CHAPTER XXX

CONSTITUTIONAL DEVELOPMENTS

THE MONTAGU-CHELMSFORD REFORMS (1917-19)

The growing strength of the nationalist movement during the First World War made it necessary for the British Government to listen to the demands of the Congress. There was, as yet, no question of struggle, violent or non-violent, for the achievement of Swaraj; self-government was expected to come through ‘progressive improvement in our mental, moral and material condition’. But the united front presented by the Indian leaders and the part played by India in the War led the British Government to survey the Indian problem, in Asquith’s words, ‘from a new angle of vision’. The conclusion formed by the British Government was thus put in the Montagu-Chelmsford Report: “Indians must be enabled in so far as they attain responsibility to determine for themselves what they want done.”

On August 20, 1917, Mr. E. S. Montagu, Secretary of State for India, declared in the House of Commons: “The policy of His Majesty’s Government, with which the Government of India are in full accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible Government in India as an integral part of the British Empire.” This Declaration was ‘revolutionary’ in the sense that it promised responsible government; it was a repudiation of the Morley-Minto policy. It was ‘a declaration of belief in the philosophy of liberalism’. It was based on ‘the idea that liberty alone fits men for liberty.’ But the machinery devised in accordance with this ‘belief in the philosophy of liberalism’ was hardly calculated to pave the way for liberty.

The Secretary of State came to India in November, 1917, and discussed his scheme of reforms with the Viceroy, Lord Chelmsford, and some eminent British civil servants and Indian
politicians. The results of these discussions were embodied in the Montagu-Chelmsford Report, which was published in July, 1918. The Government of India Act of 1919 was based on that Report.

This Act set up for British India a Legislature consisting of the Governor-General and two chambers—the Council of State and the Legislative Assembly. The Council of State consisted of 60 members, 26 being nominated by the Governor-General, 34 elected. The Legislative Assembly consisted of 145 members, of whom 105 were elected and the rest nominated. Although the Montagu-Chelmsford Report declared that communal ‘Separate Electorate’ was ‘a very serious hindrance to the development of the self-governing principle’, yet the Morley-Minto system was not abandoned. Thus ‘Separate Electorate’ came to be a permanent feature of Indian political life. The Governor-General retained his power of legislating through ordinances. The Executive remained outside the control of the Legislature, which, however, secured some control over the purse.

As regards the Provincial Legislatures, the Act provided that at least 70 per cent. of the members must be elected, and that not more than 20 per cent. of the total membership should be officials. The principle of ‘Separate Electorate’ was, of course, retained. The Provincial Executive was to consist of two halves—the Reserved Departments under the control of the Governor and the Executive Councillors, who were not to be responsible to the Legislature, and the Transferred Departments under the control of the Governor and the Ministers, who were to be responsible to the Legislature. This was known as ‘Dyarchy’.

Of all the defects of the Act of 1919 from the nationalist point of view particular attention may be directed to ‘Dyarchy’, absence of even partial responsible government at the Centre, and consolidation of ‘Separate Electorate’. ‘Dyarchy’ was too complicated to be smoothly worked. The Central Legislature harassed the Executive because it could not control or influence it. The perpetuation of ‘Separate Electorate’ made it difficult for Hindus and Muslims to work together in the political field and steadily destroyed the communal harmony arising out of the Khilafat Movement.
The Act of 1919 was accepted by the 'Moderates' to whom the mere recognition of India's 'eventual' right to self-government was a great step forward, but it was rejected by the Congress. A wing of the Congress, called the Swarajist Party, entered the Legislatures under the leadership of Desabandhu C. R. Das and Pandit Motilal Nehru with the purpose of wrecking the constitution from within.

THE NON-CO-OPERATION MOVEMENT

The Mont-Ford Reforms synchronised with a decisive stage in the evolution of the Congress from a constitutional body to a revolutionary organisation. The impact of the War, the tragedy of Amritsar, the Khilafat Movement which temporarily bridged the gulf between the Hindus and the Muslims—all these created a new situation and demanded a complete reorientation of policy and methods. *Mahatma* Gandhi brought from South Africa a message of direct struggle and a technique—Satyagraha—which, he claimed, never failed. The Congress was infected, and the fundamental change in its character was reflected in Article I of the Constitution adopted in 1921: "The object of the Indian National Congress is the attainment of Swarajya by the people of India by all legitimate and peaceful means." Self-government within the British Empire was no longer its goal, "though it was not expressly ruled out". The goal was no longer to be attained solely through 'progressive improvement in our mental, moral and material condition' or even through 'constitutional' means; unconstitutional means, provided they were 'legitimate and peaceful', might be employed.

In a sense the constitutional history of India begins in 1917. The three Indian Councils Acts (1861, 1892, 1909) did not transfer power to India, nor did they stimulate a sober and constructive spirit of responsibility in the elected Indian members of the legislatures. The authors of the Mont-Ford Report observe that the Morley-Minto Scheme failed because it "ceased in the brief space of ten years' time to satisfy the political hunger of India." Had they been able really to feel the pulse of this country, they would have understood that the Morley-Minto Reforms had not 'satisfied the political hunger
of India' even when they were promulgated. Had Britain realised the intensity of India's 'political hunger' in 1917 the Mont-Ford Scheme might have been more generous. Whatever concessions she made were due, not to generosity or political sympathy, but to pressing political and military necessity. Referring to Mr. Montagu's announcement an American writer says: "It was the product of motives that were more or less contradictory. India was to be rewarded for her loyalty and at the same time bribed to keep quiet while the Empire was fighting for its life." These 'contradictory' motives explain some of the contradictions and incongruities in the Act of 1919. But it undoubtedly made a new departure in British Indian history: for the first time in the history of British rule it provided for transfer of power, even though the transfer was halting and the power extremely limited.

It is interesting, if unprofitable, to speculate whether the Act of 1919 contained within itself germs of steady constitutional progress. One writer says: "The chief obstacle was political rather than constitutional. There was only one large and well-organized party or political bloc in India and it was irreconcilable." This attempt to distinguish between political and constitutional obstacles to the working of the Act of 1919 is really begging the question. No Constitution can be worked successfully in any country if it fails to satisfy the 'political hunger' of the people. If organized political opinion is irreconcilably opposed to a particular Constitution it is practically useless to discuss its theoretical merits and demerits. The British Government knew that the only 'well-organized party' in India—the Congress—was 'irreconcilable'. Had it been really anxious to secure genuine constitutional progress it would have tried to satisfy this party instead of weakening it by encouraging Moderates and communal Muslim groups. Even from the strictly constitutional point of view the British Government and its agents in India jeopardised the success of the 'experiment'—as Mr. Lloyd George called it—by ill-advised opposition to popular wishes and views. Lord Reading used the power of certification to protect the autocratic Indian Princes from criticism and to increase the salt tax which affected the poorest man in the land. In his famous 'Steel Frame' speech in the House of Commons on August 2, 1922, Mr. Lloyd
George declared that he could see no time when India could dispense with the guidance and assistance of the Indian Civil Service. Popular suspicions were strengthened by the appointment of the Lee Commission and confirmed by its recommendations. An American writer admits that "the British Civilians as a class had . . . been obviously hostile to the Reforms". If the Nationalists were guilty of destructive criticism and wrecking tactics, the rulers were no less guilty of destructive speeches and provocative actions.

THE SIMON COMMISSION

The opposition to the Act of 1919 did not soon exhaust its force; on the other hand, it became gradually stronger and more effective. On February 18, 1924, the Central Legislative Assembly carried a resolution at the instance of Pandit Motilal Nehru, demanding a Round Table Conference for framing a Constitution for India. Owing to the policy of obstruction pursued by the Swarajists no stable Ministry could be formed in Bengal and the Central Provinces. The Government of India partly responded to public opinion by appointing in 1924 the Reforms Enquiry Committee under the Chairmanship of Sir Alexander Muddiman. The Majority Report arrived at the following conclusion: "While the period during which the present Constitution has been in force has been too short to enable a well-founded opinion as to its success to be formed, the evidence before us is far from convincing that it has failed." The Minority Report, on the other hand, recorded the conclusion that "the present system has failed and . . . it is incapable of yielding better results in future."

The British Government virtually recognized the failure of the Mont-Ford Reforms by appointing the Simon Commission in 1927. The Commission was asked to enquire into "the working of the system of government, the growth of education and the development of representative institutions in British India", "to report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government then existing therein, including the question whether the establishment of Second Chambers of the local legislatures is
or is not desirable”, and also to examine the methods by which the future relationship between the Indian States and British India might be adjusted. No Indian found a place in the Commission. Its all-British composition was condemned by all shades of Indian political opinion and the Congress completely boycotted it. But the Commission carried on its investigations, the results of which were summarised in its Report published in June, 1930. Once again the British Government failed to take into account the views of “the only one large and well-organized party in India”. It did not strike the British rulers that a political enquiry boycotted by the leading exponents of popular wishes could not serve its purpose. True to traditional British policy, Lord Birkenhead, the Conservative Secretary of State for India, tried “to terrify the immense Hindu population by the apprehension that the Commission is being got hold of by the Moslems and may present a report altogether destructive of the Hindu position”. An American writer says: “If Lord Birkenhead and his associates did not deliberately intend to insult and humiliate the people of India they were woefully ignorant of racial psychology”.

