CONSTITUTIONAL HISTORY OF INDIA
AND NATIONAL MOVEMENT
Some Valuable Books

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Preface

India attained independence after a protracted struggle against her alien rulers. The story of this historic fight for political emancipation is not a new subject for study. Several writers of the pre-as well as post-independence era have already dwelt on it in their own way. However, a synthesis of the old and the new approach to the various landmarks in the history of national movement and constitutional development along with their repercussions has not so far been attempted by any writer. The present volume aims to make a modest attempt in this direction. We have not tried to belittle or to be unduly inconsiderate to the importance of the various steps taken by the British Government to placate the Indian opinion nor have we been hesitant in bringing into strong relief the patriotic efforts of our countrymen to cast off the foreign yoke. A brief summary of the origin and development of the movement and a short account of Muslim communalism which had a sinister effect on our freedom movement were considered essential to provide the reader with proper perspective without which it is difficult to understand the basic relation between the national movement and the constitutional development in our country.

The Constitution of India. Part II of the present volume, contains an analytical study of our new constitution which has rightly been characterized as a “Lawyer’s Paradise”. Some of the salient features of our constitution as for example, the Fundamental Rights and Directive Principles of State Policy as incorporated in it, Federal Mechanism of our government, peculiar position of the President of India and the Governors of the states vis-a-vis their respective Council of Ministers and the real significance and implications of their constitutional powers have provoked keen controversy among constitutional experts in our country and abroad.

The address delivered by late Dr. Rajendra Prasad at the foundation laying ceremony of the Indian Law Institute in 1960 particularly sparked off controversy on the true nature of the powers of the Indian President.

We have thought it advisable to study these divergent views dispassionately and to place before the reader an objective picture against the background of the influences that shaped the thinking of the members of Constituent Assembly.
We have tried to trace the history of Indian constitutional development up-to-date in a simple and lucid style, deliberately avoiding unnecessary details and yet retaining all the material and data without which our narrative would have been incomplete, faltering and perfunctory. Being teachers of long standing, we have apprised ourselves of the difficulties and requirements of the students and have striven to be as helpful to them as possible.

We are grateful to eminent authors whom we have quoted copiously in our book. Our thanks are also due to Principal P.L. Anand of the Punjab University Evening College, Chandigarh for his most valuable suggestions for effecting improvement in the work. We also wish to express our deep appreciation of the invaluable assistance given to us by Mrs. Vishnool Bhagwan, Shri K. K. Mohla and Prof. P.A. Mohla in getting the manuscript typed. We hope the book will be favourably received at the hands of the students as well as the general reader. Suggestions for further improvement of the book will be gratefully acknowledged and incorporated in the next edition.

—AUTHORS
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1. THE RISE OF THE EAST INDIA COMPANY

The unrivalled position of the Portuguese in holding monopoly of trade with the East was an eyesore for some of the maritime powers. England in particular was very keen to establish commercial relations with the East, and share its lucrative trade. On September 22, 1599, some prominent London merchants held a meeting in Founder’s Hall with the Lord Mayor in the Chair. After great deliberations, they petitioned the Queen to incorporate them into a company for carrying on trade with the Indies. On December 31, 1600, they succeeded in procuring a Royal Charter. Thus East India Company under the name of 'The Governor and Company of Merchants trading into the East Indies' came into existence.

The management of the Company’s business was vested in a Governor and 24 committees, which in fact were individuals and not bodies. Their meeting was to be termed as the ‘Court of Committees’. These committees, later on, were known as the ‘Directors’ and their assembly was to be called ‘The Court of Directors’. The first Governor and 24 committees were nominated in the Charter. Afterwards, they were to be elected annually by the shareholders who constituted the ‘Court of Proprietors’. Every shareholder was entitled to one vote only. At a later stage, some more officers like the Deputy Governor, Secretary and Treasurer were added to the existing staff. Two hundred and seventeen were total subscribers of the Company, at the initial stage but later on some more additions were made.

The Company, thus constituted, was a regulated company on the way to become a Joint Stock Company. Unlike the latter, it allowed its members to trade in their own capital to any extent. But one who was not its member was not allowed to prosecute trade and participate in its benefits. It laid down rules and regulations specifying the way its members had to carry on the trade. It enforced these rules as well by imposing fines and penalties on the defaulter. One could not seek membership of the Company by buying a share in its joint stock, as it had no such joint stock, but by payment of an entrance fee, by apprenticeship or service, by inheritance or by presentation.
The Company was granted an exclusive privilege of trading between the Cape of Good Hope and the straits of Magellan, for a period of fifteen years, subject to a power of determination on two years warning if the trade did not appear profitable to the realm. The Company was empowered to make bye-laws and issue orders and ordinances for the good government of the Company and its servants and to punish offences against them by fine and imprisonment. These laws and punishments were expected to be reasonable and not repugnant to the laws and customs of the realm.

Growth of Power of the Company. From 1600 to 1765 A.D., the Company had to pass through various vicissitudes in its fortunes. During this period, observes S. C. Ilbert, “The East India Company were primarily traders”. Despite occasional ups and downs, the Company flourished, till in 1765, it threw off the mask of traders and appeared in the true garb of rulers.

Renewal of its Charter in 1609. After the demise of Elizabeth in 1603, James I became the king of England. He renewed its charter in 1609 and in order to enable it to maintain discipline on board its vessels during these big voyages, authorised it in 1615 to issue commissions to its captains, provided that their verdict in capital punishments was found with the help of a Jury. By another charter in 1623, its power of controlling and punishing its employees was further extended, when it was authorized to grant similar commissions to its Presidents and Chief Officers on their Indian Coast Trading Settlements.

Company under Charles I. Charles I, however, was indifferent to the Company. It was during his times, that the rivalry between the English and the Dutch Companies culminated in the massacre of Amboyna. The king did nothing to set right the wrong done to the Company, but added insult to injury by granting a licence to Sir William Courteen to form a new Trading Body, to trade with the East Indies. Though Courteen’s Association could not secure huge fortunes, yet it proved to be very troublesome for the Company.

Cromwell and Company. The grievances of the Company were mitigated during Cromwell’s time. He carried on war against the Dutch and by treaty of Westminster, 1654, exacted from them a sum of £85000 as compensation to the Company for the Amboyna massacre. Out of this sum, Cromwell borrowed £50,000 from the Company for defraying the expenses of his campaigns and “thus began” in the words of A.C. Banerjee “the policy of forcing the Company to pay for its privileges”. He granted a charter to the Company in 1657 amalgamating the joint-stock companies which had come into existence like mushrooms after 1612, into one united and permanent Joint Stock Company. The union of Courteen’s Association and the Company was accomplished by the same charter. In
the words of Hunter: "The London Company was thus transformed from a futile relic of the medieval guild into a vigorous face-runner of the modern Joint Stock Company".

Restoration and marked prosperity. In the words of Punniah "With the Restoration, the Company entered on a period of unprecedented prosperity". The English king extended unfailing patronage to the Company. Under the dominant influence of Sir Josiah Child, its Governor, the Company became a Royalist Corporation, and Charles I granted no less than five charters to the Company during his reign, investing it with 'sovereign powers'.

Charter of 1661. (i) The Charter recognized the joint stock principle by giving one vote in the general court to a member for each share of £5000 stock held by him. (ii) It authorised the Governor in Council of each factory in India to judge all persons under them in all causes, civil and criminal according to English law. (iii) It authorised the Company to erect fortresses and garrison them to send ships of war, men and munitions to their settlements and to make war and peace with non-Christian powers, in the East. (iv) It empowered the Company to govern its employees in a legal and reasonable manner and to punish them for disobedience and misdemeanour.

Charter of 1668. By Charter of March 27, 1668, he transferred to the Company the island of Bombay which he had got as a dowry from his marriage with the Portuguese princess, Catherine of Braganza, on a nominal lease of £10 per annum. The Company was also authorised to make laws, orders and ordinances, and constitutions for the good government of the port and Island and of its inhabitants.

Charter of 1676. The definite establishment of the political authority of the Company was further reflected through another charter of October 5, 1676, which empowered it to coin money at Bombay. "The charter" in the words of A.B. Keith "is of special interest, as marking the complete sovereignty of the Crown over Bombay." 12

Charter of 1683. The Charter of 1683 empowered the Company to make war and peace with heathen nations in Asia, Africa and America within the charter limits; to raise arms, train and muster such military forces as seemed necessary; and to execute martial law for the defence of their forts, places and plantations against foreign invasions and domestic insurrection. It also made provision for the establishment of an admiralty court at such places as the Company might direct, consisting of a judge learned in Civil Law and two assistants by the Company.

to the Company in 1709, 1726, 1754, 1757 and 1758 pertained to the cession of territory, distribution of booty and regulation of Indian troops. It is thus quite obvious that these very Acts and Charters stabilized the position of the Company in India. Every new Charter extended its authority and enhanced its prestige.

12. ACQUISITION OF FACTORIES OF MADRAS, CALCUTTA AND BOMBAY

The Company derived its authority not only from the British Crown and Parliament in England but also from the Mughal Emperor and other native rulers of India. Although Captain Hawkins had failed in 1608 to effect a foothold at Surat due to superior Portuguese strength, Thomas Aldworth was able to obtain in 1612 a grant from the Mughal Emperor Jahangir for the establishment of a permanent factory at the mouth of Tapti. Contacts with the inland country followed in its wake and subordinate trading centres were set up in Ahmedabad, Burhanpur and even at Ajmer and Agra. In 1615, the English sent Sir Thomas Roe as an ambassador to the Court of the Emperor and he was able to secure from the latter his permission to establish factories in the Mughal dominion. Their factory at Surat soon became the Chief English Settlement on the Western Coast, second only to Bombay which Charles II had handed over to them in 1669 on acquiring it as a part of his dowry from a Portuguese princess. In this case, the Company exercised its authority as representative of the English Crown. The Charter of 1669 empowered the Company to fortify and defend the place, to levy taxes, to coin money and to administer justice over all the inhabitants whether English or Indians.

MADRAS. On the Eastern Coast, Captain Hippon had founded a factory at Masaulipatam which was a sea port of the Mohammedan of Golconda. It was subjected to frequent attacks by the Dutch and could not grow in importance. In 1639, Francis Dey, one of its councillors, secured a strip of about 230 miles of land south of Masaulipatam from a local Hindu Raja with permission to build a fortified factory which came to be known as fort St. George. Around it grew up the town of Madras which became the chief English Settlement on the Coromandel. The Company was authorised to fortify the place, to mint money, to administer justice, and govern Madras under certain conditions. The Company ruled over both Englishmen and Indians, but its authority over the former was exercised due to royal charters, while over the latter by the grant of local Raja. The coins minted at Madras had to bear the particular stamp of the suzerain power. By 1672, the British established their control over Madras with unrestricted powers of command, government and justice.

CALCUTTA. Proceeding northwards, the English set up their trading centres both in Orissa and Bengal. Their position and
prospects were considerably improved when Dr. Gabriel Boughton, a
surgeon of distinction in the service of the Company and a
court physician of the Subedar of Bengal was able to procure for
them permission to establish a factory at Hoogli. However with the
decline in the power of the Mughals, when the provincial Viceroys
started getting restive, the Company also began to cherish hopes of
building up English dominion in India. It refused to pay local
dues imposed on their trade by Shaista Khan, the Governor of
Bengal, and brought upon itself the ire of Aurangzeb who immedi-
ately ordered a general attack on all English Settlements—Patna,
Cossimbazar, Masaulipatam, Vizagapatam. Even Bombay was
besieged and the position of the English was saved only by their
superior naval power. Sir Josiah Child retaliated by laying hands
on all Mughal shipping on the Western Coast, and by an attack on
the pilgrimage traffic to Mecca. This bold stroke alone made
Aurangzeb listen to overtures for peace, though the terms he im-
posed were highly humiliating for the English. He renewed their
licence for trade on payment of a huge fine and on their engage-
ment 'not to behave any more in that disgraceful manner'. The
English thereafter retired to Sutanati, a village about 27 miles
down the river Hoogli and after fortifying it, named it fort St.
William (the site of modern Calcutta).

In 1698, the Company purchased the Zamindari of the three
villages (Sutanati, Calcutta, Govindpur) at the cost of Rs. 1200 a
year. The Mayor's Courts established at Calcutta by the Charters
of 1727 and 1753, and jurisdiction over British subjects only. Since
Indians were not British subjects, they were immune from the jur-
diction of these courts. Till 1757, the Company did not possess the
right of minting coins at Calcutta. Moreover, though it exercised
civil and criminal jurisdiction over Indians in its Zamindari Court,
capital sentences were to be confirmed by the Nazim of Murshidabad
before their execution. It is quite evident that the Company's
position at Calcutta was inferior to that at Madras.

British intrigues and the consequent revolutions in Bengal
further consolidated the position of the Company. Siraj-ud-Daula,
the Nawab, in 1757, by a formal treaty confirmed the privileges of
the Company and permitted it to mint money and to fortify
Calcutta. The position of the Company was further strengthened
under the terms on which Mir Jaffar was raised to the Nawabship
of Bengal after the Battle of Plassey. He recognized English
sovereignty in Calcutta. He granted lands sufficient to enable the
Company to maintain a military force. He stood the cost of the
troops which used to support him. He accepted the residence of a
servant of the Company at his durbar. He even granted 24 par-
ganas to the English at the time of his elevation as the Nawab. In
1760, Mir Jaffar was dethroned, and his son-in-law, Mir Kasim
was enthroned in his place. The palace revolutions brought further
territorial gains to the Company which received the districts of
Burdwan, Midnapur and Chittagong free of all payment. In 1763
Mir Jaffar was again restored to the throne. On his death in 1765, his illegitimate son, Najam-ud-Daula was made the Nawab in preference to a lawful heir. This game of installing and dethroning the puppet Nawabs was so conducive to the Company, that by 1765, it became the virtual ruler of Bengal. In the words of Lord Stowell as quoted in A. B. Keith’s A Constitutional History of India, “It must therefore be assumed that by this date the sovereignty over Calcutta, the twenty-four parganas and the three districts was definitely British, subject to whatever value might be attached to the vague claims of the Emperor to the paramount sovereign in India”.

**Double Government in Bengal (1757-72).** After the battle of Plassey in 1757, the Nawab of Bengal was reduced to a mere non-entity and real political power passed into the hands of the Company. Its servants started abusing their authority and began to amass huge fortunes at the cost of the natives. “Thus the country groaned under the tyranny and oppression of these merchant adventurers who possessed the power but professed no responsibility for the welfare of the people.” Clive was sent to Bengal a second time in 1765 as Governor and Commander-in-Chief to bring order out of chaos. During his short stay, he carried out a series of reforms in the civil and military administration of the Company. Acquisition of the Diwani of Bengal, Bihar and Orissa was another feather in his cap. In fact, he was keen to put an end to perpetual struggles for superiority between the Nawabs and the Company’s servants, and to avoid a recurrence of the revolutions which gave impetus to corruption. Mir Kasim was in open revolt. He had fled across the frontiers to Oudh, and joining hands with Shujah-ud-Daula, the Nawab vizier and his nominal suzerain, the exiled emperor Shah Alam was determined to make a final bid to free himself from English tutelage. Clive, on his arrival, however, found his work of conquest already completed by Major Munro, who had won a great victory at the fiercely contested battle of Buxar, over the combined troops of the Nawab of Bengal, the Emperor of All India and his titular Prime Minister. He was therefore left only with the task of concluding peace. On his way to Bengal, he had written to the Directors, “We must indeed become Nobles ourselves, in fact if not in name; perhaps totally so without disguise”. Soon after his arrival, therefore, he negotiated with Shah Alam—the fugitive Mughal Emperor who had been repeatedly offering Diwani to the Company in lieu of help in the recovery of throne of his fore-fathers. For the support of his imperial dignity, he made over to the Emperor the District of Kors and Allahabad which had been ceded by the Nawab of Oudh, together with an annual subsidy of 26 lakhs of rupees; and secured from him a ‘firman’ granting the Diwani of Bengal, Bihar and Orissa.

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Grant of Diwani. The grant of Diwani was, in fact, meaningless, as it was made by an Emperor who did not possess any empire. Bengal like other provinces was independent of the Emperor. In the words of Punniah, “The Diwani was in fact a fiction, which Clive conjured up to legalise and regularise the position of the Company as the de facto power in the country without however assuming the responsibilities of government.” The arrangement united Clive as he was aware of the fact that the English had the necessary force to implement it, and the Nawab of Bengal was powerless to stand against the Company’s might. Even the Directors approved the plan contemplated by Clive. They were hesitant to assume any responsibility for the government of the country and were therefore only happy by an arrangement which enabled them to pluck the fruit without watering the plant. They apprehended that responsibilities of government, if undertaken, might consume their profits. They were not oblivious of the lack of an efficient civil service which had to carry on the government of the country. Moreover, they were conscious of the jealousies and opposition of the other European nations in India. They also feared that such a step was sure to involve them in legal complications with the Government at Home which might like to end the anomaly of a trading association assuming the role of a territorial sovereign. Thus the legal camouflage of the Diwani saved the Company from both these dangers. Punniah rightly observes, “The fiction of the Diwani was an artifice which he (Clive) made use of to throw dust into the eyes of the British Government at Home and of other European nations in India who might otherwise have objected to such an aggrandisement.”

Acquisition of Nizamat. The grant of Diwani enabled the Company to become the Diwan i.e., the Collector of revenues of the provinces of Bengal, Bihar and Orissa, and also to assume responsibility for civil justice. Nizamat was still vested with the Nawab. In February 1765, Mir Jaffar died, and his son Najib-ud-Dowla entered into a treaty with the Company. By this treaty, Nizamat functions were also transferred to the Company in lieu of a sum of 53 lakhs of rupees annually. It is thus evident that by 1765, the Company combined in itself both the Diwani and Nizamat functions. The Nawab went to the background.

Certain practical difficulties, however, prevented the Britishers from shouldering directly the burden of administration. Hence, the Nawab and his government were allowed to carry on the administration and keep up the responsibility. A fixed sum out of the revenues was to be placed at the disposal of the Nawab to meet the expenses of administration. Thus Double system of Government, an innovation of the sixties of the 18th century, came into existence. It entrusted power and influence to the Company whereas responsibility to the Nawab of Bengal.

2. Ibid, p. 17.
Working of Double Government. The Double Government worked for a period of seven years (1765 to 1772 A.D.). Such an illogical and impolitic division leading to separation of power from responsibility made confusion more confounded and corruption more corrupt. The abuses of private trade attained climax. The desire to amass wealth by all possible means, on the part of the employees of the Company, made its administration very corrupt, rapacious and perfidious. It resulted in dwindling the Company’s income. It was soon finding itself financially handicapped.

The Indian industries suffered a great setback. The Indian merchants failed to compete with the British traders, as the Company ordered the silk winders to work in the Company’s factories, and its own employees to encourage the production of raw silk and discourage the manufacture of silken fabrics.

The system made the peasants groan under the heels of the ‘Aumils’ and ‘Zamindars’ who believed in mere extortion of money from the poor peasants, to humour their white masters. The Company did not bother about the internal administration as that was not its responsibility.

The Dual Government also led to a complete breakdown of the native judiciary. The Company’s servants frequently intervened into the judicial administration and even overawed Nawabs’ employees for their illicit gains. The native judges failed to perform their duties impartially and honestly. Thus justice was always at stake.

Revenue from lands also went much below expectations of the Home Government. In fact, its funds used to be exhausted on account of wars in which it had to engage and the consequent necessity of maintaining a huge army. Mr. Bolt’s observations are worth quoting “While the nation was grazing after the fruit, the Company and their substitutes were suffered to be rooting up the tree”.

Whatever its defects, the Dual system was a novel device, best suited to the interests of the Company. It put an end to the perpetual struggle for superiority between the Company and the Nawabs. Moreover, it very cleverly camouflaged the transfer of power from the Nawab to the Company, which, if effected otherwise, might have caused suspicion in the minds of the natives, roused jealousies and opposition of the European powers and possibly brought the Britishers into clash with mighty Marathas.
Regulating Act

\[\text{14. AGITATION FOR PARLIAMENTARY INTERVENTION}\]

The territorial acquisitions of the East India Company produced a startling effect in England. The public, in general, clamoured for an immediate parliamentary intervention. Expansive wars launched and shamefully conducted to satisfy the lust of a few interested individuals, the colossal fortunes amassed by the Company's servants who strutted about the streets of England like petty oriental 'Nawabs'; the unruly behaviour of the agents of the Company towards the Indian masses, induced the Parliamentarians of England to impose checks on the powers of the Company. Hence the House of Commons, in England appointed a Committee to report on the Company's state of affairs in November 1766. No less than five Acts were passed regarding Indian affairs. For a period of 7 years following February, 1767, the Company was required to deposit £ 400,000 as a tribute to the state for retaining their territorial acquisitions and revenues. Thus, with 2 years of the acquisition of Diwani, the British Government started interfering openly in the affairs of the Company and secured a share in its spoils.

But the calculations of the British Government that the Company had struck upon an inexhaustible mine of riches were not entirely true. It had a debt of more than 6 million pounds to discharge, it had undertaken to pay huge tributes and pensions to the Mughal Emperor and the Nizam in India and the British Government at home. It had to maintain large military establishments as many wars in which it had engaged, had exhausted, almost all its resources. Its position was worsened by a terrible famine which visited Bengal in 1769-72; so that the Directors were compelled in desperation to apply to the Government for a loan of one million pounds.

There was a great outcry. On April 13, 1772, Colonel Burgoyne moved for the constitution of a Select Committee of 31 members to enquire into the nature and state of the East India Company and of the affairs in the East Indies. Despite some opposition, the motion for a Select Committee was carried.
On November 26, the King in his opening speech to the sixth session of Parliament re-emphasised the imperative necessity of regulating the affairs of the East India Company. Lord North, on the same date, moved a resolution that a Committee of Secrecy be appointed to scrutinize the Company’s administration and enquire into its trade. The motion was passed.

Resolutions in Parliament. On the basis of the third report of this Secret Committee on Indian Affairs, the House on May 3, 1773, resolved itself into a committee, to consider the affairs of the East India Company. Lord North opened the Debate proposing that the Court of Directors instead of being elected annually, should in future be elected for four years, 1/4 retiring every year, the retiring ones being declared incapable of re-election; that no person should be made to vote at the election of Directors, until he possessed stock for 12 months; that stock qualification should be raised from £ 500 to £ 1,000; that a Supreme Court be set up at Calcutta; and that primacy of the Presidency of Bengal be established over the other Presidencies in India, Lord Clive, who had been blamed by the Secret Committee for misappropriation of the revenues of Bengal, threw the entire blame on the Directors. “The mismanagement abroad was founded upon mismanagement at home” he said. The resolution set for the above was accepted and leave was given for the introduction of a Bill regulating the Government of the East India Company both in England and India.

On May 18, 1773, Lord North introduced in the House of Commons, the East India Company’s Regulation Bill. “Though it did not afford a complete redress of the evils in the Company’s system of Government, it was nevertheless an important step in that direction.” The Bill was passed by House of Commons on June, 10 and by House of Lords on June, 19. It is usually known as ‘Regulating Act 1773’.

Before we discuss the main provisions of the Act, it is essential to deal with the causes leading to its enactment, a bit more elaborately.

§ 2. CAUSES FOR THE ENACTMENT OF REGULATING ACT

A critical analysis of the circumstances leading to the passing of the Regulating Act reveals that Parliamentary intervention into the affairs of East India Company was an absolute necessity due to a number of factors.

(a) Company’s Territorial Sovereignty. The Battles of Plassey (1757) and Buxar (1764) enabled the Company—a body of traders to establish its de facto rule in Bengal, Bihar and Orissa. The English law on the other hand did not permit any subject to possess territory except in the name of the Crown. Thus the Company’s position was quite anomalous. The Crown could either take over the territories in possession of the Company, or leave them as they were.

1. Anand C. L.: Government of India, p. 13,
The former solution involved many risks and was contrary to the eighteenth century tradition of "sacredness of property". The latter solution was also in no way better. There was every apprehension that misgovernment in India apart from tarnishing the name of Great Britain as an Imperialist country, might enable the Indian interest in England supported by huge revenues and corrupt Parliamentary influences, to gain a preponderating and improper power in home affairs. Thus the British Government was not only confronted with a peculiar constitutional anomaly but was also facing significant complications. Moreover, the East India Company, according to Burke, "did not seem to be merely a company formed for the extension of the British commerce but in reality a delegation of the whole power and sovereignty of this kingdom sent into the East." How could such a body be kept outside the state control? The Company's position as a territorial power and also as a delegate of the British Government was apt to result in Parliamentary intervention into its affairs.

(b) Administrative Confusion. The system of Double Government devised by Clive in Bengal in 1765 made the confusion worse confounded. Lyall beautifully portrays the faulty division of duties under the system in these words: "The magistracy, the police, the revenue officials, being diverse bodies working upon different systems with conflicting interests, under no common head, vied with each other in misgovernment; there was no positive law, and there was little justice in the country." Corruption was at its climax. Confusion and chaos prevailed. Cases of plunder and oppression were the order of the day. The unfortunate divorce of power from responsibility made the system suffer from all possible defects. Thus the Parliament could not remain a mere passive spectator of the Company's affairs. Moreover, Presidencies in India made wars, and concluded treaties, at their own discretion. They not only created more problems for the Company, but also brought disgrace and disaster. The British Government could not tolerate such hazardous ventures and chaotic affairs. Hence state intervention was thought to be a panacea of all these evils.

(c) Unscrupulous Nabobs. The Governors and their Councils in the presidencies were assisted by a body of civil and military servants whose salaries were ridiculously small and promotion exceedingly slow. They were however skilful in the art of extracting money from the poor natives. In the words of Leeky as quoted by G.N. Singh: "Never before had the natives experienced a tyranny which was at once so skilful, so searching and so strong...it was noticed that on the appearance of a party of English merchants, the villages were at once deserted and the shops shut and the roads thronged with panic-stricken fugitives." The sufferings of the people

1. Lyall: British Dominions, p. 120.
were further accentuated due to occurrence of severe famines in Bengal. "The servants of the Company were however so cruelly and shamelessly greedy that they made capital out of poor people's afflictions, and utilised famine conditions for their private lures." Horace Walpole writes "Such scene of tyranny and plunder has been opened up, as makes one shudder...we are Spaniards in our lust for gold, and Dutch in our delicacy of obtaining it." The public mind was deeply touched by tales of unscrupulous methods adopted by Nabobs" (the nickname of the Company's servants) to acquire huge fortunes. Moreover, these Nabobs were pinpricks in the eyes of ruling classes because these 'Voracious Birds of Passage' began to acquire seats in the Parliament as representatives of rotten boroughs. In fact, the ruling class grew jealous of them, hence the state intervention was apt to be expedited. In the words of Kale, "The enormous fortunes amassed by the Company's officers, the suspicion in the popular mind that the wealth of these Nabobs was ill-gotten, the Parliamentary influence of the fortunes of the Company's servants, exercised in England a doubt whether a trading corporation could have a right to acquire on its own account powers of territorial sovereignty—these things compelled the nations' attention to the affairs of the East India Company...."

(d) Bankruptcy of the East India Company. The acquisition of Diwani by the Company in 1765, overjoyed its proprietors. Clive estimated the total revenue of Bengal at £ 4 million and the net income at £ 1,650,000. Keeping in view such bright prospects, the proprietors raised the dividend from 6% to 10% and then to 12% next year. "People gambled in the East India stock not only for its high dividends but also for the influence which it gave them in the disposal of the Company's patronage." The stock went up to 267. But the expectations of the British Government and its own shareholders proved false. The Company did not prove to be an inexhaustible mine of riches. For reasons explained in an earlier section, it was under a heavy debt of more than six million pounds and was rapidly heading towards bankruptcy. In August 1772, its officers approached Lord North for loan, as it was short of £ 1,200,000 for making next three months' payments. Nothing but a loan from the State could save it from impending ruin. The Government thus could not connive at the situation. It thus led to parliamentary interposition.

(e) The occurrence of two great calamities (1769 and 1770). The position of the Company further deteriorated due to two great calamities. In 1769, the Company suffered a crushing defeat at the hands of Haider Ali, the ruler of Mysore. This unfortunate episode dealt a death blow to the British prestige. In 1770 broke out a great famine in Bengal which took a heavy toll of lives. When the conditions became awfully worse, the British

Government was apt to take some concrete action.

As quoted in the ‘Report on Constitutional Reforms, 1818,’ “The Company’s peril of bankruptcy was the immediate cause of Parliament’s first intervention, but a more powerful motive was the growing feeling in England to which the opulence and arrogance of officials returning from India contributed, that the nation must assert the responsibility for seeing that the new and vast experiment of ruling of distant and alien race was properly conducted.”

Because of the reasons quoted above, a Select Committee of 31 members was appointed to enquire into the affairs of the Company. As a result of these enquiries, two Acts were passed by Parliament in 1773. The first extended to the Company a loan of £1,400,000 at 4 per cent interest, suspended payment by the Company of the annual sum of £400,000 into the Exchequer and prohibited it from declaring dividend above six per cent, until the loan was discharged. The Act made it obligatory for the Company to submit its accounts every half yearly to the Treasury. The other Act passed on the basis of these reports was the famous ‘Regulating Act’ which effected important changes in the constitution of the Company in England, and the Government of its factories and possessions in India.

$\S 3$. PROVISIONS OF THE REGULATING ACT

(a) Provisions affecting the constitution of the Company. (i) The Directors of the Company were formerly elected by the Court of Proprietors. But only those proprietors who held £500 stock for at least six months possessed the right to vote. The Act raised the qualification for a vote from £500 to £1,000. (ii) The right to vote was restricted to those who had held the qualification for at least twelve months. (iii) The term of the Directors was extended. Henceforth they were to be elected for a period of four years, one-fourth retiring after every year. In the words of Fumiah “The longer tenure and partial renewal were intended to secure stability and continuity in the policy of the Directors.” The incorporation of this provision in the Act, considerably reduced the influence of the Proprietors on the Directors who formerly spent the first half of their year of office in discharging the obligations by which they purchased their seats and the other half in the preparing for new elections. (iv) The Directors were required to submit to the Treasury the entire correspondence from India dealing with the revenues, and to place before one of the Secretaries of State, those parts of it which dealt with the Civil and Military Administration of the Company in India. (v) All governments in India were to pay due obedience to the orders of the Directors, and were to keep them constantly informed of all matters affecting the interests of the Company.

(b) Provisions concerning Central Government in India. (i) Until the passage of the Act, the three Presidencies were separate and
independent of one another. They had direct communications and relationship with the Court of Directors. The Act aimed at unification of India. Hence it appointed a Governor-General and four councillors for the Presidency of Fort William in Bengal. (ii) The Governor-General and his Councillors were vested with the whole Civil and Military government of the said Presidency. The ordering, management and government of all the territorial acquisitions and revenues in the kingdoms of Bengal, Bihar and Orissa also was entrusted to them. (iii) The first Governor-General and Councillors were named in the Act itself. Warren Hastings was to be the Governor-General. General Clavering, Colonel Monson, Richard Barwell and Philip Francis were to act as the Councillors. "The salary of the Governor General was to be £ 25,000 per annum while each Councillor was to get £ 10,000 a year. (iv) They were to hold office for five years and were removable by the King on the representation of the Court of Directors. (v) In all cases of differences of opinion, the Governor-General and Council were to be bound by the decision of the majority of those present. If on account of the death, removal or absence of any of the members, the Governor-General and the Council were equally divided, the Governor-General or in his absence, the Presiding member exercised a casting vote. (vi) The Governor-General and Council were empowered to superintend and control the Government and management of the Presidencies of Bombay and Madras, in so far as these could not commence hostilities or conclude treaties with native powers without obtaining the previous sanction of the Governor-General and Council. In case of imminent necessity or on receipt of special orders from Home, the Presidency Governments could however act without this previous sanction. (vii) The subordinate Presidencies were required to obey the orders of the Supreme Government and to transmit to them 'advice and intelligence of all transactions and matters whatsoever that shall come to their knowledge relating to the Government, revenues or interests of the Company.' The offending Governors in Council could be suspended by the Governor-General in Council. (viii) The Governor-General in Council were empowered to make and issue "rules, ordinances, and regulations for the good order and civil management" of the Company's settlement at Fort William and other factories and places subordinate to it. These enactments were however not to be repugnant to the laws of the realm. They were not valid until duly registered and published in the Supreme Court with the consent and approval of the said court. They could be set aside by the King in Council on the application of any person or persons in India or in England.

