

PART I
THE CONDITIONS OF THE PROBLEM

CHAPTER I

STATES OF THE INDIAN UNION

14. The existing structure of the States of the Indian Union is partly the result of accident and the circumstances attending the growth of the British power in India and partly a by-product of the historic process of the integration of former Indian States. The division of India during the British period into British provinces and Indian States was itself fortuitous and had no basis in Indian history. It was a mere accident that, as a result of the abandonment, after the upheaval of 1857, of the objective of extending the British dominion by absorbing princely territories, the surviving States escaped annexation. The map of the territories annexed and directly administered by the British was also not shaped by any rational or scientific planning but "by the military, political or administrative exigencies or conveniences of the moment".¹

15. The provincial organisation of British India was meant to serve a two-fold purpose: to uphold the direct authority of the supreme power in areas of vital economic and strategic importance and to fill the political vacuum arising from the destruction or collapse of the former principalities. Of these two, the first was obviously the primary objective, and it required the suppression of the traditional regional and dynastic loyalties. This was sought to be achieved by erasing old frontiers and by creating new provinces which ignored natural affinities and common economic interests. The administrative organisation of these provinces was intended to secure their subordination to the Central Government, which was the agent and instrument of imperial control exercised from London. This process inevitably led to the formation of units with no natural affinity.

16. During the early phase of the rise of the British power in India, moreover, the accretion of territories was gradual and the need for the rationalisation of administrative units was not seriously felt. British dominion in India started with small settlements in the coastal regions established at different times during the seventeenth century. From the middle of the eighteenth century they

¹ Report on Indian Constitutional Reforms, 1918, para. 39.

provided the bases from which British authority expanded inwards by the acquisition of further territories which were attached to one or the other of the three presidencies.

17. The Presidencies of Madras and Bombay had practically acquired their final shape by 1801 and 1827 respectively. Accretion of fresh territories to the Bengal Presidency, however, continued up to the year 1865.

18. The Charter Act of 1833 had provided for the creation of a fourth presidency out of the overgrown Presidency of Bengal, to be called the Agra Presidency. It was, however, considered expedient later to set up a less expensive form of government for the new province, and accordingly the North-West Provinces were set up under a Lt.-Governor in 1836 by detaching from Bengal all British territories west of Bihar. The Punjab, annexed in 1849, was the next province to be formed. It extended at that time up to the then north-west frontier of India. Placed first under a Board of Administration and later, in 1853, under a Chief Commissioner, the Punjab was made a Lt.-Governor's province on the transfer of Delhi to it in 1859.

19. Oudh, annexed in 1856, constituted a Chief Commissionership until it was joined to the North-West Provinces in 1877. The Central Provinces were formed in 1861 by taking the Saugor and Nerbada districts out of the North-West Provinces and joining them with the territories of the Raja of Nagpur that had been acquired in 1854. Assam, attached to the Bengal Presidency on its acquisition in 1826, was made a separate Chief Commissioner's province in 1874. In 1901 the strategically important north-west frontier regions were detached from the Punjab and constituted into a separate Chief Commissioner's province. This also resulted in the North-West Provinces and Oudh being renamed the United Provinces of Agra and Oudh.

20. Thus far the formation of provinces had been mainly governed by considerations of administrative convenience and economy and by reasons of military strategy and security. To the extent, therefore, there was a conscious or deliberate design behind the demarcation of the territories of administrative units, it was grounded in imperial interests or the exigencies of a foreign government and not in the actual needs, wishes or affinities of the people. Administrative convenience itself required compact units with some measure of homogeneity. In some cases, therefore, various factors

conducive to the growth of natural units operated in the background. They were, however, subordinate to the prime considerations of administrative and military exigencies.

21. With the emergence of nationalism as a new factor in the last quarter of the nineteenth century, the policy of balance and counterpoise began to override purely administrative considerations in making territorial changes, though on such occasions arguments based on administrative needs and other principles were also put forward. Thus, Bengal, undoubtedly unwieldy as it included at that time also Bihar and Orissa, was divided with a view at least as much to dispersing revolutionary elements as to securing more manageable administrative units.

