

Mr. N. Gopalaswami Ayyangar: Sir, at the time this Resolution was adopted, what we were attempting to do was to implement the scheme in the Cabinet Mission Plan. That Plan, as the House will remember, provided for a federation of Provinces and States and the assignment of a certain limited number of subjects, broadly described, to the Federation and for various other details as regards both the substance and the procedure which the leaders of the two great parties in the country had already accepted. Now, one of the important matters that had to be tackled by this House in connection with that plan was the scope of the subjects that were assigned to the Centre in that Plan. Those subjects were very broadly described, as I said. They consisted of Defence External Affairs and Communications, and the finance necessary for these subjects. Well, one of the items in that Plan which had been accepted was that constitutions had to be framed both for the Provinces and the Centre, the Federation, as also for any Groups, if the decision of the House was in favour of setting up such Groups. The constitutions for the provinces Groups were proposed to be made in 'the Sections into which this Assembly was to be divided after its preliminary meeting. Before the work of framing those constitutions was taken up it was considered necessary that some indication should be given as to the orbit,--if I may use the word--of the jurisdiction of the Centre, that is to say, the subjects which would be within the sphere of the Federation, so that the remaining subjects might be catered for in the Constitutions of the Provinces or of the Provinces and Groups, if Groups came to be decided on. It was for the purpose of implementing this object that it was decided that we should first undertake an investigation of the individual subjects which would fall within these four broad categories, and for that purpose we appointed a Committee to make this investigation and submit a report to the House. That Committee met, and on the 17th of April, I think, it made a report. That Report was presented to the House by me on the 28th April. In presenting it, I said I was not placing before the House any motion for the consideration of the Report because the conditions at that time were so fluid that we would only have wasted a considerable amount of the time of this House in considering that Report which was bound to become out-of-date within a few weeks. As a matter of fact, a very fateful political decision was impending at that time and we did not know what the nature of that decision was going to be, whether India was going to remain united or whether it was going to be divided and if so, what other details would have to be filled in. In those circumstances, I suggested that the House need not consider that first Report of this Committee at that time. I also pointed out that it would be necessary for the Committee to meet again and review the recommendations it had embodied in its first report in the light of political decisions that might be taken very soon after. As the House is aware, that decision was taken on the 3rd June and that decision started being implemented from almost that date; since then we have had the Indian Independence Act enacted by Parliament. Well, Sir, that Act has given us two Dominions in what was India, before the 15th of August.

We are now a Dominion. We have walked into independence. I deliberately say 'walked into independence' because I do not think we went and seized it. It was there. We walked in and said we had taken our power, and we have now in working order a Constitution which is, if I may say so, a combination of the provisions of the Indian Independence Act and the provisions of the Government of India Act, 1935, as adapted under the provisions of the Indian Independence Act.