Provisions concerning the Supreme Court of Judicature at Calcutta. (i) The Act empowered the Crown to establish by Charter a Supreme Court of Judicature at Fort William in Bengal. It was to consist of a Chief Justice and three other Judges who were to be barristers of not less than five years' standing. (ii) The Court was

equipped with civil, criminal, admiralty, and ecclesiastical jurisdiction. It was to be at all times a Court of Record and a Court of Oyer and Terminer and gaol Delivery in and for the said town of Calcutta and factory of Fort William in Bengal and other factories subordinate to it. (iii) Its jurisdiction was to extend to all British subjects who shall reside in the kingdoms or provinces of Bengal, Bihar and Orissa, and also to all persons who were employed directly or indirectly in the service of the Company or any of His Majesty’s subjects. (iv) Its criminal jurisdiction did not extend to the Governor-General or any member of his Council except in cases of treason or felony. (v) It was empowered to have jurisdiction in suits or actions brought by any of His Majesty’s subjects against “any native inhabitant of India” on a contract in writing, if the subject matter in dispute exceeded Rs. 500 in value, and if the inhabitant concerned had agreed in the contract to submit to its jurisdiction. (vi) The Chief Justice and his Councillors were to hold office at the pleasure of the Crown. The Chief Justice and other Judges were to draw £8,000 and £6,000 a year respectively. (vii) The Governor-General, members of the Council and the judges of the Supreme Court were immune from arrest or imprisonment in any action, suit or proceedings in the Supreme Court. This immunity was however limited to civil cases only. (viii) The Governor-General, members of his Council, and the judges of the Supreme Court were authorised and required to act as Justices of Peace for the settlement of Fort William and factories subordinate thereto, and to hold Quarter-sessions four times a year. (ix) The Supreme Court was to try all cases by a jury of British subjects residing in Calcutta. An appeal was to lie to the King in Council.

(c) Provisions regarding reform of certain abuses. The Act of 1773 besides introducing the above modifications in the constitution of the Government of India, tried to put down bribery and other abuses which were rampant among the servants of the Company. (i) The Governor-General, members of his Council and the judges of the Supreme Court were prohibited from accepting directly or indirectly any present, gratuities or pecuniary rewards. They were not allowed to engage themselves in or concern themselves with any transactions. (ii) Persons holding or exercising any civil or military office under the Crown or the Company were prohibited from accepting, receiving or taking directly or indirectly any present, gift, donation, gratuity or reward, pecuniary or otherwise. (iii) Offenders were required to forfeit double the amount and even were removably to England. (iv) A collector, supervisor or any other British subject empowered to collect revenue or administer justice in Bengal, Bihar or Orissa could not concern himself with trade, traffic or commerce except on the Company’s account. (v) No British subject was to lend money at a higher rate of interest than 12 per cent. (vi) Servants of the Company convicted for breach of public trust or embezzlement of public money or stores or for defrauding the Company could be fined, imprisoned and sent to England. Any Governor-
General, Governor, member of the Council, judge of the Supreme Court or any other servant of the Company who committed any offence against the Act or was guilty of any crime, misdemeanour or offence against any British subject or inhabitant of India, could be tried and punished by the court of the King's Bench Division in England. (vii) In order to eradicate temptation of procuring money, the Governor-General, the members of his Council and the judges were provided with handsome salaries. The salaries of the Governor-General, Chief Justice, the Councillor and a judge were fixed at £25,000, £8,000, £10,000 and £6000 respectively.

§ 4. DEFECTS OF THE REGULATING ACT

Observations of Critics. Various observations have been made on the Regulating Act of 1773. In the words of Buteon Rouse "The object of the Act was good, but the system that it established was imperfect." According to Punniah "The Regulating Act was the first of its kind dealing with Indian affairs and some of its defects were therefore due to the inexperience of its authors." Roberts denounced it as "a half measure, disastrously vague in many points." Dodewill deemed it as 'a medley of inconsistencies dictated by tyranny, yet bearing throughout each line the mark of ignorance." G.N. Singh opines "The main cause of the imperfections was the novel nature of the problem with which the Parliament had to deal. It was fortunate for the British that the defects, many and serious as they were, did not prove fatal." Report on Indian Constitutional Reforms 1918 makes a critical portrayal of the Regulating Act, in the following words "It (the Act of 1773) created a Governor-General who was powerless before his own Council and an Executive that was powerless before a Supreme Court, itself immune from all responsibility for peace and welfare of the country—a system that was made workable by the genius and fortitude of one great man". In fact the Act suffered from many inherent flaws which are enumerated below.

(a) Governor-General at the mercy of his Council. The appointment of the Governor-General and a Council of four members was calculated to improve the state of affairs in Fort William, which was formerly governed by a Governor and an unwieldy Council of 12 to 16 members. But the method of transacting business by a majority vote was left untouched. The Governor-General was not vested with a veto power. During the first two years the Governor-General (Warren Hastings) was perpetually outvoted by the majority in the Council. Moreover, among the councillors that were appointed, none except Barwell was equipped with experience of Indian administration. Francis, Clavering and Monson were not acquainted with Indian affairs. They were in fact novices. They came to

India thoroughly prejudiced against Hastings and other servants of the Company. "The opposition of the three (councillors) was so reckless and uncompromising that by 1776 Warren Hastings was forced to think seriously of resignation." In the words of Warren Hastings "my situation is truly painful and mortifying; deprived of powers with which I have been invested by a solemn Act of Legislation, denied the respect which is due to my station and character, and condemned to bear my share in the responsibility of measures, which I do not approve." He went to the extent of resigning. But finding the situation easy after the sudden demise of Clavering, he withdrew his resignation by obtaining an opinion from the Supreme Court that it was invalid. Death of Monson further smoothened the course for him. In short "The entire dependence of the Governor-General on the votes of his Council" observes Lyall "reduced him to a cipher, threw all his foreign policy out of gear and gave birth to a six years struggle between Hastings and his councillors." This violent struggle not only undermined the prestige of the British, but also had very adverse effects on the Company's affairs in India.

(b) Failure to secure unity of Policy. Formerly, the Presidencies enjoyed independence in the sense that none of them possessed over-riding authority over the others. The Act had effected an improvement by vesting the Governor-General and Council with control over the other two Presidencies. It was done to secure unity of policy and action among them. The Act did a good thing by giving this power to the Governor-General in Council of Bengal. But it made a mistake of making exceptions to that rule. On the plea of emergency, they could, for instance, flout the authority of Governor-General in Council. Both the Bombay and Madras Governments, embarked upon wars with the Marathas and Hyder Ali, respectively without any reference to the Governor-General in Council, and caused a great embarrassment to the Supreme Government of Fort William.

(c) The Jurisdictions of the Governor-General-in-Council and Supreme Court left vague. The provisions relating to the jurisdictions of the Supreme Court were obscure and indefinite. The Act did not clearly define the jurisdiction of the judges of the Supreme Court, or their relationship with the Governor-General-in-Council. In fact the Governor-General had inherited powers from the Mughal Subahs of Bengal. Hence these powers could not be defined by the Parliament. In order to impose some check on the Executive, the Parliament empowered the Supreme Court to veto legislation passed by the Governor-General-in-Council. The ambiguity of jurisdictions created an anarchic situation in Bengal. In the words of G.N. Singh "The opposition between the Governor-General-in-Council and the Supreme Court crystallised itself round four points."

2. Lyall's British Dominion, p. 125.
(i) The first point of conflict revolved round the claim of the Supreme Court to serve writs on all the inhabitants of the country, and to make them plead before itself. The Governor-General in Council opposed the claim. In Cassijurah Case, a company of sepoys under the orders of Council prevented 'sheriff and his officers, deputied by the Supreme Court to execute a writ against a Zamin-
dar'. Even the authorities in England did not challenge the action of the Council, as it was felt that the jurisdiction of the Court over the inhabitants of the country was limited to cases of contract when the parties had agreed to refer such disputes to the court. The Court was therefore deemed to be wrongfully forcing inhabitants of India to plead before itself. (ii) The jurisdiction over the revenue officers of the Company for wrongs done in their official capacity also entailed conflict between the two authorities. The Act had expressly empowered the Supreme Court to have jurisdiction over the servants of the Company, however distasteful it might have been to the officers of the Company. But the Act was silent on a few questions of grave importance. Who were the servants of the Company? What actually constituted the employment under the Company? Upon whom did the burden of proof lie? Could the Zamin-
dars or the farmers of revenue be included in this category? The Court was of the opinion that they were but the persons concerned. The Company's chief officers did not accept the view. (iii) Another point of conflict arose due to the claim of the Court to try suits against the judicial officers of the Company for acts done by them in their official capacity. The Court in its decision, asked the officers of the Patna Provincial Council to pay for heavy damages caused to an Indian plaintiff while they acted in their judicial capacity. The Court did not overshoot the mark, when it inflicted punishment on the judicial officers of the Company. "The only question was whether the actions concerned were done bona fide in the discharge of judicial duty or not." The decision of the court is generally held just and legally sound. (iv) The refusal on the part of the Supreme Court to recognise the jurisdiction of the provincial or country courts further accentuated the quarrel between the two authorities. The court released revenue defaulters imprisoned by Provincial Courts when they (defaulters) obtained writs of "Habeas Corpus" from it on applying. In another case the Supreme Court observed, "We know not what your Provincial Chief and Council are. You might just as well have said that he was confined by the king of fairies". In order to end the over-accentuating controversy between the Supreme Court and the country courts, Governor-General Hastings appointed Sir Elijah Impey, the Chief Justice of the Supreme Court, a judge of the Sadar Diwani Adalat as well, thus empowering it to possess appellate and revisionary control over the country courts. It however reduced Impey to the position of a mere servant of the Company which was not consistent with his position as Chief Justice of the Supreme Court. The position further deteriorated when Impey accepted a big salary from the Company as a judge of the Sadar Diwani Adalat.
(d) What law Supreme Court was to administer, not clear: Another great defect of the Act was that it did not clearly state what law the Supreme Court was expected to administer. Was it to administer the personal law of the defendant or the English law in all cases? The judges who were appointed were learned in English law and were aware of English traditions only. They were neither familiar with codes of Indian laws nor acquainted with customs and traditions of the Indians. The result was that they applied English laws and procedures in Indian cases. In enforcing the decrees of the Court, the bailiffs, ignorant of the customs of the land, violently broke into the apartments of women and places of domestic worship. The idols which had been sanctified since ages “were dragged from their places by profane hands and thrown amongst the heap of household furniture and lumber which was called to answer the ends of the execution.” This created great consternation and resentment; and might have led to serious consequences if the Governor-General in Council had not intervened and the Parliament had not passed the Amendment Act of 1781.

(e) Changes in the Constitution of the Home Government of the Company also defective. The changes effected in the constitution of the Home Government of the Company also were not flawless. The raising of franchise qualification of the General Court resulted in disenfranchisement of 1246 small holders of stock and “also transformation of the Court of Directors into more or less permanent oligarchy.” Roberts also entertains similar opinion when he observes, “It was generally held that the clause (relating to the change in the constitution of the Court of Directors) failed to attain its object.”

The Ninth Report of the Select Committee of 1781, also stated, “The whole of the regulations concerning the Court of Proprietors relied upon two principles which have often proved fallacious, namely that small numbers were a security against faction and disorder, and that integrity of conduct would follow the greater property.”

(f) Inadequate control of the Parliament over the Company. There is no denying the fact that the Act provided that the copies of all civil and military despatches received by the Directors from Governor-General in Council must be placed before the ministry within a fortnight, yet it did not establish any effective machinery to scrutinise those reports and urge the Government for necessary action. Thus the control of the Parliament over the Company remained inadequate and ineffective.

3. Ibid., p. 22.
(g) It made the Executive weak before the Supreme Court. It weakened the Executive by providing in the Act that all regulations and ordinances passed by the Governor-General-in-Council should be registered with an approval by the Supreme Court.

Keeping in view the above-quoted defects of the Act, we can agree with Punniah who remarks “The provisions of the Act were so vague and indefinite in their wording and were couched in positive rather than negative terms that they obscured the intentions of the authors and lent themselves to more than one interpretation...” The observations of the author of Cambridge History (Volume V) also are worth quoting while concluding defects of the Act.

“It had neither given the state a definite control over the Company, nor the directors a definite control over their servants, nor the Governor-General a definite control over his Council, nor the Calcutta Presidency a definite control over Madras and Bombay.”

5. CONSTITUTIONAL IMPORTANCE OF THE ACT

Despite these glaring defects, the Regulating Act was of great constitutional importance. It constituted a great landmark in the constitutional history of India because of following reasons:

(a) For the first time it was recognized that the East India Company was not a mere commercial body. The Act made it crystal-clear that it was a Political Organization whose function also were political in nature.

(b) It was the first of a series of parliamentary enactments which subjected to some extent, the control of Indian affairs in the hands of the Parliament. The Directors were expected to submit copies of all correspondence received from India to the ministers in the Parliament. Letters and advice concerning the revenues, for instance, were to be submitted to the Treasury, while those dealing with civil and military government to one of the secretaries of the state. In the words of Lyall, “The Act gave a definite and recognizable form to the vague and arbitrary powers of sovereignty that had devolved upon the Company.”

(c) The Act considerably curtailed the patronage of the Company by making appointments of the first Governor-General and his Councillors, the Chief Justice and other Judges. In future also, such nominations were subject to the ratification of the Crown.

(d) The Act is deemed as significant because it was the first measure of its kind which enabled a European government to assume the responsibility for governing territories outside Europe. Such an attempt was not made by any other European nation so far. Principal Sri Ram Sharma attaches importance to this Act, because of the above fact.

(e) The Act’s honest attempt towards the unification of the Company’s possessions in India is of no mean significance. The Governor-General-in-Council was henceforth supposed to superintend, direct and control the presidencies in the matters of foreign policy. Of course, the presidencies abused the latitude given to them by the Act; yet there is no denying the fact that the Act aimed at bringing together the Company’s territories in India.

(f) The Act put an end to scandalous misrule and corruption which was prevalent amongst the servants of the Company. No person in the Indian service was henceforth to fill his coffers with alluring presents of the natives or amass huge fortunes. Even the Governor-General, his Council or the judges of the Supreme Court were prevented from succumbing to such temptations.

(g) It was by the Act of 1773 that for the first time, the British nation, as a nation, assumed the actual responsibility of the government of the territories won by the servants of the trading corporation. There was a gradual growth of feeling that the Britshers through their Parliament rather than through a trading concern should be responsible for British rule in India.

We can conclude with the words of Prof. Keith, “The Act altered the constitution of the Company at home, changed the structure of the Company in India, subjected in some degree the whole of territories to some supreme control in India, and provided in a very efficient manner for the supervision of the Company by the ministry.”

§ 6. THE AMENDING ACT OF 1781

A few years’ working of the Act of 1773 forced the attention of the British Parliamentarians to its glaring shortcomings. On April 9, 1781, Lord North observed in the House of Commons that the Governor of Bengal might in future be something more than a mere primus inter pares. He said, “For his part, he was an enemy to absolute power, but if the genius, the habits and religious prejudices in India were inconsistent with a free government, the necessity would justify Parliament to invest him with a degree of absolute power to be exercised by him with moderation and discretion.” In 1781, two committees were appointed. One was to inquire into the administration of justice in India, and the other into the causes of the second Mysore War and also to report on the existing state of British territories in the East. The first committee termed as Select Committee submitted its report in the same year on the basis of which Amending Act of 1781 was passed. The Act of 1781 made efforts to remove some of the grave defects of the Regulating Act.

Provisions of the Act. (i) It exempted the public servants of the Company from the jurisdiction of the Supreme Court in matters arising out of the official discharge of their duties. The Governor-General and Council severally and jointly were exempted from the jurisdiction of the Court for anything counselled, ordered or done by
them in their public capacity"; except for the orders affecting British subjects. The revenue collectors and the judicial officers were also freed from the jurisdiction of the Supreme Court. (b) The Act attempted to settle the questions concerning the jurisdiction of the Court over servants of the Company and the inhabitants of the country. (c) The Court was to have jurisdiction over all inhabitants of Calcutta but was to administer the personal law of the defendants and not the English law. (b) The Company was asked to maintain a register giving the names and occupation of its employees. (c) The servants of the Company or of its British officers or of any Britisher in India were to be subject to the jurisdiction of the Court only in actions for wrongs or trespass or civil cases by agreement of parties, but not in any matter of inheritance or succession to land or goods or in any matter of business or contract. (d) No person was to be subject to the jurisdiction of the Supreme Court only because of his being a landlord or farmer of land or of land-rent or for receiving a payment or pension in lieu of any title to or ancient possession of land or land-rent or for any compensation or share of profits for collecting rents payable to the public out of such lands. (iii) The Act also clarified as to what law was to be administered by the Supreme Court. It was laid down that questions of "inheritance and succession to lands, rents and goods and all matters of contract and dealing, between party and party were to be determined in the case of Mohammedans by the Mohammedan laws and usages and in the case of Hindus by the Hindu laws. "In other words, the Court was to administer the personal law of the defendant, whatever that may be, and not one uniform foreign law." (iv) It was laid down that the Court was to show reverence to the religious usages and practices of the Indians, their social customs and traditions, rules and laws of caste even though they were criminal or illegal according to English law. Moreover, while making rules for the execution of legal decrees, the religious and social customs of the inhabitants of the country were to be respected. (v) The appellate jurisdiction of the Governor-General-in-Council or any committee thereof in cases decided by the country courts was recognized and confirmed by the Act. The judgements of the Governor-General-in-Council were to be final except in civil suits involving a sum of £ 5,000 or more, in which appeals can be laid to the King-in-Council. The Governor-General-in-Council was empowered to act as a revenue court as well, hearing and determining actions for offences committed in the collection of revenues. (vi) The Governor-General and Council were empowered to make regulations for the Provincial Courts and Councils; and these did require registration in the Supreme Court.

Thus the Act of 1781 removed some of the grave defects of the Regulating Act. It substantially strengthened the position of the Governor-General-in-Council vis-a-vis the Supreme Court, and settled practically all disputed questions in their favour. Henceforward

there were to be no undesirable conflicts that had led to the scandalous Patna and Cassijura cases, and all those servants of the Company who had been arrested and detained under judgements of the Supreme Court were consequently released. It also recognized and legalized the legislative powers of the Governor-General-in-Council over Bengal, Bihar and Orissa which they had hitherto exercised in their capacity as Diwans, when it authorized them to frame regulations for these areas without any requirement as to their registration in the Supreme Court. The Act of 1773 had also vested this power in them, but had subjected it to the veto of the Supreme Court. The hostile relations between the two however made it difficult to frame regulations; and exasperated the Governor-General-in-Council. The Amending Act of 1781 therefore apart from removing the defects of the Act of 1773 achieved something more to its credit.

§ 7. DUNDAS' INDIAN BILL (APRIL 1783)

The Reports of the two committees appointed by the House of Commons immediately before the passing of the Act of 1781 were very critical of the judicial and executive administration in India. On May 30, 1782, on the motion of Dundas, the House of Commons adopted a resolution condemning the administration of Warren Hastings and urging the Directors to pursue all legal and effectual means for his recall. But the Court of Proprietors rescinded the order of the Court of Directors in pursuance of their resolution, and kept Hastings in office in defiance of it. It made it quite obvious that Regulating Act had failed to establish the state control over the Company’s administration in India. Such a control was however thought indispensable. In 1783, when the Company petitioned for financial relief, Burke said, "the relief and reformation must go together." In 1783, soon after the formation of coalition ministry of Fox and North, Dundas introduced a Bill which proposed to give the King power to recall the principal servants of the Company, to entrust the Governor-General with power to override the Council in important cases, and to enhance the control of the Governor-General and Council over other Presidencies.

Since Dundas was in the opposition, his Bill had a very little chance of enactment. His Bill, however, proved useful, as it asserted the necessity of a constitutional measure and goaded the ministry into action.

§ 8. FOX'S INDIA BILL, NOVEMBER 1783

Though Dundas' Bill was dropped, yet it prompted the ministry into action. The coalition ministry of Fox and North promptly took up the question. Fox described the Company’s government in India as “critical beyond description...... a government of anarchy and confusion”. On November 18, 1783, Fox introduced his famous ‘East India Bill’. Following were its main provisions. (i) It made a distinction between the government of the Company’s territories and
its commercial interests and emphasised that the Company was not to deal with the former. (ii) In order to implement the first provision it was proposed that the existing Court of Directors and Proprietors would be replaced by a Board of Commissioners consisting of seven members. (iii) These Commissioners were to be empowered to order and administer the territories and revenues of India; and also to appoint and dismiss all servants of the Company. (iv) They were, in the first instance to be named in the Act itself i.e., chosen by the Parliament and vacancies in them were to be filled by the Crown. (v) They were to hold office for a period of four years, and were not removable during this tenure of their office except by the king on an address by either House of Parliament. (vi) The Board was to sit in London and Parliament was authorised to inspect the minutes of its meetings. (vii) For the management of the details of commerce, a body of nine Assistant Directors was to be set up. (viii) These assistant directors were to be named in the Act in the beginning. Later, they were to be elected by the Court of Proprietors. (ix) They were to have the same security of tenure as the Commissioners for a period of five years. (x) The Bill did make provisions for putting down monopolies, the acceptance of gifts, and also the loan of British troops to native princes.

Opposition of the Bill. In the words of Punniah, “The Bill aroused loud, vehement and acrimonious opposition both in and outside the Parliament.” Following were the main points of criticism against the Bill:— (a) It was apprehended that the Bill aimed at transferring of patronage to a Board of Commissioners which they would utilize to corrupt Parliament and maintain themselves in power. In the words of Robertson, “It seemed to shift a vast patronage not from the Company, to the Crown, but to a political party; who, it was asserted, would use it to debauch Parliament, and gild the chains of a new political slavery.” Pitt also emphasised the same point, when he said, “Was it not the principle and declared avowal of this Bill that the whole system of Indian government should be placed in seven persons and those under the immediate appointment of no other than the minister himself?”

(b) The Bill was denounced as being expropriatory in character, intending to confiscate, annihilate and destroy the chartered rights of the Company. In the words of Pitt, “Charter were sacred things; on them depended the property, franchises and everything that was dear to Englishmen; and wantonly to invade them would be to unhinge the constitution and throw the state into anarchy and confusion.”

(c) It was emphasised that the Bill sought to establish a permanent Parliamentary commission independent of the Government of the day, for the government of the Indian possessions. At a later stage, while comparing his own Bill with that of his rival Fox, Pitt emphasised “.........Let it be remembered that a permanent Board

might be hostile to those who held the Government at a time; a view of it, which, he trusted would sufficiently prove that an actual independent permanency in any such Board would be evil."

(d) King (George III) deemed this measure as a mere artifice to transfer the patronage of India to a body already notorious for the abuse of its power, and in violation of the usages of the Constitution of his Realm, signified his dissent while the Bill was still under discussion.

Though due to the personal intervention of George III, the Bill was defeated in the House of Lords, yet a dispassionate appraisal of the facts reveals that the denunciation of the Bill was exaggerated. In fact, the opposition derived its strength mainly from the personal unpopularity of Fox and North. The coalition of these erstwhile bitter enemies was made an argument to prove their unscrupulousness in public life. Vehement opposition of the King, tactlessness on the part of Fox and choice of commissioners from their own parties, made the coalition leaders face disappointment. The Bill, in the words of Robertson, "was a sincere and statesman-like effort to deal with a great problem on comprehensive lines; but George III, Pitt and Thurlow and the East India Company did not consider it on merits.....Fox, not the imperial problem was made the issue," 1 This conclusion is also substantiated by A.B. Keith who remarks that the Bill was "a vigorous effort to reform the whole Constitution." 2

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Pitt's India Act 1784

With the rejection of Fox's India Bill, by the House of Lords, the coalition Government was dismissed by George III and Pitt was called to office. Early in 1784, Pitt made his first attempt to bring in a Bill but the opposition was so strong that his Bill was thrown out at the initial stage. The Parliament was dissolved on March 25, 1784. Pitt was once again triumphant. On meeting of the new Parliament, Pitt introduced his Bill, relating to the government of India for the second time. It was passed into an Act in August, 1784. Pitt carefully avoided the short-comings which he had vehemently pointed out in that of his rival.

§ 1. PROVISIONS OF THE ACT

The Act introduced changes mainly in the Company's administrative set-up at Home. Some of its clauses effected modifications and alterations in the constitution of the Supreme Government and Presidencies in India as well.

Provisions concerning Home Government. (a) The Act established a Board of six commissioners for the affairs of India known as the Board of Control. It was to consist of a Secretary of State, the Chancellor of the Exchequer and four other Privy Councillors who were to be appointed by the King and were to hold office during his pleasure.

(b) Any three members constituted the quorum to act as the Board. The Senior Commissioner was to preside in the absence of the Secretary of State and the Chancellor of the Exchequer.

(c) The Commissioners were to hold office on honorary basis. They were not to be disqualified for being or becoming members of Parliament.

(d) They were not vested with the power of appointing any of the Company's servants. In the words of Punniah, "patronage was thus left to the Court of Directors and the Company and the country were satisfied with the arrangement."
(e) The Board was fully authorised and empowered to superintend, direct and control all acts, operations and concerns relating to civil and military government or revenue of the British territorial possessions in the East India.

(f) The commissioners were allowed to have an access to all papers of the Company, and to be furnished with copies of all minutes, despatches, orders and other proceedings sent or received by the Directors.

(g) The Court of Directors were to be bound by all orders of the Board, touching the Civil and Military Government and the revenues of India.

(h) The Board was authorised to approve, disapprove or amend the letters, orders and instructions submitted to them, and the Directors were expected to send the despatches so approved or modified to their servants in India.

(i) For the prompt despatch of business, the Board was entitled to ask the Directors to prepare an order or despatch on any subject. If within a couple of weeks time, the Directors could not comply with such a requisition, the Board was fully authorised to prepare the dispatch and send it to the Directors who were required to transmit it as from themselves to any government in India.

(j) The Board of Control (Commissioners) was empowered to send secret orders and directions regarding secret matters such as declaring of war, making of peace or negotiating with any of the native Princes or States in India, to the Secret Committee of the Court of Directors. This Secret Committee consisting of these Directors was to transmit them to the governments in India, without disclosing their contents to other directors.

(k) The Act deprived Court of Proprietors to revoke or rescind any act, order, resolution or proceeding of the Court of Directors which had received the ratification of the Board of Control.

(l) Parliament was empowered to pay salaries, charges and expenses of staff of the Board of Control out of the revenues of India, if this charge did not exceed £16,000.

(m) The Secretary of State was to be Chairman of the Board of Control. In case of a tie, he was vested with a casting vote.

Provisions dealing with the Central Government in India. (l) Since the experiment of sending out new men from England had proved to be a miserable failure, only covenantant servants of the Company were to be appointed councillors of the Governor-General. Though the appointments were to be made by the Court of Directors, the Crown was empowered to recall or remove the Company's servants. (m) The Council of Governor-General was in future to consist of only three members (not four as before). If he had even one member as his supporter in the Council of three, he could keep his ascendency over the Council by the exercise of
the casting vote. (iii) For the first time, the Company's territories were called "the territorial possessions of this kingdom", "the British possessions in India". (iv) The Governor-General and the Council were vested with full power and authority to superintend, direct, and control the several presidencies and governments in matters concerning war or peace or application of revenues or forces during war or transactions with the country powers. Thus the control of Governor-General over other presidencies was strengthened. It was no longer qualified by the provisions that the subordinate governments could in cases of urgent necessity act in their own, and without obtaining leave from Bengal. If vacancy in the office of Governor-General occurred, the senior of the two civilian councillors (third councillor was to be commander-in-chief—a non-civilian) was to be his substitute though temporarily.

**Clauses concerning Presidencies.** (i) The Council of the Governors in the Presidencies were also to consist of three and not four members. One of these three councillors was to be the Commander-in-Chief of the Presidency concerned. (ii) Only covenant-ed servants of the company were henceforth to be appointed as the councillors of the Governors of the Presidencies. (iii) As already stated, the Presidencies were kept under the control of Bengal Presidency in matters concerning war and peace, transactions with the country powers or any other matter which might be specially referred by the Court of Directors to their superintendence and control. In the words of G. N. Singh, "The Act of 1784 carried the unification of India one step further, it extended and defined the powers of the Governor-General in Council over the Governors in Council of Madras and Bombay." In case, the Governments of Bombay and Madras failed to carry out the orders of the Bengal Government in matters of peace and war, the latter possessed the right of suspending all the members of the offending Council. (iv) The Governors and their councillors were to be appointed by the Court of Directors but they could be recalled or removed by the King. (v) Bombay and Madras were required to send to the Government of Bengal copies of all regulations framed by them.

**General Provisions.** (i) A court consisting of three judges; four peers and six members of the House of Commons was to be constituted for trial in England of Company's servants guilty of committing offences in India. (ii) Section 34 of the Act laid down that to pursue schemes of conquest and extension of dominions in India were measures repugnant to the wish, the honour and policy of the nation. But this remained a pious wish of the authors of the Act, because the Governor-General frequently intervened in the affairs of states. (iii) The Company was asked to put her house in order and to carry out "every retrenchment and reduction." (iv) The servants of the Company were not to deal in money matters

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with the native princes. (c) Special powers were given to the Governor-General and Governors to authorise the arrest of persons suspected of carrying on illicit correspondence with persons in authority whether in native states or European settlements. This power, however, was never used.

§ 2: CONSTITUTIONAL IMPORTANCE OF THE ACT

Basis of Indian Constitution till 1858. Pitt's India Act of 1784 is acclaimed as a measure of great constitutional importance in history. In the first place, it formed the basis of the Indian Constitution till 1858. It transferred the responsibility for the Government of the Company and its affairs from the Court of Proprietors to the Board of Control. This Board of six Commissioners was to superintend, direct and control the civil and military government of India. Ilbert pointed out that Pitt followed the principle adopted by Fox... "the principle of placing the Company in direct and permanent subordination to a body representing the British Government."¹ In the words of Sri Ram Sharma, "The Pitt's India Act altered the foundation of the direction of Indian affairs in England. The Court of Proprietors lost its political power. The Directors now played second fiddle to the British Government who possessed almost unlimited powers of issuing orders which the Directors were bound to obey."² Thus by establishing the control of the British Government over the affairs of the Company, the Act removed one of the most conspicuous defects of the Regulating Act.

(b) Centralized control of G. G.-in-C established. The Act established centralised control of the Governor-General-in-Council over the affairs of India, as the Governors of the Presidencies were made to pay due deference to the directions of the former. Clause 31 of the Act clearly laid down that disobedience on the part of Presidencies would lead to their suspension. Thus the Act aimed at the unification of India which was so essential for its efficient administration.

(c) Improvement in Indian Government. The Act effected a very great improvement in the mechanism of Indian Government. The Governor-General and the Governors could now score their point as against their councils even if one councillor supported them. Reduction of their strength from 4 to 3 strengthened the position of the Governor-General and the Governors. As pointed out by Principal Sri Ram Sharma, the Act almost entirely changed the position of the Heads of the Governments in Bengal, Bombay and Madras. They were no longer to be senior colleagues of the members of the Local Councils. They became executive heads of the administrations over which they presided.

1. Ilbert: The Government of India.
(d) **Court of Proprietors eclipsed.** The Act made the political power of Court of Proprietors suffer an eclipse by forbidding them to change any decision of the Directors duly ratified by the Board of Control. They could no longer interfere with the Civil and Military affairs of India. They were not authorized to share in the direction of the Company’s administration.

(e) **Establishment of a Supreme Court.** The establishment of a special tribunal in England to try offences committed by the English in India was definitely an improvement upon the existing arrangements.

(f) **Position of G.G. strengthened.** The Act considerably strengthened the position of the Governor-General by closely relating him with the ministry at home. Moreover, the Act enhanced his status by changing the nature of his office. Henceforth, the Governor-Generalship was to be a sort of senatorial pro-consulship.

