membership of the Commonwealth will weaken allegiance to the United Nations Organisation. This is a very important matter from the point of view of world security. One of Gladstone's admirers wrote to him: "We believe in no man's infallibility, but it is restful to be sure of one man's

integrity." The world will not expect India, any more than any other country, to make no mistakes: but of India's integrity and her complete freedom to act as she thinks right, there should never be any doubt.