22. In 1905 Bengal was divided to form, along with Assam, the provinces of (a) East Bengal and Assam and (b) Bengal, which included the western part of Bengal, Bihar, Orissa and Chota Nagpur. The change in the outlook regarding provincial boundaries was reflected in the famous Resolution of Lord Curzon, dated 19th July, 1905, which, while providing for the partition of Bengal, also commented on the proposed territorial realignment of areas between Madras, the Central Provinces and Bengal. Thus, "reasons of administrative expediency, arising out of the peculiar linguistic and racial conditions and the geographical conformation of Ganjam and the Agency tracts of Vizagapatam" were cited against the transfer of these areas from the Government of Madras. "Commercial considerations" were relied upon for the continued retention of the districts of Chota Nagpur under the Bengal Government. The linguistic principle was mentioned in support of the transfer of certain Oriya-speaking tracts from the Central Provinces to Bengal; and the principle of close contact between the governors and the governed was put forward to justify the concentration of the "typical Muhammadan population" of Bengal in a separate province of East Bengal and Assam.

23. Six years later the partition of Bengal was annulled, though it was considered impossible both on "political and on administrative grounds" to revert to the *status quo ante*. In 1912 Assam was reconstituted into a Chief Commissioner's province and the eastern and western parts of Bengal were rejoined to form the province of Bengal. At the same time, Bihar, with Orissa and Chota Nagpur, was constituted into a separate province of Bihar and Orissa.

24. These changes were made in order to provide convenient administrative units and to satisfy the legitimate aspirations of the

people of Bengal. At the same time, they sought to give the Muslims "a position of approximate numerical equality with or possibly of small superiority over the Hindus" in the new Bengal, formed after the detachment of Bihar and Orissa, which province was intended to give the Hindi-speaking population "a fair opportunity for development". The settlement was supposed to be "so clearly based upon broad grounds of political and administrative expediency as to negative any presumption that it has been exacted by clamour or agitation".

25. The shape of the provinces and the principles underlying their formation, before and after 1905, continued, however, to be very far from satisfactory. As late as 1930 British statesmen themselves admitted that there were in India "only a number of administrative areas" which had "grown up almost haphazard as the result of conquest, supersession of former rulers or administrative convenience".¹ The desirability of a reorganisation of provinces on a rational basis was pointed out earlier by the authors of the Report on Indian Constitutional Reforms, 1918, who had observed: "We are impressed with the artificial, and often inconvenient character of existing administrative units".² The Indian Statutory Commission, 1930, endorsed this view and observed: "Although we are well aware of the difficulties encountered in all attempts to alter boundaries, and of the administrative and financial complications that arise, we are making a definite recommendation for reviewing, and if possible resettling, the provincial boundaries of India at as early a date as possible".³ The Commission recommended the examination of the question by a Boundaries Commission under a neutral chairman.⁴

26. The Commission made a special mention of Orissa. "An urgent case for consideration and treatment", it observed, "is that of the Oriya-speaking peoples, most, but not all, of whom are now included in Orissa, because we consider that so close a union as now exists between Orissa and Bihar is a glaring example of the artificial connection of areas which are not naturally related".⁵

27. The province of Orissa was created in 1936 by joining together the Oriya-speaking areas of the provinces of Bihar and Orissa, the Central Provinces and Madras.

¹ Report of the Indian Statutory Commission, Vol. II, para. 25.

² Report on Indian Constitutional Reforms, 1918, para. 246.

³ Report of the Indian Statutory Commission, Vol. II, para. 25.

⁴ *Ibid.*, para. 38.

⁵ *Ibid.*

Integration of the Indian States

28. The administrative units of British India have remained virtually intact after the achievement of Indian Independence. The only changes which have been made so far as these units are concerned are the formation of a separate Andhra State and the merger in these units of some of the territories of the former Indian States.