Shri J. Holland Rose, biographer of Pitt, has very well portrayed the importance of the Act in these words. "While wielding despotic authority in India, the new Viceroy was but an adjunct of the British constitutional machine. It is perhaps the highest of Pitt’s achievements that he saw how to combine two ideals of governments, the oriental and occidental in a way that conduced to vigour of action in Bengal and did not impair popular progress at home. While investing the real ruler of India with powers far greater than those wielded by Warren Hastings he subordinated them to the will of the king and Parliament...."

3. WORKING OF THE DUAL GOVERNMENT AT HOME

What **dual Government meant**? As already stated, the most important constitutional change introduced by the Act of 1784, was the establishment of 'Dual Government' for the management of the Company's affairs in England. Formerly, they were managed and controlled by the Court of Directors subject to the superior authority of the Court of Proprietors. Appointments to high offices like those of the Governor General, Governors, Councillors and junior servants were made by the Directors who formulated general policy to be followed by the Company. The Act divided the commercial, administrative and political business of the Company into two distinct parts—the commercial and the political business. Commercial business was left under the undisputed charge of the Directors, while for the supervision of political activities of the Company, a Board of Control was constituted. It is thus quite evident that for the management of Indian affairs at London, the Act established a dual organization the Court of Directors and the Board of Control. A.B. Keith terms such an adjustment of Company’s activities as "a compromise".

Board of Control comparatively stronger. The 'Compromise' was curious in nature. Board of Control was in fact far superior to the Court of Directors, both in influence and power. It was empowered to superintend, direct and control all acts, operations and concerns relating to civil and military government or revenues of the British possession in India. It was allowed to have an access to all papers, minutes, correspondence, etc. of the Company. The Court of Directors was apt to furnish to the Board information, the latter might require and to carry out their instructions. The Board could recall any official appointed by the Directors for running the administration of the Company. All this strengthened the position of the Board and weakened considerably the Court of Directors.

Moreover, the Act gave large powers of interference to the Board of Control. Every order proposed to be sent to India required the concurrence of the Board within 14 days of its receipt. It resulted in a very elaborate system of correspondence which gave the first and the last word to the President of the Board. Whenever a dispatch was to be sent to India, it was initially to be discussed informally between the Chairman of the Court of Directors and the President of the Board Control either verbally or through correspondence. A dispatch was then prepared by the Directors and sent to the President along with a mass of documentary evidence on the basis of which it was formed. This part of the process was termed as "Previous Communication". The President could either approve the dispatch or effect such corrections as he deemed essential. Differences at this stage (if any) were to be settled either by informal discussion or friendly communication between the President and the Chairman. Dispatch thus corrected was to be sent back to the Court of Directors who prepared a fresh dispatch called a Draft and passed it on to the Board for their final ratification. The above quoted procedure reflects that though the initiative informally proposing dispatches ordinarily lay with the Directors, the President had ample opportunities of asserting his views upon them. When differences of opinions attained eliminity, the President went to the extent of scoring out whole paragraphs and inserting new ones. Thus, the draft so drastically modified sensibly contrary to what was intended by the Court of Directors. In the words of Kay, this "unlimited power of correction was in effect co-extensive with the power of initiation." 1

In urgent cases, the Board was still more powerful. It could order the Directors to propose a dispatch on any subject and in case of refusal could itself prepare one and send it to the Directors for transmission to India. It could even compel their obedience by applying to the Court of King's Bench for a writ of Mandamus. "The knowledge that the Board had this power was itself sufficient to bring the Directors into line with its policy but if in any case, they resisted relying on the justice of their cause, the Board did not always go to the length of applying for a 'Mandamus' as it meant publicity but

1. As quoted by Punniah, K.V., in Constitutional History of India, p. 41.
acquiesced in some sort of a compromise."

It is generally presumed that the Act had left the patronage with the Directors. But it vested in the Crown the authority of recall of Company's servants in extreme cases. The Board made use of this weapon quite often. In 1784, the Court of Directors appointed Holland as Governor of Fort St. George. Dundas, the President of the Board of Control, did not approve of the choice. The Directors persisted in their appointment and protested against undue interference of the Board. The President agreed with the Directors that the Board had no legal right to interfere. But he made it clear to Holland that he would be called back as soon as he landed on the soil of India. This brought the Directors round. As a compromise, the nominee of Dundas was nominated as the Governor, in place of Holland.

In 1806, a similar situation cropped up. After the demise of Cornwallis in India, Sir George Barlow, the Senior Counsel succeeded temporarily to the post. Then occurred a change of Ministry in England and also a subsequent change in the Presidentship of the Board of Control. The new President without consulting his colleagues, approved this appointment. Ten days after, he informed the Directors that the ministry had decided to supersede Barlow in favour of Earl of Lauderdale. The Directors did not agree to cancel the appointment. The ministry recalled Barlow by a warrant under the royal sign-manual. It is therefore quite obvious that the Board used its power of recall quite frequently, thus curtailing the Directors' patronage a great deal.

The Board of Control not only encroached upon the patronage of Court of Directors regarding appointments, it secured larger share of power in the direction of policy also. It was with the secret assistance of the Presidents of Board of Control that the successive Governors-General followed an aggressive policy in India much against the wishes of the Directors.

The above mentioned facts make it crystal clear that the Board of Control dominated the Indian affairs and the Court of Directors suffered a great decline with the passage of time. The working of this dual system was very well described by Henry St. George Tucker who had the privilege of being the Chairman of the Court of Directors for an appreciable period in a letter written to the Duke of Wellington in 1838. His concluding words throw enough light on the plight of Directors. "Still I feel most painfully that we are gradually sinking. Our weight and influence have declined of late and are declining." As the years elapsed, the Directors were deprived of one power after another. In the words of Punniyah ".........The feeling that they were on sufferance might have made the Court of Directors reluctant to exercise their legal powers to the full while the President of the Board might have asserted his powers more vigorously than before."

2. Ibid., p. 44.
Court of Directors not a non-entity. There is no denying the fact that the Board of Control wielded greater power and commanded more influence than the Court of Directors, yet we cannot conclude that the Court of Directors was a mere non-entity. It served as a channel of communication between the Board of Control and Governor-General in India. The dispatches for India used to be addressed to it or to its Secret Committee. The opinion of the Directors used to be given due weight by the Board, as they were equipped with administrative experience concerning Company's affairs in India. Since the mass of business had to pass through their hands, they could exercise quite a considerable influence. In the words of Henry St. George Tucker, the Chairman of the Court of Directors "...the administration of India is now vested in the national government. This is very much the case no doubt; but ..........we are still left in a position to exert some moral influence with effect."

The Court of Directors still by law retained initiative. Apart from having a large staff at their disposal, even the original records were maintained in the East India House. Thus, they were in a better position to frame proposals about Indian administration than the Board of Control. Moreover, the Board of Control was usually interested in the foreign and political policy of the Indian authorities. Hence the Directors played an important role in matters of administration. They were still authorised to expose to public view instances of mal-administration. In the words of Mr. Tucker, Chairman of the Court of Directors ..........as long as the court shall be filled by independent and honourable men, they may not only by their knowledge and experience assist in giving a proper direction to the machine of government but they can also exert a wholesome influence in checking the career of an unscrupulous government."

The Directors' power of making appointments from the Governor-General down to the petty clerk enhanced their influence, prestige and dignity. The Board of Control was empowered to recall any of the high dignitaries like the Governor-General and the Governors. Of course, the Board could recall their nominees yet the frequent recalls of the servants was not resorted to. The Directors were generally given long rope in the matters of appointments.

Taking into consideration the above powers of the Directors, we cannot afford to consider the Court of Directors a mere non-entity. It was a reality. Its influence over the Company's affairs was quite considerable. The authors of the Report on Indian Constitutional Reforms (1918) made a very correct and analytical appraisal of the position of Court of Directors in relation with the Board of Control in the following words: "We must not conclude, however, that the supremacy of the President of the Board of Control left the Directors with no real control. Their position was still a strong one; the right of initiative still rested ordinarily with them. They were still the main repository of knowledge and though the legal responsibility lay with the Government, they exercised to the last a substantial influence upon the details of administration.
But with all this it is a fact that the Board of Control gradually deprived Court of Directors of its powers. In the words of Punniah "As the century advanced, one power after another was taken from them........").

4. DEFECTS OF THE DUAL GOVERNMENT

(a) System based on unsound principles. By the working of the Double Government, it was established that the system envisaged by the Act was not only cumbersome but also based on unsound principles. Pitt himself confessed that "Any plan which he or any man could suggest for the government of the territories so extensive and so remote must be inadequate."

(b) Weak and inefficient government. The Double Government proved to be a weak and inefficient government. Government is an organic unity. It is impossible to run it in two halves. Any attempt to do so, is apt to prove detrimental to its efficient and successful working. In fact the respective spheres of the Board and the Court of Directors were deliberately left vague. It further worsened the situation. Parliamentary control over the Company's affairs was also not perfect as President of the Board was not supposed to submit annual accounts to the Parliament.

(c) Their relations not clearly defined. There were often conflicts between the Board of Control and Court of Directors as the mutual relations between the two were also not clearly defined. The Board of Control asserted that they were vested with the power of supervision, direction and control over the Indian affairs.

(1) Conflict over appointments. Hence they contended that they were automatically equipped with the authority of making appointments in order to carry out effective supervision. The Directors contested this assertion of the Board. The conflict got further accentuated in the time of Lord Wellesley. The matter was brought to the Court of Law, which decided in favour of Board of Control.

(2) Quarrel over troops. Another quarrel between the Directors and the Board of Control related to the question of sending troops to India at the expense of the Company. The Board of Control dispatched four British regiments to India and charged their expenses to Indian revenues. The Company challenged this right of the Board on the plea that the Company had all the troops it needed and also it was cheaper to raise troops in India than to get them from England. The quarrel was resolved with the passing of a Declaratory Act in 1788 which placed the supreme authority in the hands of Board of Control though a few limitations were imposed on its power. The number of troops to be sent by the Board was limited. The Board was not allowed to increase the salaries of the officers or

1. Punniah K.V. : Constitutional History of India, p. 44.
order gratuities for services performed except with the concurrence of the Directors and the Parliament. The Directors were also required to place before parliament the annual accounts of the Company’s receipts and disbursements.

(d) G.G’s position made awkward. The Dual control made the position of the Governor-General awkward. He was supposed to serve two masters at Home in the Directors and the Board of Control. The Directors made appointments and initiated policy and the President of the Board of Control recalled these officers or threatened to do so thus thwarting the will of the Directors. The Governor-General, however, generally evaded the orders of both the authorities by acting in his own way. Since distance between India and England was great, he could easily do so. It is contended by certain historians that Dual Government in a way strengthened his position. If one of the two halves of the Home Government disapproved of the Governor-General’s conduct or policy, the other half supported it.

(e) Administration of Company cumbersome. The Dual Government made the administration of the Company dilatory and cumbersome. Generally, it took about two years to get an answer to a dispatch sent to Home Government from India. Lord Palmerston, Prime Minister of England, remarked in 1858, “The functions of Government and its responsibility have been divided between the Directors, the Board of Control and the Governor-General in India and among these authorities, it is obvious that dispatch and unity of purpose can hardly exist.” He further said, “Before a dispatch upon the most important matter could go out to India, it had to oscillate between Canon Row (Board of Control’s office) and India House (the office of the Company). It was proposed by one party, altered by the other, altered again by the first and sent back to the other.” It is thus quite evident that the process resulted in delay and disappointment. In the words of Sri Ram Sharma, the direction of Indian affairs from England was very often in the nature of post-mortem.

(f) Unstatesman-like in principles. According to Fox, the Dual Government was “unstatesman-like in its principles”. The power of originating the measures rested with the Board. It was authorised to formulate the policy to be followed by the governmental authorities in India also. But those who were to be the executors of such a policy, were to be appointed by the Directors. The latter could, therefore, if so wished, impede and delay the implementation of the policy by either not appointing the officers needed, or delaying this appointment. If the Dual Government could function despite its glaring drawbacks, the credit for that goes to the accommodating spirit of the English. Sri Ram Sharma remarks, “Had the letter of the law been followed, the control of the Indian affairs from England by two independent authorities would have presented many difficulties and this might have resulted in an early and inglorious
end of the system."

(g) Directors paid low. The Directors were paid very low as it was claimed that they were "paid in patronage." "The institution had a very baneful effect. It enslaved the Directors to the President of the Board of Control by their fear that if they opposed him he might use his parliamentary influence to strip them of patronage."

(h) An intriguing system. Lastly, the Dual system enhanced influence without entrusting responsibility and worked by trickery and intrigue, rather than avowed authority. The Board of Control as an annexe to the Ministry, enabled the British Government to exercise its influence on the Indian administration, though it had not to bear any responsibility regarding the conduct of the Company's affairs. Moreover, the Board of Control in league with the Governor-General followed a course generally distasteful to the Directors. The Directors in their turn, were still more unscrupulous. They also were always on look out to retaliate. All this caused "great deterioration in the administration of Indian affairs of the Company".

Conclusion. With all its shortcomings and glaring drawbacks, the Dual system under the circumstances provided the best possible if not an ideal solution of the Indian problems. The system was aiming at an adjustment and not demolition of what already existed. Neither the Company was deprived of its territorial possessions nor were the private rights of English people infringed. The sanctity of charters so dear to the Englishmen was also maintained. In the words of the author of the Act—Pitt "It afforded a vigorous system of control, with less possibility of influence; secured the possession of the East to the public without confiscating the property of the Company and beneficially changed the nature of the defective Government without entrenching on the chartered rights of the men."

§ 5. THE ACT OF 1786

One of the most glaring defects of the Regulating Act was that it made the Governor-General powerless before his Council. Till 1786, no step was taken to remove this defect. When Lord Cornwallis succeeded Warren Hastings as the Governor-General, he demanded as a condition of his acceptance of Governor-Generalship that the Governor-General should be empowered to override his Council in important cases. An Act was passed in 1786 empowering the Governor-General to override his Council and act on his own responsibility, whenever he deemed fit. He was, however, bound to consult his Council and was expected to accept its advice, though he could reject its advice and act as he deemed proper, whenever situation so demanded.

The Charter Acts, 1793-1853

Punniah observes, "The three quarters of a century that lie between Pitt's India Act of 1784 which established the Board of Control in England and the Government of India Act of 1858 which transferred the Indian territories to the Crown are remarkable for two things—the gradual diminution of the Company's powers and privileges in England and the development of an administrative system in India." 1

41. THE CHARTER ACT 1793

The charter of the Company has been confirmed in 1773 for twenty years. Hence towards the close of Lord Cornwallis' regime, the question of the renewal of the Company's charter was taken up by the Parliament. A few merchants and manufacturers of leading towns in England like Glasgow, Liverpool and Manchester demanded freedom of trade with India. Since the nation's interest was centred in the fight with France, it was not difficult for Pitt who was at the zenith of his power and who had in Dundas (the President of the Board of Control) an intimate friend, to push through the renewal of the Charter. The Act of 1793 was passed without much noise. Company's monopoly and power was renewed for a period of twenty years with minor modifications. In the words of Keith, "It was essentially a consolidating measure and its alteration struck at points of detail," Dr. Banerjee also observes, "No great constitutional change was introduced by this statute of consolidation." 2

§ 2. PROVISIONS OF THE ACT

(i) "The Company's privileges were continued for a period of 20 years without prejudice to the claim of the public." In fact, the private individuals were allowed to trade to the extent of 3000 tons of shipping. But the right was hedged with so many restrictions that the merchants did not like to occupy the unprofitable channel opened to them. (ii) The members of the Board of Control and their staff

were to be paid and their expenses charged on the Indian revenues in future. This unfortunate practice continued till the coming into force of the Act of 1919. (iii) The Act regulated the Company’s finances. An annual surplus of £1,239,241 was assumed, out of which £500,000 were to go to the liquidation of the Company’s debts and £500,000 were to be utilised in increasing the dividends from 8 to 10 per cent. But the assumed surplus, in the words of G.N. Singh, “never materialized and Britain did not receive its share of £500,000 a year though the shareholders benefited by the raising of the dividend from 8 to 10 per cent.” (iv) The Act effected a few modifications in the system of the government in India. Each Presidency was henceforth to be governed by a Governor or Governor-General in the case of Bengal and a Council of three members who must have been resident of India for a period of twelve years as Company’s servant, at the time of their appointment. (v) The Commander-in-Chief was to be a member of the Council, if specially authorised by the Directors for that purpose. (vi) If a vacancy in the office of the Governor-General or Governor occurred, the Councillor next in rank (other than the Commander-in-Chief) acted in their place until a permanent incumbent was appointed. (vii) Departure from India without permission was to be tantamount to resignation in the case of Governor-General, Governors, members of their Council and Commander-in-Chief and no leave of absence out of India was to be allowed to them. (viii) The Governor-General and the Governors were empowered to override their Councils in cases of such high importance as would in their judgement affect in any way the safety, tranquility or interests of the British possessions in India or any part of India. This power was, however, not to extend to judicial matters, taxation or legislation. (ix) The powers of the Governor-General over subordinate presidencies were expressed in the widest term, so as to apply to the Civil and Military Government in general, to the collection or application of the revenues and to all matters relating to war and peace and diplomatic relations with native powers. (x) When visiting a Presidency, the Governor-General was to supersede its Governor, he might appoint one of his Councillors as a Vice-President to act in his absence. In such cases he was authorised to issue orders and directions to the subordinate governments or their officers even without previous consultation with or the concurrence of the local council. These orders and directions were to have the same force and effect as if issued by the Governor-General in Council at Fort William. (xi) The King’s approval was essential for the appointment of Governor-General, Governors and Commander-in-Chief. (xii) The civil servants of the Company were to be graded in rank according to seniority, and promotion to a higher rank was also to depend strictly upon the length of one’s service. (xiii) Only a covenanted servant, who had rendered three years’ service in India was in future to be eligible for a post

carrying a salary of more than £500 a year. Six, nine and twelve years' service were essential for jobs whose salaries exceeded £1,500, £3,000 and £4,000 per annum respectively. (xiv) Since for preserving and maintaining peace in the Presidencies, a further number of justices was thought indispensable, the Governor-General in Council was empowered to appoint by commissions issued under the seal of the Supreme Court in the name of His Majesty such number of justices as was essential for the purpose. Such appointments were however to be made from among the covenanted servants of the Company or other British inhabitants. (xv) The justices of respective Presidencies were also empowered to appoint scavengers and other persons for the cleansing, watching and repairing of the streets in the Presidency towns. They could also raise necessary funds for the purpose by levying a sanitary rate in those localities. (xvi) The Admiralty jurisdiction of the Supreme Court at Calcutta was to extend to the high seas. (xvii) The sale of liquor was made subject to the grant of licence. (xviii) The Act reiterated that "to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, honour and policy of the nation. But as observed by G.N. Singh "the force of circumstances and the ambition of the man on the spot led to the adoption of just the opposite policy in actual practice.""

It is thus quite evident, that the Act which renewed the Charter in 1793 is a long one though it is not of much constitutional importance. It effected no important change and was merely of a consolidating nature. However, it is important to note that the Act provided for the payment of the members of the Board of Control and its staff out of Indian revenues—a nasty practice which persisted till the passage of the Act of 1919.

3. THE CHARTER ACT OF 1813

When the Charter of the Company came up for renewal after the expiry of a period of 20 years, the conditions were quite different from those in 1793. It was no longer possible to continue the commercial privileges of the Company due to following reasons: (i) The 'Continental Blockade' against British Commerce established by Napoleon, since 1808, made the British exports suffer a great setback. The British merchants therefore asserted that the Indian trade should be thrown open to them to compensate them for the losses, they had incurred and will continue incurring due to the Continental system introduced by Napoleon. (ii) The popularity of the theory of laissez-faire advocated by Adam Smith, induced the trading classes to launch an attack on the trading monopoly of the Company. The British merchants clamoured for free trade with India. The Company tried to preserve its privileges by arguing that the Indian revenues had never been sufficient for the expenses of its government, and that the deficit had always been made good by profits derived from its commercial monopoly. Failing to convince

its opponents, they resorted to another argument. They emphasised that if the trade with India was thrown open to Englishmen who were ignorant of the customs, habits and manners of the Indian people and also suffered from superiority complex due to their being members of the ruling race, there was every apprehension that they would behave in a most haughty and oppressive manner towards Indians. Moreover, these English traders would be amenable only to the King’s Courts established at Presidency towns miles away from the abodes of these natives. Thus the latter would not be in a position to seek redress for their wrongs, due to the trouble and expenses involved in the legal process. According to Warren Hastings, “They would insult, plunder and oppress the natives and no laws enacted from home could prevent them from committing acts of licentiousness of every kind with immunity.” Lord Teignmouth (Sir John Shore), Colonel Malcolm and Colonel Munro also supported these arguments. A compromise was however brought about by which Europeans were allowed to proceed to India, under a strict licence system. They were prohibited from holding land in India and were required to preserve “the authority of the Local Governments respecting the intercourse of Europeans with the interior of the country.”

Moreover, the leaders of Evangelists agitated both inside and outside the Parliament for getting full facilities for the missionaries would like to go to India and spread the gospel of Christ among the heathens of India. Wilberforce and a few others exhorted the Indian Government to take active steps for the propagation of Christian religion among the Indians. The Company was not reluctant to spread Christianity. Hence they were willing to appoint a bishop and archdeacons for this purpose but they refused to go further as they did not like to incur the wrath of the natives who had their religious prejudices.

Last though not the least, the policy of war and conquest pursued by Wellesley had considerably enlarged the British possessions in India. Almost the whole of India with the exception of Punjab, Nepal and Sindh had come under the paramount influence of the British. The Company’s territorial possessions in India had thus expanded so much that it was rather difficult for her to continue as both, a commercial body and a political sovereign. Parliamentary intervention was therefore a necessity.

Moreover, due to these costly ventures in vast conquests, the Company was groaning under financial strain. Its debt was doubled. In 1805, it stood at 21 million pounds. The Directors had to appeal to the Parliament for financial assistance. A committee to enquire into the affairs of the Company was appointed. The Committee during the next four years published many reports, the most famous being the fifth report (1812) “a standard authority on the Indian land

1. Ilbert: Historical Introduction to the Government of India, p. 75.
2. Quoted by G.N. Singh, p. 46.
tenures and the judicial and police arrangements of the time." On the basis of these reports, the Parliament intervened in the Company's affairs and passed the Act of 1813.

4. PROVISIONS OF THE ACT

(i) The territorial acquisitions of the Company in India with their revenues were granted to the Company for another twenty years "without prejudice to the undoubted sovereignty of the Crown of the United Kingdom......in and over the same." (ii) The trade with India was thrown open to all British subjects except the trade in tea and the trade with China, which were to be monopolised by the Company. (iii) British merchants and missionaries were permitted to go and settle in India under licences to be issued on an application by the Court of Directors or on their refusal by the Board of Control. (iv) The Governor-General and the Local Governments were empowered to cancel the licence of any person, who did not conduct himself properly and also could ask him to quit the country. (v) Justices of Peace in the provinces were vested with the power of trying British subjects for assault and trespass committed by the latter on the natives of India. The cases of small debts (not exceeding Rs. 50) due to natives from British subjects also fell under their jurisdiction. (vi) The Company was to maintain its commercial and territorial accounts separately. (vii) Vacancies in the offices of the Governor-General, Governor, Commander-in-Chief, etc. were to be filled by the Directors subject to the approval of His Majesty, to be signified in writing under the royal sign manual countersigned by the President of the Board of Control. The approval of the Board of Control was made necessary for a number of minor appointments. (viii) The Company was required to appoint a Bishop at Calcutta with archdeacons under him. It made it obligatory on the East India Company to institute a regular church establishment in India. (ix) A sum of one lakh of rupees was to be earmarked every year for the revival and improvement of literature and the encouragement of the learned natives of India and for the introduction and promotion of a knowledge of the sciences among the inhabitants of British territories in India. (x) No one was to be appointed a writer unless he had been resident at Haileybury for four terms and had produced a certificate from the Principal that he had duly conformed to the rules and regulations of the college. (xi) The college at Haileybury, the military seminary at Addiscombe and the colleges at Calcutta and Madras were kept under the supervision of the Board of Control. (xii) The number of troops to be paid out of the Company's revenues was fixed at 29,000. The Company was empowered to make laws and regulations, etc., for the Indian troops. Provision for court martial also was made in the Act. (xiii) The Board's power of direction and superintendence was clearly defined and also enlarged. (xiv) The local governments in India were authorised to impose

1. Ibert: Historical Survey, p. 73.
taxes on persons, subject to the jurisdiction of the Supreme Court and also could punish offenders in case of non-payment. (xv) The Act regulated the application of Indian revenues. It made the maintenance of forces the first, the payment of interest the second and the maintenance of civil and commercial establishment the third charge on the revenue. (xvi) Provision was also made for the reduction of the Company’s debt for the division of any surplus between the Company and the nation in the ratio of one to five. (xvii) The Act provided that the commercial profits of the Company were in future not to be liable to any territorial payments, until the dividend claims had been satisfied and that a huge amount to the tune of £1,000,000 were to be set aside from the surplus revenue to meet any eventuality.

§ 5. IMPORTANCE OF THE ACT

The Act of 1813, is not of much constitutional importance like its predecessor but it is not devoid of significance altogether. It abolished the Company’s monopoly of Indian trade, except the tea trade. The Company was thus reduced to the position of a competitor competing for Indian trade. It resulted in the rise of the British Trade with 13 million pounds in 1813 to 100 million pounds in 1865. Thus the Britishers were in a position to face effectively the financial crisis caused by Napoleon’s Continental Blockade.

For the first time, the Company recognized its duty of uplifting Indians morally and intellectually. Though, the substantial amount earmarked for this purpose was not spent for next 20 years, yet the Act served as a basis for further progress in this direction.

With the free flow of English capital and enterprise in India, an era of exploitation ushered in. The British factories eclipsed the Indian industries and the British merchants with their cheaper and superior goods ousted their Indian fellow workers. In the words of Dr. Ishwari Prasad, “From this date approximately begins the ruin of Indian industries, the growing dependence upon agriculture and the consequent poverty of our people.”

The Act paved the way for the spread of Christianity. The English missionaries by establishing missionary schools and colleges at various places in India succeeded in influencing illiterate Indians and making them embrace Christianity.

The Act is also quite significant because in its Preamble, it asserted the undoubted sovereignty of the Crown of United Kingdom in and over the territories of the Company.

§ 6. CHARTER ACT 1833

The Charter Act of 1833 was described by Lord Morley as “the most important measure of the Indian Government between Mr.

Dr. Ishwari Prasad: A History of Modern India, p. 76.
Pitt's Act of 1784 and Queen Victoria's assumption of the powers of government in 1858."

Circumstances leading to its enactment. At the time of the renewal of the Charter in 1833, the political atmosphere in England was dominated by liberal economists and utilitarians and humanitarian. The doctrine of laissez faire held sway. The gospel of the Rights of Man was on the lips of everybody in the country. Slave trade had been abolished. A hundred felonies exempted from capital punishment and Catholics were altogether emancipated. Restrictions on the press had been removed, and adequate provision had been made for popular education. The Reform Bill became an Act on June 7, 1832. Slavery was totally prohibited in the British Empire in 1833. In the words of C.L. Anand, "It was in such an atmosphere of reform and enthusiasm that Parliament was called upon in 1833 to renew the Charter of the East India Company."

When a wave of reforms was sweeping over the country, men like Macaulay, Grey and Mill were on the helm of the affairs. Macaulay was a member of the Parliament and also Secretary to the Board of Control. James Mill, the disciple of Bentham, was examiner of correspondence at the India House. Grey who had played a significant role in the passage of Reform Act of 1832, was holding the key office of the Prime Minister of England. These advocates of reforms exercised a considerable influence on the Bill demanding the renewal of Company's charter.

The introduction of the Bill entailed a heated controversy in the Parliament. The administration of the Company was violently discredited by Parliamentarians, like Grant, Lansdowne and Buckingham.

In his opening speech in the House of Commons on June 13, 1833, Grant referred to two circumstances which wrecked the efficiency of Indian Government. They were "the union of the trader and the sovereign," and the interference which too often took place from Home. He emphasised that "It was essential to the well-being of India that confidence should be placed in the administration and that as far as possible the interposition of the Home authorities should be confined to cases of a strong and extraordinary nature or rather to cases of general nature."

On June 13, 1833, the House of Commons adopted three resolutions regarding the renewal of the East India Company's charter and referred them to the House of Lords for their consent. The discussion in the House of Lords revolved round the Indians claim to be admitted to offices under British Government in India. The Marquis of Lansdowne suggested that the Indian masses "as a first step be admitted to a larger share in the administration of their local affairs." He was sure that their Lordships would feel as he indeed felt that their only justification before God and Provi-

dence for the great and unprecedented dominion which they exercised in India was in the happiness which they communicated to the subjects under their rule, and in proving to the world at large and to the inhabitants of Hindustan that the inheritance of Akbar—the wisest and the most beneficent of Mohammedan princes had not fallen into unworthy and degenerate hands." He therefore proposed to the Lords that to every office in India, every native without distinction on the basis of caste or religion should be by law admissible. Lord Ellenborough, however, opposed Lansdowne in these words: "No man in his sense would propose to place the political and military power in India in the hands of the natives." The Duke of Willington on the other hand observed, "The natives of India should as far as possible be employed in the revenue and judicial establishments of the country." The resolutions of House of Commons were ultimately adopted.

On July 10, 1833, when the East India Company Charter Bill was read for the second time in the House of Commons, Buckingham appreciated the Bill for abolishing the trading function of the Company but asserted that it was "preposterous to leave the political government of an immense empire in the hands of a joint-stock company." He suggested that a provision be incorporated in the Act "for admission into Supreme Council in India of some few representatives of British population in India as well as of the natives in order to make a beginning at last of that system of self-government to which they ought to advance with all our colonies as fast as possible." Macaulay, however, did not agree with this suggestion. He remarked, "In India you cannot have representative institutions...and went on to emphasise the desirability of retaining the Company as an organ of government in India, on the plea that "The House......has not the necessary time to settle these (Indian) matters; nor has it the necessary knowledge nor has it the motive to acquire that knowledge......" Moreover, he asserted that a suitable alternative to the Company could not be easily found. In his words, the Company was "neither Whig nor Tory neither High Church nor Low Church. It cannot be charged with having been for or against the Catholic Bill, for or against the Reform Bill. It has constantly acted with a view not to English Politics, but to Indian Politics......And amidst all.....agitating events, the Company has preserved strict and unsuspected mentality." Extolling it still more he said, "among foreign military despotism" there has been none that approaches it in excellence."

These effective arguments of Macaulay had profound influence on the minds of British Parliamentarians. Hence despite violent

2. Keith : Speeches and Documents on Indian Policy, Vol. 1, pp. 236-37
3. Ibid., pp. 239, 240.
opposition, the Company was granted a charter for 20 years more. The Charter Act was passed on August 28th, 1833 and came into force on 22nd April, 1834.

§ 7. PROVISIONS OF THE ACT

The Charter Act of 1833 introduced some changes of far-reaching importance both in the Company's Government in India and its administration at Home.

Changes in the Home Government. (i) The Company was allowed to retain its administration and political powers till 30th April, 1854 "in trust for His Majesty, his heirs and successors for the service of the Government of India." (ii) The Company was deprived of its commercial privileges and its monopoly of trade with China for tea. It was asked to wind up its business with all convenient speed. All the debts and liabilities of the Company were charged on the Indian revenues. It was guaranteed 10% per cent dividend on its capital for a period of 40 years. The dividend was however subject to redemption by Parliament on payment to the Company at any time after April 1874 at double the amount. (iii) The constitution of the Board of Control was modified. The Lord President of the Council, the Lord Privy Seal, the First Lord of the Treasury, the principal secretaries of State, and the Chancellor of the Exchequer were to be commissioners for the Affairs of India, ex-officio and were to act in conjunction with the persons nominated in any such commission. Any two or more of them could constitute a Board for executing powers entrusted to the Commissioners. (iv) Restrictions on European immigration and acquisition of landed property in India were removed. The Governor-General-in-Council were, however, "required by law or regulations to provide with all convenient speed for the protection of the natives of the said territories from insults and outrage in their persons, religions or opinions."