THE NEHRU REPORT

While the Simon Commission was carrying on its work in isolation from Indian public opinion the leading political parties of India were trying to lay down a common political programme. In accordance with a resolution of the Madras session of the Congress (1927) an All-Parties Conference met at Delhi early in 1928 and it was agreed between the Congress and other organisations present there that the question of a Constitution for India should be discussed on the basis of full responsible government. A Committee presided over by Pandit Motilal Nehru prepared a Report which laid down Dominion Status—not complete independence—as India’s political objective. The Congress was prepared to accept a Constitution based on this Report if the British Government accepted it in its entirety within December, 1929. To this gesture the British Government made no serious response. Lord Irwin merely stated on October 31, 1929, that he was authorised to make it clear on behalf of the British Government that “in their judgment, it
is implicit in the Declaration of 1917 that the natural issue of India's constitutional progress, as there contemplated, is the attainment of Dominion Status." This vague statement failed to satisfy India. The Congress changed its creed to complete independence. Presiding over the Lahore session of the Congress (1929) Pandit Jawaharlal Nehru said: "We have had much controversy about Independence and Dominion Status and we have quarrelled about words. But the real thing is the conquest of power by whatever name it may be called. I do not think that any form of Dominion Status applicable to India will give us real power."

ROUND TABLE CONFERENCE

The Simon Commission suggested that the constitutional problem of India should be discussed at a Round Table Conference. The suggestion was accepted by the British Premier, Mr. Ramsay MacDonald, in October, 1929. In the same month the Viceroy, Lord Irwin, made the above declaration.

The first session of the Round Table Conference met in London in November, 1930. Instead of joining it the Congress launched a Civil Disobedience Movement under the leadership of Mahatma Gandhi. The second session of the Round Table Conference (autumn of 1931) was attended by Mahatma Gandhi as the sole representative of the Congress, for he had meanwhile suspended Civil Disobedience through a pact with Lord Irwin. The third session of the Round Table Conference met in 1932. The Conference was attended by the representatives of all important political groups in India, of the rulers of the Indian States, and of the three political parties of England. Its deliberations might have been more useful and practical had it been a smaller and homogeneous body. The emergence of the Federal idea—the idea of creating an Indian Federation consisting of the British Indian Provinces and the Indian States—was the only tangible achievement. Mahatma Gandhi's appeal to trust the Congress found no response from the British Government, and his failure to solve the communal problem owing, it is said, to the intransigence of some Muslim leaders secretly supported by the Europeans, led to Ramsay MacDonald's Communal Award. Thus the system invented by
Lord Minto in 1906 was consolidated and extended in 1932. The Communal Award was later on partially modified by the Poona Pact, which was accepted by the Hindu leaders as a result of Mahatma Gandhi’s fast to prevent a political breach between the so-called ‘Caste Hindus’ and ‘Scheduled Caste Hindus’.

THE GOVERNMENT OF INDIA ACT, 1935

On the basis of the discussions in the Round Table Conference the British Government prepared a White Paper (1933), which later on formed the nucleus of the Government of India Act, 1935. This Act was piloted in the House of Commons by the Secretary of State for India, Sir Samuel Hoare.

The complicated provisions of this Act cannot be discussed here, but its most prominent features may be noticed. It provided for the establishment of an Indian Federation made up of British Indian Provinces and Indian States. In the case of the States accession to the Federation was voluntary, and the Federation could not be established until the accession of States entitled to fill not less than half the 104 seats of the Council of State and having a population of not less than 39,490,956 persons. The terms on which a State joined the Federation were to be laid down in an Instrument of Accession.

The Federal Executive was to be composed of the Governor-General and a Council of Ministers. The Ministers were to be chosen by him and would hold office during his pleasure. He had ‘special responsibility’ regarding certain specified subjects (e.g., the prevention of any grave menace to the peace and tranquillity of India or any part thereof); in respect of these subjects he had full freedom to accept or to reject the advice of the Ministers. In certain other subjects—defence, ecclesiastical affairs, external affairs, administration of tribal areas—he was empowered to act in his ‘discretion’. These subjects were to be managed by three Counsellors appointed by him. Thus Dyarchy, rejected by the Simon Commission, was deliberately provided for in the Federation by the Act of 1935. In the British Indian Provinces the executive power of the Governor-General extended to all matters in respect of which the Federal Legislature could make laws, but in the Federated States it extended only to
matters over which the Instrument of Accession conceded Federal control. Moreover, while some Departments of the Federation were to be managed by the Ministers, others were left under the management of the Counsellors.

Apart from the control given to the Federation by the Instrument of Accession, the rights and obligations of the Crown in respect of the Indian States remained unaffected. These rights and obligations were left in charge of the Crown Representative. The combination of the offices of Governor-General and Crown Representative was allowed.

The Federal Legislature consisted of the King (represented by the Governor-General), the Council of State, and the House of Assembly or Federal Assembly. The Council of State was to be a permanent body, one-third of the members retiring every three years. It was to consist of 156 members for British India and up to 104 for the States. The British Indian members were to be directly elected, the system of 'Separate Electorate' being in force, but 6 members were to be nominated by the Governor-General. The members from the States were to be nominated by the Rulers. The Assembly was to consist of 250 representatives of British India and up to 125 members from the States. The British Indian members were to be elected, not directly by the people, but indirectly by the members of the Provincial Legislative Assemblies on the system of proportional representation with the single transferable vote. The members from the States were to be nominated by the Rulers.

As in the case of the Federation, the executive government of the Provinces was vested in the Governor whose position was largely modelled on that of the Governor-General. He had 'special responsibility' regarding certain specified subjects (i.e., the prevention of menace to the peace or tranquillity of the Province or any part thereof), and in regard to certain matters he could act in his 'discretion'. He was to be aided and advised by a Council of Ministers appointed and dismissed by him in his 'discretion'.

The composition of the Provincial Legislature naturally varied from Province to Province; but the system of 'Separate Electorate' was everywhere in force. In all Provincial Legislative Assemblies all members were directly elected by the
people. But in six Provinces (Madras, Bombay, Bengal, the United Provinces, Bihar and Assam) there was a bicameral Legislature consisting of a Legislative Council and a Legislative Assembly, and in each of these Legislative Councils a few seats were filled by the Governor through nomination.

The Chief Commissioners' Provinces remained directly under the administration of the Governor-General, and the Federal Legislature had full legislative authority over them. Burma was separated from India and given a separate constitution.

The division of legislative power is inevitable in a Federation. The Act of 1935 contained three lists—the Federal Legislative List, the Provincial Legislative List, and the Concurrent Legislative List. A Federal Court was established and given exclusive original jurisdiction in any dispute between the Federation, the Provinces, and the Federated States.

In India the Act of 1935 proved unsatisfactory to all important parties. In his Presidential Address at the Bombay session of the Congress in 1934 Babu Rajendra Prasad reviewed the Act thoroughly and concentrated criticism on the system of putting the nominees of the Princes in the Federal Legislature, 'special responsibilities' and discretionary powers of the Governor-General and the Governors, addition of Second Chambers to Provincial Legislatures, and absence of any provision for 'automatic growth or development of self-government'. He said, "It will be a kind of Federation in which unabashed autocracy will sit entrenched in one-third of India and peep in every now and then to strangle popular will in the remaining two-thirds." The Muslim League condemned the Federal Scheme as 'calculated to thwart and delay indefinitely the realisation of India's most cherished goal of complete responsible government', but the Provincial Scheme was to be 'utilised for what it is worth'. The Princes became reluctant to commit themselves to a system which implied loss of autocratic privileges. So the Federal Scheme was shelved and the Provincial Scheme was put in operation in April, 1937.

PROVINCIAL AUTONOMY

The most important feature of the Act of 1935 was Provincial Autonomy. From this point of view it marked the
culmination of the reaction against the Charter Act of 1833, which had made the Provincial Governments completely subordinate to the Central Government in legislation as well as administration. That centralisation led to inconvenience and even conflict; the growing complexities of legislation and administration demanded gradual relaxation of the control of the Government of India. The Act of 1861 introduced partial decentralisation in the sphere of legislation, and Lord Mayo's scheme of financial decentralisation introduced a new tendency in Indian administration. In 1891 Lord Lansdowne declared, "We are all of us fond of dwelling upon the necessity of decentralising our administration." He found in the States a good instrument of decentralisation. In the days of Lord Curzon the old policy of centralisation was to a large extent restored. In 1907 Lord Morley appointed the Decentralisation Commission, which recommended the relaxation of Central control over the details of Provincial administration. Certain changes in the system of financial administration were introduced in 1912, but there was no basic alteration in the relations between the Central and Local Governments.

A new policy was indicated by the Government of India in a despatch to the Secretary of State, dated August 25, 1911, in which it was observed, "... it is certain that, in the course of time, the just demands of Indians for a larger share in the government of the country will have to be satisfied, and the question will be how this devolution of power can be conceded without impairing the supreme authority of the Governor-General in Council. The only possible solution of the difficulty would appear to be gradually to give the provinces a larger measure of self-government, until at last India would consist of a number of Administrations, autonomous in all provincial affairs, with the Government of India above them all, and possessing power to interfere in case of misgovernment, but ordinarily restricting their functions to Imperial concern."