29. So far, however, as the former Indian States are concerned, the period immediately following the transfer of power to India saw a revolutionary change come over them with dramatic speed. Of about six hundred units known as Indian or princely States,

- (a) 216 States having a population of a little over 19 millions were merged in the provinces;
- (b) 61 States having a population of about 7 millions were constituted into new Centrally-administered units; and
- (c) 275 States with a population of about 35 millions were integrated to create new administrative units, namely, Rajasthan, Madhya Bharat, Travancore-Cochin, Saurashtra and PEPSU.¹

Only three States, namely, Hyderabad, Mysore and Jammu & Kashmir, survived these processes of integration, but the internal structure of these States as also their relationship with the Centre were cast into a new mould so as to fit them into the constitutional structure of India.

30. While factors such as linguistic and ethnic homogeneity or historical tradition were taken into consideration to the extent practicable in the process of integrating these diverse units with adjoining provinces or constituting them into separate administrative units, the compulsion of the dynamic urges of the time necessitated prompt decisions. A number of settlements, therefore, made in respect of these States had to be in the nature of transitional expedients.

The princely States, as they existed at the time of the transfer of power, were themselves in varying phases of development. Their integration into the new democratic Constitution of India involved many problems, both administrative and political. So far as the political structure was concerned, in most States it was a form of direct personal rule; and even in the States which had introduced some of the forms of democratic government, the personal authority of the Ruler was hardly affected. So far as administration was

¹ White Paper on Indian States, 1950, para. 147.

concerned, while some of the larger States had developed a fairly efficient machinery, in most cases it was of a rudimentary character.

32. It was, therefore, inevitable that some of the features of the old order should be found in the Indian Constitution and leave an impress on the administrative and political structure of the units comprising territories of the erstwhile princely States.

Disparate status of the constituent units

33. A peculiar feature of the Indian Constitution is the disparate status of the constituent units of the Union. The Constitution recognises three categories of States and gives each category a pattern and status of its own. The status of the first two categories of States, *i.e.*, those specified in Parts A and B of Schedule I of the Constitution, is based on the concept of federalism. Apart from the institution of Rajpramukh, the main feature that distinguishes Part B States from Part A States is the provision contained in Article 371, which vests in the central executive supervisory authority over the governments of these States for a specified period. This provision is, no doubt, un-federal in character, but it does not alter the basic relationship between these States and the Centre, which essentially rests on the principle of a clear division of powers between the Centre and the States. Part C States, which rank lowest in the hierarchy, are, however, administered by the Centre on a unitary basis. The devolution of powers to the legislatures and governments of some of these States under the Government of Part C States Act, 1951, does not detract from the legislative authority of Parliament over these States or from the responsibility of the Union Government to Parliament for their administration.

34. Apart from the States of the Union, there are also territories specified in Part D of Schedule I, which form part of India. In respect of such territories as also of any territory comprised within the territory of India but not specified in this Schedule, the Central Government has not only full executive authority but also regulation-making power.¹

Historical background of the classification of States

35. If the present alignment of the boundaries of States has been largely determined by the vicissitudes of British rule in India and the integration of the former Indian States, the same holds true also of their existing constitutional classification into different categories.

¹ Constitution of India, Article 243.

36. Even before the Act of 1935 introduced, to a limited extent, the federal principle in the governance of this country, the relative status of administrative units *vis-a-vis* the Central Government had varied from one category to another. This was to a certain extent due to the historical reason that different parts of the country were acquired and their administration organised by the British at different times, so that they could not be patterned as units of an administrative structure constituted on a systematic and rational basis. Considerations of economy and administrative expediency also led the British rulers to give to newly-organised and smaller provinces less expensive and simpler government than that of the older, more settled, and developed provinces.

37. By the close of the nineteenth century, there were in existence three different forms of provincial governments, namely, those under a Governor and Executive Council, those administered by a Lieutenant Governor and those administered by a Chief Commissioner. Many of the British Indian provinces, such as Assam, Bihar and Orissa, the Central Provinces, the North-West Frontier Province, the Punjab and the United Provinces, passed through one or both of the earlier stages before acquiring the Governor-and-Council form of government.

38. The difference in the form of government of a province carried with it a difference in status. It is, no doubt, true in a sense that, after 1833, all the provincial governments became agents of the Central Government. Still the different categories were clearly distinguishable in their status. A broad distinction was made between territories which were under the immediate authority and management of the Central Government and those which were not. To the former category belonged all territories not included in Governorships or Lt.-Governorships, *i.e.*, the provinces administered through Chief Commissioners.