Changes in the Central Government in India. In the words of Punniah, "Extensive changes were made in the system of Indian government and administration which may be aptly summed up in one word—Centralization." There is no denying the fact that the Supreme Government had been given large powers of control and superintendence over the other Presidencies by the earlier acts but in practice these powers were of a nominal and ineffective nature since they had never been exercised. The Provincial Governments generally indulged in costly ventures and spent money lavishly. They could not be restrained by the Governor-General because he was informed of them only after the event. This act sought to centralize the whole civil and military government by vesting it in the Governor-General-in-Council and thereby reducing the status and importance of Subordinate Provincial Governments.

1. Article LXXXV of the Act.
the superintendence direction and control of the "whole civil and military government" in the Governor-General of India-in-Council—the new title revealing the new role of the Central Government. (ii) The Governor-General's Council was enlarged for legislative work by the addition of a fourth member—the Law Member. He was to be appointed by the Directors subject however to the approbation of His Majesty. He was not to be a covenant Member. He was not allowed to sit or vote in the Council except at meetings for making laws and regulations. Other three members of the Governor-General's Council were to be appointed by the Directors from among the covenant members of ten years' service. The Governor-General and three members constituted the quorum for legislative business while the Governor-General and one member formed quorum for transacting executive business. Though the Law Member could not participate in the Executive Business of the Council, yet the Governor-General-in-Council was advised to avail themselves of "his presence without his vote" as an intimate knowledge of the business transacted in the Executive Council would be of use to him in the discharge of his legislative functions. This advice was faithfully accepted. (iii) For the codifications of laws and regulations the Governor-General-in-Council was authorised to appoint the "Indian Law Commission." The Commission was to enquire into the jurisdiction, powers and rules of the existing courts of justice, police establishments, all existing forms of judicial procedure and the nature and operation of all law, civil or criminal, written or customary; and suggest the necessary alterations with due regard to people's castes and religions. The Commission submitted many reports; the most important of which was the Penal Code, mostly drawn up by Macaulay. (iv) The power of making laws in India was concentrated in the hands of the Governor-General-in-Council. Formerly, there were five different bodies of statute law in force in India. (a) There were the Hindu and Mohammedan laws and usages which were most obscure and uncertain due to a variety of texts and conflicting interpretations. In the words of Macaulay: "What is administered is not law but a kind of rude and capricious equity." (b) There were the English statute and Common Law, applicable in the Presidency Towns and to Englishmen in particular. (c) Regulations of Bengal (d) Regulations of Madras (e) Regulations of Bombay each different from the other. Hence it was essential to reform and digest all these laws and regulations into a code.

Moreover, the rules and regulations made by the Governor-General-in-Council were binding only on the Indian population and the servants of the Company. They had no authority over other Britishers or foreigners in the country. They had no jurisdiction over the Supreme Court. The Act removed these defects by entrusting this law-making authority to the Governor-General-in-Council. It was laid down that the jurisdiction of the Governor-General-in-Council extended to all persons and all courts, all places and all things "within and throughout the whole and every part of the said territories and for all
servants of the said Company within the dominion of princes and states in alliance with the said Company. 3

Changes in the Presidencies Governments. (i) The Government of each Presidency was to be administered as before by a Governor and three Councillors to be styled as "the Governor-in-Council". The Governor-General of India was to act for the time being as Governor of the Presidency of Fort William in Bengal. The Directors of the Board of Control were empowered to make and suspend the appointment of Councils in all or any of the presidencies or to reduce the number of members in all or any of the Councils. (ii) Each Presidency Government was empowered to propose to the Governor-General-in-Council, drafts or projects of any laws and regulations which it might deem expedient. The Governor-General-in-Council was required to take the same into consideration and communicate resolutions thereon to the Presidency concerned. (iii) The privilege of enacting laws was withdrawn from the Governors of Madras and Bombay. The Act laid down that no Governor or Governor-in-Council was to make or suspend any regulations or laws in any case whatever save in cases of urgent necessity. (iv) Each Presidency Government was required regularly to transmit to the Governor-General-in-Council true and exact copies of all such orders and Acts of their respective governments and also advice and intelligence of all transactions and matters coming to their knowledge which they deemed essential to be communicated to the Governor-General-in-Council. (v) Each Presidency Government was as usual allowed to correspond direct with the Court of Directors. They were, however, expected to send to the Governor-General-in-Council copies of all important communications addressed to the authorities at Home. (vi) The Presidencies were made subordinate to the Supreme Government in all financial matters. Previous sanction of the latter was made essential to their incurring any extra expenditure however insignificant or to their creating any new office however small. (vii) A provision for the splitting of the ever growing Presidency of Bengal into two Presidencies, Bengal and Agra was made in the Act; even though it never came into operation. It was suspended just by the Act of 1835 which provided for the appointment of a Lieut. Governor for the North-West Provinces and later, by the Act of 1853.

General Provisions. (i) Section 87 of the Act of 1833 laid down in very clear and emphatic language that no native of the said territories nor any natural-born subject of His Majesty resident therein, shall by reason only of his religion, place of birth, descent, colour or any of them be disabled from holding any place or employment under the said Company. Fitness henceforth was to be the criterion of eligibility. "It was this clause that made Lord Morley call the Act of 1833, as the most important Indian Act passed by the Parliament till 1909." 1

2. Mukerjee: Indian Constitutional Documents, Vol. I, p. 120.
(iii) The Act directed the Governor-General-in-Council to take steps for the amelioration of the slaves in India and to adopt measures for the abolition of slavery throughout India. (iii) The Act of 1833 increased the Bishoprics to three and made the Bishop of Calcutta the Metropolitan Bishop in India. (iv) The Act provided for the training of civil servants for India at the Company’s college at Haileybury and also regulated admission to that college. (v) The Company hitherto described as “the United Company of Merchants of England trading to the East India” was to be designated as the “East India Company”.

§ 8. SIGNIFICANCE OF THE ACT

The Charter Act of 1833 is deemed to be the most significant measure enacted by the British Parliament during the nineteenth century. Other constitutional measures of the current century pale into insignificance when compared individually with it. Lord Morley truly describes it as “the most extensive measure of the Indian Government between Mr. Pitt’s Act of 1784 and Queen Victoria’s assumption of the powers of government in 1858.” Indeed the Act not only affected changes of far-reaching importance in the Government of India, but also made such benign declarations and touched at broad humanitarian principles.

Section 87 of the Act embodied the excellent sentiment of the British politicians of the time towards Indian masses. Fitness henceforth was to be the only criterion of eligibility in matters of higher services. The natives were not to be debarred from holding any office under the Company, simply on the basis of religion, place of birth, descent or colour. Ramsay Muir eulogised this section of the Act by describing it as “an unparalleled declaration which a ruling class can announce in regard to its recently conquered subjects”. Macaulay termed it a wise and benevolent and noble clause of the Act. Explaining the significance of Section 87 of the Act, the Despatch observed that its object was ‘not to ascertain the qualification but to remove disqualification’.

This gracious declaration was laudable indeed but was not of much practical significance, for despite the views of Munro, Malcolm, Elphinstone, Shenan and Bishop Heber, nothing was done to repeal the provision of the Act of 1793, which excluded any but covenanted servants from occupying places worth over £500 a year. In the words of Punniah, “The declaration remained for long in the tantalizing realm of unfulfilled aspirations.” Dr. Ishwari Prasad remarks that the declaration “was more honoured in the breach than in the observance by those who were entrusted with the governance of India”.

2. Dr. Ishwari Prasad: History of Modern India, p. 164.
Though conflicting opinions have been expressed regarding section 87 of the Act, yet the benevolent intentions of its authors cannot be challenged. Moreover it seemed as an impetus to the leaders of political agitation in the last decades of the 19th century. Inspired by this noble declaration, educated Indians proceeded to England for prosecuting higher studies. They were extremely disappointed, when, on their return, they found themselves excluded from all but the subordinate service posts. Thus discontent against the Britishers got aggravated which ultimately intensified the political agitation.

Alterations of vital importance were made in the legislative system of India. The Act aimed at simplification of law; which it sought to obtain by centralization of legislation. Hence the Governor-General-in-Council was empowered to make laws extended to all places and all things within the territories of the Company. It ushered in an era of "an enlightened and paternal despotism".

The Act, by abolishing completely the Company's monopoly of the tea trade and trade with China, removed one of the most glaring defects of the Indian administration, i.e., the union of traders and sovereign. The Company ceased to be a commercial body. It was to act as an administrative body in future. Till its abolition in 1858, the Company was vested with political functions only. In the words of Keith "Macaulay defended this position and the retention of the Company on the ground that it was not desirable to give so much uncontrolled power to the Crown, for Parliament was incapable of exercising effective supervision over Indian Government."

The Act unsealed for the first time the doors of British India to British subjects of European birth. They were entitled to live in the country and even occupy land. This free ingress of Europeans in India promoted their general improvement and prosperity. A few critics however opine that mass exodus of Europeans to India resulted in the exploitation of Indian people who were the customers for English goods.

The Act constituted a 'Law Commission' with Macaulay as its first President. The Indian Penal Code and the Codes of Civil and Criminal Procedure are the outcome of efforts of this Commission headed as it was by an embodiment of legal acumen and practical sagacity. The codification of laws which were so imperfect and capricious, is a commendable constitution of the Act. As already stated, codification of laws facilitated centralization still further.

In the words of Marshman, "The separation now effected of the functions of the State from all commercial speculations served to give a more elevated tone to the views and policy of the Court of Directors and to impart a more efficient character to their

administration." Since the Directors were henceforth not to concern themselves with the management of huge commercial establishment, they devoted their attention to the amelioration of the lot of the servants of the Company in India, by passing measures moderate and beneficent in nature.

Thus we can safely conclude that the Act of 1833 was a measure of great constitutional significance. It removed some of the potent defects in the system of administration. It introduced uniformity in the laws of governance by establishing the legislative supremacy of the Central Government and doing away with diversities in the laws of different Presidencies. It eradicated the anomalies and the conflicts in the jurisdiction of various courts. It effected uniformity in general administration by concentrating the executive and financial administration in the hands of the Governor-General. It succeeded in establishing the supremacy of the Crown and Parliament in the management of the Indian affairs, by clipping the wings of the Court of Directors.

9. THE CHARTER ACT OF 1853

The circumstances under which the Charter Act of 1853 was passed by the Parliament were in a way unique. When the Act of 1833 was being discussed on the floor of the British Parliament it was only the English merchants and missionaries who were opposed to it. When the time for the renewal of the Charter came in 1853, Indians also had joined with them. A petition signed by a large number of inhabitants of the three Presidencies was now presented to the Parliament, opposing any further extension of the Charter to the Company.

As a matter of fact, Section 87 of the Act of 1833 had roused high hopes among Indians. Several youngmen who went to England to equip themselves with requisite qualifications for holding high offices in India, had to face utter disappointment on their return. Cameron, a member of the Council in India and President of the Indian Law Commission, observed in 1853, "The statute of 1833 made the natives of India eligible to all offices under the Company. But during the twenty years that have since elapsed, not one of the natives, has been appointed to any office except such as they were eligible to before the statute." 2

The old system of recruitment continued; and Indians did not derive any benefit whatsoever from the high sounding concession embodied in this noble clause of the Act. They were naturally feeling aggrieved. On Feb. 25, 1853, the Earl of Ellenborough presented the House of Lords a petition on behalf of the Presidency of Madras, urging among other things, the necessity of construction of public works and a better provision for the education of the people. On March 4th, Montague presented a petition on behalf of Bombay Association and other Indians of Bombay Presidency urging the abolition of dual

system of government and replacing it by the Indian Council. Another petition was presented on behalf of Bengal by the Earl of Harrowby complaining that section 87 of 1833 Act had not been implemented and suggesting that the Company be given a shorter lease than twenty years in order to bring its administration earlier under the review of Parliament. It also proposed that instead of Dual system of Government at Home, a Secretary of State assisted by a Council of India partly elected and partly nominated be substituted. A few other substantial suggestions as creation of a separate Legislature for India; for making the Governor-General act with the consent of the Council for giving provincial autonomy to the Presidencies, for throwing the Civil Services open to all British subjects and for enhancing the salaries of men in subordinate services and decreasing those of men in higher offices were also made in the said petition.

On April 2, 1852, the Earl of Derby moved for the appointment of a Select Committee to inquire into the affairs and administration of the Company. Both the Houses of the British Parliament appointed committees of enquiries. On the basis of reports submitted by these Committees, Charter Act of 1853 was enacted.

10. PROVISIONS OF THE ACT

Clauses dealing with Home Government. (i) The Charter Act of 1853 renewed the powers of the Company, but unlike other previous Acts did not do so for any definite period of 20 years. It allowed the Company to retain possession of territories and revenues “in trust for Her Majesty, her heirs and successors,” only “until Parliament shall otherwise provide.” (ii) The number of Directors was reduced from 24 to 18, six of whom were to be appointed by the Crown. The quorum for a Court of Directors was reduced from 13 to 10, to make it possible for the Crown-appointed Directors to hold majority in a sparsely attended meeting. (iii) The Act provided that the members of the Board of Control along with the other officers of the Board were to be paid by the Company. Their salaries were to be fixed by Her Majesty. It was enacted that the salary of the President was in no case to be less than that of a Secretary of State. (iv) The Directors were deprived of patronage. The covenanted Civil Service was thrown open to competition to all natural-born subjects of Her Majesty under rules to be framed by the Board of Control. (v) Three sub-committees consisting of six Directors were formed to deal with judicial, financial and political matters. The Secret Committee of three Directors was to continue as before.

Changes concerning Central Government in India (i) The Act relieved the Governor-General of the Governorship of Bengal and made a provision for the appointment of a separate Governor of Bengal. Until a decision to appoint a separate Governor was arrived, the Court of Directors was empowered to authorise the Governor-General of India-in-Council to appoint a covenanted servant of ten years’ standing as
the Lieutenant Governor of the Province. The latter appointment being the cheaper of the two was made in 1854. Separate Governor for Bengal was however appointed in 1912. (ii) The Act empowered the Directors to create one more Presidency having the same system of government as in Madras or Bombay or in the alternative to authorize the appointment of a Lieutenant Governor. Consequently, the Lieutenant-Governorship of the Punjab was created in 1859. (iii) The fourth ordinary member or the Legislative Councillor under the Act of 1833 was now made a regular member of the Governor-General’s Executive Council. He was vested with the right of sitting and voting at its meetings. (iv) The Legislative and the Executive functions of the Governor-General’s Council were separated for the first time. The Council was enlarged for purposes of legislation, by an addition of six more members. All laws were to be passed in the meeting of these 12 members—the Governor-General, the Commander-in-Chief as an extraordinary member, four members of the Executive Council and six Legislative members. The latter included two English judges of the Calcutta Supreme Court and four representatives of the local governments of Madras, Bombay, Bengal and Agra. A quorum of seven was fixed for a legally constituted meeting of the Council. All Bills passed by the Legislature could become Acts only on receiving the assent of the Governor-General. Thus in the words of Punningh “In the Legislative provisions of the Act of 1853, may be clearly discerned the emergence of a Legislative Council as distinct from an Executive Council.” (v) Each of the representatives of the Provincial Governments in the Legislative Council was to draw an annual salary of £ 5,000. (vi) The procedure of the Legislative Council was modelled on that of the British Parliament. It was empowered to ask questions, and discuss the policy of the Executive Government. (vii) The Act authorised the appointment of a body of English Commissioners to examine and consider the recommendations of the Indian Law Commission which had ceased to exist by that time. It was as a result of their labours that the Indian Penal Code and the Civil and Criminal Procedure Codes were at last enacted into law.

11. CONSTITUTIONAL IMPORTANCE OF THE ACT

The Charter Act of 1863 is a measure of constitutional importance. The fact that the Company’s Charter was not renewed for any definite period, made it crystal clear that Company’s end was fast approaching. The clause, “territories and revenues of India were to be held by the Company in the trust for Her Majesty, her heirs and successors until Parliament shall otherwise provide,” clearly indicated that the transfer from the Company to the Crown was apt to take place in the near future. The inevitable happened in 1858.

The Act created a separate Legislative Council. Strictly speaking, it

was not a separate Legislative Council. The Executive Council was only enlarged for purposes of legislation. Yet in the words of the authors of Montford Report it was in 1853 that "legislation was for the first time treated as a special function of the government requiring special machinery and special process." Indeed, the Act turned the small legislative body in India into an Anglo-Indian House of Commons questioning the acts of the Executive.

The Act implemented the high sounding noble declaration contained in section 87 of the Charter Act of 1833. Henceforth, the recruitment was to be made on the basis of merit. A Committee was appointed in 1854, with Lord Macaulay as the President to frame rules and regulations according to which the covenanted civil service was thrown open to the competition. Though, practically speaking, the Indians were not benefitted substantially by this gracious concession, yet it was a commendable step providing for a further progress in this direction.

The appointment of English Law Commission, to examine and consider the mass of reports and drafts left by the Indian Law Commission, now a defunct body, was a matter of great significance. Its labours bore fruit. Indian Penal Code and Civil and Criminal Procedure Codes were enacted into law. They can be deemed as important contributions of the Act.

The Act affected important changes in the administrative structure of India. It was realized that the interests of Bengal had suffered to a great extent for want of a permanent head of the Government. Relieving the Governor-General of a great burden by making a provision for a separate Governor for Bengal was, in fact, a great improvement in administrative structure of India.

The Act considerably enhanced the prestige of the President of the Board of Control by placing him on par with the Secretary of State as regards his salary and rank.

The Act is considered to be a measure of great constitutional significance as it deprived the Directors totally of their cherished privilege of making appointments. Reduction of their number from 24 to 18 and also placing six Directors in the pocket of the crown further reduced their authority, rather dealt a severe blow to the Court of Directors which was already on its last legs. Punniah remarks "Under these circumstances, there would therefore be no obstacle for the transfer of the Indian territories to the Crown when Parliament in the natural course of things would come to consider the matter in 1873. The mutiny only accelerated this process." 1

With all its creditable provisions, the Act was not free from flaws. It did not associate any Indian with the legislative body whereas its English members were not aware of the local conditions. The exclusion of Indians aggravated discontent and proved to be one of the most important reasons for the outbreak of the mutiny. More-

over, caste and religious differences, the heavy expenditure entailed in the competitive examinations and the long distance, still stood in the way of natives aspiring to hold important offices under the Company’s administration.

The Act ignored the most important demand of Bengal petitioners who had aspired for a sort of Provincial autonomy.

Lastly the most glaring defect of administration, viz. the Double Government still persisted. Though the wings of the Directors were clipped yet they still exercised considerable influence.

§ 12: GOVERNMENT OF INDIA ACT, 1854

Before we discuss the assumption of authority by the Crown, it is essential to refer to the Government of India Act 1854 which brought about a few important administrative changes.

The Act empowered the Governor-General-in-Council with the sanction of the Court of Directors and the Board of Control to assume by a proclamation management and control of any part of the territories for the time being in the possession of the East India Company.

He was also authorised to issue all necessary orders and directions regarding the administration of that part of the territory.

By virtue of the above provisions, Chief Commissionerships were established in Assam, the Central Provinces, North-Western Frontier Province, Burma, British Baluchistan and Delhi. "The Act had the effect of relieving the Governor-General-in-Council of the task of exercising immediate control over any province. The Government of India henceforth assumed the character of merely supervising and directing authority over the entire administration of the country." 31

The Act also empowered the Governor-General-in-Council with the sanction of the Directors and the Board of Control to limit and define the boundaries of the provinces.

The Act also directed that the Governor-General was no longer to bear the title of the Governor of Bengal.

Government of India Act, 1858

§ 1. CIRCUMSTANCES LEADING TO ITS PASSAGE

1857 Revolt. The revolution of 1857-58, commonly termed as a 'Sepoy Revolt' by European historians and scholars like Griffith, was in fact a 'national liberation movement', nay, the first war of independence launched by the displeased and dispossessed nobles like Nana Sahib, Rani of Jhansi, Tantia Tope and Bahadur Shah actively assisted by the civil population. The revolt covered a very wide area and entailed untold misery and suffering on the people of India. Various causes are attributed to this national uprising. It is not relevant to our purpose to go into historical details, but a brief enumeration of the factors causing the revolt would not be out of place.

The wars and annexations of Lord Dalhousie unsettled and infuriated both the army and the ruling classes in India. The aggressive 'Europeans innovations' hurt the religious susceptibilities of the various castes inhabiting India. The zealous missionary campaign for wholesale proselytization aroused fear of forcible conversion. Decision of non-recognition of imperial rank after the death of Bahadur Shah antagonised him and his followers. A number of other disgruntled and discontented nobles like Nana Sahib and Rani of Jhansi, were already seeking a vengeance on the white autocrats. The intelligentsia was feeling a sense of humiliation at its complete exclusion from the services. The policy of racial discrimination pursued by the British bureaucrats towards the natives aggravated discontent among the latter. The weavers, spinners and traders squeezed out by free trade, were feeling utter frustration. The people in general were now conscious of the fact that the British had assumed sovereignty over India by force, fraud, forgery and chicanery. Discipline in the army was also hopelessly lax. Majority of the Indian soldiers who were poorly paid and kept in subordinate positions, were not prepared to be cannon-fodder any more.

On the other hand, the British position was precarious. The organisation and distribution of the personnel of the British army was also gravely defective. "Strategic points (like Delhi and Allahabad) and most of the guns were left in the hands of the native army." 1 Expeditions to the Persian Gulf and China weakened the

Indian defences in Bengal and the North-Western Provinces to a great extent. In the words of G.N. Singh, "The time was thus ripe and propitious for a revolt." Enfield rifles which required the use of cartridges greased with animal fat furnished a good enough excuse to excite the sentiments of the soldiers. It proved a signal for a general revolt in the enslaved country. The rising began on January 23rd, 1857 at Dum Dum near Calcutta. It spread to Barrackpur in March, Ambala in April, Meerut, Lucknow and Delhi in May. In May, the conflagration engulfed wide area of the country. The superior force of the East India Company aided by mercenary natives and supported by Sir Dinakar Rao of Gwalior, Sir Salar Jung of Hyderabad, Sir Jung Bahadur of Nepal and the Rajas of Patiala, Jind and Nabha suppressed the Movement with unparalleled violence and force. The leaders of the revolt were tortured, killed or driven away. G.N. Singh remarks, "In restoring order, however, the British committed great atrocities, the memory of which rankled in Indian mind long after the rising was suppressed and produced consequences whose significance escaped recognition till only recently."

Russel, a correspondent of The Times, London depicts in his diary harrowing tales of the barbaric atrocities committed by the British troops. About the Havelock's advance guard, he writes: "The officer in command was emulous of Neill and thought, he could show equal vigour. In two days, forty two men were executed because their faces were turned the wrong way" when they were met on the march. All the villages in front were burnt when he halted. These severities could not have been justified by the Cawnpore massacre because they took place before that diabolical act."

"Inevitably, the blame for the debacle fell on the Company and its rule was doomed." In the words of Bright "The conscience of the nation had been touched on the question and it came by a leap—as it were by an irrepressible instinct—to the conclusion that the East India Company must be abolished." In February 1858, Lord Palmerston introduced a Bill for the abolition of double government. In his memorable speech before the House of Commons, he enumerated the defects of the Double System of Government. He said, "The principle of our political system is that all administrative functions should be accompanied by ministerial responsibility—responsibility to Parliament, responsibility to public opinion, responsibility to the Crown; but in this case, the chief functions in the Government of India are committed to a body not responsible to Parliament, not appointed by the Crown but elected by persons who have no more connection with India than consists in the simple

2. Ibid., p. 63.
5. As quoted by G.N. Singh, p. 66.
possession of so much stock.” He also emphasised the inconvenient, cumbersome nature of the system of Double Government. “Before a despatch upon the most important matter can go out to India, it has to oscillate between the cannon Row and the India House..........and that the adventures between these two extreme points of the metropolis are often as curious as those adventures of a Guinea which we have all read.” He expressed a surprise that so vast and populous ‘country like India should have been deliberately kept under the care and management of a chartered Company. He therefore proposed to abolish the Court of Directors and Proprietors and substitute a President for these bodies. The President—a member of the Government and an organ of the Cabinet, regarding matters concerning India, was to be assisted by a Council which was to consist of eight members nominated by the Crown from amongst the Directors of the East India Company or officers who had served in India in civil or military capacity for a certain period or those who had resided in India for a certain number of years unconnected with the local administration. Palmerston replied suitably to the contentions of the Company, embodied in a petition skilfully drafted by J.S. Mill—an employee of the Company, as well.

J.S. Mill had pleaded the cause of the East India Company, strongly emphasising that parliamentary control would not prove more effective than the control of the Court of Directors. He also eulogised the Court of Directors which was a body consisting of experienced statesmen, who because of their non-partisan character could perform their duties impartially. He therefore pleaded for non-transference of Company’s administration to a Minister of the Crown. He also opined that the time was not yet ripe for effecting these changes. Lord Palmerston met these objections in a convincing manner. He asserted that the Parliament was a responsible body; it was not ineffective, as in the past, and all improvements in administration had been effected by the Members of Parliament. He maintained that the present system suffered from want of unity, efficiency and sense of responsibility. Hence he concluded by saying, “I see no reason, either on the score of principle or on the score of the augmentation of patronage or on the score of time or constitutional danger why we should not at once pass the measure.”

The measure of Palmerston was not put on the statute book in his Primeministership as he had to relinquish office after the second reading of the Bill. Palmerston was succeeded by Lord Derby. On March 26th, 1858, Dearsall—the Leader of House of Commons—introduced a Bill for the transfer of Government of India to the Crown. He proposed to place the responsibility for Indian Government in the hands of a separate minister of the Crown, assisted

2. Ibid., p. 324.
3. Ibid., p. 66.
by a Council of 18 members of whom one half were to be nominated by the Crown and the other half elected by certain commercial bodies in England. Palmerston who was now in the opposition ridiculed Desaiji’s Bill. He said, “People met one another in the street and one laughed and other laughed and every body laughed”. “What are you laughing at” said one “Why I am laughing at the India Bill too”. Thus it is obvious Desaiji’s Bill was a laughing stock. It died of ridicule and was ultimately abandoned. On April 30, 1858, the House passed fourteen resolutions (moved by Stanley) on the basis of which the Bill of 1858 was drawn up and ultimately passed. It received the royal assent on August 2, 1858.

§ 4. PROVISIONS

(a) Relating to the Home Government. The Act of 1858 is known as the Act for the better Government of India. (i) Its constitutional importance is exclusively based on the fact that it transferred the Government of India from the Company to the Crown. India was henceforth to be governed by and in the name of Her Majesty. (ii) All the territorial and other revenues of or arising in India and paramountcy rights over and the tributes from the Indian States were vested in the Crown. (iii) The Act abolished the Court of Directors and Board of Control and vested their powers in one of Her Majesty’s principal Secretary of State. The Crown was empowered to appoint a fifth Secretary of State who was to be placed in charge of Indian governance and paid out of Indian revenues. (iv) A ‘Council of India’ consisting of fifteen members, eight of whom were to be appointed by the Crown and the remaining seven were to be elected by the existing Court of Directors, was to assist the Secretary of State. The Act laid down that more than half of the members in each case—in all at least nine—must have served or resided in India for at least ten years and must not have left India more than ten years before their appointment. (v) Future vacancies were to be filled in by the Crown. (vi) Members of the Council were to hold office during good behaviour, but were removable from office upon an address of both the Houses of Parliament. (vii) Each one of the members was to be paid a yearly salary of £1200 out of the revenues of India. The salary of the Indian Secretary of State, the cost of the India Office, the debts of East India Company were, however, to be charged on Indian revenues. (viii) The Council was to meet once a week. Its quorum was fixed at five. (ix) The Council was to conduct, under the direction of the Secretary of State, the business transacted in the United Kingdom in relation to the Government of India. (x) Every communication or order was to be signed by the Secretary of State (alone). All the despatches from the Governments were to be addressed to him. Every order or communication (not being urgent) proposed to be sent to India and proposed to be made in England by the Secretary of State, must, unless it is submitted to the Council, be placed in a Council room for a week before issue. Every member was to record his opinion on it
in a Minute Book kept for the purpose. If a majority minuted against the order, the Secretary of State, if opined otherwise, was to record his reasons for doing so. In urgent matter, he was authorised to issue orders without consulting the Council but he must record in every such case, the reason for urgency and notify it to his Council. Orders regarding levying of war, conclusion of peace or negotiating with native powers were to be issued by the Secretary of State without notice to the Council. The Council, in the words of Punniah, "therefore had no initiative to frame despatches which had all along been possessed by its predecessor—the Court of Directors." The Secretary of State was to preside over the meetings of the Council with a casting vote, in case of a tie. His written approval was essential for any decision taken in his absence. He could normally overrule his Council except in certain cases, such as the appropriation of Indian revenues, purchase or sale of property; issuing of securities for money, distribution of patronage among several authorities in India; alterations of salaries, furlough rules, the civil services and the raising of loans. Keith’s remarks, "The Council was to be advisory without initiative" correctly portray the Council instituted in 1858. The Secretary of State was authorised to appoint one of the members of the Council as Vice-President to preside over its meetings in his absence. He was empowered to divide the Council into committees for the more convenient transaction of business, distribute departments of business among them and also direct the manner for the transaction of business. The Secretary of State was required to lay before parliament an annual financial statement of the revenues and expenditure of India and also report on the moral and material progress of the country. The Secretary of State in Council was made liable to sue or be sued as the successor of the Company in respect of contracts and such other matters as could have formed the subject of litigation by or against the Company.

(b) Relating to the Government of India. (i) The Governor-General and the Governors of the Presidencies were to be appointed by the Crown and the members of their Council, by the Secretary of State in Council. Lieutenant Governors were to be appointed by the Governor-General subject to the approval of Her Majesty. Appointments to the covenanted Civil service were to be made by open competition under rules to be made by the Secretary of State in Council with the assistance of Civil Service Commissions.

(ii) The Act transferred the military and naval forces of the Company to the service of the Crown, subject to the same conditions of service under which they had been enlisted. The power of altering conditions of service for "persons hereafter entering Her Majesty’s Indian Forces" was given to the Crown. (iii) It was laid down in the Act that except for preventing or repelling actual invasion or under other sudden or urgent necessity, the Indian revenues should

not be consumed to defray the expenses of military operations carried on beyond the external frontiers of India without the consent of both the Houses of Parliament. (iv) The Act specifically laid down that when an order directing the commencement of hostilities was communicated to India, it must be presented to both the Houses of Parliament within three months of its issue and if Parliament was not in session within one month after the next meeting of the Parliament. (v) The treaties entered into by the Company were to be binding on the Crown. All contracts, covenants, liabilities and engagements entered into by the Company could be enforced by or against the Secretary of the State in Council. (vi) The assumption of Government by the Crown was to be declared to the Princes and people of India by Queen’s proclamation.

13. QUEEN’S PROCLAMATION, NOVEMBER 1, 1858

The transfer of political power from East India Company to the Crown was announced to the people and princes in India by Queen Victoria in a Royal Proclamation on November 1st, 1858. It was drafted after careful consideration and is memorable both on account of the principles of government which it embodied and the pledges and assurances it gave. It was couched in a beautiful and dignified language and breathed a spirit of friendliness, clemency and justice.

Proclamation. "We hereby announce to the Native Princes of India" said the Queen "that all treaties and engagements made with them by or under the authority of the Honourable East India Company are by us accepted and will be scrupulously maintained and we look for the like observance on their part." "We shall respect the right, dignity and honour of the Native Princes as our own." We hold ourselves bound to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects and those obligations by the blessing of Almighty God, we shall faithfully and conscientiously fulfill" "and it is our further will, that as far as may be our subjects of whatever race or creed be freely and impartially admitted to offices in our service, the duties of which they may be qualified by the education, ability and integrity duly to discharge......we disclaim alike the right and desire to impose our convictions on any of our subjects. We declare it to be our royal will and pleasure that none be in any wise favoured, none molested or disquieted by reason of their religious faith or observances but that all shall alike enjoy the equal and impartial protection of the law," "......When by the blessing of Providence, internal security shall be restored, it is our earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement and to administer its Government for the benefit of all our subjects resident therein. In their prosperity will be our strength; in their contentment our security; and in their gratitude our best reward. And may the God of all, grant power to us and to those in authority under us, strength, to carry out these our wishes for the good of our people."
This proclamation served to allay the perturbed minds of the people to a large extent. It proclaimed an abandonment of the policy of conquest and annexation and a scrupulous respect for the maintenance of all treaties and engagements. It gave us assurance of adherence to the principles of secularism and religious neutrality and a desire to admit all the subjects of Her Majesty to public service, without distinction of race or creed. If any thing was left out, it was that it did not guarantee political rights to the Indian masses or a responsible share to them in the administration of their country. It, however, led to the grant of restricted political concessions as provided for by the Councils Act of 1861.