Sir, that is the present state of things. The Union Powers Committee met again after the 28th of April at a time when even the Indian Independence Bill had not been introduced in Parliament. We knew of course that such a Bill was going to be introduced, but we were not quite sure at the time we settled our second report what the provisions of that Act would finally look like. Well, we did make that report. We have since had this Independence Act. What we have now is a Dominion and a Dominion if I may describe it--possibly it has, been described so in the adaptations of the Government of India Act--I am not sure of it because we are yet to be supplied with copies of the *Gazette Extraordinary* which is supposed to have been issued on the 14th night or the 15th morning: but I take it, Sir, that that adaptation describes this Dominion as a Union comprising those Provinces of what was British India as have not seconded into the new Dominion of Pakistan. It comprises also those Indian States which have acceded to the Dominion. When I said Provinces, I should have referred to two kinds of provinces that we have in this country, namely, the Governors Provinces and the Chief Commissioners, Provinces. In addition to that, there may be other areas which may be included in the Dominion. Thus we have really a Federal Union now in this country, and that Federal Union will have to be administered in accordance with the provisions of the Indian Independence Act and the Government of India Act as modified. Now, Sir, we, in this report of the Union Powers Committee, have nothing to do with the Federal Union which now exists. What we are attempting to establish is a Federation in the future, and, in considering what that Federation should be, we have got to take note of the essentials that any Federal Constitution has to provide for, and one of the essential principles of a Federal Constitution is that it must provide for a method of dividing sovereign powers so that the Government at the Centre and the Governments in the Units are each within a defined sphere, co-ordinate and independent. Perhaps I may quote for the information of the House the definition in orthodox terms of what a Federation should be as visualized by thinkers on political science, by people who have engaged themselves in the framing of Federal constitutions. Here, for instance, is a description which I take from the Report of the Royal Commission on the Australian Constitution in 1929. For this definition the person responsible was Sir Robert Garran, a name very well known in the history of Federal Constitutions. He describes Federation as "a form of government in which sovereignty or political power is divided between the central and local governments so that each of them, within its own sphere, is independent of the other". I call this, Sir, an orthodox definition because, if we look round the world and look at the Federal constitutions that are actually in being, I am almost sure that not one of them will be found to conform rigidly to the actual terms of this definition. The line between the Centre and the Units is not so definitely fixed as this definition would assume. There are relations between the Centre and the Units There are cases where the Units have to depend upon the Centre. There are controlling powers vested in the Federation in emergencies, when the Federation could override the jurisdiction of the Units and take over things into its own hands: so that this absolute independence of functioning, which is contemplated in the definition, has not been realised in practice. But there is one fact which stands out in the history of Federations, and that is this: it is necessary for us to demarcate the sphere within which the Centre on the one hand and the Units on the other could exercise sovereign powers, and that is really at the back of all the attempts that have been made in the various Federations to demarcate the subjects which should be assigned to the Centre and the subjects which should be assigned to the Units or retained by the Units, or retained by the Units, according to the view that is taken as to where residuary power should finally be lodged.

Now, Sir, with regard to our country, we are confronted with problems which have not confronted other Federations in history. We have decided to bring into a Federation areas which were under British sovereignty before the 15th of August, as also areas which were in theory independent but which were under the suzerainty of the British Crown. Now, to bring these two areas under one Federation confronts us with problems which the framers of Federal Constitutions elsewhere have not had to tackle; and there is this further fact. Provinces have to be provided for under a scheme of government which is not monarchical. Indian States have to come into the Federation and to remain there under a monarchical form of government. But I am one of those who think that the substance of democratic government is not affected by a difference such as the one I have referred to, whether it is a monarchical form of government or it is a republican form of government.

What we are all wedded to in this House, so far as I can gauge the opinion of this House, is a Government which is responsible to the Legislature. That responsible government you can achieve under a monarchical system, as well as under a republican system. That being so, in essence, we can easily get over the superficial difficulties that are posed by the existence of these two systems in the two areas of this country and develop a Federal Constitution which would bring about a harmonious co-ordination of governmental activities in these two sets of areas.

Well Sir, in framing our Constitution we have kept this constantly in view. On this Committee connected with Union Powers we have kept the Same principle constantly in view.

Now let me draw the attention of the House to one or two more peculiarities in the work that we are called upon to do. There is a certain amount of recognition which has been accorded to the principle of our making a difference between what were British Indian Provinces in the past and the Indian States, as regards the quantum of jurisdiction which we shall assign to the Centre. It has been taken as conceded that the States have to cede jurisdiction, have to accede to the Federation; and while it is recognised that accession should at least be in respect of a certain minimum number of subjects, accession with regard to the other Federal subjects has to be with their consent. I am glad to be able to say that the accredited Constitutional Advisers in Indian States have generally recognised, and also I think the representatives of the people of the Indian States have generally recognised the wisdom of agreeing, if possible, to a wider range of subjects to be assigned to the Centre than the subjects which could come within the four corners of Defence, External Affairs and Communications. But the only thing I would appeal to the House to do is to carry our persuasion of these Advisers to the point of their recognising that there is nothing in the Constitution that we shall be framing which could act as a discouragement to their implementing what I know they would be only too glad to implement if they were satisfied on the point I have mentioned.

Now, Sir, the fact that we have to make this distinction between the quantum of jurisdiction that is assigned to the Centre by the States on the one hand and to what were British Indian Provinces on the other, has materially affected the nature of the Report that this Committee has decided to present to this House. You will notice that there are three lists of subjects attached to the report and they are described as the Federal List, the Provincial List and the Concurrent List. The Federal List is the only one with which the States are "immediately concerned."