Although the Secretary of State, Lord Crewe, declared that decentralisation did not imply popular control over provincial administration, yet the idea of "Administrations autonomous in all provincial affairs" captured the imagination of Indian political leaders. The Congress-League Scheme formulated in 1916 declared: "The Government of India shall not ordinarily inter-
iere in the local affairs of a province, and powers not specifically
given to a Provincial Government shall be deemed to be vested
in the former.” The Montagu-Chelmsford Report recommended
that centralisation must diminish in proportion to the introduction
of popular control over Provincial administration. The Act of
1919 freed the Provincial Governments to a large extent from
the control of the Government of India by providing for delega-
tion and devolution of authority, but the Constitution remained
unitary.

The idea of creating a Federation composed of British
Indian Provinces and Indian States had originated even before
the introduction of the Montagu-Chelmsford Reforms, but it
did not take a practical shape before the Round Table Con-
ference. In a Memorandum circulated by Mahatma Gandhi at
the Round Table Conference the Congress standpoint was
expressed as follows: “The future constitution of the country
shall be federal. The residuary powers shall vest in the federat-
ing units, unless, on further examination, it is found to be
against the best interests of India.” While recommending
Provincial Autonomy the Joint Parliamentary Committee empha-
sized that the unity of India must be maintained.

The type of Provincial Autonomy introduced by the Act of
1935 did not satisfy the Congress, although Lord Linlithgow
repeatedly emphasized its political value. The Muslim League
was definitely hostile to the Federal Scheme, but it decided, in
the hope of capturing power in the Muslim-majority Provinces,
that “the Provincial Scheme of the constitution be utilised for
what it is worth”. The way was thus prepared for the attempt
to vivisect India on communal grounds.

THE COMMUNAL PROBLEM

The communal unity symbolised by the Khilafat move-
ment reached its climax in 1921, but soon afterwards a gradual
worsening of the communal situation began. All hopes of
forging new bonds of unity between the Congress and the
League were practically given up on the failure of the All
Parties’ Conference in Calcutta in 1928. The British Govern-
ment tried its best to prevent the emergence of any united
political front in India. Mr. Jinnah circulated his “Fourteen
Points”. In the Round Table Conference the Nationalist Muslims had no representative, and when Pandit Madan Mohan Malaviya held a Unity Conference at Allahabad to placate the Muslim League, Sir Samuel Hoare offered better terms (33½ per cent. representation in the Central Legislature and separation of Sind). All chances of unity were thus irretrievably lost, and the solid product of the Round Table Conference was the “Communal Award” devised by the British Government. The Congress adopted an anomalous attitude towards the “Communal Award”, but this halting concession failed to satisfy the Muslims.

Meanwhile Mr. Jinnah was giving up his old nationalist ideas and increasing his influence on his own community. He decided to accept the Provincial Scheme of the Act of 1935 although he was strongly opposed to the Federal Scheme. When the Congress accepted office in certain Provinces in 1937 it refused to form coalition Cabinets, and in the U. P. the Muslim League rejected conditions of co-operation laid down by the Congress.

Mr. Jinnah protested strongly against what he called the policy of “Hindustan for the Hindus”. He “exposed” the “game” of “Congress Fascism” and levelled some specific charges against the Congress Ministries. These charges were repudiated by the Congress, and Mr. Jinnah made no attempt to substantiate them. It is interesting to quote the comments of a pro-Muslim observer, Professor Coupland:

“. . . . the controversy is not of major importance because the incidents in dispute cannot by themselves account for the strength and scope of the Moslem revolt. They were not very numerous considering the vast areas concerned: many of them were of a relatively trivial character: and similar incidents had been occurring from time to time for many years past.”

But Mr. Jinnah emphasized the gravity of the so-called “atrocities,” and when the Congress demanded a Constituent Assembly for framing a constitution for India, he described it as an attempt to consolidate the “Hindu Raj”. No agreed solution of the constitutional problem was thus possible. The outbreak of the Second Great War widened the gulf between the three parties—the British Government, the Congress and the League. Mr. Jinnah began to develop the theory of “two
nations” which some Muslim leaders had already propounded. He made no constructive suggestion for the preparation of a constitution acceptable to all parties. His constructive suggestion came in a nebulous form in the shape of the famous Pakistan resolution in 1940. It was a plan destructive in its essence, for it was a complete repudiation of the unity which two centuries of British rule had created in this country.

THE INDIAN STATES

The Mont-Ford Report recognised the desirability of drawing the Indian States “still closer within the orbit of the Empire”, insisting at the same time that “no constitutional changes which may take place will impair the rights, dignities, and privileges secured to them by treaties, sanads, and engagements, or by established practice”. The Chamber of Princes was established on February 8, 1921. It was a deliberative, consultative and advisory, but not an executive, body.

On March 27, 1926, Lord Reading wrote a letter to the Nizam in which the doctrine of Paramountcy was explained in the following words:—

“The sovereignty of the British Crown is supreme in India, and therefore no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogative in matters relating to foreign Powers and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India.”

The legal and historical aspects of “treaty rights” were discussed by the Nehru Committee and the Indian States Enquiry Committee (with Sir Harcourt Butler as President) appointed by the British Government. These discussions were more or less academic. The Nehru Committee rightly pointed out that the question of the States “is more a case for the constructive statesman than for the analytical lawyer”. Even the “analytical lawyer” could hardly afford to forget that
treaties concluded more than a century ago under circumstances having not the remotest resemblance to the political condition of India in the thirties of the present century, and differently interpreted by the Paramount Power at different times, could no longer be invoked in defence of a system which public opinion was not prepared to tolerate. The Indian States might not be governed by International Law, but the principle of *rebus sic stantibus* is based on sound practical considerations which statesmen cannot afford to ignore.

The Nehru Committee discussed the question whether the Paramountcy of the Crown could be transferred to the Government of India if India attained Dominion Status. The Act of 1935 repudiated the claim of the Nehru Committee and provided that the Crown Representative, not the Governor-General or the Government of India, would deal with the claims of Paramountcy. The Congress adopted a cautious policy towards the States, but the growing political discontent in British India did not leave the States unaffected. Lord Linlithgow failed to persuade the States to join the proposed Federation.

There are many shrewd observers of political events in India who suspect that in summoning the Princes to the Round Table Conference the British Government was not guided by a genuine desire to bring uniformity to India's political scene; it was rather anxious to utilise the Princes for the purpose of nullifying in practice such transfer of power as it might be forced to make in theory. The Princes could hardly be taken as friendly and reliable partners by the Nationalists who wanted real transfer of power. But the Act of 1935 made the establishment of federation dependent upon the co-operation of the Princes. It was to be, said the President of the Congress, "a kind of federation in which unabashed autocracy will sit entrenched in one-third of India and *peep* in every now and then to strangle popular will in the remaining two-thirds".

It is somewhat strange that the Princes finally refused to be roped in by the Paramount Power. They decided not to join the Federation, and their non-co-operation, apart from the policy of the Congress and the Muslim League, torpedoed the carefully framed Federal Scheme. There was a real change in the country which alarmed the Princes. If "British India"
succeeded in getting "democratic freedom," "Princely India" could not perpetuate "unabashed autocracy." So the Princes stepped aside, hoping that the postponement of the Federal Scheme would mean the postponement of "democratic freedom" for British India.

There was probably another important reason which prevented the Princes from accepting the Federal Scheme. Dr. Rajendra Prasad's Presidential address at the Bombay session of the Congress (1934) contained an important statement: "... the Princes themselves will be more helpless than they are now and will soon realise the effect of a federation which is conceived to keep them free from the baneful interference of British India people but nonetheless subservient to the Viceroy." Acceptance of the Federal Scheme would mean for the Princes submission to dual authority. The Federal Government of India, in which the Congress was sure to exercise predominant, if not always effective, influence, would control the administration of the States in some essential matters, and it was well known that under modern conditions the Centre was likely to grow at the cost of the Units. But acceptance of Federal control would not free the Princes from the undefined control of the Paramount Power. The Report of the Butler Committee had not accepted the Princes' views on Paramountcy. When the Act of 1935 was on the anvil the Princes wanted an authoritative definition of Paramountcy; but the reply of the British Government was vague and disappointing. "The nature of their relationship to the King-Emperor", observed the Secretary of State, "is a matter which admits of no dispute". In other words, Paramountcy would remain paramount even if some portion of "internal sovereignty" was surrendered to the Congress-dominated Federation. Why should the Princes welcome two masters in place of one?

If the Princes were afraid of the Congress, the Congress was also afraid of them. One of the principal objections of the Congress to the Federal Scheme related to the position of the Princes in the Federation. Of course there were other objections, e.g., no real transfer of power in the Centre, defects of the Provincial Scheme, special powers of Governor-General and Governor, protection of European interests, etc. The Congress
pursued a consistent policy of opposition to the Act of 1935, particularly to the Federal Scheme, and laid down the democratic principle of framing a new constitution through a really representative Constituent Assembly. The British Government did not take this proposal seriously, and it found an able ally in Mr. Jinnah.