§ 4. CONSTITUTIONAL IMPORTANCE OF THE ACT OF 1858

The Act of 1858 is generally termed as the Act for the better government of India. Its constitutional importance and revolutionary character lies in the fact that it closed one great period of Indian history and ushered in another great era—the direct role of the Crown. India was, no longer, to be governed by a trading organisation. Henceforth, it was to be governed by and in the name of Her Majesty. In the words of Marshman “It transferred to the crown on relinquishing its functions an empire more magnificent than that of Rome”. All the territories acquired by the Company through force and fraud became the possessions of the Crown. It thus marks the end of old and the beginning of a new era in the constitutional development of India. It may, however, be stated though the Act marked a change in the form of government, it did not make any difference in the substance of powers.

The significance of the Act is also obvious from the fact that it dealt the coup de grace to the system of double government at Home. In fact the elite of England were already opposed to the Dual arrangements. They were conscious of diffusion and dissipation of responsibility which the division of power of government between the Court of Directors and Board of Control had brought in its wake. The reaction against the system however attained climaxity after the mutiny. The Act of 1858 earned the gratitude of the enlightened opinion in England by driving last nail into the coffin of the Double Government.

The establishment of India Council in 1858 was another measure of great importance. Its predecessor—the Court of Directors exhibited complete ignorance regarding the Indian affairs, as most of these Directors had never been to India. The members of the Council, on the other hand, were to be fully aware of even petty details about the Indian affairs as they were to be equipped with 10 years of residential or service qualifications in India before the appointment. Naturally such a body could be more keenly interested in Indian affairs, than the Court of Directors. The aspirations of the authors of the Act that the Home Government of India should continue “the promptness, the decision, the energy which are the results of the
individual authority with the knowledge, the experience and the practice which can only be furnished by a body of men of distinguished talents, we have had considerable acquaintance with the vast and various forms of Indian life," were fulfilled through the Indian Council. The purpose of the Council was also to put a curb upon the powers of the Secretary of State who was vested with lot of authority. In actual practice, however, the Council was reduced to a mere consultative body without any of the attributes of a modern Cabinet. The members of the Council who generally belonged to the age group of 55 to 60, were more worried about their pay and retention of their position than about the powers assigned to them. They therefore believed in seeing eye to eye with the Council practically in all matters. The Council thus proved to be an appendage having outgrown its utility.

The institution of the office of the Secretary of State—an office of dignity and influence, authority and power was another important outcome of the Act. The post of the President of the Board of Control was deemed a damping ground for the mediocrities but the office of the Secretary of State was held by eminent scholars and sagacious and talented statesmen. The occupants of this office commanded great influence both in the Cabinet and the Parliament. The post of the Secretary of State continued till the British agreed to quit India.

The Act established a new healthy relationship between the native rulers and foreign masters. The abandonment of the policy of conquest and annexation cemented friendly relations between the two parties which formerly suspected each other and tried to ridicule each other. These words of the royal proclamation..."We shall respect the rights, dignity and honour of native princes as our own" restored confidence in the minds of the native princes for the British bureaucrats.

The Act did not ignore concessions to the common people. The principle of religious toleration was inculcated. Differentiation on grounds of race or creed in the public service was disapproved. Coupland truly portrays the consequences of the Act "More significant than the change itself was the sense that it closed a chapter of Anglo-Indian history and opened a new one."

With all these important changes effected by the Act, we cannot afford to ignore the fact that it did not grant any political rights to Indians nor did it allow them a share in the administration of their country. A few ambitious aristocrats were no doubt gratified by its loud declarations but the majority remained dissatisfied. National consciousness had dawned upon the people. Hence they could no longer be hoodwinked by the transfer of power announced by a Royal Proclamation couched in a dignified language and breathing

1. Speech of the Chancellor of Exchequer on the 1st Reading of the Bill on March 26, 1858, as quoted by C.L. Anand in Government of India.
a spirit of British magnanimity and justice. It was in fact a change from a frying pan to the fire.

§ 5. INEVITABILITY OF ASSUMPTION OF POWER BY THE CROWN

The transfer of the Government of India from the Company to the Crown was in the words of Banerjee, "the logical result of the clear declaration of the sovereignty of the Crown in the charter Acts. The occasion of the transfer was provided by the mutiny which showed that Double Government and conflict of responsibility could no longer continue." There is no denying the fact that the change seems to be substantial and tremendous. The abolition of the Double Government at Home and the institution of the Secretary of State and Indian Council as the substitutes, the transfer of power from the Company to the Crown appears to be quite impressive alterations in the Indian administration. But if we make a critical appraisal of the facts, we agree with Lord Derby who said, "...In point of fact, the transfer of authority to the Crown is more nominal than real."

Pitt's India Act had already entrusted the government of India to the British Cabinet through one of its Secretaries of State. It had reduced the Company to a quasi-state Department and the Court of Directors to an Advisory Council. Real powers were encroached upon by the President of Board of Control. The Court of Directors could only impede or delay the affairs. With the exception of power of recalling the Governor-General, the Directors could not perform any act without the assent of the President of the Board of Control. Thus since the passage of Pitt's India Act, the Board of Control had eclipsed the Court of Directors. Every successive Act of Parliament dealt a blow to the already dwindling powers of the Company. The Charter Act of 1813 threw open trade of India to all British subjects. The Company was left only with exclusive monopoly of tea trade and trade with China. Thus its commercial monopoly was broken. Moreover it was asked to maintain distinctly its territorial and commercial accounts which had its future consequences. The Act of 1833 deprived the Company of its commercial privileges altogether. The Indian territories and revenues were granted to the Company for another twenty years to be administered in "trust for His Majesty, his heirs and successors". The Company was soundly a note of warning to wind up its business with convenient speed. The Act of 1853—the last of the series, further brought Company's end nearer. The territories and revenues of India were granted to the Company not for a period of 20 years but "until Parliament shall otherwise provide". The Act reduced the number of Directors from 24 to 18. Out of 18, six were to be the nominees of the Crown. Quorum was 10. Thus in thinly attended meetings, the Crown nominees could easily muster the majority and score their point. The Act deprived the Court of patronage by

abolishing the system of nomination by the Directors and introducing the competitive examinations. It is therefore quite obvious that ever since the passing of Pitt’s India Act, the Parliament had been making efforts to curb the powers of the Company and reducing its position to a mere trustee of the Crown. The Act of 1833 reduced it to mere Political Power. The Act of 1853 made the extinction of the Company as a political power only a question of time. The mutiny accelerated the process. It furnished a golden opportunity for the purpose, yet it is an undisputable fact, that the transfer of India to the Crown was inevitable even if the current of national liberation movement had not swept over India. Dr. Ishwari Prasad very well sums up this gradual process of unseating the Company which was given a final blow in 1858 in the following words. "The Act of 1858 was the culmination of the proces begun by Pitt in 1784 and merely dressed the seat of power and responsibility with the outward semblance of authority."

1. Dr. Ishwari Prasad: History of Modern India, p. 286.
The Beginning of Representative Institutions

THE INDIA COUNCILS ACT, 1861

Circumstances leading to its enactment. The assumption of the administrative power by the British Crown in 1858 ushered a new era in the constitutional history of India. It served to mark the beginning of representative institutions in India. No attempt had so far been made to associate Indians with the administration of their country. Such a move was sought to be made in the British Parliament in 1856, but Gladstone had turned it down. It was in 1861, when such an important step was taken for the first time. Loyalists like Sir Syed Ahmed Khan emphasised that the recent outbreak would not have occurred, if the natives had been admitted into the Legislative Council. He remarked, ".....it is highly conducive to the welfare and prosperity of government—indeed it is essential to its stability—that the people should have a voice in its Councils.....the voice of the people alone can check the error in the bud, and warn us of dangers before they burst upon and destroy us.....The men who have ruled India should never have forgotten that they were here in the position of foreigners, that they differed from its natives in religion, in customs, in habits of life and thought. The security of a Government, it will be remembered, is founded on its knowledge of the character of the governed, as well as on its careful observance of their rights and privileges.....The evils which resulted to India from exclusion of natives from legislative Council of India were various> Government could never know the unsuitability of any of the laws and regulations which it passed. It could never hear, as it ought to have heard, the voice of the people on such a subject. The people had no means of protesting against what they might feel to be a foolish measure or giving public expression to their own wishes. But the greatest mischief lay in this that the people misunderstood the views and intentions of Government."

Even Sir Bartle Frere urged "the inclusion of native element" to the

1. As quoted by Anand C.L. in Government of India, p. 84.
Councils in his famous minute of 1860. The Government also began to realize earnestly the need of non-official advice in the legislative domain. They felt a change in the Indian attitude towards the British after the mutiny. Mutual sympathy and understanding gave place to a feeling of distrust and suspicion between the two races. The growing exclusiveness of Anglo-Indian Society and their lack of sympathetic contact with the natives alone had strained the relations of the Europeans with the Indians. The inclusion of Indians as members in the Legislative Councils therefore became an absolute necessity.

Secondly, the Government of India were not satisfied with the constitution and powers of the existing Council. A single council was in their opinion inadequate to provide legislation for the varied needs of all parts of the country. It displayed colossal ignorance of the conditions prevailing in different parts of the country and was therefore not qualified to legislate for them.

Thirdly, the Provincial Governments were very unhappy over the meagre share, they were assigned in the legislation concerning their territories. The introduction of representative official members of the subordinate governments into the Council in 1853 was not considered sufficient to overcome the feeling of the subordinate Presidencies that they were being dominated by the Bengal Council or to overcome the disadvantages of having a body legislating for the Presidencies without any acquaintance with the local problems.

Fourthly, "doubts had been expressed regarding the alleged powers of the Governor-General to make laws for the non-Regulation Provinces by executive orders corresponding to the orders in Council made by the Crown."1

Fifthly, the Legislative Council had arrogated to itself powers which were wholly inconsistent with the existing system of government. Much against the expectations of its author, the Legislative Council had become a sort of debating society or petty Parliament. It had adopted all the formalities of parliamentary procedure—the three readings, the reference to Committees, etc. It went to the extent of questioning the Executive and forcing it to place before it even the most confidential papers. It refused to submit legislative projects to the Secretary of State before their consideration in the Council and even declined to pass any legislation required by the Secretary of State. It always asserted its right of independent legislation. The effect of all this had been to impede business, cause delay and induce a Council which ought to be regarded as a body doing practical work to assume the debating functions of a Parliament.2

Lastly, the Indian masses were emphasising the need of some substantial changes in the machinery of Government of India since the passage of the Government of India Act, 1858 which had

introduced changes of far-reaching importance in the Home Government. Hence a parliamentary measure was the crying need of the hour to meet the popular aspirations.

The cumulative result of all the above-mentioned causes was the Act of 1861 which marked a beginning in representative institutions and legislative devolution. While introducing the Bill on June 6, 1861, Sir Charles Wood—the Secretary of State for India made it clear that the idea of having some representatives of the people of India on the Council was, however, rejected as "simply and utterly impossible; for you cannot possibly assemble at any one place in India persons who shall be the real representatives of the various classes of the native population of that empire." Hence in his opinion discretion was to be left with the Governor-General to admit, particularly Indian Chiefs for legislative purposes. "Then they will no longer feel as they have hitherto done that they are excluded from management of affairs in their own country."

§ 2: PROVISIONS OF THE ACT

"The Indian Councils Act 1861 consolidated and in certain respects amended the provisions of former Acts of Parliament respecting the constitution and functions of the Council of the Governor-General. It marked the first important step in the direction of decentralization and by associating of Indians with the business of legislation, it sowed the seed of representative institutions." Its provisions can be studied under three heads: (i) provisions dealing with the Central Executive, (ii) provisions dealing with the Central Legislature, (iii) provisions dealing with the Provincial Legislature.

(a) Changes in the Central Executive. (i) The number of ordinary members of the Executive Council was raised to five. The fifth ordinary member who was added, was to be a barrister or a member of the Faculty of Advocates in Scotland, of not less than five years' standing. Three of them were to be from among the persons who at the time of their appointment were in the service of the Crown in India for 10 years. (ii) The Governor-General was empowered to frame rules and orders for the transaction of business in the Council. The Acts and orders passed according to such rules were to be termed as Acts and orders of the Governor-General-in-Council. Rules made by Lord Canning under this authority introduced the portfolio system in Indian Government. (iii) The Secretary of the State retained the power of appointing the Commander-in-Chief as an extra-ordinary member of the Council. (iv) Provision was made for co-opting the Governor or the Lieutenant Governor of the Province when the meeting of the Council took place as an extra-ordinary member. (v) The Governor-General-in-Council was empowered to appoint a President of the Council in case of his anticipated absence from headquarters. President of the Council was vested with all

1. Speech of Sir Charles Wood in the House of Commons, June 6, 1861.
powers of the Governor-General except that of assenting to or
withholding his assent from or reserving for the signification of
Her Majesty's pleasure any law or regulation as hereinafter pro-
vided."

(b) Changes in the Central Legislature (i) The Act enlarged the
Council of the Governor-General for purposes of making laws and
regulations by the addition of not less than six nor more than
delve "additional members" provided that not less than one half of
the persons so nominated, shall be non-official members." The
Tenure of the additional members was to be two years. (ii) The powers
of the Legislative Council were strictly limited to legislation. It was
invested with power to make laws and regulations for the whole of
British India. Thus it possessed a supreme and concurrent power
with the minor legislative bodies even in matters of provincial or
local concern. The previous sanction of the Governor-General
was however made essential for the introduction in his Council
of any measure affecting the army, the foreign and political
relations, the public debt, customs and other taxes, coinage and
currency, posts and telegraphs, patents and copyrights and reli-
gious or religious rites of any class of people in India. (iii) Every
Bill passed by the Governor-General's Council required his assent to
become an Act. (iv) Every Act passed by any legislature in India
was subject to subsequent disallowance by Her Majesty acting
through the Secretary of State-in-Council. (v) Since the need for a
rapid process of legislation in an emergency was keenly felt by the
government during the mutiny, the Governor-General was authorised
in cases of emergency to make and promulgate ordinances for the
peace and good government of British India or any part thereof
which were to have the force of law for a maximum period of six
months unless disallowed by Her Majesty or superseded by an Act of
the legislature. (vi) The Governor-General was also empowered to
alter or revoke any laws passed by the Provincial Government. (vii)
The Governor-General was given an absolute right of veto as well.
(viii) The Governor-General-in-Council was empowered to establish
by proclamation, Councils for making laws and regulations for the
Bengal Division of the Presidency of Fort William, the North
Western Province and the Punjab and to extend the provisions of
the Act to these territories. (ix) He was also authorised to constitute
new provinces and appoint Lieutenant Governors for them. He
could even fix or alter the boundaries of any Presidency, Division or
province. (x) Extra-territorial jurisdiction of the Governor-General-
in-Council was re-affirmed in respect of all servants of the govern-
ment of India within the dominions of princes and states in alliance
with Her Majesty.

(c) Provisions dealing with Provincial Legislature. (i) The Act
restored legislative powers to the Presidency governments of
Bombay and Madras. (ii) Their Governors were empowered to no-

minate to their legislative Councils, the Advocate General of the Presidency and between 4 to 8 other additional members less than one half of whom were non-officials for the purpose of making laws and regulations. (iii) These additional members were to hold office for a period of two years and they were to be called to attend all meetings, transacting legislative business. (iv) These Provincial Legislative Councils were authorised to make laws and regulations not affecting provisions of an Act of Parliament, for the peace and good government of the Presidency. They were however debarred from making laws on any of the following subjects except with the previous sanction of the Governor-General—(a) measures affecting the Army; (b) the foreign and political relations; (c) the public debt; (d) customs and other taxes; (e) coinage and currency; (f) posts and telegraphs; (g) patents and copyrights; (h) the Indian Penal Code. (i) The religion or religious rites and usages of any class of people. (v) Previous sanction of the Governor or Lieutenant Governor was deemed essential for the introduction of any measure into his Council affecting the public revenues of the Province or by which any charge might be imposed on such revenues. (vi) Every bill passed by a Provincial Council required not only the assent of the head of the Province but also the subsequent approval of the Governor-General. It was also subject to subsequent disallowance by Her Majesty acting through the Secretary of State in Council.

Keeping in view some of the above facts Punniah remarks "The Act did not attempt in any but cursory manner to demarcate the respective spheres of the Central and Provincial Legislatures." The Legislative Council of the Governor-General continued to possess supreme and concurrent powers with the Provincial Legislatures in matters of provincial or local concern.

3. CONSTITUTIONAL SIGNIFICANCE OF THE ACT

The Act of 1861 is a measure of great constitutional importance. G.N. Singh attributes two chief reasons for its constitutional significance. "Firstly because it enabled the Governor-General to associate the people of the land with the work of the legislation." The Act in fact embodied the advice of loyalists like Sir Syed Ahmed Khan and Sir Bartle Frere—a member of the Governor-General's Council. In the words of the latter, "The addition of the native element has, I think, become necessary owing to our diminished opportunities of learning through indirect channels what the natives think of our measures ...." The Act indeed provided opportunities for our alien masters to apprise themselves of the mind of the natives and thus avoid misunderstanding and suspicion against the activities of the government of the day.

Secondly, according to G.N. Singh, the Act attained significance "by restoring legislative powers to the Governments of Bombay and

Madras and by making provision for the institution of similar Legislative Councils in other provinces." Thus the Act laid the foundation of legislative devolution which ultimately led to the grant of provincial autonomy to the provinces in 1937.

It would not be an exaggeration if we say that the Act laid the foundation of the system of administration which lasted till the end of the British regime in India. The portfolio system which was legalised by section 8 of the Act, the ordinance power, the Legislative Councils with non-official members, constitute cardinal features of our administration till today.

§ 4. DEFECTS OF THE ACT

(a) Non-elected non-officials. There is no denying the fact that the Act helped the Governor-General to associate non-official Indians for purposes of legislation but these non-officials were not the elected representatives of the people. They were the boy-errands of the Viceroy. They were drawn either from the aristocratic princes or their yes-men, the diwans, big landlords or retired officials. They did not belong to the hierarchy of national leaders who alone could reflect and mirror the views and aspirations of the Indian masses. "From a minute written by Sir Henry Maine in 1868, we understand that offer of seats in the Council were often declined and that the members who were nominated showed the utmost reluctance to come and the utmost hurry to depart." Sir Henry Maine attributed this reluctance on the part of these members to stick to the Councils to the abominable climate of Calcutta. But climate is not the only factor which did not cultivate interest in the non-official members regarding legislation for India.

A more logical and fundamental reason for this lack of interest was quoted by the Hon'ble Subramania Iyer, a member of the Madras Legislative Council, in his speech at the first session of the Indian National Congress. "The functions of these Councils are limited to registering the decrees of the Executive Government and stamp them with legislative sanction." Emphasising the little influence, the non-official members possessed, he further said, "The misfortune is that these non-official members are not allowed to feel any responsibility and even if one of them assume it, no opportunity is given them to render themselves useful."

(b) A retrograde Measure. Another glaring defect of the Act is that it is considered to be a retrograde measure. The Legislative Councils established by the Act were legislatures neither in their organisation nor their functions. They were mere committees for purpose of making laws. Report on Constitutional Reforms depicts vividly the functions of these Councils. "They are committees for the purpose of making laws—committee by means of which the Executive Government obtains advice and assistance in their legislation and

1. Ibid., pp. 74-75.
the public derive the advantage of full publicity being ensured at every stage of the law-making process—the Councils are not deliberative bodies with respect to any subject, but that of immediate legislation before them. They cannot enquire into grievances, call for information or examine the conduct of the Executive.” In fact, the laws enacted by these Legislative Councils were nothing but the orders of the Government. Coupland has very well portrayed the functions of these Councils in these words, “These Councils were akin to the durbars which Indian rulers had traditionally held in order to sound their subjects opinion.”

(c) Governor-General’s power of promulgation of ordinances. Moreover, another defect of the Act was that it further strengthened the position of the Governor-General by granting him for the first time the power to promulgate ordinances for the peace and good government of British India in an emergency. Such ordinances were to have the force of law for a period of six months unless disallowed by the Crown or superseded by an Act of the legislature. Since 1853, the Governor-General was armed with all other powers save legislation. The Act conferred this power also on him, thus making him very powerful and enabling him to make laws, suitable to his own needs and interests. The presence of the disinterested and helpless nonofficials in their Councils was futile and immaterial. They could only assist the ‘Benevolent Despot’—the Governor-General in understanding the Indian point of view and in the words of Charles Wood “...they will no longer feel.....that they are excluded from management of affairs in their own country.” But Charles Wood could hardly predict that Indians are conscious of this hoax—“the so-called share in the management of their own affairs.” The Act failed to satisfy the aspirations of the Indians who agitated for substantial reform in these Legislative Councils soon after the passage of the Act of 1861.

§ 5. INDIAN COUNCILS ACT OF 1892

The eighties of the nineteenth century saw the birth of the Indian National Congress. “The Indian Councils Act 1892 was the first result of the work of the Indian National Congress.” It took up the question of reform of the legislature which had proved to be inadequate and disappointing to the people. The enlightened classes of the country demanded the expansion of the Councils and also enhancement of their powers. It was emphasised that no financial discussion was possible in the Legislative Councils except when a proposal for new tax was taken up. Moreover, there was no opportunity for the government to explain its policy or to reply to hostile criticism or for the so-called representatives of the popular views to seek information or express their wants. Even independent expression of opinion on the Councils was not possible as the nominated

2. Coupland R.: Indian Problem, p. 56.
members always acted in accordance with the wishes of their employers. Apart from the Congress, other important public bodies and associations addressed Memorials to the Government of India, to bring about changes in the Act of 1861.

The Indian National Congress expressed grave dissatisfaction at the existing system of government and passed a resolution demanding reform of the Legislative Councils in its first session. The resolution ran as follows: "That this Congress considers the reform and expansion of the supreme and existing Local Legislative Councils by the admission of a considerable proportion of elected members (and the creation of similar councils for the North-Western Provinces and Oudh and also for the Punjab) essential and holds that all Budgets should be referred to these Councils for consideration, their members being moreover empowered to interpelate the executive in regard to all branches of the administration." The Congress further elaborated this resolution at its next session by demanding that the number of members in the Councils should be materially increased and not less than one half of them should be elected. They further proposed that the elected members of the Governor-General's Council should be elected by the elected members of the Provincial Councils who should be elected by the members of the Municipal Councils, District Board, Chambers of Commerce and Universities.

The attitude of the Government was sympathetic towards the Congress in initial stages but it was entirely changed in 1888. Lord Dufferin characterised the Congress as representing only 'a microscopic minority' of literate Indians. At the annual St. Andrew's dinner held at Calcutta in November 1888, he severely attacked the Congress and said, "How could any reasonable man imagine that the British Government would be content to allow this microscopic minority to control the administration of that majestic and multi-form empire for whose safety and welfare, they are responsible in the eyes of God and before the face of civilization?" Though he launched an attack on the Congress, he was convinced of the desirability of further associating Indians with the government of the country. He had realized earlier that their presence at the Council meetings and their assent to the measure would popularise the acts of the Government. He wrote in 1886 "...Among the natives I have met, there are a considerable number who are both able and sensible and upon whose loyal cooperation, one could undoubtedly rely. The fact of their supporting the Government would popularise many of its acts which now have the appearance of being driven through the legislature by force; and if they in their turn had a native party behind them, the Government of India would cease to stand up as it does now an isolated rock in the middle of a tempestuous sea, around whose base the breakers dash themselves simultaneously from all the four quarters of the heavens," In fact, in order to take wind out of its sails, he had already appointed a Committee of his Council with George Chasney as President to consider the question of reforms. In the year of his attack on the Congress, he sent Home a despatch.
embodifying the proposals for reform which did not differ much from those presented by the Congress. In the words of C.L. Anand, "Lord Dufferin's despatch is an important constitutional document not only for the reasons that the reforms ultimately embodied in the Act of 1892 were on the lines indicated in it but also for the fact that it laid down the principles of decentralization, increasing association of India and maintenance in the English hands of the supreme control and authority which in after years were repeatedly held to be the guiding principles of constitutional changes in India." Lord Dufferin, however, made it crystal clear that he was not contemplating an approach to English Parliamentary Government. The Secretary of State for India approved the other features of the Plan though did not agree to the introduction of the principle of election. However, when despatches between the Secretary of State for India and the Government of India were being exchanged, a Bill to amend the Indian Councils Act 1861 was introduced by Charles Bradlaugh in the House of Commons in 1890. In fact, Bradlaugh, member of the British Parliament and a consistent friend of India, had attended the fifth session of the Congress held at Bombay in 1889 and the Bill, he introduced, embodied the demands of the Congress. The Bill, however, was crowded out by other business. In 1890, the Government initiated a measure in the House of Lords which passed it but the Bill could not go beyond the first reading stage in the House of Commons. It was in 1892 that the amended Government Bill was passed after great discussions by both the Houses and became the Indian Councils Act 1892.

§ 6. PROVISIONS OF THE ACT

In the words of C.L. Anand, "The changes made by the Act were in three directions. The number of members was increased in all the Councils. Opportunity was given to the members freely to criticise financial policy of the Government. The privilege of interpellation was conceded." (i) The number of additional members was increased in the case of the Supreme Council to not less than ten and not more than sixteen and in the case of the Bombay and Madras Councils to not less than eight and not more than twenty. The maximum number of additional members of the Bengal Council was fixed at twenty and that of N.W. Provinces and Oudh at fifteen. Schwann M.P. described the increase in the number of additional members "as a very paltry and miserable addition." Lord Curzon strongly defended it on the plea "that the efficiency of a deliberative body is not necessarily commensurate with its numerical strength....over large bodies.....do not promote economic administration but are apt to diffuse their force in vague and rapid talk." (ii) The Governor-General-in-Council was empowered with the approval of the Secretary of State in Council to make regulations

2. Ibid.
3. Keith: Speeches and Documents on Indian Policy, p. 60.
for nomination of additional members and prescribe the manner in which such regulations should be carried into effect. Lord Kimberley remarked, "Under this clause, it will be possible by the Governor-General to make arrangements by which certain persons may be presented to him having been chosen by election if the Governor-General should find that such a system can properly be established." (iii) The Governor-General-in-Council was authorised to make rules subject to the sanction of the Secretary of State in Council for the discussion of annual financial statement and the asking of questions. (iv) The Governors-in-Council and Lieutenant Governors were also empowered to frame similar rules (as in iii) with the sanction of Governor-General-in-Council. (v) Local Legislatures were empowered with the previous sanction of the Governor-General to repeal or amend those Acts of the Central Government which concerned their territories. (vi) The Act authorised the Councils to discuss the annual financial statement—"not to vote the Budget...item by item...but to...indulge in a full, free and fair criticism of the financial policy of the Government." (vii) The Members of the Council were empowered to ask questions on matters of public interest subject "to such conditions and restrictions as may be prescribed in rules made by the Governor-General or the provincial Governors." Six days' previous notice for asking a question was made obligatory. The President of the Council was empowered to disallow a question without assigning any reason. (viii) The Act cautiously introduced the elective element in the Councils. The rules under the Act provided that a certain proportion of non-official members in each Council should be nominated by the Head of the Government on the recommendation of certain bodies. In the case of the provincial Councils, the recommending bodies were to be the Municipal Councils, District Boards, Chambers of Commerce, Zamindars and the University Senates. Thus out of 20 additional members of Madras Legislative Council, 9 were officials, 4 were nominated non-officials and the rest were elected—4 by the Municipalities and District Boards and one each by the Corporation of Madras, the University of Madras and the Chamber of Commerce. In the case of the 16 additional members in the Imperial Legislative Council, 6 were officials, 5 were nominated non-officials and five were elected—one by the Calcutta Chamber of Commerce and one each by the non-official members of the four Provincial Councils. In the words of Punniah, "The word election was carefully avoided but in as much as every recommendation came to be accepted as a matter of course, it did not differ in any way from election."

§ 7. SIGNIFICANCE OF THE ACT

The achievements of the Act were of quite a great significance. Sir Surendra Nath Banerjee, a member of the Legislative Council

1. Keith : Speeches and Documents on Indian Policy, p. 60.
2. Ibid., p. 56.
opined that the Act laid down the foundations of the representative government. Formerly, no Indian enjoyed the privilege of sharing counsels at a high level. The Act enabled eminent Indians like G. K. Gokhale, Ashutosh Mukerjee, Rash Behari Ghosh and S.N. Banerjee to sit with the Viceroy and his councillors and give ample proof of their political wisdom and parliamentary capacity. There is no denying the fact that Indians were not in a position to override the official majority in the Council as they were only one third of the latter, yet their opinions and views were accorded proper attention and listened to with great deference.

The rules and regulations made under the Act required that a certain proportion of the non-official members in each Council should be nominated by the Head of the Government on the recommendation of certain bodies. The word 'election' which entailed a great opposition at the hands of Sir R. Temple and Lord Curzon in particular was carefully avoided but as every recommendation was accepted as a matter of course, it did not differ in any way from election. Speaking on this Bill intending to give Indians some type of representation, Gladstone said "the great question we have before us—the question of real and profound interest—is the question of the introduction of the elective element in the Government of India while the language of the Bill cannot be said to embody the elective principle, it is intended to pave the way for the adoption of that principle." As already pointed out, out of sixteen non-official members of the Imperial Legislative Council, five were to be elected. In the Provincial Councils, also the persons recommended by the specified bodies were accepted as a matter of course. Thus the principle of election was conceded. In this indirect acceptance of the principle of election lies the momentous character of the change effected by the Act of 1892.

Enlargement of the functions of the Legislative Councils in the financial matters was another commendable provision of the Act. The Act of 1861, had not empowered the Councils to criticise and discuss the financial policy of the government. The Act of 1892 enabled the non-officials to have free and full discussions on the financial policy of the government. Thus the government got an opportunity to remove misapprehensions and meet their criticism.

The Act empowered the members of the Council to put interpellations on matters of public interest. They could not, however, ask supplementary questions. The restrictions imposed upon interpellation were in no way more comprehensive than those meant for the House of Commons in England. It was indeed a significant advance. The Report on Constitutional Reforms nicely portrays the advance made by the Act of 1892 on that of 1861 in the following words, "Whereas in 1861 men had said, "We had better hear what a few Indians of our choosing have to say about our laws," they said in 1892, 'our laws have positively benefited by Indian advice and criticism; let us have more of it, and if possible, let the people choose the men they send to advise us.'
Though the gains might appear trifling to us in retrospect, yet the significance of the gains might not be minimised. Evaluation of the Act had been very aptly made by a critic in these words, “It was an attempt at compromise between the official view of the Councils as pocket legislatures and the educated Indian view of them as embroy parliaments. While no efforts were made to enlarge the boundaries of the educated class to provide them with any training in responsible government or to lay the foundations of a future electorate, to control them, the Act deliberately attempted to dally with the elective idea.”

No doubt, the Act did not mark the beginning of parliamentary government in India yet it is decidedly an important milestone on the road that led to the establishment of the parliamentary government at a later stage. The seed sown in 1892 at a much later date sprouted and grew into a big tree despite the attempts made by the white bureaucrats to sterilise and kill it.

8. DEFECTS OF THE ACT

The instalment of reforms released by the Act of 1892 did not satisfy the aspirations of the Indian people. “The elective system gave to the legal profession a prominence in these Councils to which it was not entitled while it signally failed to represent other important elements of the community.”

The government also was disappointed as these Councils did not turn out to be as conservative as it was expected of them. The Government of India in their circular dated the 24th August, 1907, admitted that the results had not justified the expectations formed. The principle of election provided in the Act did not afford satisfaction to the Indian public. The authors of the Act did not pay any heed to Schwana, M.P., of Manchester, who emphasised, “No reform of the Indian Councils which does not embody the election principle will prove satisfactory to the Indian people or compatible with the good government of India.” Since the most coveted demand of the Indians was not fulfilled, the younger element in the Congress dubbed the mild methods of the Congress—its “moderation and loyalty” —to be insufficient for securing the political freedom of their motherland. In other words, failure to concede the demand of election gave birth to an extremist group in the Congress.