Now, there is another point of distinction to which I should draw attention. When we were merely trying to implement the Cabinet Mission Plan, we accepted the proposal of the Cabinet Mission that subjects not assigned to the Centre would be deemed to be assigned to the Provinces, and, in the case of the States, the language used was "Subjects not ceded by the States to the Federation would be retained by them". Now, in substance, it more or less amounted to the same thing, viz., having listed out Federal subjects, what remained, viz., the residuary subjects, would be with the Provinces in the one case and with the States in the other.

Now, Sir, When this Committee met after its first report had been presented, we were relieved of the shackles which we had imposed on ourselves on account of the acceptance of the Cabinet Mission Plan and the Committee came to the conclusion that we should make the Centre in this country as strong as possible consistent with leaving a fairly wide range of subjects to the Provinces in which they would have the utmost freedom to order things as they liked. In accordance with this view, a decision was taken that we should make three exhaustive Lists, one of the Federal subjects, another of the Provincial subjects and the third of the Concurrent subjects and that, if there was any residue left at all, if in the future any subject cropped up which could not be accommodated in one of these three Lists, then that subject should be deemed to remain with the Centre so far as the Provinces are concerned.

This decision, however, is not one which the Committee has applied to the States. You will find a reference to this in the Report. What is said there is that these residuary subjects will remain with the States unless the States are willing to cede them to the Centre. Well, I do not know if those who represent the States in this House will take any decision of the kind which perhaps the Committee hoped for when it said so; but we have got to take things as they are.

There is another matter which it is important that we should recognise. Residuary subjects in the case of provinces are subjects which are not accommodated in any of the three long Lists that we have appended to the Report. Residuary subjects in the case of the States would really mean all subjects which are not included in the Federal List. I want to draw attention to this, because I know my Hon'ble friend Dr. Ambedkar would rather see that the States accede also on certain items which are included in the Concurrent List, if not the whole of that list. There is a school of opinion in favour, of that. But, as things stand now, the report stands today, all the subjects included in the Provincial List, all the subjects included in the Concurrent List, and whatever subjects may not be included in the federal list are with the States. That is a distinction which I think it is necessary for the House to remember in considering this report. Sir, so far as this report is concerned, there is one matter to which I should like to draw, attention if only for the purpose of avoiding possible apprehensions as to whether certain things are included in it or excluded from it. The first report gave a list of subjects under each of these four heads. It also made certain recommendations as regards the inclusion of certain other provisions in the Constitution which may not be included in the lists themselves, for instance the last sentence of paragraph 2 (a) of the first report which referred to our making some provision so far as defence matters were concerned similar to the provisions contained in sections 102 and 106 (a) of the Government of India Act. Then, Sir, there is the penultimate sub-paragraph of para 2 (d) in which, in defence to the wishes of the representatives of States, it was decided by the Committee that the States should have a certain amount of time within which they could re-order their financial systems in such a way that they could be brought up to the standard of the rest of India and that provision, is there and the second

report does not cancel it.

Then, Sir, the second report itself draws attention to certain other matters, specific matters.....

Mr. H. V. Kamath: Mr. President, I submit that the loud speaker system is not behaving as well as it used to till the 15th,

Mr. President: It has caught the infection of being independent, we are going to have it checked up and. put right.

Mr. N. Gopalaswami Ayyangar: Sir, what I wish to say is that though the motion is that the second report of this Committee be taken into consideration, I think, the House is entitled to take into consideration also those portions of the first report which are not in conflict with what is said in the second one. Sir, with regard to these, lists themselves, any person who superficially glances through these lists might probably get the impression that they are too long, particularly the federal list which consist of 87 items. People have run away with the impression that this Committee has stolen a number of items from the provincial and concurrent lists and put them in the federal list and made it unduly long. I think if honourable members would scrutinise these lists and compare them with the lists in the Act of 1935 it would be difficult for them to find-perhaps with one or two stray exceptions any cases where we have encroached upon the sphere assigned to the provinces by that Act. There is also one other point that I wish to make so far as the federal list is concerned. We have cut up a number of items in the federal list into separate items and that is one reason why the number has increased so much. In other cases we have adopted certain items from other constitutions which we did not find in the Government of India Act, but none of are in the opinion of the Committee of such a character that they should necessarily go either in the provincial or concurrent list.