PROVINCIAL AUTONOMY AT WORK

In April, 1937, the Government of India Act, 1935, was imposed on unwilling and protesting India, and Provincial Autonomy, subject to many 'safeguards' and cramped by Governor's 'special responsibilities', was introduced in 11 Provinces.\(^1\) After the elections the Congress found itself in absolute majority in the Legislative Assemblies of five Provinces (Madras, C.P., U.P., Bihar, Orissa); in four Provinces (Bombay, N.W.F.P., Bengal, Assam) it emerged as the largest single party. The Muslim League could not secure majority in any Province. At first the Congress refused to accept office, for it was afraid that the Ministers would have no real freedom to run the administration in their own way. In June, 1937, Lord Linlithgow assured the Congress in a public statement that the Governors would not interfere in the day-to-day administration of the Provinces. The Congress then formed Ministries in seven Provinces (Bombay, Madras, U.P., Bihar, C.P., Orissa, N.W.F.P.). In 1938 the Congress joined a Coalition Ministry in Sind and a Congress Premier formed a Coalition Ministry in Assam. Thus, except Bengal and the Punjab all the Provinces practically came under Congress rule.

CONGRESS IN OPPOSITION

In September, 1939, war broke out in Europe, and India was dragged into it without any reference to public opinion and even without formal reference to the Central Legislature. This at once revealed the width of the gulf which separated the Congress from the British Government. The Congress declared that 'the issue of war and peace for India must be decided by

\(^1\) Burma was separated from India on April 1, 1937.
the Indian people', declined to 'offer any co-operation in a war which was conducted on imperialistic lines and which was meant to consolidate Imperialism in India and elsewhere', and asked the British Government 'to declare in unequivocal terms what their war aims were in regard to Democracy and Imperialism and the new order that was envisaged'. It was also demanded that 'India must be declared an independent nation, and present application must be given to this status to the largest possible extent.' As the British Government made no satisfactory response, the Congress Ministries tendered their resignations. Five Provinces (Bombay, Madras, U.P., Bihar, C.P.) remained under the autocratic rule of the Governors under Section 93 of the Act of 1935 till the restoration of the Congress Ministries in 1946. In N.W.F.P. a League Ministry was formed, but it was replaced by a Congress Ministry in 1945. In Orissa Coalition Ministries were formed, but the Congress came back to power in 1946. In Assam a League Ministry was formed; it was replaced by a Congress Ministry in 1946. In Sind and Bengal the rule of the League was consolidated, in spite of occasional victories of non-League groups. The Punjab remained under the rule of the Unionist Party till the formation of a Congress-Sikh-Unionist Coalition Ministry in 1946.

Even after the resignation of the Ministries the Congress did nothing to embarrass the Government apart from demanding a Constituent Assembly to frame a new constitution for India. Mahatma Gandhi wrote, 'We do not seek our independence out of Britain's ruin.' In 1940 the Congress offered co-operation on terms, the chief demands being an immediate declaration of 'the full independence of India' and the formation of a Provisional National Government at the Centre. On August 8, 1940, Lord Linlithgow issued a statement in which the minorities were assured that no constitution would be framed without their consent; there was conditional recognition of the right of the Indians to frame their own constitution, and it was made clear that the constitution-making body was to be set up after the war. Mahatma Gandhi wrote that this statement 'widened the gulf between India as represented by the Congress and England'. The Congress then launched Satyagraha under his guidance in support of the modest
demand for freedom of speech. He decided that the campaign must not be expanded into 'mass action', for that would embarrass the Government; it was simply a 'moral protest'.

**BIRTH OF PAKISTAN**

In 1937 the Muslim League and its leader, Mr. M. A Jinnah, occupied an unimportant place in Indian public life. In the elections under the Act of 1935 the League captured only 110 out of a total of 482 Muslim seats in 11 Provinces. When the Congress accepted office Mr. Jinnah declared that the Muslims 'can expect neither justice nor fair play under Congress Government'. In 1939 the League issued three documents describing 'atrocities' alleged to have been committed by Hindus on Muslims and bringing serious charges against several Congress Ministries. Sir Reginald Coupland says, "An impartial investigator would come to the conclusion that many of those charges were exaggerated or of little serious moment, . . . . and that the case against the Congress Governments as deliberately pursuing an anti-Moslem policy was certainly not proved. . . . . However that may be, the indictment of Congress rule was all too easily credited by the Moslem rank and file. . . . ." Naturally Mr. Jinnah's popularity increased in his own community. When the Congress Ministries resigned he declared that the end of Congress rule in the Provinces should be solemnly celebrated every year by the observance of a 'Deliverance Day'.

Soon after the introduction of Provincial Autonomy Mr. Jinnah began to preach the theory that the Indian Muslims were a 'nation', not a mere community. In an article published in an English journal in January, 1940, he observed, "There are in India two nations who both must share the governance of their common motherland". In his Presidential address at the Lahore session of the League held in March, 1940, he emphasized the differences between Hinduism and Islam: "They are not religions in the strict sense of the word, but are, in fact, different and distinct social orders, and it is a dream that Hindus and Muslims can ever evolve a common nationality. . . . . The Hindus and Muslims belong to two different religious philosophies, social customs, literatures. . . . .
To yoke together two such nations under a single State, one as a numerical minority and the other as a majority, must lead to growing discontent and final destruction of any fabric that may be so built up for the government of such a State."

So the Muslims, argued Mr. Jinnah, must have a State of their own; they would not 'accept any constitution which must necessarily result in a Hindu-majority Government'. That State was to include the Muslim 'homeland', i.e., those areas in north-west and north-east India in which the Muslims were in a majority. This idea was not a discovery of Mr. Jinnah. In 1930 Sir Muhammad Iqbal, the poet-philosopher of the Punjab, made a proposal for the amalgamation of the Punjab, the N.W.F.P., Sind and Baluchistan in a single autonomous—but not independent—State which was to form a part of a loose Federal structure. In 1933 Chaudhuri Rahmat Ali, a Punjabi Muslim student, coined the word 'Pakistan' ('Land of the Pure'). Pakistan was to be a Muslim State consisting of the Punjab (indicated by 'P'), the N.W.F.P. or the Afghan territory (indicated by 'A'), Kashmir (indicated by 'K'), Sind (indicated by 'S') and Baluchistan (indicated by 'stan'). In 1940 Chaudhuri Rahmat Ali claimed Assam and Hyderabad as integral parts of Pakistan.

In March, 1940, the Lahore session of the League passed a resolution declaring that no constitutional scheme would be acceptable to the Muslims unless it was based on the following principle: "that geographically contiguous units are demarcated into regions which should be constituted with such territorial adjustments as may be necessary, that the areas in which the Muslims are numerically in a majority, as in the north-western and eastern zones of India, should be grouped to constitute independent States in which the constituent unit shall be autonomous and sovereign". This resolution did not clearly specify the extent of Pakistan. It spoke of 'units', 'regions', 'areas', 'zones' and 'territorial adjustments'; there is no reference to existing political or administrative units. Early in 1942 Mr. Jinnah told Professor Coupland that Pakistan would be 'a Moslem State or States comprising the N.W.F.P., the Punjab, and Sind on the one side of India and Bengal on the other'. He did not claim Baluchistan and Assam, nor did he want Kashmir and Hyderabad. In the Memorandum submitted to the Cabinet Mission on May 12, 1946, the League claimed that "the six
Muslim Provinces (Punjab, N.W.F.P., Baluchistan, Sind, Bengal, Assam) shall be grouped together as one Group." It was never explained why Assam was described as a 'Muslim Province'.

The separatism which culminated in Pakistan has a long history behind it. The British policy of *divide et impera* created a gulf between the Hindus and the Muslims by granting special concessions to the latter. Special mention should be made of the system of 'Separate Electorate'. The evil effects of communal representation were so patent that even the authors of the Montagu-Chelmsford Report could not justify it. They observed, "Division by creeds and classes means the creation of political camps organized against each other, and teaches men to think as partisans and not as citizens; and it is difficult to see how the change from this system to national representation is ever to occur". But they concluded that the pledge given to the Muslims in 1909 could not be repudiated. Mr. Ramsay Mac-Donald's Communal Award not only confirmed but extended the system of communal representation.

**THE CRIPPS MISSION (1942)**

The spectacular success of Japan during the early months of 1942 forced the British Government to make a serious attempt to end the deadlock in India. On March 11, 1942, Mr. Churchill, the British Prime Minister, announced that Sir Stafford Cripps, a member of the War Cabinet, would go to India to explain certain constitutional proposals accepted by the British Government and 'to satisfy himself upon the spot, by personal consultation' that those proposals would 'achieve their purpose'. Sir Stafford Cripps arrived at Delhi on March 22, 1942, and left Karachi for London on April 13, 1942.

The Draft Declaration of the British Government contained the following proposals:

1. "Immediately upon the cessation of hostilities steps shall be taken to set up in India an elected body charged with the task of framing a new constitution for India."

2. "Provision shall be made for the participation of the Indian States in the constitution-making body",
(3) The British Government undertook 'to accept and implement forthwith the constitution so framed', subject to the following conditions:

(i) Any Province of British India might refuse to accept the new Constitution and choose to retain its existing constitutional position, provision being made for its subsequent accession if it so decided.

With such non-acceding Provinces, if they so desired, the British Government would be prepared to agree upon a new constitution, giving them the same full status as the Indian Union.