The enlargement of the Legislative Councils, also, was not a satisfactory step to appease the agitated minds. Even Mr. Schwana described the addition of these non-official members in the Councils as a “very paltry and miserable addition”. Out of 25 members in the Supreme Legislature, the non-official, both elected and nominated, were only ten. Moreover the nominated non-officials were always in the pocket of the official majority. The only possible voice against

the government could be that of elected non-officials who were only five in number. Thus their voice was just a cry in the wilderness.

The non-officials also were dissatisfied with the Legislative Councils for two reasons. Firstly, the few powers conceded to them were hedged in by far too many restrictions. They could not discuss budget. They were not authorised to ask even supplementary questions. They were not empowered even to move resolutions. They could question the Executive only if they served the latter with a previous notice of six days. Even the President of the Council could disallow any question without assigning any reason. Secondly, they complained that the Councils were not sufficiently representative of the people. In the case of Bombay, for an instance, while two seats were allotted to the Indian merchants, none whatsoever, was allotted to the Indian merchants. Representation accorded to the general public in the provinces was negligible and deplorable. For example, only two seats were given to the public in Bombay Presidency. The Punjab was given no representation at all, either in the Viceroy's Council or in the Supreme Legislature. Thus the basis of representation was most unfair and unreasonable. Hence, it could not humour the Indian public which dubbed the whole system a mere show.

Despite all these shortcomings, we have to agree with Principal Sri Ram Sharma who said, "Men like Pheroz Shah Mehta, Gopal Krishan Gokhale and Dinahaw Wacha could not be in any assembly without influencing it by their mere presence. Besides, the Councils served as political forums where the advance guard of the Indian National Movement could have their way without let or hindrance." It is correct beyond any doubt that non-officials of high mental calibre like the ones referred to above wielded considerable influence on the course of administration.

§ 9. THE INDIAN COUNCILS ACT 1909 (MINTO-MORLEY REFORMS ACT)

Circumstances leading to its passage —

(a) Dissatisfaction with the Indian Councils Act of 1892. As already discussed in the preceding pages, the Act of 1892 did not fulfil the aspirations of the people in general and of the extremists in particular. Both the constitution and function of the Legislative Councils disappointed the Indian public opinion. The Councils in fact were reduced to mere debating societies exercising very little influence on the decisions of the government. Moreover the so-called "elective idea" incorporated in the Act could not afford satisfaction to the people. The increase of non-official element in the Councils was also an eye-wash. The Indian National Congress started agitating for more reforms but the British were not responsive. Thus the indifferent and evasive attitude of the British Government aggravated discontent which ultimately resulted into political unrest in the country.

1. Sharma Sri Ram: A Constitutional History of India, p. 120.
(b) Influence of National Calamities. Another factor that caused accentuation of discontent against the government was the occurrence of national calamities like famine and plague and the measures adopted by the Government to combat them. Frazer describes the famine of 1896-97 as "the most intense and severe famine ever then known under British rule. By the spring of 1897, over four million people were receiving relief and mortality was extremely heavy." Famine was followed by another loathsome epidemic—bubonic plague in the Bombay Presidency. By the end of 1898, the total mortality according to official estimates alone reached 1,73,000, a figure much below the real mortality. Rains failed in 1899 and India had to face a very severe famine again in 1899. The suffering millions attributed their untold misery to the anti-national economic policy pursued by the British Government. Unfortunately the measures adopted by the Government though quite vigorous yet could not appeal to the masses. In fact, the methods for enforcing them were most unpopular. Soldiers were sent in the homes of the people to examine victims of plague and remove them to isolation hospitals if there was sign of disease. Their behaviour towards the people was very rude and extremely rough. It infuriated the people and led to the outbreak of riots. On 22nd June 1897, Mr. Rand, the unpopular Plague Commissioner was shot dead and also his military associate Lieutenant Ayerst. Damodar Chapekar, the murderer, was arrested and convicted. Tilak—an extremist, though not directly involved in these murders was also imprisoned for a period of eighteen months for inciting the people, through his speeches and seditious articles in the 'Kesari'. All these happenings turned the masses against the British and strengthened the ranks of Indian National Congress.

(c) Lord Curzon's Tyrannical Regime. In the words of Punniah, "The viceroyalty of Lord Curzon (1898-1905) marked an important stage in the development of political unrest in our country." In order to effect efficiency in administration, he deliberately crushed under his heels the feelings and aspirations of the enlightened classes in India. His Calcutta Corporation Act (1899) and the Indian Universities Act (1904) which officialised these institutions and reduced their independence, roused stormy opposition in the country. His Budget Speech in March 1904, emphasising that the highest ranks of civil employment in India must as a rule be held by Englishmen—the ruling class embodying the requisite qualities essential for the task and his highly insulting convocation address at Calcutta University in February, 1905, added fuel to the fire. The partition of Bengal, in order to crush the rising tide of the Indian nationalism was effected on October 16th, 1905. The Curzonian efficient administration aimed at setting the natives against the natives. They can-

1. Frazer: *India under Curzon and After*, p. 4.
vassed support of the Muslims on the plea that they were given a Muslim Province in Eastern Bengal. Mr. A.C. Maxumdar writes, "Fully resolved to crush the new spirit by dividing the people against themselves, Lord Curzon proceeded to East Bengal and there at meetings of Muhammedans especially convened for the purpose, explained to them that his object in partitioning was not only to relieve the Bengal Administration but also to create a Muhammedan Province where Islam could be predominant and its followers in the ascendancy." The official propaganda was misinterpreted by the Muhammedans. Riots broke out. The Muslims looted Hindu shops and desecrated Hindu temples. There is no denying the fact that a large number of Muslims of East Bengal were hoodwinked by clever arguments of Lord Curzon, nonetheless the majority of the people throughout the country strongly opposed the Partition. Under the wise and revolutionary leadership of S.N. Banerjee and B.C. Paul the Bengalees indulged in an unprecedented agitation against the Partition. The Partition day came to be observed every year as a day of national mourning. Cries of Bande Mataram rang the horizon. The Partition of Bengal led to the growth of Extremist Bloc in the Congress. In the words of Gokhale—a moderate Congressite, "Many people are losing faith in English integrity and sense of justice. Our young men are beginning to ask what is the good of constitutional agitation if it only results in insult and the Partition of Bengal. That is how Extremists are created."

In short, Lord Curzon followed a policy which caused great resentment and disgust among the people. Dr. Pattabhi Sitaramayya has beautifully summed up the high-handed policy of Lord Curzon in these words, "His curtailment of the powers of the Calcutta Corporation, his Official Secrets Act, his officialisation of the Universities which made education costly......and finally his Partition of Bengal broke the back of loyal India and roused a new spirit in the nation. Even more galling to our sense of self-respect than this speech in Calcutta regarding our untruthfulness was his sweeping charge that we Indians were by environment, our heritage and our upbringing "unequal to the responsibilities of high office under British Rule." Even Lord Morley writing in his Recollections about Curzon's regime speaks in the same strain. We were told by leading Moderates that even the general loyalty had been chilled by his (Lord Curzon's) declared policy of centralisation; by his whittling away...of liberal principles and promises of Queen Victoria's proclamation of 1858; by too openly expressed contempt for Indian standards of morality and by measures like the Partition of Bengal carried out against the strong wishes of the people concerned."

(d) Victory of Japan over Russia. Victory of Abyssinia over Italy in 1896, and of Japan over Russia in 1905, exploded the myth of European supremacy and invincibility and heralded, "the dawn of

I. Morley, Viscount: Recollections, Vol. II.
a new era for the whole of Asia. Success of Japan in particular gave a new hope to the Indians. It symbolised the regeneration of the East. The greatness of Japan was attributed to her unique patriotism and nationalism, spirit of sacrifice and freedom from foreign exploitation. "These virtues it was thought could work miracles and enable even a subject and disarmed country like India to free herself from the crushing bond of England." Thus the victory of Japan created a spirit of emulation in the breast of every Indian. The reading of accounts of New Movement for national uplift and freedom in oriental and semi-oriental countries like Egypt, Russia, Persia and Turkey further strengthened these ideas of national liberation from the foreign yoke and aroused patriotism in the minds of the Indian people.

(c) Humiliation of Indians Abroad. The most humiliating treatment meted out to the Indians in South Africa, Fiji and Canada exercised a continuous influence on the course of the national movement in India. Imposition of a three-pound poll tax on Indian labourers in Natal if they overstayed and prohibition imposed upon the Indians in Transvaal to hold land in their own names fanned the fire of discontent. Expulsion of Indians from the Orange River Colony in 1888 and compelling them to live among dung heaps in prescribed localities, outside the town and subjecting them to intolerable discriminations in rail-road carriages, trains and cabs convinced them that their humiliation abroad was due to their degradation at home. "The cup of humiliation was filled to the brim when in 1907, the Transvaal Government passed the Asiatic Registration Act requiring Indians to be registered by means of fingerprints." Mahatma Gandhi launched Satyagraha against this most insulting Act. It was realised that the degradation of Indians in South Africa was but a natural consequence of their degradation in their native land. Tilak—the fearless editor of the 'Kesari' and a staunch opponent of alien bureaucrats started advocating through his paper that a good foreign government was less desirable than an inferior native government. Thus the atmosphere was honeycombed with animosities against the British Government spread in the country.

(/ ) Deterioration in Economic Condition. In the beginning of the 20th century, the economic conditions of the country further deteriorated. Land revenue was considerably enhanced. The irrigation rates particularly on the Bari-Doab Canal were raised. The government made an attempt to back out its promise concerning the possession of reclaimed lands in the Chenab colony. A colonization Bill passed by the Punjab Legislative Council entailed a great controversy in the Punjab, though, owing to great agitation against it, it was vetoed by the Viceroy. Even in the domain of industries, things

1. Pradhan: Indian's Struggle for Swaraj, p. 69.
2. Ibid., p. 75.
took a turn for the worse. Prices of the necessaries of life also shot up though wages of the workers went down considerably. The educated young men faced frustration as all avenues of procuring good jobs were blocked. The middle class people could not stand the soaring prices of the commodities. Thus all-round frustration and pessimism prevailed. Government's callous attitude and unsympathetic response to the people's problems tended to develop anti-British feelings.

(g) Role of Press and Platform. The role of free press and platform in the development of national movement is very significant. Dailies like 'Kesari', 'Kal', the 'Vaibhav', the 'Madavritta', the 'Pratod' and powerful organs like 'New India', the 'Bande Matram', 'Yugantar' and 'Sandhya' exposed the evils and unmasked the infirmities of the British imperialism. The fiery speeches delivered by impetuous leaders like Tilak, B.C. Paul and Lala Lajpat Rai against the alien government were widely circulated through most of these dailies and weeklies. Thus the natives even in the remotest corners of the country got conscious of the injustices done to them by the white masters. Hence they also started harping the tune of responsible government in India.

(h) Emergence of Extremist Group. G.N. Singh remarks that the reactionary and repressive policy of the Government drove the more sensitive and emotional spirits among the youth of the two surrendered provinces to the path of terrorism and revolution. B.K. Ghosh in an article "The Age of Gita again in India" expounded his revolutionary gospel. He said in his article, "At the present time righteousness is declining and unrighteousness is springing up in India. A handful of alien robbers is mixing the crores of the people of India by robbing the wealth of India. Through the hard grinding of their servitude, the ribs of this countless people are being broken to pieces... Fear not, oh Indians, God will not remain inactive... He will keep his word... when the lightning of Heaven flashes in their hearts, men perform impossible deeds." Lokmanya Bal Gangadhar Tilak, the father of Indian civil commotion, by his patriotic songs and fiery speeches inculcated the spirit of patriotism and nationalism in the masses. Fearlessly he courted imprisonment so many a time. He inaugurated the Ganapati festival in 1893 and the Shivaji festival in 1895. In his stirring speech, at Shivaji festival, he said, "If thieves enter our house and we have not sufficient strength to drive them out, should we not without hesitation shut them up and burn them alive... Rise above the Penal Code into the rarefied atmosphere of the sacred Bhagavad Gita and consider the action of great men." During the famine days, he toured famine-stricken areas and exhorted the affected to demand relief and remissions. He fomented agitation and sowed the seeds of rebellion amongst the illiterate masses through his well-known paper 'Kesari'.

B.C. Paul, another extremist, intensified agitation against the Britishers in Bengal. He denounced the partition of Bengal, as an attempt to disrupt the National Movement and drive a wedge between the Hindus and Muslims. The measure was deemed an attack on their history, traditions and language. Lala Lajpat Rai, the lion of the Punjab and his associate Ajit Singh incited the inhabitants of the Punjab against the British Government, by their stirring speeches. Their arrests and deportations further infuriated the people who were prepared to face any eventuality, to liberate themselves from the foreign yoke. Thus violent crusade launched by the above named extremists against the alien bureaucracy was a note of warning to the latter to introduce some substantial reforms to quell this mass agitation.

\( \text{(f) Spread of Violent Activities.} \) The extremists preached the futility of constitutional methods. They exhorted their countrymen not to wear the cloak of cowardice and undauntedly to make effort to wrest authority from the reluctant usurpers. These exhortations heralded an era of revolutionary activities. As already stated, the Plague Commissioner Mr. Rand and his Lieutenant, Ayacast, were shot dead. In fact, since 1907 a fairly large number of terrorist crimes were committed by the Bengal revolutionaries. An attempt to blow up the Lieutenant Governor’s train by a bomb near Midnapore on the 6th December 1907; shooting in the back of Mr. Allen, former District Magistrate of Dacca; the killing of two innocent English ladies, Mrs. Kennedy and Miss Kennedy by throwing a bomb in the carriage driving them to the bungalow of unpopular judge Mr. Kingsford; the assassination of the collector of Nasik and terrorising the police officers, trying magistrates, prosecuting lawyers and hostile witnesses not only irritated the Britishers but also made them nervous. They gave a serious thought to the whole situation and concluded that their callous indifference towards the Indians demands would have to be abandoned.

\( \text{(f) The expectations of the Congress.} \) The Indian National Congress, under the Presidentship of Mr. Gokhale, a moderate Congressite, met at Banaras in 1905. Apart from protesting strongly against the Partition of Bengal and speaking for the Swadeshi movement, Gokhale explained the goal of the Congress which had a strong bearing on the events of the day. “The goal of the Congress is that India should be governed in the interests of the Indians themselves and that in course of time, a form of government should be attained in this country similar to what exists in the self-governing colonies of the British Empire.” Mr. Gokhale also put forward as an immediate demand the reform of the Legislative Councils—both the Supreme and the Provincial Legislative Councils. Gokhale personally met the Liberal Secretary of State, Lord Morley, and emphasised the dire necessity of substantial concessions to the Indians. Though the radical Secretary of State did not appreciate the Congress ideal of colonial self-government and described it as
'crying for the moon'; yet he promised reasonable reforms to Gokhale in whom he found a man having a politician's head and a sense of executive responsibility.

(k) The Rise of Muslim Communalism. To counteract the sweeping tide of nationalism, the Britishers not only followed the policy of placating the moderates and crushing the extremist group in the Congress, but also sowed the seeds of permanent dissensions amongst the Hindus and Muslims. It is revealed that Lord Minto inspired a section of Muslims to wait in deputation on him and demand the right of separate electorates. As sponsored secretly by the Viceroy, a deputation under the leadership of H.H. the Aga Khan waited on the Viceroy on 1st October, 1906 and demanded separate representation for the Muslims. The Viceroy readily accepted their demand. He wrote the following in reply: "...... I am entirely in accord with you. Please do not misunderstand me. I make no attempt to indicate by what means the representation of communities can be obtained, but I am firmly convinced that any electoral representation in India would be doomed to mischievous failure if it aimed at creating a personal enfranchisement regardless of the beliefs and traditions of the communities composing the population of this continent. Lord Minto in his correspondence with Mr. Morley, the Secretary of State for India, also supported this proposal. Lord Morley because of his liberal outlook pointed out that the introduction of separate electorates would retard the growth of the national spirit. But unfortunately, Morley did not assert effectively against the scheme of separate electorates. He, however, wrote to Lord Minto on December 6, 1909, "I won't follow you again into our Mohammedan dispute. Only I respectfully remind you once again that it was your early speech about their extra claims that started the (Muslim) ban. I am convinced, my decision was the best." On December 30, 1906, Muslim League was set up. It reiterated its demand for separate electorates in 1908 and 1909. Lord Minto is truly described as the real father of Communal Electorates which enabled the Britishers to perpetuate their rule in India by making the natives fight against each other and to tide over the crisis which had unnerved them to a great extent.

(l) The advent of Liberal and Radicals Ministry in England. In December 1905, the Liberals constituted the Ministry in England. Morley became the Secretary of State for India. The conservative Viceroy—Lord Minto and the liberal Secretary of State—Lord Morley entertained almost similar opinions regarding Indian affairs. In his letter dated June 6, 1906, Morley wrote to Lord Minto "Fundamental difference between us, I really believe, there is none. Not one whit more than you do, I think is desirable or possible or even conceivable to adapt English political institutions to the nations who inhabit India...... Everybody warns us that a new spirit is growing and spreading over India...... You cannot go on governing in the same spirit; you have got to deal with the Congress party and Congress principles whatever you may think of them, be sure that
before long the Mohammedans will throw in their lot with the Congressmen against you." It is thus quite evident from the above letter that Morley was conscious of the fast changing circumstances in India. Hence he was keen for introducing some constitutional reforms in India. In his private letter to Minto on June 15, 1906, Morley clearly exhorted the Viceroy to set the ball in motion. Lord Minto appointed a committee of his Executive Council with Sir A. Arundel as its President to formulate proposals for introducing reforms. He, however, drew up a minute, for the guidance of this committee.

The Arundel Committee submitted its report in October. The Viceroy in Council held many serious and solemn discussions on the report. In March 1907, he submitted a despatch embodying these proposals of the Committee to the Secretary of State. After examining these proposals, the Secretary of State authorised the Government of India to consult Local Governments and invite public criticism on these proposals. The Government of India drew up a circular on the 24th August, 1907 and passed it to all the Local Governments for inviting their opinion. The Local Governments took about a year to despatch their replies. On October 1, 1908, the Government of India passed on to the Secretary of State their second despatch containing the revised proposals. A committee of the India Council carefully scrutinized these proposals which were later on discussed in the Council, very thoroughly. On the basis of these proposals Lord Morley drew up his final scheme which was ratified by the British Cabinet. The scheme containing these proposals was sent in the form of a despatch to the Government of India, on 27th of November, 1908. On December 17, 1908, Lord Morley explained these proposals to the House of Lords. In February 1909, a short Bill based on these proposals was initiated in the House of Lords. It became an Act after undergoing procedural formalities. The Reforms were however implemented in the middle of November and the new legislatures met in January, 1910.

§ 10. PROVISIONS OF THE INDIAN COUNCILS ACT OF 1909

The Act of 1909 is considered as a great landmark in the history of Indian administration and marks an advance on the Act of 1892 in several respects. It made an attempt to associate Indians not only with the work of legislation but also with the day-to-day administration of the country. It increased the strength of the Councils and enhanced their powers. It provided for the appointment of Indians to the Executive Council. The Minto-Morley reforms were significant also because they heralded a new era in the Indian political life by the introduction of separate electorates along with narrow franchise and indirect election. Its provisions may be summarised as under.

(a) Increase in the size of Legislative Councils. In the first instance, the Act of 1909 increased the strength of each Legislative
Council: The actual strength, however, was fixed by the Regulations. The additional members of the Governor-General's Council were increased up to a maximum of 60, those of Bombay, Madras, Bengal, the United Provinces, Bihar and Orissa to a maximum of 50 and those of Punjab, Burma and Assam to 30. The above members did not of course include the ex-officio members viz., the head of the Government and his councillors and in the case of Bombay and Madras even the Advocate General.

(b) Each Council was to consist of three types of members—nominated officials, nominated non-officials and elected members. The Secretary of State was particular to retain a substantial official majority in the Imperial Legislative Council. In his Reform Despatch to the Government of India he wrote, "Your Excellency's Council in its legislative as well as its executive character should continue to be so as to ensure its constant and uninterrupted power to fulfil the constitutional obligations that it owes and must always owe to His Majesty's Government and to the Imperial Parliament." The Imperial Legislative Council therefore consisted of 37 officials and 32 non-officials. Of the 37 officials, 28 were nominated by the Governor-General and the rest were ex-officio viz., a Governor-General, six ordinary members of his Council and the two extraordinary members in the Commander-in-Chief and the Head of the Province where the Council happened to meet. Of the 32 non-officials, 5 were to be nominated by the Governor-General and the rest were to be elected.

Regarding the elected element, the Government of India presumed that territorial representation was unsuited to India as it was a land inhabited by diverse races, castes, creeds and sects, embracing varying and conflicting interests. They opined that "representation by classes and interests is the only practicable method of embodying the elective principle in the constitution of the Indian Legislative Councils". Thus in the case of the 27 elected seats in the Imperial Legislative Council, six were allotted to the landholders, five to the Muhammedans and one to the Muhammedan landholders and one each to the Bengal and Bombay Chambers of Commerce. The remaining 13 were to be filled up by the non-official members of the non-Provincial Councils.

In the case of the Provincial Legislative Councils, the Secretary of State did not think it desirable to maintain even a bare official majority proposed by the Government of India as he did not expect any danger in conceding non-official majority to the Local Councils. He was aware of the fact that the Provincial Legislatures were hedged with many restrictions. They could not make laws regarding a number of subjects specified in the Act. And if they insisted upon legislation, the Head of the Government did not approve of, the latter was vested with a sort of veto power. The non-official members could not be expected, moreover, to forge a united front because they represented not a homogeneous electorate,
but a number of different circumstances, interests and classes. If it became so indispensable, legislation desired by the Provincial Government could easily be secured by the exercise of the concurrent legislative power vested in the Governor-General-in-Council. In the words of Punjiah "another important fact, which the Secretary of State did not however mention in his despatch was that they were creating only 'non-official majorities' but not non-official elected majorities in these councils.....The Government could safely rely upon the unflinching loyalty and steadfast support of the nominated non-officials to vote with them in a division." Punjiah's contention is correct beyond any doubt. Officials and nominated non-officials could easily muster majority in all Local Councils save in Bengal, where there was a small elected majority. For instance, Madras Legislative Council consisted of 26 non-officials and 21 officials. Out of 21 officials, the Governor, three members of his Executive Council and the Advocate-General were the ex-officio. Remaining 16 were nominated by the Governor. Of the 26 non-officials, five were nominated and twenty-one were elected. The Government thus clearly enjoyed a majority in the Council. Out of the 21 elected members, two were elected by the Muhammedans, two by the Zamindars, and three by the landholders other than the Zamindars, one each by the corporation of Madras, the University of Madras, the Madras Chamber of Commerce, the Madras Trades Association and the Planting Community and the rest of nine members by the Municipal Councils, District and Taluk Boards.

(c) No special qualifications were laid down in the Regulations in the case of the nominated (non-official) members. Nomination was provided to give representation to the interests not adequately represented or not represented at all through election. In the case of Imperial Legislative Council, for example, out of the nominated members, one must be from the Indian commercial community, one from the Punjab Muhammedans and one from the landholders in the Punjab. In the case of the elected members, however, elaborate rules were laid down by the Regulations.

(d) In Bengal, Bombay and Madras eligibility to a membership of a Provincial Council was confined to the members of Municipal and District Boards only. No such restriction was specified for the membership of the U.P. Councils.

Property qualification was also laid down in case of candidates seeking membership to the Provincial Councils. The following categories of candidates were however not eligible for the elections, if they were (i) not British subjects (ii) officials (iii) females (iv) of unsound mind (v) below 23 years of age (vi) uncertified bankrupt (vii) dismissed government employees.

According to a Regulation, the government was empowered to debar any person from the election. This regulation could be easily

exploited to disqualify national leaders. The candidates contesting from the class constituencies were supposed to possess some special qualifications in addition to the general qualifications.

(c) Enlargement of the functions of the Legislative Councils The Act enlarged the functions of the Legislative Councils. Detailed rules were framed for the discussion of the Budget in the Imperial Legislative Council in two days. The Finance Member presented every year to the Council the Financial Statement (Preliminary estimates) copy of which was furnished to each member who had the freedom to suggest any alteration in any proposal of taxation or grant. No discussion took place on that day, in order to give ample time to the members to get acquainted with their contents. General discussion took place, after the Finance Minister had accepted such alterations in the figures and furnished such explanations of them as he considered essential. Any member could then move any resolution entered in his name in the list of business concerning any alteration in taxation, any new loan or any additional grant to local Governments proposed in the financial statement or explanatory memorandum. After discussion on these resolutions each head or group of heads was discussed separately. A couple of restrictions were however imposed on the councillors with respect to discussions on financial matters: (i) Firstly, the President could disallow any resolution without giving any specific reason. Secondly, the Council was not allowed to discuss military, foreign, political and purely provincial affairs. Certain kinds of revenue which comprised of stamps, customs, assessed taxes and courts and also heads of expenditure as assignments and compensations, interest on debt, ecclesiastical expenditure and state railways were not open to discussion by the members of the Council. On or before the 24th of March every year, the Finance Member was to present Budget—the Financial Statement—as finally settled by the Governor-General-in-Council to the Council. Discussion on the Budget, however, took place on a subsequent day. Resolutions could not be moved on the Budget at this stage, nor was it to be submitted to the vote of the Council. The Provincial Council also followed a similar procedure. (ii) According to the Regulation, the Imperial Legislative Council possessed the right of discussing resolutions on matters of general public interest subject to certain limitations and power of the President to disallow any resolution detrimental to the public interest. (iii) A notice of fifteen days was required for moving resolutions which must be in a prescribed form and raise a definite issue. (iv) Amendments may be moved in the course of discussion. The Council was empowered to examine vote upon them and the resolutions. (v) The resolutions of the Council were to be in the form of recommendations to the Government which the latter might or might not accept. The Resolutions were not to contain arguments, inferences and ironical expressions, etc. (vi) The right to ask questions was also slightly enlarged by the new regulations. The members could also ask supplementary questions as well, in case they had already
asked a question.
All these above powers (ii to vi) were given to the Provincial Councils as well.

(f) Creation of the Executive Council for Bengal and Increase in the number of members of Executive Councils of the Provinces. The Governor-General-in-Council was empowered with the approval of the Secretary of State for India, to create an Executive Council of not more than four members for Bengal. Regarding other provinces, no direct power of creating the Executive Council was conferred upon the Governor-General-in-Council. Rather Parliament of Britain was authorised to stop the creation of any other Executive Council even if the Government of India with the ratification of the Secretary of State proposed to do so. In the words of G.N. Singh, "The Act gave power to the Government to create other Executive Councils subject to the veto of either House of Parliament." The Act contained also a provision allowing the increase of the number of members of the Executive Councils of Madras and Bombay to a maximum of four, two to be qualified by at least twelve years of service.

(g) The appointment of Indians to the Executive Councils. A declaration of intention to secure the appointment of an Indian to the Governor-General’s Council and those of the Governors was incorporated in the Act. Though the proposal was not acceptable to the majority of the Council, yet the king permitted it when the whole of the British Cabinet supported it. Lord Sinha was appointed as the first Indian Law Member on the Governor-General’s Executive Council. In the words of Keith, "It was unquestionably of far more importance than the step taken by the Secretary of State in 1907 in admitting to his own Council two Indians." Messrs. K.G. Gupta and Syed Hussain Bilgrami were, in fact, appointed members of the India Council in 1907.

II. DEFECTS OF THE ACT

(c) Much below expectations. The Reforms embodied in 1909 Act fell far short of the expectations of the agitated Indians. The people of India had demanded the establishment of responsible government in the country. But the reforms in the words of Dr. Zacharias had given the people, "the shadow rather than substance". In fact, Lord Morley himself had expressly declared in the House of Lords when the Bill reached the second reading stage, "If I were attempting to set up a parliamentary system in India or if it could be said that this chapter of reforms led directly or indirectly to the establishment of a Parliamentary system in India, I for one would have nothing to do with it". The reforms aimed at associating

some representative Indians in the task of legislation and administration and establishment of a sort of 'constitutional autocracy'. The authors of the Report on the Constitutional Reforms of 1918, have very well portrayed the intentions of this Act, in the following words, "They hoped to blend the principle of autocracy derived from Moghal Emperors and the Hindu kings with the principle of constitutionalism derived from the British Crown and Parliament to create a constitutional autocracy ...and a predominant and absolute power...They anticipated that the aristocratic element in society and the moderate man for whom, there was then no place in Indian politics, would range themselves on the side of the Government and oppose any further shifting of the balance of power and any attempt to democratise Indian institutes." 1

(b) Counterpoise of natives against natives. The Act attempted to drive a wedge between the two Indian major communities—the Hindus and the Muslims. The constitution of the Councils on the basis of representation of classes sowed the seeds of dissensions between the two communities, for all times to come. In fact, the authors of the Act deliberately wanted to wreck the national unity by setting up of counterpoise of natives against natives and interest against interest. In the words of Roberts the principle of class representation "created a distinction between different classes of the community and made the fusion of their interests impossible." The credit for perpetuation of the British rule in India after 1909 and the partition of the country goes to the Minto-Morley Reforms of 1909 as the demands of the separate electorates were made by the other communities also in the following years and readily conceded by the British.

(c) Restricted franchise and lack of direct contact between the members and their constituencies. The working of the Act revealed that there was no direct contact between the members and their constituencies. This was due to limited franchise and indirect and even doubly indirect method of election. The largest constituency returning a member directly to the Imperial Legislative Council did not exceed 650 voters. The nine General Constituencies returning the thirteen representatives of the people at large, were composed of the non-official members of the Provincial Councils. The average number of voters in these constituencies was only 22. In the Provincial Councils also, the constituencies did not exceed a few hundred persons. In the words of Punniah, "The representation of the people at large became in fact a process of infiltration through a series of sieves." 2 The rate-paying citizen in a village or town elected his representatives in the municipal council or a local board. The latter cast his vote to elect a member of the Imperial Council. This fact has been emphasised in the Joint Report of 1918, as well. The report says, "There is absolutely no connection between the supposed primary voter and the man who sits as his representative in

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the Legislative Council and the vote of the supposed primary voter has no effect upon the proceedings of the Legislative Council.......

Thus the legislatures both at the Centre and the provinces due to limited franchise and method of indirect election could not claim themselves as the true representative of the nation.

(d) Glaring inequalities. The Act is generally denounced on the ground that it created glaring inequalities between the voters of the different communities. The middle class Muslim landholders, traders, merchants, graduates were entitled to vote while the corresponding classes of non-Muslims were debarred from such a right. For instance, to get right to vote, a Hindu of East Bengal must pay Rs. 5,000 as revenue whereas a Muslim Rs. 750 only, the cess qualification for the former was Rs. 1250 and of the latter Rs. 188. The payment of income tax, the receipt of a Government pension and his being a honorary magistrate, qualified a Muslim for a vote but not a Hindu. The same injustice was meted out to the Hindu voters in the Provincial Councils. Pt. Madan Mohan Malviya remarked, "Hindu, Parsee and Christian graduates of thirty years' standing, men like Gurdas Banerjee, Dr. Bhandarkar, Sir Subramania Iyer and Dr. Rash Bihari Ghosh, have not been given a vote which has been given to every Muhammadan graduate of five years' standing". Thus the Act resulted in gross injustice to the Hindus who were in overwhelming majority in India. Weightage was given to the Muslims in the Legislative Councils, having majority of Hindus on the plea of protection of minority interest. But no such protection was accorded to Hindu minority in the provinces like Punjab, East Bengal and Assam.

(e) The existence of a strong official Bloc in the Imperial Legislative Council. The existence of a strong official bloc in the Imperial Council was another glaring defect of the Act. The official bloc was in fact a government bloc. They could not vote as they wished. They were not expected to ask questions or move resolutions or raise points of order without government's approval. They had to vote with the Government and against the non-official opposition. Punniath has very well stated the role of the official bloc in these words, "However eloquent the non-official speakers might talk and however reasonable and weighty their arguments might be, when the time for voting came, the silent official phalanx stepped in and decided the matter against them." It is thus quite evident that the presence of this solid, ever-united official bloc reduced the importance of the elected members to a mere farce. Even Gokhale, once a chief supporter of the Reforms, complained that once the Government had made up their mind to adopt a particular course, nothing that the non-official members may say in the Council is practically of any avail in bringing about a change in that course.