39. A distinction was also made between "major provinces" and "minor administrations". In the first category were included the Governors' provinces, Lt.-Governors' provinces and the two largest Chief Commissionerships, *i.e.*, Assam and the Central Provinces, whose Chief Commissioners were, in practice, entrusted with powers nearly as wide as those of a Lt.-Governor. All the other Chief Commissionerships were called "minor administrations" and were administered under the direct control of the Central Government acting except in the case of Ajmer-Merwara, British Baluchistan and

the North-West Frontier Province, mainly through the Home Department. The North-West Frontier Province and British Baluchistan constituted a special class because of their strategic importance and special political problems. Central control over these, as well as over Ajmer-Merwara, was exercised through the Foreign and Political Department of the Government of India.¹ It was these "minor administrations" which, on account of their geographical position and other special characteristics, continued to be centrally-administered, while the territories which were initially placed under a Chief Commissioner mainly because of administrative expediency, acquired more advanced forms of government in course of time.

40. The Government of India Act, 1935, recognised, in the circumstances in which it was formulated, three categories of component units, namely, Governors' provinces, federating Indian States and Chief Commissioners' provinces. This classification is reflected in the grouping of the States of the Indian Union as Parts A, B and C States, except that not all the former Indian States are now represented by Part B States, a number of them having been merged in the provinces or consolidated into centrally-administered areas. A departure, however, from the old classification is the recognition under the Constitution of two categories of centrally-administered areas, namely, Part C States and Part D territories, as against only one such category recognised under the Act of 1935.

States not pre-existing sovereign units

41. Another important feature of the States of the Indian Union is that none of them represents a pre-existing sovereign unit. The units corresponding to the Part A States, namely, Governors' provinces, were administered until 1937 on a unitary basis, although from 1919 there was a certain measure of devolution of powers to the provinces. With the enforcement of the provincial part of the federal scheme embodied in the Act of 1935, certain subjects were assigned to the provinces on a federal basis, but the federal principle was heavily circumscribed by the special powers of the Governors, in the exercise of which they were answerable to the Governor-General. The Chief Commissioners' provinces, although recognised as constituent units of the federation, continued to be administered on a unitary basis. It was only in the case of the former Indian States that the right of accession on a negotiated basis was conceded. Rulers of these States, no doubt, claimed a measure of sovereignty, but this sovereignty was severely overborne by the paramountcy of the British Crown, not only in the field of external affairs but also in

¹ Report on Indian Constitutional Reforms, paras. 43 and 44.

respect of internal administration. Whatever the content of the sovereignty of the rulers, it was surrendered by them to the national Government of India before the commencement of the Constitution.

42. Thus, none of the constituent units of India was sovereign and independent in the sense the American colonies or the Swiss Cantons were before they decided to pool their sovereignty to form federal unions. Accordingly, the Constituent Assembly of India, deriving its power from the sovereign people, was entirely unfettered by any previous commitment in evolving a constitutional pattern suitable to the genius and requirements of the Indian people as a whole. Consequently, unlike most other federal legislatures, Parliament, representing the people of India as a whole, has been vested with the exclusive power of admitting or establishing new States, increasing or diminishing the area of an existing State or altering its boundaries, the legislature or legislatures of the States concerned having only the right to an expression of views on the proposals.¹ It is significant that for making such territorial adjustments it is not necessary even to invoke the provisions governing constitutional amendments. Unlike the United States of America, therefore, the Indian Union is not an "indestructible Union composed of the indestructible States" in that the Union alone is indestructible but the individual States are not.²

Changes since the adoption of the Constitution

43. At the time of the commencement of the Constitution, there were nine Part A States, eight Part B States and ten Part C States. Since then, Parliament has, by law, established a new Part A State, namely, Andhra, and merged one Part C State, namely, Bilaspur, in another such State—Himachal Pradesh.

¹ Constitution of India, Articles 2, 3 and 4.

² Munro: The Government of the United States, 5th edition, p. 591.