(ii) The constitution-making body would conclude a treaty with the British Government, covering 'all necessary matters arising out of the complete transfer of responsibility from British to Indian hands' and guaranteeing 'the protection of racial and religious minorities'; but this treaty would not 'impose any restriction on the power of the Indian Union to decide in the future its relationship to the other Member States of the British Commonwealth'.

(4) The constitution-making body would be elected by the members of the Lower Houses of the Provincial Legislatures by the system of proportional representation.

(5) Until the new Constitution could be framed the British Government would remain responsible for the defence of India, but it 'desired and invited the immediate and effective participation of the leaders of the principal sections of the Indian people in the counsels of their country, of the Commonwealth and of the United Nations'.

What this Declaration offered India was a promise—a promise that was not to be fulfilled at once, but only in the future. Mahatma Gandhi is said to have remarked that it was 'a postdated cheque'. Secondly, the provision about the non-accession of Provinces to the Indian Union was a direct encouragement to, if not a clear acceptance of, the demand for Pakistan. Thirdly, the proposed arrangement about Defence was unacceptable to the Congress. Fourthly, the Congress demanded, but did not receive, an informal assurance that the Governor-General would act as a constitutional ruler on the advice of the National Government consisting of Indian leaders. According to Pandit
Jawaharlal Nehru, the Cripps Plan came to mean that "the existing structure of Government would continue exactly as before, the autocratic powers of the Viceroy would remain, and a few of us could become his liveried camp-followers and look after canteens and the like." So the Congress rejected this offer of the British Government. The League also rejected it and reiterated the demand for Pakistan.

'QUIT INDIA' AND THE AUGUST REVOLT (1942)

Sir Stafford Cripps left India in the grip of unprecedented excitement. The Congress could no longer postpone the adoption of a policy of effective opposition to the British Government, which refused to conciliate the Indian people even at a critical hour when the Japanese were knocking at the gates of India. Soon after the departure of Sir Stafford Cripps the 'Quit India' idea occurred to Mahatma Gandhi, who at once made it the battle cry of Nationalist India. On May 10, 1942, he wrote in the Harijan, "The presence of the British in India is an invitation to Japan to invade India. Their withdrawal removes that bait..." Some time later he wrote, "Leave India in God's hands, or in modern parlance, to anarchy. Then all parties will fight one another like dogs or will, when real responsibility faces them, come to a reasonable agreement..."

A resolution of the Congress Working Committee, dated July 14, 1942, laid down that, if the demand for British abdication was rejected, the Congress would be 'reluctantly compelled' to launch a 'widespread' non-violent struggle under Mahatma Gandhi's leadership. This resolution was confirmed by the All-India Congress Committee at Bombay on August 8, 1942, and it was declared that:

"...the immediate ending of British rule in India is an urgent necessity, both for the sake of India and for the success of the cause of the United Nations. The continuation of that rule is degrading and enfeebling India and making her progressively less capable of defending herself and of contributing to the cause of world freedom".

Early next morning (August 9, 1942) Mahatma Gandhi, the members of the Congress Working Committee and some other Congress leaders were arrested, and the All-India Congress
Committee and the Provincial Congress Committees were banned. Lord Linlithgow deliberately pursued a policy of stern repression all over India. The sudden arrest of the Congress leaders left the people leaderless and the violence of the Government goaded them to extreme measures. The full story of the violent struggle of the leaderless masses against the tyranny of dying Imperialism has not yet been written. According to official statements, 250 Railway Stations and 500 Post Offices were damaged or destroyed, over 150 Police Stations were attacked, some officials and soldiers were killed and over 900 civilians lost their lives.

For this violence Mahatma Gandhi disclaimed even the slightest measure of responsibility. He undertook a fast on February 10, 1943, and broke it at the end of the three weeks he had set himself. Lord Linlithgow's refusal to release him even when his life was in serious danger led to the resignation of two Hindus and one Parsi from his Executive Council. This was followed by the terrible Bengal Famine of 1943, which cost millions of lives and revived the horrors of the Famine of 1770.

**RAJAGOPALACHARI FORMULA (1944)**

Meanwhile Mr. Jinnah was insisting on the division of India and the creation of a sovereign Muslim State. Mr. C. Rajagopalachari, the veteran Congress leader of Madras, evolved a formula for Congress-League co-operation on the basis of Pakistan. Mahatma Gandhi, released on May 6, 1944, put that formula before Mr. Jinnah: (1) The Muslim League would endorse the demand for independence and co-operate with the Congress in forming a Provisional Government for the transitional period. (2) At the end of the war a plebiscite of all the inhabitants in the Muslim-majority areas in north-west and north-east would decide whether or not they should form a separate State. (3) In the event of separation, agreements would be made for defence, communications and other essential matters. (4) These terms were to be binding only in case of transfer by England of full power and responsibility for the government of India.

Mr. Jinnah rejected this offer. He refused to allow the non-Muslim inhabitants of the Muslim-majority areas to take
part in the proposed plebiscite: the right of self-determination, which he claimed for the Muslims, was not to be conceded to the non-Muslims (38 per cent. in the north-west and 48 per cent. in the north-east). He also refused to provide for joint control over subjects of common concern, like defence.

**WAVELL PLAN (1945)**

Lord Wavell succeeded Lord Linlithgow in October, 1943. As Commander-in-Chief he had played a leading part in the negotiations connected with the Cripps Plan. In February, 1944, he affirmed the unity of India in the following words: “You cannot alter geography. From the point of view of defence, of many internal and external economic problems, India is a natural unit”. A year later he made an attempt to solve the deadlock in India. In March, 1945, he went to London for consultation with the British Government. Soon after his return to India (June 4, 1945) the Secretary of State, Mr. Amery, made a statement in the House of Commons (June 14, 1945). “The offer of March, 1942,” he said, “stands in its entirety without change or qualification”. He proposed the reconstruction of the Governor-General’s Executive Council pending the preparation of a new Constitution. With the exception of the Governor-General and the Commander-in-Chief (‘who would retain his position as War Member’) all other members of the Executive Council would be nominated from amongst leaders of Indian political life. This Council would have ‘a balanced representation of the main communities, including equal proportions of Moslems and Caste Hindus’. The portfolio of External Affairs (other than those tribal and frontier matters which had to be dealt with as part of the defence of India) was to be transferred from the Governor-General to an Indian member of the Council. It was expected that co-operation at the Centre would be reflected in the Provinces and responsible government would be restored in the ‘Section 93 Provinces’ on the basis of coalition of the main parties.

The members of the Congress Working Committee were released (June 16, 1945) and a conference of leaders was held at Simla in June-July, 1945. No agreement was found possible regarding the composition of the Executive Council. The
Congress insisted upon the inclusion of 2 Congress Muslims; as a national organisation it could not agree to confine its quota to Hindus alone. Mr. Jinnah demanded that all the Muslim members of the Council must be nominated by the League. Lord Wavell announced the breakdown of the Conference. Maulana Abul Kalam Azad, President of the Congress, declared that the Viceroy allowed the League to hold up the progress of the country.

SUBHAS CHANDRA BOSE AND THE INDIAN NATIONAL ARMY

Subhas Chandra Bose, a brilliant student of the University of Calcutta, gave up his career as a member of the Indian Civil Service and attached himself to the standard of Desabandhu C. R. Das. Although his allegiance to the national cause was never in doubt, he frequently disagreed with the official policy of the Congress High Command. In the Calcutta session of the Congress in 1928 he demanded complete independence, while the official Congress demand was for Dominion Status. At Lahore, in 1929, he staged a walk-out and formed a new party called the Congress Democratic Party. In 1934, when Mahatma Gandhi suspended the Civil Disobedience Movement, he described it as a confession of failure. In spite of his unorthodox views he became President of the Congress in 1938 and again in 1939. But his differences with the Congress High Command compelled him to form a new party known as the Forward Bloc. On January 26, 1941, he disappeared from his house in Calcutta and travelled secretly to Berlin through Afghanistan and Russia. In 1943 he came to Malaya and Burma, where Japanese Imperialism had already ousted British Imperialism, organised the Indian National Army and fought against the British in Assam. The Indian National Army was composed mainly of Indian soldiers of the British army who had been captured by the Japanese. Under the leadership of their beloved Netaji these soldiers forgot all communal differences and dedicated themselves to the great cause of India's freedom. The full story of their reckless attempts to expel the British forces from Assam has not yet been written. But their unequal contest ended in inevitable defeat, and those who survived fell into the hands of the British when they re-occupied Burma. These heroes of the I.N.A. were tried by British Courts Martial in 1945-46, and many of
them were sentenced. The Congress took up their cause and defended them in their trials through eminent lawyers. Subhas himself is said to have died in an air crash in Siam on August 23, 1945. Speaking of him the historian of the Congress observes: "A stormy life from boyhood onwards, a strange combination of mysticism and reality, of intense religious fervour and stern practical sense, of deep emotional susceptibility and cold, calculating pragmatism!"

THE ELECTIONS (1945-46)

After the failure of the first Siuila Conference the rise of the Labour Party to power in England and the increasing international complications which followed the cessation of the war changed the course of British policy towards India. The trial of some officers of the I.N.A. captured the popular imagination. The Congress increased its own popularity by fully identifying itself with the ideals and interests of those valiant soldiers. It was decided that elections to the Central and Provincial Legislatures would be held in the cold weather of 1945-46. In September, 1945, Lord Wavell announced that after the elections a constitution-making body would be summoned and the Executive Council would be reconstituted with the support of the main Indian parties.