(f) The non-official majority in the Provincial Councils a farce. In the Provincial Councils a non-official majority could not be of any practical use to the Indians. As a matter of fact, the non-officials were to be of two types—nominated non-officials and elected non-officials. The former always danced to the tune of the Government. Hence the elected non-official were reduced to a minority. Moreover the non-official members were not so regular in attending the meetings of the Councils as the officials. This further gave a blow to the non-official element in the Councils. Keeping in view the limited powers of the Council as well, the so-called non-official majority could not be of any utility. Even Lord Morley had remarked that the provision of the non-official majority in the Provincial Councils "would not matter much, for the powers of these Councils even, were very limited and the Heads of the Government had the power to veto measures." In fact, these Provincial Councils proved to be mere registering bodies. They registered the decrees of the Executive. Their debates lacked life and their proceedings reflected unreality.

(g) Importance to vested interests. The Act gave great importance to the vested interests by according special representation to the landholders, chambers of commerce, etc. These vested interests were puppets in the hands of the British Government and opposed to the national interests.

(h) Overcentralization of administration. The Act exhibited overcentralization in administration. Control of Centre over Provincial governments was not relaxed. The Central Government administered not less than two-thirds of the entire revenues of the State. Even in the domain of legislation and administration, the Central Government exercised excessive control over the provinces. All bills passed by the provinces needed the assent of the Governor-General. In all vital matters of administration, the Indian Government issued instructions to the Provincial Governments. Even the Provincial employees were under the full control of the centre. The absence of decentralization on the plea of efficiency of administration not only deprived the local bodies of their utility but also seriously obstructed the progress towards self-government.

The above defects have been very well summed up by Dr. Zacharias who points out, its (Act's) essence, "lay in conceding what was at once evacuated of all meaning. Thus the elective principle of democracy was adopted; yet at the same time, the anti-democratic communal representation was added. The official majority was done away with; but the elected members remained in a minority. The membership was considerably enlarged; but an emphatic disclaimer was issued simultaneously that the new Councils in no way meant the introduction of a parliamentary system. The Council of India and even the Viceroy's Council were opened to some very few and very select Indians; but the liberal aspect of admitting Indians to arcana of government could in no way dis-
guise the fact that real power remained safely in British hand. In fact the people were so much disillusioned that the popular conventions, where the native speakers were at liberty to denounce the government and give vent to their feelings untrammeled by rules of business or the prospect of a reply, regained ascendancy. The prominent among the speakers exposed the so-called utility of the councils and dubbed them as cynical and calculated sham. Some of them pointed out that the reforms granted influence and not power. Hence they were “mere moonshine.”.

§ 12. SIGNIFICANCE OF THE ACT

(a) The above-mentioned glaring defects and severe denunciation of Minto-Morley Reforms should not make us oblivious of the fact that the Act of 1909 marks an important stage in the evolution of representative institutions in our country. Despite Lord Morley’s disclaimer that he did not intend to introduce parliamentary government in India, these reforms did constitute “a decided step forward on a road leading at no distant period to a stage at which the question of responsible government was bound to present itself”. The Councils did possess the trappings of a parliamentary government without however its substance—responsibility. Responsibility, of course, to some extent is transferred in the next installment when Montagu-Chelmsford Reforms Act was passed in 1919. Principal Sri Ram Sharma remarks, “The constitutional autocracy that it set up was bound to find its autocratic side challenged by its constitutionalism, and an answer had to be found for that challenge. Autocracy was likely to go overboard.”

(b) The reforms modified to some extent the bureauocratic character of the government by providing opportunities to the Indians for ventilating the grievance of the public through these Councils. Through these reforms, the Indian members could give vent to their feelings.

(c) Ten years of working of these Councils revealed that the Indian representatives (non-official elected members) also were equipped with high mental calibre, great debating skill and political acumen. These members of the Council not only made useful contribution to the framing of laws but also made it clear to the Britishehrs that Indians if given an opportunity can play useful and effective role in Indian administration.

(d) The inclusion of the natives in the Viceroy’s Council was in no way less significant. The admission of the Indians to the Imperial and Provincial Executive Councils not only gave them a direct share in matters of administration but also enabled them to have a peep in the secret most councils of the government hitherto concealed from the natives.

1. Zacharias: Renascent India, p. 158.
(e) The importance of the Act lies in its conceding the principle of election. The Government for the first time realised that no reform would satisfy Indians unless it embodied the elective principle. This was the outcome of the political agitation launched by the Indian National Congress since its inception. In fact, acceptance of this principle of election by the Britishers served as an incentive to the Congress for intensifying its activities.

Lord Morley correctly describes these reforms as "the opening of a very important chapter in the history of relations of Great Britain and India" and "the turning over a fresh leaf in the history of British responsibility to India."
Montagu-Chelmsford Reforms

1. CIRCUMSTANCES LEADING TO ITS ENACTMENT

(a) Dissatisfaction with Minto-Morley Reforms. Minto-Morley Reforms of 1909 could not satisfy any section of the Indian opinion. They proved unworkable due to the reasons specified in the preceding pages. The Montford Report very well summed up the futility of these reforms in these words: "The Morley-Minto Constitution ceased in the brief space of 10 years' time to satisfy the political hunger of India. The new institutions began with good auspices and on both sides there was a desire to work them in a conciliatory fashion. But some of the antecedent conditions of success were lacking. There was no general advance in local bodies; no real setting free of provincial finance; and in spite of some progress no widespread admission of Indians in greater numbers into the public service." Since 1906, the Indians were striving hard for the achievement of their goal—complete 'Swaraj', but the Minto-Morley reforms disillusioned them. Lord Morley's disclaimer in the House of Lords on December 17, 1908 that he did not propose to introduce parliamentary government in India, was highly disappointing to the nationalists. Hence hardly the ink on the statute was dry when the nationalists started clamouring for a responsible government in India. Even Moderates like Gokhale were convinced of the hollowness and inadequacy of the reforms. The recommendations of the Deentralization Commission of 1909 also could not satisfy the Indians who in fact, felt frustration at their announcement.

(b) Policy of Repression. The British policy of placating the Moderates and crushing the Extremists could not be successful. They could neither humour the Moderates nor suppress the Extremists, despite their repressive acts. The repressive laws which were supposed to be temporary measures were to be permanent phase. The Indian Press Act, more stringent than that of 1908, was passed in 1910. The Seditious Meetings Act of 1911, reproduced the similar law passed in 1907. To avenge the attempt on the life of Lord
Hardinge in December 1912, the Criminal Law (Amendment) Act was passed. The latter Act made it penal 'to conspire to commit an offence even though the conspiracy was accompanied by no overt act in pursuance of its object.' The enactment of these measures caused great resentment in the country. The non-officials in the Legislative Councils vehemently opposed them but the government did not pay any heed to their protests and warnings. Hence it became utterly unpopular with the Indians. Even the Moderates were highly disappointed over such enactments. The discontentment and disappointment gave fillip to revolutionary activities. The cult of bomb became very popular. Outrages committed by the terrorists were on the increase.

(c) Grievances—old and new. The appointment of the Decentralization Commission in 1907 and of the Public Service Commission in 1912 had raised high hopes in the minds of Indians. But these hopes dashed to the ground when nothing substantial came out of them. The recommendations of the Decentralization Commission in 1909 proved inadequate. No genuine attempt was made to relax the control of the Indian Government over the Local Bodies and instal self-government in them. The Public Service Commission took two years in taking evidence; but its report was published in 1917. The slow movement of governmental machinery infuriated the people. The assumption of the Islington Commission that "British responsibility for India requires a preponderating proportion of British officers in the security service" also offended the people to a great extent. Racial discrimination exhibited through the arms rules, which allowed the Europeans and Anglo-Indians to possess ammunition without a licence; non-admission of the Indians into the volunteer corps on the refusal of the commanding officers and the exclusion of the Indians from the commissioned ranks in the army; the shabby treatment meted out to Indians in South Africa and the discrimination made against them in the immigration rules of many of the dominions accentuated bitterness and aggravated discontent against the Britishers.

(d) Lord Crewe’s repudiation of Nationalists’ interpretation of Government of India’s dispatch (24th August, 1911). In order to deepen and intensify love and devotion of the Indian people and the princes towards the British throne and the sovereign, King George V and Queen Mary paid a visit to India in 1911 and held their Coronation Durbar at Delhi. At this Imperial Durbar, His Majesty announced a few concessions which were embodied in the Dispatch of the Government of India dated the 24th August, 1911. The Indian nationalists pinned very high hopes in these changes enumerated in the dispatch. Lord Crewe, who succeeded Lord Morley as Secretary of State, however, repudiated Nationalists’ interpretation of the dispatch and said "... The experiment of extending a measure of self-government practically free from parliamentary control to a race not our own... is one which cannot be tried." This assertion of the new Secretary of State incited the nationalists to
demand nothing but 'self-government' from the alien masters. They exhorted the British to declare in unequivocal terms their acceptance of self-government to Indians, as the goal.

(c) Change in the Muslim attitude towards the Government. The introduction of separate electorates had pampered the Muslims to a great extent. They were proud of their friendship with the Britishers. The revision of the Partition of Bengal in 1911 after a period of six years only, gave the Muslims a rude shock. They did not relish the re-incorporation of the Muslim population of Eastern Bengal into the Hindu Province of Bengal. They interpreted this action of the government as a great concession to the Hindu community for their agitating against the government and intimidating it. They emphasised the connection between bombs and boons. Moreover unfriendly policy pursued by Great Britain towards Turkey during the Tripote and the Balkan wars was a source of great uneasiness to the Muslims. In the words of Punniah, "This was regarded as a concerted plot on the part of the Christian powers to drive Turkey out of Europe and then put an end to Islam as a temporal power." On the other hand, the sympathy exhibited by the Indian nationalist Press towards the Muslims in their distress weaned away the Indian Muslims from the fold of the British bureaucrats and brought them closer and nearer to the Indian National Congress. Younger leaders among the Muslims took initiative in convening a meeting of the Council of the All-India Muslim League, in Calcutta in December, 1912, to adopt a new constitution for the League. The progressive leaders of the Muslim community attended the meeting which accepted the national ideal embodied in the Congress creed and also drafted the constitution of League which was adopted at the annual session of the All-India Muslim League. One of the most laudable objects of the new constitution of the League was to promote friendship and union between the Muslims and other communities of India. Another important object of the new constitution was "the attainment under the aegis of the British Crown of a system of self-government suitable to India". Such an important change in the ideal and policy of the Muslim League won great appreciation at the hands of the Indian National Congress. Thus communal unity which was disrupted by the passage of 1909 Act, was once again fostered between the two major communities of India.

(f) Congress-League Pact. The communal unity was further cemented when the Bombay session of the League was attended by the leaders of the Congress. Both the League and the Congress formulated a common scheme of post-war reforms known as the Lucknow Pact. The Congress demonstrated its goodwill to the Muslims by conceding their demands for separate representation and weightage, in lieu of the League's support to the Congress demand for self-government. The Congress-League pact recommended the enlargement of the legislatures in the major provinces to at least 125

members and in the minor provinces from 50 to 75. 80 per cent of the members were to be elected directly on a wide franchise with weightage and special electorate for the Muslims. The introduction of Provincial autonomy with division of heads of income and expenditure between the centre and the provinces was also recommended. The Congress-League Pact of December 1916 is a great event in the national history of India, since it symbolised a new unity between the two communities though procurement of this unity had to pay a very high price—concession to communalism. G.N. Singh remarks “Unity of action was thus secured between the two great communities of India and between the two great political organizations, which between them—especially after the Moderate-Extremist re-union in 1916—represented the whole of the politically-conscious British India.”

(g) The first Great War and impetus to the demand of Self-Government. It was in an atmosphere of discontentment and disappointment that the Great War broke out in 1914. Traditional generosity of the Indian Community induced all the parties in the country to stand by the Britishers in the period of crisis. Mahatma Gandhi, who by now had emerged on the scene as a great patriot, exhorted the Indians to render all possible assistance to the British Government. All the parties rallied to the side of the government. The people of India demonstrated the splendid loyalty and unflinching devotion to the British Crown, despite the repressive policy of the Britishers in the preceding years. India made huge contributions to the war in men, money and munition. The princes placed their Imperial Service Troops at the disposal of the British masters and even went to the front to defend the honour of the alien government. Over a million and a quarter men were recruited to fight for the British. The Government of India contributed £ 20 to £ 30 million a year. A free gift of one hundred million pounds was extended by the Indian Legislative Council to His Majesty’s Government. Large contributions were made to the Red Cross Societies. It will be amusing to note that India was transformed into a Banker for England. England purchased and India paid. Thus the war gave Indians a feeling of profound pride that their country had not fallen behind other portions of the British Empire in the hour of distress. Hence they expected the British to accord them equality of treatment with other dominions. Sir S.N. Banerjee reminded the British of Indians’ aspirations to colonial self-government.

In fact, the war awakened the Indian masses who had hitherto been indifferent to public affairs. The British had fought the war to make the world safe for democracy. It was supposed to be a war to defend the rights of the small nations and enable them to shape their own destinies. How could the champions of liberty and of the right of self-determination deny the same democratic rights to the Indians

who had spared no pains to serve their masters in the hour of their sorest trial—was a question on the lips of every enlightened nationalist. Moreover the distinctions won by the Indian soldiers on many battlefields of Europe developed in them a new sense of self-esteem. They no longer suffered from inferiority complex. Hence they claimed equality of treatment with the other dominions and demanded immediate constitutional reforms.

During the initial stages of war, Indian politicians had responded loyally to the appeal of Lord Hardinge and suspended their political agitation. In fact, they were hopeful of a speedy victory. As the prospects of early termination of war got bleak, they got impatient. Moreover the prices of the commodities shot up, resulting in the distress of the masses. The methods employed by the Britishers in recruitment and collection of funds for the Red Cross added insult to the injury. The commercial classes of India got antagonistic to the Government due to imposition of war-time restrictions on them. Hence they demanded the policy of protection. An idea began to haunt the Indians that the people of India had nothing to do with the war. The Irish rebellion and the apparent collapse of Western civilization emboldened the Indian patients. Lord Sinha who had exhorted the Congress to support the war efforts of the Government, no longer commanded influence in the organisation. In 1915, while presiding over the Bombay session of the Congress, Lord Sinha advised the British Government to make a declaration of their goal in India in order to pacify the Indian youth who were intoxicated with the ideas of freedom, nationality and self-government.

(b) Home Rule Movement. Since the government did not listen to the advice of Lord Sinha, the political leaders who had liberally supported the British cause during the early stages of war got suspicious of the intentions of the British. In 1916, Mr. Tilak in Bombay and Mrs. Annie Besant in Madras started Home Rule Leagues. With the help of his daily ‘Kesari’ and the weekly ‘Maharatta’ Tilak revitalized and reorganized his Extremist Party which grew in strength and influence very rapidly. The two Leagues collaborated with each other whole-heartedly and propagated vigorously for Home Rule in the country. The government could not tolerate the revolutionary activities of these leaders. Alarmed at the Home Rule campaigns, the government tried to suppress the new movement indirectly by imposing restrictions on the liberties of these two leaders. The Governor of Bombay ordered the internment of Mrs. Besant along with her two colleagues. In Bombay, security proceedings were instituted against Tilak for delivering speeches at Home Rule meetings, but were quashed on an appeal by the Bombay High Court. Such restrictions on these two revolutionary leaders did not stem the agitation, rather made them idols of the people. Punniah remarks “India throbbed with new ideas and was alight with a new life as it had never been before.” The nine years gulf

between the two wings of the Congress was also abridged. The national solidarity was on its climax. Dr. Ishwari Prasad, writing on this period remarks, "The national solidarity of these years between the League and the Congress, the Extremists and the Moderates within the Congress was promise for the future."

(i) Memorandum of the Nineteen. When the elected members of the Imperial Legislative Council came to know that Lord Chelmsford had submitted proposals of reform to the British Government, nineteen of them submitted to the Government a Memorandum embodying their proposals on post-war Reforms. Dignitaries like Pt. Madan Mohan Malviya, Mohammad Ali Jinnah and Sir Tej Bahadur Sapru were party to these proposals. It was proposed that (i) in all Executive Councils, Provincial and Imperial at least half of the members should be Indians, (ii) all Legislative Councils should have a substantial elected majority, (iii) franchise should be widened, (iv) minorities should have due representation in the legislature, (v) the Council of the Secretary of State should be abolished, (vi) provinces should enjoy full measure of autonomy, (vii) local self-government should be introduced immediately, (viii) higher jobs in the army should be offered to Indians on the same conditions of service as Europeans.

They declared "What is wanted, is not merely good government or efficient administration but government that is acceptable to the people because it is responsible to them."

(j) Mesopotamian Muddle. "The Mesopotamian Muddle" also had a strong bearing on our constitutional advance. Since this British campaign against Turkey had been left completely in the hands of the Indian government, the latter was deemed responsible for its disastrous end, by the Mesopotamian Commission which submitted its report in July 1917. The report created a stir both in England and in India and resulted in strengthening the demand for political reforms in India. The Commission exposed the inefficiency of the Government of India as "too modern, too iron, too inelastic, too anti-diluvion to be of any use for the modern purposes we have in view." He advocated greater independence of action for the Viceroy, transfer of partial control to the legislatures in India, reduction in the powers of the Council of India and the reform in the machinery of India Office. He stated "If you want to use loyalty (of the Indian people) you must give them that higher opportunity of controlling their own destinies not merely by councils which cannot act, but by control, by growing control of the Executive itself."

Montagu in his concluding remarks sounded a note of warning to the British Government in these words "Unless you are prepared to remodel, in the light of modern experience this

1. An ex-under Secretary of State for India speaking on the Commission's Report in the House of Commons.
2. The Indian Annual Register 1919, p. XIII.
century-old and cumbersome machine, then I believe... that you will lose your right to control the destinies of the Indian Empire. 1

(k) The Duke Memorandum. Before we take up August Declaration of 1917, it is essential to refer to another scheme of 1915 prepared by William Duke, an ex-Lieutenant Governor of Bengal and at that time a member of the Secretary of State's Council. The Memorandum was written at the request of Lionel Curtis, the leader of the English Round Table Group—an association of English public men interested in Indian problems. It proposed the introduction of Dyarchy in India according to which the departments like Education and Local Self-Government, etc., were to be transferred to popular control. In his letter to Sir B.N. Basu, the then member of the Indian Legislative Council, Mr. Curtis pointed out that his scheme of Dyarchy meant the division of the government into two parts only, one of which was to be responsible to the people. In his opinion, this was an essential intermediary step to full-fledged responsible government which could not be introduced all at once in a country like India having no democratic traditions behind it. "Even though, no mention was made of this Duke Memorandum in any of the official documents, it really formed the basis for the reforms of 1919." 2

§ 2. MONTAGU DECLARATION, AUGUST 20, 1917

When the fortunes of the Allies were at their lowest ebb and the Home Rule agitation was at its height, the Indian question was taken up seriously by His Majesty's Government in 1917. The Government felt the dire necessity of placating Indian opinion by a declaration of policy in order to win whole-hearted support of the Indians for the successful prosecution of war. The British Cabinet fully discussed the matter and a draft was prepared by Austin Chamberlain—the Secretary of State for India. Since the latter tendered resignation over the "Mesopotamian Muddle", Montagu, an intimate friend of India, succeeded him. He did not make any substantial change in the draft which was finally recast by Lord Curzon who substituted the words "responsible government" for "self-government". On August 20, 1917, Montagu made his famous announcement known as "August Declaration" in the House of Commons. The Declaration runs as follows:—"The policy of His Majesty's Government with which the Government of India are in complete 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 realization of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible.......

1. Ibid., p. XIV
2. Punrnah K.V. : The Constitutional History of India, p. 144
"I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance and they must be guided by the cooperation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility."

Significance of the August Declaration. The Declaration of 1917 is of great constitutional importance. For the first time declaration of such a momentous significance was made by the Britishers since the transfer of power from the Company to the Crown. It served as the basis of British policy till the attainment of independence by the Indians.

Though the words 'dominion' and 'self-government' were purposely avoided yet it was implicit in this declaration that some day India was to be given self-government and she was to attain a 'Dominion Status'. The phrase "realization of responsible government in India as an integral part of the British Empire" conveys this sense in unmistakable terms. In the words of Coupland this implies that India "could acquire a real nationhood which could be embodied as in the Dominions in a national system of government." The Declaration thus constituted an important milestone on the road leading to self-government in not a distant future.

The Declaration is indeed revolutionary in character. Lord Morley had in 1909 emphatically stated that he had absolutely no intention of introducing a parliamentary government in India. Hence the possibility of India's attaining the status of a self-governing colony seems to be a Utopia. His successor, Lord Caw, also had reiterated the same fact in 1912. It was Montagu who dispelled all the fears of the Indians by repudiating Morley's policy in clear and unambiguous terms. His declaration instilled new hope in the Indians. What was held to be an impossibility in 1909 and 1912 was found to be feasible and desirable in 1917. Hence the Moderates welcomed it as "the Magna Carta of India".

The declaration marked the triumph of the Hindu-Muslim unity. Both the major parties realized that by forging a united front, they could compel the Britishers to yield and accept their legitimate demands.

The Declaration made the Indians feel that they would no longer be treated as strangers in their own land. Henceforth they were to be associated in all branches of administration including the Army. It made them feel that they would no longer be treated as inferior and incompetent by the alien bureaucracy.

The Declaration added to the moral strength of the Indian National Congress. Their hard struggle bore some fruits. The Britishers made an important commitment. It could not easily deviate from it. The Congress could in future remind the Britishers of their commitments and ask for the implementation of the most extensive scheme of decentralization and devolution. The success of the Congress in wrestling concessions from the Britishers strengthened their ranks still more.

Significance of the Declaration lies also in the fact that during the most critical period, it eased the political situation for the Britishers, by calming down the agitation amongst the Indians.

Keeping in view these important bearings of the Declaration, the authors of the Report on Indian Constitutional Reforms regarded it as "the most momentous utterance ever made in India's chequered history" which marked "the end of one epoch and the beginning of the new one." Pradhan deemed the Declaration a revolutionary pronouncement and remarked, "With the announcement of August 20, 1917, modern India has entered on a new era in her history."

With all these good points to its credit and the commendations showered on it, the Declaration was considered unsatisfactory both in language and substance by the Extremists. The hope of introduction of some tangible measure guaranteeing self-government however kept them closer for the time being but when the hollowness of declaration was revealed to them, they resorted to the usual agitation with more vigour. They dubbed the announcement as an artifice to hoodwink the Indians. The indefiniteness of the announcement was unmasked in the next few years. India's progress was to be judged by the British Parliament and Government of India alone. The Britishers alone were to be the judges of the time and measure of each advance. It was considered flagrantly incompatible with the spirit of liberty. It greatly hurt the sentiments and feelings of the Indian patriots who started feeling that the promised self-government was a mirage and the declaration of 1917 was a vague, indefinite and elusive step.

§ 3. MONTFORD SCHEME

Instead of appointing a royal commission to submit a report, as to what should be given to the people of India, Montagu left London on October 18, 1917, at the head of a delegation and arrived at Bombay on November 10, 1917. After staying for about 5½ months in India, touring the entire country and meeting a large number of deputations, Montagu left for London towards the end of April, 1918. On his stay in India, he remarked, "I spent my whole time rocking my brains as to how I am going to get something which India will accept and the House of Commons will allow me to do without whittling it down." In fact, he exhausted himself so much that he developed insomnia. After prolonged deliberations and thorough study of the Indian affairs in collaboration with Lord
Chelmsford, Montagu published his report in 1918. Following were the three cardinal principles of the Reforms.

(a) "The provinces are the domain in which the earlier steps towards the progressive realization of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence legislative, administrative and financial of the Government of India which is compatible with the due discharge by the latter, of its own responsibilities."

(b) "The Government of India must remain wholly responsible to Parliament and saving such responsibility, its authority in essential matters must remain indisputable pending experience of the effect of the changes now to be introduced in the Provinces. In the meantime, the Indian Legislative Council should be enlarged and made more representative and its opportunities of influencing Government increased."

(c) "In proportion as the foregoing changes take effect, the control of Parliament and the Secretary of State over the Government of India and Provincial Governments must be relaxed."

If these three cardinal principles are compared with the cardinal points of the pre-reform structure which have been described in the earlier chapters, it will be plain that the Reforms struck at the roots of the earlier system. Authority instead of being concentrated at the Centre, was to be considerably devolved on the Provinces; the opportunities of the Central Legislature for influencing the Government of India were to be increased; and the control of the Parliament over the administration of India was to be modified, by marking out a portion of the Provincial field, in which it would no longer be exercised.

The Moderates in the Congress regarded these proposals as constituting a great advance on the existing system and welcomed them, but the Extremists found them nowhere near the demand of the Congress as set forth in the Congress-League Scheme. No element of responsibility was proposed to be introduced in the Centre; and the responsibility of the provinces was only halting and partial. Mrs. Besant described them as "ungenerous of England to offer and unworthy of India to accept" and Tilak summed them up as "unsatisfactory and unacceptable."

As a matter of fact, the whole atmosphere was vitiated by the publication of the Rowlatt Committee Report during the summer. The recommendations of the said Report were incorporated into two Bills according to which judges were equipped with the power of trying political cases without juries in the notified areas and the Provincial Governments were authorised to possess the powers of internment. These Bills infuriated the people who no longer paid any attention to Montagu's recommendations. Both
B.G. Tilak and Mahatma Gandhi strongly condemned the attitude of the Government. Apart from the Rowlatt Act, the Anarchical and Revolutionary Crimes Act of March, 1919, the tragedy of Jallianwala Bagh Amritsar and the proclamation of Martial Law in the Punjab by its Lieutenant Governor Sir Michael O’Dwyer aroused a vehement opposition against the Government. The arrests of the leaders added fuel to the fire. It was under these abnormal circumstances that the joint authors of the reforms drew up an outline of the scheme according to the principles stated in the preceding page. A number of special committees were appointed to work out the details of the scheme. The detailed scheme as worked out by these committees was initiated in the House of Commons in June, 1919 and after the second reading was referred to a Joint Select Committee of both the Houses. The Committee effected a few but important alterations in the Bill. The Bill then passed through the necessary stages in both the Houses and received the royal assent on December 23, 1919. The new legislatures were inaugurated in January and February, 1921.

14. GOVERNMENT OF INDIA ACT OF 1919

The Act of 1919 marked the beginning of a new phase in our constitutional development. It inaugurated a new era characterised by the growth of responsible government. Coupland has very well portrayed the marked changes brought about by the Act in the following words, “It crossed the line between legislative and executive authority. Previous measures had enabled Indians increasingly to control their legislatures but not their Government. Some Indians, it is true, had been members of those governments, but they had been officially appointed and responsible like their British colleagues to the Secretary of State and Parliament. Now Indians were to govern, so to speak, on their own. They were to take charge of great departments of provincial administration not as official nominees but as the leaders of the elected majorities in their legislatures and responsible to them.”

§ 5. PREAMBLE OF THE ACT

Since the Preamble of the Act embodies some of the cardinal features of the Act of 1919, it is imperative to make a mention of its substance: (i) According to the Preamble, the goal of the British policy towards India was defined as that of increasing association of Indians in every branch of administration; and of that of gradual development of self-governing institutions, with a view to the progressive realization of responsible Government in British India as an integral part of the Empire. (ii) Progress in the realization of the goal was to be made by successive stages, and substantial steps on that decision were to be undertaken immediately. (iii) The time and manner of each advance was to be determined only by the British Parliament, on

whom the responsibility for this welfare and advancement of Indian people resides. (iv) The action of the Parliament in such matters was to be determined by the cooperation it received from those upon whom the new opportunities of service were conferred, and the extent of confidence it could repose in their sense of responsibility. (v) Concurrently with the gradual development of self-governing institutions in provinces in India, it is expedient to give these Provinces in provincial matters the largest measure of independence of the Government of India, compatible with the due discharge by the latter of its own responsibilities.

(a) Significance of the Preamble. Significance of the Preamble lies in the fact that it did not envisage a free India outside the Empire. It was contrary to the expectations of the Indian National Congress and other political bodies in India.

(b) It is significant to observe that the Preamble clearly and definitely asserts the sovereignty of the British Parliament over India and emphasises its responsibility for her welfare and administration. Even the time and manner of each successive advance towards the ultimate goal of full responsible government was to be determined by the Parliament—an outside authority and not the Indians themselves. In fact, it gave a rude shock to the people of India who had whole-heartedly supported the British masters in the hour of sorest trial. The war was fought to make the world safe for democracy and assure right of self-determination to each nation. But the right was denied to the Indians who were, therefore, apt to feel disillusioned. It is curious to note that further advance on the road to self-government was made dependent on the cooperation of Indians and the extent to which they would exhibit their fitness and sense of responsibility to the entire satisfaction of the British Parliament.

(c) The Preamble is deemed important because of its laying down the scope of the Montford Reforms. Two main principles of the Reforms viz., the introduction of partial responsibility in the provinces and conferment on them of the largest measure of independence consistent with the due discharge of responsibilities by the Government of India were embodied in the Preamble.

§ 6. PROVISIONS OF THE ACT OF 1919

The most vital and revolutionary change introduced by the Government of India Act of 1919, consisted in the introduction of partial responsibility in the provinces. In the words of G.N. Singh, "The central proposal of the Montford Reforms then was an important beginning in provincial autonomy, in both senses of the term, i.e., in the sense of freedom from control from above and also in the sense of transfer of power to the people." 1

(a) Dyarchy in the Provinces. Demarcation of the Provincial Sphere of Government:—In order to introduce partial responsible government in the provinces, the demarcation of the sphere of Provincial Governments from that of the Centre was thought indispensable. Hence two lists of subjects on the Canadian pattern were drawn up. The Division was created on the principle that matters requiring uniformity in legislation and concerned with the whole of India or more than one Province should be given to the Centre while those concerning provinces alone should be placed in the "Provincial List". Thus the Central subjects included defence, foreign and political relations, the public debt, tariffs and customs, posts and telegraphs, patents and copyrights, currency and coinage, communications, commerce and shipping, civil and criminal law and procedure, major ports, etc. In the list of Provincial subjects were included local self-government, public health and sanitation and medical administration, education, public works, water supplies and irrigation, land revenue administration, famine relief, agriculture, forests, co-operative societies, law and order (i.e., the administration of justice, police and jails). Apart from the powers enumerated above, the last item in the Central list left to the Centre "all matters not included among provincial subjects". The last item in the Provincial list, allotted to the Provinces "any matter which though falling within a central subject, is declared by the Governor-General-in-Council to be of a merely local or private nature within the Province". It is thus obvious that the residual powers were left with the Governor-General-in-Council.

(b) Division of the Provincial Subjects. The above system of government applied only to Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, Assam and Burma. In each of these nine provinces, a uniform system of government, with the Governor as the head, was established by the Act. Status quo was however maintained regarding the seven other territories of the N.W.F.P., Baluchistan, Delhi, Coorg, Ajmer-Marwar, Andamans and Nicobar Islands which as hitherto were headed by the chief commissioners. In each of the Governors' Provinces, the Provincial subjects were further subdivided into two parts—"reserved" and "transferred". The reserved subjects were kept under official control whereas the transferred subjects were made over to popular controls. Land revenue, and irrigation, famine relief, law and order, industrial matters, control of newspaper, books and printing presses, local fund audit, borrowing money on the sole credit of the Province were known as "reserved subjects". Local Self-government, public health and sanitation, medical administration, education other than European or Anglo-Indian, public works, agriculture and fisheries, excise on alcoholic liquors and drugs, registration of deeds and documents, religious and charitable endowments, development of industries, adulteration of foodstuffs and other articles, weights and measures, libraries, etc. were to be termed as "transferred subjects". In case of a conflict, whether a particular
matter related to a 'reserved' or a 'transferred' subject, the decision of the Governor was final. This system of dividing the provincial subjects into reserved and transferred subjects and entrusting them to two different authorities appointed in different ways is commonly known as 'Dyarchy'. The reserved subjects were to be administered by the Governor assisted by an Executive Council, whereas the transferred subjects were dealt with by the Governor with the help of his Ministers. While the Executive Council was nominated by the Governor, the ministers were chosen by the Governor from amongst the members of the legislature.