There is another matter in this connection to which perhaps, I may refer. One of the headaches of the Indian Independence Act, I mean the headaches caused in this country by the Indian Independence Act, was the manner in which practically it encouraged the cutting, of the political connection between the Government of India and the Governments of the Indian States. If that Act, or rather if that Bill had become law in the form in which it was originally framed, perhaps the disconnection would have been complete, but certain steps were taken in order to introduce into that Bill provisions which were intended to avert that calamity. But even so what was Pitt into the Act as enacted by Parliament, was not half of what was demanded from here with the full support of the statesman who is now tile Governor-General of the Dominion. What we got was only a partial recognition of the point of view that was urged from here, and that only tried to maintain certain economic connections that exist between the Centre and the Indian States. It left the continuance of the political connection very much in the air. In fact, legally speaking it cut off that connection, unless some steps were taken to revise that connection by some means or other, and I may here say that, happily for this country, this revival of the connection has been brought about, and the result is that today we are in the Dominion of India under the Indian Independence Act in a much better position as regards this political connection than we were under the Act of 1935.

The overwhelming body of Slates coming within the geographical boundaries of the Indian Dominion have acceded to the Dominion. They have accepted the position that

the Dominion can make laws in respect of the subjects on which they have acceded, a state of things which did not exist before the 15th of August. They have, most of them, I believe, sent representatives to the Constituent Assembly and this Constituent Assembly is going to function also as the Legislature of our Dominion, so that the political and the constitutional connection that exists today between the States and the Centre is much closer than it ever was during the last 150 years. I only say political and constitutional connection. I do not refer to the effectiveness of the control that was exercised over Indian States in the past. That may have been perhaps a little more efficient than may be possible under the existing state of things, but what I wish to draw particular attention to is that we have erected an organic political and constitutional structure which has commenced to function from the 15th of August. The credit for this, I think, should primarily go to the great awakening of public opinion in the States. It--should next go, I think, to the well considered policy of inviting the accession of Indian States to the Dominion which was announced by Sardar Vallabhbhai Patel who presides over the States Department today. But above all I should say that the actual accession of practically the overwhelming bulk of Indian States, the credit for that should go to the statesmanship and the genius for what he himself has called open diplomacy with which Lord Mountbatten has roped them in. I say this advisedly, because I think that but for the energy and the consummate skill which he has employed in this matter, we might not have reached the result which we are so happy to see today.

Now, Sir, I was mentioning this in order to point out that there are some rather hazy opinions as to what this accession means. It is said that the States have acceded only on three subjects. It is true there are three subjects, described in very broad terms but the actual Instrument of Accession which they have signed has detailed the items which come under each of these three heads and you will find that they really come to somewhere about 18 or 20. If we cut them up as in the list attached to the Union Powers Committee's Report, the number will probably be larger. The reason why I point out this particular fact is that representatives of States who are in this House are very substantially interested in the business which has got to be transacted here whether it is by way of constitution making or it is by way of legislation or control over central administration. They are vitally interested in this matter and I should like all of them to feel that there is absolutely no distinction between them and other representatives of India who are in this House. Now, Sir, having said that, I should finally refer to these three lists themselves the first question I dare say which will exercise the minds of many Honourable Members here would be whether after all, this kind of distinction as regards the lodgement of the residuary powers should continue. There are two ways of removing that distinction. One is perhaps to go back to the Cabinet Mission Plan in view of the fact that we have exhaustively described the subjects in the three lists--and lodge the residuary powers in the case of the Provinces also in those Provinces. The second proposition is one which the States might consider. Very eminent statesmen connected with the administration of Indian States have contended that what they wanted was a strong Centre and that if the Centre was made strong their hesitations about coming into the Constituent Assembly and participating in its labour would disappear. Well, if that view is concurred in by their colleagues here as also by the peoples' representatives from the Indian States, it is quite up to them to consider the alternative of modifying the report of this Committee and agreeing to the lodgement of residuary powers in the Centre itself. Well, Sir, that will be one of the things which this House will have very seriously to consider. The report of the Committee is, I must emphasize however in favour of residuary powers being with the States in the case of the States and with the Centre in the case of the Provinces. Sir, I do not wish to take up more of the time of the House. I move.