In the elections which followed the Congress captured almost all non-Muslim seats in all the Provinces, the majority of the Muslim seats in the N.W.F.P., and some Muslim seats in U.P., C.P., Bihar and Assam. The League captured the overwhelming majority of the Muslim seats in all Provinces except the N.W.F.P. The Congress assumed office in all Provinces except Bengal and Sind; everywhere pure Congress Ministries were formed, except in the Punjab where a Coalition Ministry composed of Congressmen, Akali Sikhs and Unionist Hindus and Muslims came to power.

THE CABINET MISSION (1946)

In the winter of 1945-46 a Parliamentary Delegation visited India with a view to collect first hand impressions about the political situation in this country. On February 19, 1946, the British Government made an important announcement in Parlia-
CABINET MISSION

ment: a special Mission of Cabinet Ministers consisting of the Secretary of State for India (Lord Pethick-Lawrence), the President of the Board of Trade (Sir Stafford Cripps) and the First Lord of the Admiralty (Mr. A. V. Alexander) would be sent to India to hold discussions with Indian political leaders about the setting up of a constitution-making body and the bringing into being of an Executive Council having the support of the main political parties. The Cabinet Ministers would act in association with the Viceroy. On March 15, 1946, Mr. Attlee, the Prime Minister, declared in the House of Commons that a minority could not be allowed to put a veto on the advance of the majority. This statement was taken in India to indicate a reversal of the traditional British policy towards the Muslim League.

The three Ministers arrived at Karachi on March 23, 1946, and left for England on June 29, 1946. In April they interviewed many Indian political leaders of all parties and groups, and in May a conference was held at Simla with the representatives of the Congress and the League. As the Congress and the League failed to arrive at any compromise, the decision of the Mission was announced on May 16, 1946.

The salient features of the Cabinet Mission's Plan were as follows:—

Mr. Jinnah's demand for Pakistan was examined and rejected by the Mission. The establishment of Pakistan would not solve the communal minority problem, and there was no justification for including within Pakistan the predominantly non-Muslim districts of Bengal, Assam, and the Punjab. Secondly, it would be injurious to disintegrate the transportation and postal and telegraph systems of India. Thirdly, to divide the armed forces of India would 'entail the gravest dangers'. Finally, "there is the geographical fact that the two halves of the proposed Pakistan State are separated by some 700 miles and the communications between them both in war and peace would be dependent on the good will of Hindustan". So the Mission suggested that there should be one Central Government controlling some specified subjects:

"There should be a Union of India, embracing both British India and the States, which should deal with the following subjects: Foreign Affairs, Defence, and Communications; and
should have the powers necessary to raise the finances required for the above subjects.'"

The Provinces would enjoy full autonomy, for all subjects other than the Union subjects and all residuary powers should vest in the Provinces. Moreover, "Provinces should be free to form Groups with Executives and Legislatures, and each Group could determine the Provincial subjects to be taken in common". The six Hindu-majority Provinces (Madras, Bombay, C.P., U.P., Bihar, Orissa) would form Group A. The Muslim-majority Provinces in the north-west (the Punjab, the N.W. F.P., Sind) would form Group B. Bengal and Assam would form Group C. Of the Chief Commissioners' Provinces three (Delhi, Ajmer-Merwara, Coorg) would join Group A and one (Baluchistan) would join Group B. The 'full autonomy' of the Provinces and the provision for Grouping were meant to give the League 'the substance of Pakistan'. It was clear that Groups B and C would be under the absolute control of the Muslims.

A complicated procedure was laid down for the election of the constitution-making body. For this purpose three main communities were recognised: 'General' (all persons who were not Muslims or Sikhs), Muslim and Sikh. The members of each Provincial Legislative Assembly would be divided into three groups—'General', Muslim, and Sikh,—and each group would elect its own representatives to the constitution-making body by the method of proportional representation with the single transferable vote. The number of representatives allotted to each Province and community was to be proportional to its population, roughly in the ratio of one to a million. This procedure applied to the 11 Governor's Provinces. Different arrangements were made with regard to the 4 Chief Commissioners' Provinces. On the whole, the six Provinces in Group A would have 187 members ('General' 167, Muslim 20), the three Provinces in Group B would have 35 members ('General' 9, Muslim 22, Sikh 4) and the two Provinces in Group C would have 70 members ('General' 34, Muslim 36). To these 292 members were to be added 4 members from the 4 Chief Commissioners' Provinces and not more than 93 members from the Indian States. The method of selection of the members from the States would be 'determined by consultation.'
The constitution-making body, thus composed, would be divided into three Sections (Section A corresponding to Group A, and so on). Each Section would settle the Constitution for its own Province and also decide whether a Group Constitution should be set up. The three Sections and the representatives of the states would jointly settle the Union Constitution. There was to be an Advisory Committee on the rights of citizens, minorities and tribal and excluded areas.

The Constitutions of the Union and of the Groups would contain a provision whereby any Province could, by a majority vote of its Legislative Assembly, call for a reconsideration of the terms of the Constitution after an initial period of 10 years and at 10 yearly intervals thereafter. Moreover, any Province could, after the first general election under the new Constitution, come out of any Group in which it had been placed.

The constitution-making body would conclude a treaty with Britain 'to provide for certain matters arising out of the transfer of power.'

As regards the Indian States, the Cabinet Mission declared that when the new Constitution came into force the British Government would cease to exercise the powers of Paramountcy. "This means", it was pointed out, "that the rights of the States which flow from their relationship to the Crown will no longer exist and that all the rights surrendered by the States to the Paramount Power will return to the States." They would, therefore, be legally free to join the Indian Union or to retain their separate independent existence. If they joined the Indian Union they would retain all powers other than those ceded to the Union and their representatives would take part in the work of the constitution-making body.

The Cabinet Mission attached the greatest importance to the setting up of an Interim Government having the support of the major political parties.

THE CONSTITUENT ASSEMBLY

The Cabinet Mission's Plan was accepted by all parties and the elections to the Constituent Assembly took place in July 1946. Out of 210 'General' seats the Congress captured 199; out of 78 Muslim seats the Muslim League captured 73. As
several other seats were captured by nominees and allies of the Congress, it could count upon the allegiance of 211 members in an Assembly of 296. This commanding position of the Congress alarmed Mr. Jinnah. On July 29, 1946, the Muslim League resolved to withdraw its acceptance of the Cabinet Mission’s Plan as also ‘to resort to direct action to achieve Pakistan’.

On August 16, 1946—the ‘Direct Action Day’ of the Muslim League—began the ‘Great Killing’ in Calcutta, and the premier city of India—then under a Muslim League Government—was reduced to ‘bloody shambles’. In October, 1946, the Muslims of two Muslim-majority districts in Bengal (Noakhali and Tipperah) fell upon their Hindu neighbours and committed horrible murders and other unspeakable atrocities. Riots then broke out in some parts of Bihar and U.P. and in Bombay. A movement for the partition of Bengal into two Provinces, one consisting of the Hindu-majority areas and the other consisting of the Muslim-majority areas, began to gain ground, for the Hindus of Bengal felt that their life, property and honour would not remain safe under the rule of the Muslim majority.

Meanwhile Pandit Nehru formed an Interim Government consisting of Congress nominees which assumed office on September 2, 1946. Mr. Jinnah’s co-operation was asked for but refused. Lord Wavell, the Viceroy, however, continued negotiations with him, as a result of which five Muslim League nominees joined the Interim Government on October 26, 1946. The Congress and the League blocs within the Interim Government could not pull on together. Pandit Nehru openly declared that “the League pursued their aim to enlist British support and tried to establish themselves as the King’s party”.

Even after joining the Interim Government the League persisted in its refusal to join the Constituent Assembly. The British Government invited the Viceroy and representatives of the Congress, the League and the Sikhs to go to London to discuss the basis of a common understanding between the Congress and the League. In that conference the Congress was represented by Pandit Nehru and the League by Mr. Jinnah. After discussions with them the British Government issued a statement on December 6, 1946, which supported the League point of view. This statement was accepted by the Congress in
the hope that the League would then join the Constituent Assembly; but Mr. Jinnah refused to change his policy. The first session of the Constituent Assembly began at New Delhi on December 9, 1946; the Muslim League did not participate in it. Pandit Nehru moved the main resolution on the declaration of objectives, which was adopted on January 22, 1947. This resolution laid down the principle that India would be an "Independent Sovereign Republic".

PARTITION OF INDIA

As the Muslim League steadily refused to co-operate with the Congress the political situation in the country began to grow worse day by day. On February 20, 1947, the British Government made a statement, declaring its 'definite intention . . . to effect the transference of power to responsible Indian hands by a date not later than June, 1948'. If the League did not join the Constituent Assembly the British Government would have 'to consider to whom the powers of the Central Government in British India should be handed over, on due date, whether as a whole to some form of Central Government for British India, or in some areas to the existing Provincial Governments, or in such other way as may seem most reasonable and in the best interests of the Indian people'. Thus the decision of the Cabinet Mission to maintain the unity of India was reversed and the possibility of establishing Pakistan was clearly recognised.

The publication of this statement was followed by organised violence in Calcutta, Assam, the Punjab and the North-West Frontier Province. The non-Muslims suffered a good deal everywhere, especially in the western districts of the Punjab, where thousands were massacred. The Muslim League succeeded in dislodging the pro-Congress Coalition Ministry in the Punjab, where the Governor's rule under Section 93 of the Act of 1935 was introduced; but it failed to remove the Congress Ministries in Assam and the N.W.F.P. The Hindus of Bengal now became almost unanimous in favour of the partition of Bengal. The Hindus and Sikhs of the Punjab also concluded that their safety lay in partitioning their province, thereby leaving the Hindu-majority districts outside the pale of the Muslim League.
Lord Mountbatten succeeded Lord Wavell as Viceroy in March, 1947. On June 3, 1947, he published a statement outlining his solution of India’s political problem. It provided for the partition of India and also for the partition of the three disputed Provinces—Bengal, Assam and the Punjab. As regards Bengal and the Punjab, the Legislative Assemblies would decide whether those Provinces were to be partitioned or not. A referendum was to be held in the district of Sylhet (in Assam) to decide whether that district would remain a part of Assam (in India) or join East Bengal (in Pakistan). A referendum was also to be held in the N.W.F.P. to decide whether that Province would join Pakistan or remain in India.

The Mountbatten Plan was accepted by the Congress, the League and the Sikhs, and it was put into effect immediately. The Legislative Assemblies of Bengal and the Punjab decided in favour of partition of those Provinces. East Bengal and West Punjab joined Pakistan; West Bengal and East Punjab remained within the Indian Union. The referendum in Sylhet resulted in the incorporation of that district in East Bengal. The boundaries of the new Provinces were demarcated by a judicial Commission. The referendum in the N.W.F.P. decided in favour of Pakistan; but the Provincial Congress boycotted the referendum and demanded the creation of an independent Pathan State. Baluchistan and Sind decided to join Pakistan.

By drawing artificial political boundaries across this subcontinent united by geography and culture the authors and collaborators of the Mountbatten Plan have not been able to solve its problems. After the establishment of Pakistan terrible atrocities were committed on the Hindus and Sikhs of West Punjab, N.W.F.P., Sind, Bahawalpur State and Baluchistan. More than 5 million Hindus and Sikhs migrated to India, leaving all their earthly possessions in Pakistan. To-day there are practically no non-Muslims in West Pakistan. In East Bengal the position of the Hindus became, so precarious that more than 2 millions migrated to West Bengal and Assam; the exodus still continues. In East Punjab there was retaliatory oppression on the Muslims on a large scale, and most of the Muslim inhabitants of that Province migrated to Pakistan. In the rest of the Indian Union, however, the Muslims have always been perfectly safe.
Politically the two States have become rivals rather than allies. At the root of this rivalry are Pakistan’s invasion of Kashmir and her persistent anti-Indian propaganda in foreign countries. The integrated economy of this sub-continent has not survived the partition. The consequences may well be disastrous.

INDIA AND THE BRITISH COMMONWEALTH

In July, 1947, the British Parliament passed the Indian Independence Act, which provided for the end of British rule in divided India on August 15, 1947. On that day two independent Dominions were set up in India, known as 'India' and Pakistan. Each Dominion had a Governor-General\(^1\) appointed by the King\(^2\) on the advice of the Government of that Dominion. The Governor-General was to be a constitutional ruler acting on the advice of a Ministry responsible to the Legislature. The Legislatures of the Dominions, i.e., the Constituent Assemblies of India and Pakistan, were given full power to make laws for the Dominion concerned, and no Act of the British Parliament would extend to either of them. The authority of the British Government over British India and the suzerainty of the King over the Indian States lapsed.

The provisions of the Indian Independence Act did not stand in the way of India's complete separation from the British Commonwealth. India became a Republic on January 26, 1950; with effect from that date she ceased to have any constitutional connection with the British Crown. But the Constituent Assembly endorsed the decision of the Commonwealth Prime Ministers’ Conference of April, 1949, according to which Republican India remains a member of the Commonwealth without owing allegiance to the Crown.

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\(^1\) Lord Mountbatten remained Governor-General of India. He was succeeded in 1948 by Mr. Rajagopalachari, who relinquished charge on the inauguration of the Republic. In Pakistan Mr. Jinnah became Governor-General on August 15, 1947. He was succeeded, after his death in September, 1948, by Mr. Nazimuddin.

The Governor-General ceased to be Viceroy on August 15, 1947.

\(^2\) The King of England ceased to be Emperor of India on August 15, 1947. From that date up to January 25, 1950, he was King of India.
INTEGRATION OF STATES

The Cabinet Mission Plan recognised the legal right of the Princely States, on the lapse of British Paramountcy, to "enter into a federal relationship with the succession Government or Governments, or failing this, enter into particular political arrangements with it or them". The Mountbatten Plan did not change this arrangement. On August 15, 1947, the States were, therefore, theoretically free either to join India or Pakistan or to "enter into particular political arrangements" with either of them. But the Congress did not recognise 'the right of any State in India to declare its independence and to live in isolation from the rest of India'. It invited the Princes to make their States 'democratic units in the Indian Union, thereby serving the cause of their own people as well as of India as a whole'. To this appeal the Princes responded promptly, and by August 15, 1947, all States within the geographical limits of India—except Kashmir, Junagadh and Hyderabad—acceded to the Indian Union.

At the beginning the scope of accession was limited to three subjects — defence, foreign affairs, communications—which the Cabinet Mission Plan had assigned to the Union Government. Gradually the rulers and the peoples of the States realised the necessity of complete integration, and Sardar Patel's persuasive policy made the States integral parts of the Union. By November, 1949, when the Constitution took its final shape, all constitutional differences between the States and the former British Indian Provinces were obliterated (except in the case of Kashmir).

During the period between the achievement of independence (August 15, 1947) and the inauguration of the Republic (January 26, 1950) the constitutional evolution of the States passed through several stages which cannot be described here in detail. The present position is this: (1) Three States (Kashmir, Hyderabad and Mysore) have retained their separate existence and separate administration. (2) Some States (e.g., Bhopal, Tripura, Manipur) have retained their separate existence, but they are directly administered by the Government of India. (3) Some States have formed Unions, each of which has a separate administration (e.g., Rajasthan, Saurashtra).
(4) Some States have formed Unions which are directly administered by the Government of India (e.g., Himachal Pradesh, Vindhyā Pradesh). (5) Some States have been merged into the neighbouring Provinces (e.g. Baroda, Kolhapur, Mayurbhanj, Cooch Behar).

The Nizam of Hyderabad made a Standstill Agreement with the Government of India on November 29, 1947. Internal anarchy in the State compelled the Government of India to take military occupation of it in September, 1948. In November, 1949, the Nizam formally acceded to the Indian Union.

The Nawab of Junagadh wanted to accede to Pakistan, but his subjects compelled him to hand over the State to the Government of India. The merger of the State in the Saurashtra Union was ratified by a plebiscite.

The Maharaja of Kashmir acceded to the Indian Union in October, 1947. Legally the State is an integral part of the Indian Union. Pakistan's invasion of Kashmir is now under consideration by the U.N.O.

**THE MAKING OF THE CONSTITUTION**

Owing to the opposition of the Muslim League and the consequent uncertainty about the future of the Cabinet Mission Plan the Constituent Assembly could not do much substantial work before the final transfer of power on August 15, 1947. The Mountbatten Plan removed all restrictions which the Cabinet Mission Plan had imposed on the Constituent Assembly and it became a sovereign body in the legal sense as well as in practice. On August 29, 1947, it appointed a Drafting Committee, with Dr. B. R. Ambedkar as Chairman, which prepared a Draft Constitution and submitted it to the President on February 21, 1948. After elaborate and long-drawn discussions on the basis of the Draft Constitution the Constituent Assembly finalised the Constitution on November 26, 1949. It came into force on January 26, 1950. This date was chosen for the inauguration of the Republic because January 26 was recognised as "Independence Day" from 1930 onwards.¹

¹ On January 26, 1930, the Congress Working Committee adopted a resolution saying that "India must sever the British connection and attain Purna Swaraj or complete independence". This resolution was read at public meetings all over India on January 26 from 1930 to 1947.
THE CONSTITUTION: PREAMBLE

The Preamble of the Constitution, which is based on the Objectives Resolution adopted by the Constituent Assembly on January 22, 1947, proclaims India to be “a sovereign democratic Republic”. India’s sovereignty is in no way restricted or affected by her voluntary association with the British Commonwealth of Nations. That association is political, not legal or constitutional; it is based on an unwritten understanding. The Preamble makes it clear that sovereign authority is vested in the people. Justice, liberty, equality and fraternity—which are the essential characteristics of democracy—are the principal objectives of the Constitution. In the chapters on “Fundamental Rights” and “Directive Principles of State Policy” there are elaborate provisions for giving practical shape to these basic objectives.

FUNDAMENTAL RIGHTS

The Indian Constitution contains the most elaborate declaration of fundamental rights so far recognised by any State in the world. These rights include: right to equality, right to freedom (of speech, to acquire property, etc.), right against exploitation, right to freedom of religion, cultural and educational rights, right to property and right to constitutional remedies. These fundamental rights are enforceable through courts of law.

"DIRECTIVE PRINCIPLES"

In addition to fundamental rights, there are certain “Directive Principles of State policy” which are instructions for the guidance of the Executive and the Legislature. Although not enforceable by any court, these principles are “fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.” These principles give us an idea about the character and functions of the State which the Constitution aims at building up. Among these principles are the following:

1) The State shall secure a just social order for the promotion of the welfare of the people.

2) The State shall try to secure for all citizens (men and women equally) an adequate means of livelihood.
(3) The State shall provide, within a period of ten years from the commencement of the Constitution, free and compulsory education for all children below 14.

GOVERNMENT OF THE UNION

Under the Constitution India is a "Union of States." Although the Constitution uses the term "Union" it is essentially federal in structure. India is a federal Union resembling the American and Canadian Federations; she is not a League of States like the German Confederation of the 19th century. We have a dual polity in which the Union and the States exercise full authority within their respective domains. The States exercise authority in their own right, not as delegates of the Union. There is, however, an emphasis on unity and uniformity which strengthens the Union and weakens the States. In times of war and other national emergencies the Union can virtually supersede the authority of the States. It is a peculiar attempt to combine the best elements of the federal and unitary systems.

Because India is a Republic her executive head is an elected President—not a hereditary monarch. Although the head of the State is called President, the Constitution does not provide for the Presidential form of Government based on the American model; it provides for Parliamentary democracy and Cabinet Government of the British type. The position of India's President is analogous to that of the King of England; the main difference is that the President's office is elective while the King's office is hereditary.

The President is to be elected by an electoral college consisting of the elected members of both Houses of Parliament and the elected members of the Legislative Assemblies of the States in accordance with the system of proportional representation by means of the single transferable vote. The term of office of the President is five years and he is eligible for re-election. He may be removed from office by impeachment for violation of the Constitution.

1 The first President, Dr. Rajendra Prasad, was elected by the members of the Constituent Assembly under Article 380 of the Constitution. He will hold this office until the election of a new President according to the normal procedure.
The President has a Council of Ministers to "aid and advise" him "in the exercise of his functions". The Constitution does not expressly say that the President must always act on the advice of the Ministers, but it is expected that he will follow the British practice and act on Ministerial advice alone.

The Council of Ministers consists of the Prime Minister (appointed by the President) and other Ministers whose number is not specified (appointed by the President on the advice of the Prime Minister). The Ministers hold office during the pleasure of the President; but they are collectively responsible to the House of the People.

There is a Parliament\(^1\) for the Union consisting of the President and two Houses known as the Council of States and the House of the People. The Council of States consists of not more than 250 members, of whom 12 are to be nominated by the President and the remainder shall be representatives of States. This is a permanent body not subject to dissolution, but one-third of its members are to retire at the expiration of every second year. The House of the People consists of not more than 500 members directly elected by adult voters in the States. The normal term of this House is five years; but it may be dissolved earlier by the President.

The Constitution does not recognise communal electorates. All elections to the House of the People (and also to the Legislative Assemblies of the States) shall be on the basis of adult suffrage.

There is a Vice-President who is elected by the members of Parliament in accordance with the system of proportional representation by means of the single transferable vote. His term of office is five years. As in the U.S.A., he is the *ex-officio* Chairman of the Council of States. But whenever there is a casual vacancy in the office of the President, the Vice-President acts as President, not, as in the U.S.A., for the remainder of the term of the President, but only until the election of a new President.

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\(^1\) Until the election of a Parliament according to the normal procedure the Constituent Assembly (with a single Chamber) will function as provisional Parliament under Article 379 of the Constitution.
THE SUPREME COURT

In a federal constitution the highest court is usually entrusted with the duty of interpreting the constitution. This power enables the court to enforce the constitutional limitations on the Centre and the Units and thus to preserve the federal structure intact.

The highest court of the Indian Republic is called the Supreme Court. It consists of a Chief Justice and not more than seven other judges, all of whom are appointed by the President. This Court has exclusive jurisdiction over disputes between the Union Government and one or more States or between two or more States inter se. It has also appellate jurisdiction in all cases from every High Court involving questions of law as to the interpretation of the Constitution. It has criminal appellate jurisdiction over the High Courts in certain specified classes of cases. It has a very wide revisory jurisdiction over all courts and tribunals. It has special jurisdiction as regards the enforcement of Fundamental Rights. It has also special advisory jurisdiction. Our Supreme Court has wider powers than the highest court in any other federation.

GOVERNMENT OF THE STATES

India is a Union of 27 States divided into three classes: (1) Former Governors' Provinces (Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Punjab, U.P., West Bengal). (2) Former Princely States (Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union, Rajastan, Saurashtra, Travancore-Cochin, Vindhya Pradesh). (3) Former Chief Commissioners' Provinces (Ajmer, Bhopal, Bilaspur, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur, Tripura). In addition, there is also the territory of the Andaman and Nicobar Islands.

The executive power of States which were formerly Governors' Provinces is vested in the Governor. He is appointed by the President for a term normally of five years. The Constitution does not expressly say that the Governor must always act on the advice of the Ministers, but it is expected
that he will act on Ministerial advice except in cases where he is required by the Constitution to act in his "discretion".

There is a Council of Ministers consisting of the Chief Minister (appointed by the Governor) and other Ministers whose number is not specified (appointed by the Governor on the advice of the Chief Minister). The Ministers hold office during the pleasure of the Governor; but they are collectively responsible to the Legislative Assembly. The Council of Ministers is to "aid and advise" the Governor "in the exercise of his functions".

There is a Legislature in each State consisting of the Governor and one House or two Houses. There is one House (Legislative Assembly) in Assam, Madhya Pradesh, and Orissa. There are two Houses in the remaining six States. The Legislative Assembly consists of not more than 500 nor less than 60 members elected by adult voters. Its normal term is five years; but it may be dissolved earlier by the Governor. The total number of members in the Legislative Council is not to exceed one-fourth of the total number of members in the Legislative Assembly of that State, but in no case it shall be less than 40. The Legislative Council, like the Council of States, is a permanent body not subject to dissolution, but as in the case of the Council of States, one-third of its members are to retire at the expiration of every second year.

There shall be a high Court in each State. The judges are to be appointed by the President.

The machinery of Government of all States which were formerly Princely States is exactly similar to that of the former Governors' Provinces. The only difference is that the executive head is a Rajpramukh recognised as such by the President. The constitutional position of the Rajpramukh is analogous to that of the Governor. The case of Kashmir is exceptional.

Those States which were formerly Chief Commissioners' Provinces shall be administered by the President either through a Chief Commissioner or through a Lieutenant-Governor or through the Government of a neighbouring State.

The Andaman and Nicobar Islands shall be administered by the President through a Chief Commissioner or other authority to be appointed by him.
LEGISLATIVE RELATION BETWEEN THE UNION AND THE STATES

Generally speaking, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of that State.

The subjects of legislation have been enumerated in three Lists—the Union List, the State List and the Concurrent List. Those States which were formerly Governors' Provinces or Princely States have exclusive power to make laws with respect to any of the matters in the State List. Parliament as well as the Legislatures of such States have concurrent power to make laws with respect to any of the matters in the Concurrent List. Parliament has also power to make laws with respect to any matter, including matters in the State List, for States which were formerly Chief Commissioners' Provinces and also for the Andaman and Nicobar Islands.

The residuary power is, as in Canada, vested in the Centre; so all matters not enumerated in the State List and the Concurrent List are taken to be in the Union List. Moreover, the Union Parliament has power to legislate with respect to matters in the State List if the Council of States decides that it is necessary or expedient in national interest that Parliament should make laws with respect to such matters. If a Proclamation of Emergency is issued by the President, Parliament can legislate with respect to any of the matters in the State List. Parliament may also make laws for implementing treaties or international conventions even if the subject-matter falls in the State List.

ADMINISTRATIVE RELATION BETWEEN THE UNION AND THE STATES

The executive power of the Union extends to the matters with respect to which Parliament has power to make laws and the executive power of a State extends to the matters with respect to which the Legislature of the State has power to make laws. The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and as not to impede or prejudice the exercise of the executive power of the Union. In certain cases the Union may give directions to the States.
AMENDMENT OF THE CONSTITUTION

The procedure for amendment of the Constitution is comparatively simple. It is only for the amendment of certain special provisions (e.g., Articles relating to the Supreme Court and High Courts, the distribution of legislative powers between the Union and the States, etc.) that the ratification of the change by the Legislatures of not less than one-half of the States is required. All other provisions of the Constitution may be amended by Parliament under a special procedure. An attempt has been made to combine rigidity with flexibility.

CONCLUSION

Republican India occupies an honoured place in the family of nations. Her enlightened foreign policy has won for her international respect and confidence. She is a member of the Security Council of the United Nations.

But this ancient land now stands divided. Since the dawn of recorded history her greatest intellects have thought of her, as a geographical and cultural unit, and mighty political architects from Mahapadma Nanda to Lord Dalhousie created political unity through war and diplomacy. That vast mosaic of Indian life is now broken into pieces, but, as Pandit Nehru reminds us in inspiring words, "The India of geography, of history and tradition, the India of mind and heart cannot change".

FOR FURTHER STUDY

Coupland, The Constitutional Problem in India.
Coupland, India, A Re-statement
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