(c) Allocations of revenues to the Departments. The apportionment of funds between the reserved and the transferred subjects was to be made every year by an agreement between two sides of the Government. In case, the agreement seemed to be impossible, the Governor by order in writing could make the allocation by specifying fractional proportions of the revenues and balances that were to be assigned to each class of subjects. The Finance Department in each province was kept as a reserved subject. A member of the Executive Council assisted by a Finance Secretary was to be in charge of this Department. If the ministers so desired, the Governor could appoint a Joint Financial Secretary to assist them in preparing the proposals for expenditure and advising them in 'financial matters'.

*Functions of Finance Department:*—The finance department prepared the budget and supplementary estimates. It examined and advised on all schemes of new expenditure, all proposals for borrowing and also on all proposals for enhancement or reduction of taxation. It was consulted on questions involving expenditure concerning establishing. It was empowered to sanction any reappropriation within a grant from one head to another may that be major or minor or subordinate. The advice tendered by the Finance Department could not be rejected by a member without referring to the Executive Council or by a minister without reference to the Governor.

(d) Common Administrative Services. (No separate staff for transferred Departments.) No separate Executive staff was provided for the administration of the transferred departments. Important posts in each such department were kept reserved to the All-India services who were recruited by the Secretary of State in Council and whose pay and pension were not votable. The ministers had no control whatsoever over them. The Governor acted as the custodian of their interests. It is he who examined their complaints and redressed their grievances. The ministers were not empowered to ensure them or transfer them without the concurrence of the Governor. In the words of Punniah, "A complete and logical system of dyarchy would have involved the establishment of two governments in the same area, with separate legislatures, separate funds and separate executive staff. But this was not aimed at by the authors of the Reforms." Even Montagu himself emphatically said that such a

type of Political Dualism was impossible. While speaking in the House of Commons on the Bill, Montagu remarked, "If you have two houses with two staves, two purses, the net result would be that the people concerning themselves with transferred subjects would never have any thing to say on reserved subjects. But if reserved subjects are to become transferred subjects one day, it is absolutely essential that during the transitional period although there is no direct responsibility for them, there should be opportunities of influence and consultation." Though dyarchy in the true sense was not introduced, yet it goes without saying that through this scheme of transferred subjects administered by the elected ministers, the authors of the Act envisaged a first substantial step towards self-government.

(c) The Provincial Executive. As already pointed out, the Provincial Executive in the Governors' provinces was split into two parts. The reserved departments were kept under the Governor and his Executive Council whereas the transferred subjects were to be administered by the Governor and the Ministers.

(l) Executive Councillors. The number of the Executive Councillors was not to exceed four. Only in three Presidencies, statutory maximum of four was maintained whereas in the rest of the Governors' Provinces, the number was two. At least one of the members of the Council at the time of his appointment was to be an employee of the Crown in India with twelve years of service; and half the number of members in each council were to be Indians. All the executive councillors were appointed by the Crown on the advice of the Secretary of State, for a period of five years and they held office at his pleasure. Their salaries were fixed by the Act and were not subject to the vote of the provincial legislature. They were ex-officio members of the Legislative Council but were not responsible to that body. The Governor and the Council were jointly responsible to the Government of India and the Secretary of State and ultimately to the Parliament. The Governor presided over the meetings of the Council where the decision was arrived at in case of difference of opinion by a majority vote. In case of a tie, the President was vested with a casting vote. The Governor was empowered to override the decision of the majority whenever, in his opinion, the decision of majority was fraught with grave danger to the safety, peace and tranquility and interests of the province.

(ii) Ministers and transferred subjects. The ministers were entrusted with the administration of the transferred subjects in each province. The Act did not place any limit on their number, as it did in the case of councillors. In practice however there were three ministers in each Presidency, the Punjab, and the U.P. and two each in the rest of the four provinces. They were to be appointed by the Governor and they held offices during the latter's pleasure. An official could not be appointed as a minister. No person could remain a minister for more than six months unless he was elected to the Legislative Council, within a period of six months. The
Governors generally chose their ministers from amongst the leading elected members of the Legislature. In so far as they owed responsibility to the Legislative Council and their salaries were also subject to its vote, their tenure practically depended upon the will of the Legislature. There is no denying the fact that according to the letter of the law, the ministers held office during the pleasure of the Governor, yet no Governor was supposed to retain a minister who had lost the confidence of the Legislative Council. In the U.P., for an example, the Governor dismissed a minister much against his wishes when the latter lacked the confidence of the Legislative Council. This reflects that the parliamentary form of government was established so far as transferred subjects were concerned.

Relations between the Governor and the Ministers. The authors of the Joint Report did not like the Governor to be a mere constitutional Governor who was bound to accept the advice of the ministers. They expected the ministers to avail themselves of the Governor's trained advice upon administrative questions while the Governor was also expected to meet their wishes to the maximum possible extent, if they were backed by the popular opinion. The Act stated, "In relation to transferred subjects, the Governor shall be guided by the advice of his ministers, unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with that advice". The above clause of the Act seemed to be ambiguous and left much to the discretion of the Governor. According to the Joint Select Committee's interpretation, however, a minister was equipped with the option of resigning if his advice was not accepted by the Governor and the latter possessed the ordinary constitutional right of dismissing a minister whose policy was seriously at fault or was contrary to the views of the Legislative Council. In the last resort, the Governor was empowered to dissolve the Legislative Council and choose the new ministers after a fresh election. He was however expected to accept such views of these newly chosen ministers, as they might press upon him regarding the issue which forced the dissolution. It was hoped that the Ministers enjoying the confidence of a majority in their Legislative Council would be given the fullest opportunity of governing the affairs entrusted to them. The Governor should accept their advice and promote their policy to the farthest possible extent.

The Instrument of Instructions issued to the Governor contained instructions as to the manner in which he was to deal with his popular ministers. It stated, "In considering a minister's advice and deciding whether or not there is sufficient cause to dissent from his opinion you shall have due regard to his relations with the legislature council and to the wishes of the people of the province as expressed by their representatives therein." But the same Instrument of Instructions entrusted a number of special responsibilities to the Governor which could enable him to override the ministers in the discharge of these responsibilities.
Special Responsibilities of the Governor. He was required (i) to see that necessary measures were taken for maintenance of safety and tranquillity in all parts of the province and for preventing occasions of religious or racial conflict, (ii) to see that all orders issued by the Secretary of State or the Governor-General-in-Council to whatever matters they were related were complied with, (iii) to see that due provision should be made for the advancement and social welfare of those classes of people, who, whether on account of the smallness of number or their lack of educational or material advantages or from any other causes, could not as yet fully rely for their welfare upon joint political action, (iv) to see that no order of his Government and no Act of his Legislative Council should be so framed that any of the diverse interests of, or arising from, race, religion, education, social condition, wealth or any other circumstance might receive unfair advantage or might unfairly be deprived of privileges or advantages which they had hitherto enjoyed or be excluded from the enjoyment of benefits which might be hereafter conferred on the people at large, (v) to safeguard all members of the Public Services employed in the Provinces in the legitimate exercise of their functions and in the enjoyment of all recognised rights and privileges, and (vi) to take care that no monopoly or special privilege, which was against the common interest, should be established and that no unfair discrimination should be made in matters affecting commercial or industrial interests.

Principle of Joint Ministerial Responsibility. Since joint responsibility of the ministers is a hallmark of the parliamentary form of government, we deem it essential to examine how far the Act introduced the principle in the provincial governments. The authors of the Joint Report accepted the principle as a matter of course. They clearly stated that "The actual decision on a transferred subject would be taken after general discussion by the Governor and his ministers." The Government of India, however, in their first dispatch advised the rules to be so framed as to regulate the relations between the Governor and his individual ministers (so that there was no question of collective responsibility) even though he would meet his ministers for consultation. While framing the Government of India Bill, the Instrument of Instructions and the Devolution Rules, the British Government adopted the above view. The reference was all along to the Governor and a minister or to the minister-in-charge. The Joint Select Committee however advised in favour of the principle of joint responsibility, and the clause which declared that "in relation to a transferred subject, the Governor shall be guided by the minister-in-charge" was amended to read "In relation to transferred subjects, the Governor shall be guided by the advice of his ministers." Similar change was not however made by the Secretary of State and the Government of India in the wording of the Instrument of Instructions and the Devolution Rules which still spoke of the "minister" in the singular. It may therefore be concluded that though the framers of the constitution clearly in-
tended that the ministers should act on the principle of joint responsibility, yet the observance of the principle was not to be binding on any body. It was to develop as a convention which unfortunately did not develop.

Temporary Administration of transferred subjects. The Act provided for the temporary administration of transferred subjects in case of an emergency. In case of any such eventuality, the Governor was authorised to entrust the 'transferred' subject to any other willingly available minister temporarily. In case none was so available, he himself could hold the charge of the department, till the appointment of a minister. In the latter case, the Governor could exercise only the powers of a minister in relation to the subject. He was not, however, allowed to exercise the powers of certification and restoration which he had in relation to the reserved subjects though he was allowed to authorise the necessary expenditure for running the department. Such temporary administration could however continue if there was any hope of finding the ministers who could take charge of the subjects. If possibility of a ministerial government was remote, the Governor-General-in-Council with the previous sanction of the Secretary of State-in-Council could revoke or suspend for such period as he deemed essential, the transfer of all or any subjects in the Province. Such transferred subjects thus relapsed into the position of reserved subjects and were to be administered by the Governor-in-Council.

7. THE PROVINCIAL LEGISLATURE

With the introduction of responsible government in the provinces, the question of the reform of the legislatures assumed great importance. The Montford Report was not in favour of establishing second chambers in the provinces. They proposed that "there should be in each province an enlarged Legislative Council differing in size and composition from province to province with a substantial elected majority, elected by direct franchise with such communal and special representation as may be necessary." (i) The Act of 1919 fixed the strength of the Legislative Council in the Governors' provinces as follows: Madras 127, Bombay 111, Bengal 139, United Provinces 123, Punjab 93, Bihar and Orissa 103, Central Provinces 70 and Assam 50. (ii) The number of official members in the Legislative Councils was not to exceed 20 per cent and of those elected was not to be less than 70 per cent. The members of the Executive Council were its ex-officio members. (iii) It was reluctantly felt essential to continue separate electorates for Muslims and to grant them to Sikhs in the Punjab and to Europeans, Anglo-Indians and Indian Christians where their numbers rendered such action proper. Thus Christians were provided for in Madras, Anglo-Indians in Madras and Bengal and Europeans in all provinces save the Punjab, Central Provinces and Assam. (iv) Provision for special

constituencies for the Universities (except for in Assam) for landholders and for commerce and industry was also made in the Act. In Madras 13 of the elected seats fell to special, 20 to communal and 65 to general constituencies. In Bengal, there were 22 elected seats for special electorate, 46 for communal and 46 for general. In the Punjab there were 7 special, 44 communal including 12 Sikhs and only 20 general. Keith remarks, "The figures show the essential difficulty, the fact that while in the other provinces Hindus predominated, Muslims were in strong force in Bengal and the Punjab while the Sikhs were of much greater importance than their numbers suggested as a martial race indispensable to the recruiting of the Indian army. A further complication arose in the necessity of reserving 28 seats for non-Brahmans in Madras, in view of the predominance there of the Brahmans who though only 3 per cent of the electorate had secured practically all the representation in the legislature in the past and held three times as many posts as all the other Hindus. The reservation proved needless, A like difficulty was raised in the case of Marathas in Bombay." It may be pointed out that no provision was made for the representation of women. (v) The Governor was authorised to fill up the remaining seats in the exercise of his general discretion to correct any glaring inequalities in election or to secure the presence on the Council of any person of position or political experience who may have failed to secure election. (vi) The system of indirect election was ended. The Provincial Councils were now to be elected directly by the people. (vii) The authors of the Joint Report had recommended that the franchise should be 'as broad as possible' yet the proposals made by the Franchise Committee enfranchised only about one-tenth of the adult male population. In 1920 out of a total population of 241.7 millions, only 5.3 millions got the right to vote. The percentage of voters to the adult male population varied from province to province. In the U.P., it went up to 11.8 whereas in Bihar and Orissa 3.9 per cent. The qualifications for voters also varied from province to province also in urban, rural and landlord constituencies. The disqualifications were the same in all cases. A person who was not a British subject; or was a female; or had been judged by a competent court to be of unsound mind or; was under 21 years of age, was not entitled to have a vote. Persons convicted of a criminal offence punishable with imprisonment for a term exceeding six months or of corrupt practices were also disqualified for a period of five years. The Local Government was, however, authorised to remove the last disqualification and also the first in the case of rulers and subjects of the Indian States. The provincial legislatures were empowered to admit women to the vote by means of a special resolution to that effect.

Following were the qualifications for voters in general constituencies—(i) residence in the constituency for the last 12 months and

either payment of municipal taxes, amounting in most cases to not less than Rs. 3 per annum; or (ii) occupation or ownership of a house of the annual rental value of Rs. 36 per annum in the majority of the Provinces; or (iii) assessment to income tax on an annual income of not less than Rs. 2,000 in the case of urban constituencies; or (iv) in rural constituencies, the holding of agricultural land assessed at an annual value of Rs. 10 to Rs. 50 per annum. (v) Military Service was also regarded as a qualification for the vote in all provinces. Persons holding the office of Lambardar or village headman were also entitled to vote in the Punjab and the Central Provinces. (vi) The chief qualifications for the voter in a landholder’s constituency was the possession of a landed estate assessed to land revenue varying from Rs. 500 to Rs. 5000. (vii) In the University constituencies, all graduates of over seven years standing were given the right to vote. (viii) For other special constituencies, the members of the respective associations organised to protect special interest such as Chambers of Commerce, Millowners Association and Planters Association were entitled to vote.

Qualifications of Candidates. No special qualifications were required for the candidates seeking election to the provincial legislatures. They were not to be less than 25 years of age and were voters or qualified to be voters in the constituency from which they were contesting, provided they did not have the disqualifications mentioned above. In the case of candidates, however, apart from the disqualifications enumerated for the voters, a few more, such as insolvency or dismissal or suspension from legal practice were also prescribed.

Rules of Election, etc. Elaborate rules were specified for the holding of elections and maintaining their purity. Provisions were made, in the Act, for avoiding the use of corrupt practices. The election disputes were to be settled by the commissioners appointed by the Governor. Orders of the Governor on the basis of the report of the commissioners were to be final. In the words of G.N. Singh, “The new Legislative Councils were thus elected bodies though the system of election was not purely territorial. The official element though small and in a definite minority was not unimportant. It could yield great influence with the help of nominated members and members elected through special and communal electorates.”

Tenure of the Legislative Councils. (i) The tenure of the Legislative Council in a Governor’s province was to be three years. It could however be dissolved earlier if the exigencies of parliamentary government deemed it necessary. The life of the Council could also be extended by the Governor under special circumstances up to a maximum period of one year. (ii) The Governor was empowered to summon, prorogue and dissolve the Council and fix the time and place of its meetings. (iii) The Governor

could not, however, be a member of the Legislative Council, although he was vested with the power of addressing it. (iv) The Governor was also authorised to appoint the President of the Council for the first four years and confirm the election of the Vice-President.

Powers of the Legislative Council. (a) The Act empowered the Legislative Council to make laws for the peace and good government of the province but this power was hedged with many restrictions:—
(i) The Devolution Rules necessitated the previous sanction of the Governor-General in several cases. (ii) The Governor was empowered to pass legislation through power of certification despite its rejection by the Legislative Council if he considered it necessary for the administration of reserved subjects. (iii) The Governor could stop at any stage the consideration of a Bill or a part of a Bill on the plea that it affected the safety and tranquility of the province or any part thereof. (iv) The Governor-General and the Governor were empowered to veto the Bills passed by the Legislative Council and also to return the measures passed by the latter, for reconsideration. (v) Even the Crown could disallow any Act of the Provincial Legislature. (vi) The Governor had to reserve for the consideration of the Governor-General any Bill which contained provisions affecting religion or religious rites regulating the constitution and functions of any University having the effect of including within a transferred subject matters which had been classified as a reserved subject, etc. In the words of G.N. Singh, "These were serious limitations on the legislative powers of the provincial legislatures; but some of them were inherent in the very conception of Dyarchy." 1

(b) The Legislative Councils did not possess control over the administration of the reserved subjects. They exercised only influence. If it refused to give leave to introduce or failed to pass a Bill concerning a reserved subject as recommended by the Governor, the latter could certify that the passage of the Bill was essential for the discharge of his responsibility for the subject. Thereupon it became an Act of the Local Legislatures. The Governor was required to send an authentic copy of it to the Governor-General who was expected to reserve it for the signification of His Majesty’s pleasure. The Act so passed was to be placed before each House of Parliament for not less than eight days during the session, before it was presented to His Majesty for his assent. On getting assent of His Majesty-in-Council, the Act became valid.

In case of an emergency, the Governor-General might not reserve the Act for His Majesty’s consent. It came into effect immediately on his giving the assent though it could be subsequently disallowed by His Majesty-in-Council. Punish remarks that these provisions clearly point out that the Governor was ultimately responsible for the administration of the reserved subjects not to the Local Council, but to the Parliament in England.

1. Ibid., p. 311.
(c) The Act laid down that no proposal for the appropriation of any provincial revenues could be made save on the recommendation of the Governor communicated to the Council. It is thus quite evident, that the proposals for expenditure could be initiated by the executive. The estimated annual revenue and expenditure was to be laid in the form of a financial statement before the Council each year. The items mentioned below were not notifiable by the Council. (i) Contributions payable to the Central Government; (ii) interest and sinking fund charges on loans; (iii) expenditure of which the amount was prescribed by or under any law; (iv) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State-in-Council; and (v) salaries of judges of the High Court of the province and of the Advocate General.

The rest of the proposals for expenditure were to be submitted to the vote of the Council as 'demands for grants'. The Council was fully empowered to give its assent or refuse it or even reduce the amount so demanded either by a reduction of the whole grant or by the omission or reduction of any of the items included in it. The Council was not however authorised to enhance any of the grants or alter the destination of any of them.

If the Council did not give its assent to a demand relating to a reserved subject, the Governor could certify that the expenditure involved in the demand was essential for the discharge of his responsibility for the subject. Hence he could act as if it had been assented to by the Council. The Governor could not however restore a rejected demand in the case of a transferred subject. In cases of emergency, however, he was allowed to authorise such expenditure, if, in his opinion, it was essential to incur it for the maintenance of safety and tranquility of the province or for running any department.

Keeping in view all these changes in the provincial domain, G.N. Singh observes, "Such then were the changes made by the Government of India Act, 1919 in the provincial sphere. They constituted the first step on the road to self-government."

Changes in the Central Government of India. The second important formula laid down by the Montford Report stated, "The Government of India must remain wholly responsible to Parliament and saving such responsibility, its authority in essential matters remains indisputable, pending experience of the effect of the changes now to be introduced in the Provinces. In the meantime, the Indian Legislative Council should be enlarged and made more representative and its opportunities of influencing Government increased." Part II of the Government of India Act 1919 and subsequent Rules framed by the Government of India to implement it gave effect to this policy. Some significant alterations were made.

1. Ibid., p. 313.
in the Central Legislature and the constitution of the Viceroy's Executive Council was slightly modified.

Changes in the Executive Council of the Viceroy. The authors of the joint report wanted to retain autocracy at the Centre till the development of responsible government in the provinces. They were however keen to make it responsive to Indian public opinion. Hence the changes introduced in the Executive Government at the Centre were not very significant. (i) The maximum limit imposed on the membership of Governor-General's Executive Council was removed. (ii) A pleader of an Indian High Court was also made eligible for appointment as the Law Member. (iii) Of the six members of the Governor-General's Council, other than the Commander-in-Chief, three were required to Indians, and this was done to implement the policy of increasing association of Indians to every branch of administration. (iv) These members held office for a period of five years. It may however be pointed that these Indian members were allocated portfolios of minor significance only. Law, Education and Health, Industry and Labour were generally handed over to them. (v) The Executive Council was to be responsible to the Secretary of State and not to the Central Legislature. It could not be overthrown by an adverse vote of the legislature. The legislature could however criticise the Executive Council through questions and supplementary questions and censure it through adjournment motions. It, therefore, generally responded to the wishes of the legislature. Some of the members of the legislature were the members of the standing committees such as Finance Committee and the Committee on Public Accounts. Through them, they got an opportunity to exercise their influence on the Government. The members of the legislature could reject the Budget and move resolutions against the Government. All these factors bear an ample testimony to the fact that even the most autocratic of Executive Councillors could not afford to ignore the wishes of the legislature. Although the Executive was independent of the legislature, yet the latter could influence its members. It is therefore evident that the Act of 1919 introduced responsive if not responsible Government at the Centre. (vi) The superintendence, direction, and control of civil and military government of India continued to remain vested with the Governor-General-in-Council. Powers of certifying bills, restoring cuts, promulgating ordinances, were a few more additions to his powers made by the Act. Though, theoretically speaking, the Executive authority was vested with the Governor-General-in-Council yet in reality, the Governor-General asserted his supremacy over the Council. In fact, he was not a part of the whole, but constituted the whole. Due to his being the representative of His Majesty, the King, and a direct communicating link with the Secretary of State for India and also his holding high social status, and vast patronage regarding appointment and promotion of his councillors, the Governor-General enjoyed enviable position and commanded dominating influence. (vii) The Central Government exercised jurisdiction
over a number of subjects of national importance such as Defence, Foreign relations, Customs, Indian States, Emigration, Nationalization, Shipping, Navigation, Railways, Posts and Telegraphs, Currency and Exchange, Commerce, Civil and Criminal law, Public services, etc.

The Chief Commissioners' Provinces, viz., Delhi, Ajmer, British Baluchistan, Coorg and Andamans were also directly administered by the Central Government. It also exercised a general power of direction, superintendence and control over the Provincial Administration. Its superintendence over the reserved subjects of provincial administration was almost complete though in respect of transferred subjects, its influence was limited to problems concerning public services, inter-provincial disputes, and administration of central subjects.

Changes in the Central Legislature. (i) Though the Central Executive remained responsible to the British Parliament yet Central Legislature was made more democratic. The new legislature was to consist of two chambers—the Council of State and the Indian Legislative Assembly. The second chamber was created mainly to secure the passage of essential legislation refused by the Lower House. (ii) The Council of State was to consist of a maximum number of 60 members of whom 34 were to be elected and the rest were to be nominated. Of the 26 nominated members not more than 20 were to be officials. Of the 34 elected members, 19 were elected by the general constituencies and the rest by communal and special constituencies—11 Muslims, 1 Sikh and 3 Europeans Commers. (iii) Election of the members of the Council of State was to be direct though franchise was highly restricted. (iv) The franchise was, in fact, based on a high property qualifications. Only those who paid income-tax on an annual income of not less than Rs. 10,000 to Rs. 20,000 or were assessed to land revenue of at least Rs. 750 were entitled to vote. In addition to these property qualifications, those who were equipped with previous experience of public work or who were recognised as men of high scholarship or academic worth viz., those who are and have been members of a legislature; or those who hold or have held the office of a Chairman or a Vice-Chairman of a municipality; or district board or a central co-operative bank; or those who hold the highest title conferred for oriental scholarship were entitled to be voters of general constituencies for the Council of State. (v) The first Legislative Assembly was to consist of 143 members of whom 25 were officials, 15 nominated non-officials and 103 elected. The elected members were distributed among the different communities, classes and interests as follows:—51 were returned from general constituencies, 30 from Mohammedan constituencies, 2 represented Sikhs, 9 Europeans, 7 Landowners and 4 represented Indian Commerce. In 1934, however, the number of members of the Assembly went up to 145 out of whom 26 were officials, 13 nominated non-officials and 106 elected. (vi) The Depressed Classes, Anglo-Indians, Indian Christians, the Associated Chambers of Commerce and Labour
interest were each represented in the Assembly by one nominated member. (vii) The distribution of the elected members among the provinces was done on the basis of their importance rather than their population. For example, Bombay having less than half the population of Madras was accorded equal representation with that Presidency due to its commercial importance and the Punjab having less than 2/3 of the population of Bihar and Orissa was given the same number of representatives as the latter owing to its military importance. Thus weightage in representation was given not only to minority communities but also to smaller provinces. (viii) In the case of voters of the Central Assembly, following were to be the qualifications - payment of municipal tax amounting to not less than Rs. 15 per annum or tenant or owner of a house of an annual rental value of at least Rs. 180; or an income tax assesse on an annual income of not less than Rs. 2,000 to Rs. 5,000 or landlord paying a land revenue of at least Rs. 50 to Rs. 150 per annum varying from province to province. The total number of electors in British India was only 1,128,331 for the election to the Legislative Assembly in 1926. (ix) The disqualification in the case of both the electors and the candidates for both the Houses were the same as those prescribed for the voters and candidates respectively of the provincial councils. No special qualifications were prescribed for the candidates for both the Houses except that they should be 25 years of age and be qualified voters for the constituencies from which they seek election. (x) The normal duration of the Council of State was five years and of Legislative Assembly three years. The Governor-General was authorised to dissolve any of the chambers at any time within the period and also extend that period in special circumstances. (xi) The Governor-General nominated the President of the Upper House and also the first President of the Lower House for four years. After this period of four years, the President of the Lower House was to be elected. (xii) The members of the Governor-General’s Executive Council who were nominated as members of either chamber were allowed to attend and address the other chamber but not to vote. (xiii) The time and place of the meetings of both the Houses were to be fixed by the Governor-General who also possessed the power to summon and prorogue the chambers. (xiv) The Governor-General was authorised to address the members of the two Houses.

Powers of the Central Legislature. The Central Legislature was equipped with very wide powers.

(a) It could make law for the whole of British India, for the subjects of His Majesty and services of the Crown in other parts of India, for the Indian subjects of His Majesty wherever they may happen to be and for all persons employed in His Majesty’s defence forces.

(b) It was empowered to repeal or amend laws for the time being in force in British India or applicable to the persons mentioned in the preceding sentence. However, the previous sanction of the Secretary of State-in-Council was required to pass any legislation
abolishing any High Court. Moreover, the Indian Legislature had no power to amend or repeal any parliamentary statute concerning British India or to do any thing affecting the authority of the Parliament or the unwritten laws or the constitution of the United Kingdom.

Besides these restrictions imposed to keep the sovereignty of the British Parliament intact, some other important restrictions were also imposed on the Legislative Assembly to maintain the supremacy of the Governor-General-in-Council. (a) Previous sanction of the Governor-General was required to introduce bills concerning the following subjects:—(i) the public debt or public revenues of India. (ii) Religious rites and usages of the British subjects in India. (iii) Discipline or maintenance of His Majesty’s military, naval or air forces. (iv) Relations of the Government of India with foreign states or Indian States. (v) Any measure which repeals or amends any Act of a Legislature or any ordinance made by the Governor-General, etc.

(b) The Governor-General was empowered to prevent the consideration at any stage of a Bill or a part of a Bill in either Chamber of the Legislature, if, in his opinion, it affects the safety or tranquility of British India or any part thereof.

(c) The Governor-General was empowered to enact laws which he deemed essential for the safety, tranquility or interests of British India or any part thereof if either chamber refused or failed to do so. Every Act so passed required the assent of His Majesty which could not be given “until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat”.

(d) The Governor-General possessed the power of making and promulgating ordinances for the peace and good government of British India or any part thereof in cases of emergency. An ordinance issued by the Governor-General had the same force of law as a law passed by the Indian Legislature. It lasted for six months.

(e) The Governor-General was empowered to return any measure passed by the two Houses of the Central Legislature for reconsideration before signifying his assent or dissent.

(f) The Governor-General’s assent was essential for the enactment of a law by the Indian Legislature. He had the power to give his assent or to reserve the Bill for the signification of His Majesty’s pleasure. The Crown could disallow any Act made by the Indian Legislature or the Governor-General. The vetoing power of the Governor-General was thus real and was actually exercised on many occasions.

Members of both Houses of the Central Legislature were given the right of putting interpellations and supplementary questions, of moving resolutions and making motions of adjournment and of in-

introducing projects of legislation according to the rules. The mem-
bers were given the right of freedom of speech in the two chambers.
The estimated annual expenditure and revenue of the Govern-
ment of India was to be laid in the form of a statement every year
before both the chambers of the Indian Legislature. The Govern-
ment was to submit, on the recommendation of the Governor-
General, proposals for the appropriation of revenue in the form of
demands for grants, to the vote of the Indian Legislative Assembly.
The following heads of expenditure however need not be submitted
to the vote of the Legislative Assembly—Interest and sinking fund
charges on loans; the expenditure of which the amount was pres-
ccribed by or under any law; salaries and pensions of persons
appointed by or with the approval of His Majesty or by the Secretary
of State-in-Council; salaries of Chief Commissioners and Judicial
Commissioners; expenditure classified by the order of the
Governor-General-in-Council as ecclesiastical, political and defence.

All other items of expenditure were submitted to the vote of
Assembly which may assent or refuse its assent to any demand or
may reduce the amount referred to it in any demand by reduction of
the whole grant. If the Governor-General was satisfied that any
demand refused by the Assembly was essential for the discharge of
his responsibilities, he could restore the grant even if it was rejected
by the Assembly. In cases of emergency, the Governor-General was
empowered to authorise such expenditure as may, in his opinion,
be necessary for the safety or tranquility of British India or any
part thereof.

Keeping in view the above powers of the Indian Legislature
which were hedged with so many restrictions, G.N. Singh remarks
"The Indian Legislature was thus not only a non-sovereign law-
making body but it was also powerless before the executive. The
Governor-General-in-Council were supreme in all spheres of govern-
mental activity—administrative as well as legislative and financial.
Not only was the executive independent of the legislature, it also
possessed the power of overriding the legislature in almost all
respects."1

Changes in the Home Government. (a) Relaxation of Secretary
of State's Control. Since the Indians were disgusted with the
superfluity of the India Council and considerably agitated over the
autocratic interference of the Secretary of State in Indian affairs, the
Act of 1919 effected changes in the Home Government as well: (i)
The powers of the Secretary of State for India were considerably
reduced. Some of his functions were passed on to the High Com-
misssioner for India (a new office created by the Act) who was to
be appointed by the Government of India and also paid by it.
Formerly, the Secretary of State was not only responsible for the
political administration of India but also made purchases, on behalf

of the Government of India in London for the requirements of Indian stores and machinery. This task of making purchases was now assigned to the High Commissioner for India who was to be directly under the Governor-General-in-Council. The High Commissioner was to be in charge of the Stores Department and also the Indian Students' Department. He had also to supervise the work of Indian Trade Commissioner. Thus the 'agency' functions of the Secretary of State were transferred to the High Commissioner. The first appointment of the High Commissioner was made in 1920, by the Governor-General-in-Council with the approval of the Secretary of State in Council. (ii) Many of the powers of the Secretary of State were also delegated to the Governor-General-in-Council and Governors-in-Council. Moreover matters in which reference to the Secretary of State was essential, were considerably reduced. Thus prior to the passage of the Act, all projects of legislation used to be referred to the Secretary of State before they were initiated in the Central and Provincial Legislatures. Henceforth only a few special bills, viz., those relating to foreign relations, military affairs, customs, currency and shipping, the public debt, the rights of European British subjects, the law of naturalization were to be referred to the Secretary of State by the Imperial Legislature. (iii) Provincial bills were not referred at all except in very rare cases, where the Governor-General might decide to refuse statutory previous sanction to any of them. (iv) In regard to provincial expenditure on the reserved subjects, however, the previous sanction of the Secretary of State was still required in such cases as the pay and allowances of the All-India Services, the expenditure of the Governors, the revision of permanent establishments involving an additional recurring cost of more than Rs. 15 lakhs a year, and capital expenditure on irrigation and other public works costing more than Rs. 50 lakhs. (v) Though powers over expenditure were generally delegated to the Central Government, yet the control of the Secretary of State over its financial administration continued to remain more rigid than over any other sphere of administration except defence and foreign relations. His control over the provincial finances was however considerably relaxed. (vi) The control maintained by the Secretary of State-in-Council over the Central and Provincial Governments regarding All-India Services also continued to be very strict. None of them was empowered to create or abolish any of the permanent posts held by the members of the All-India Services or those carrying a salary of more than Rs. 1,200 a month; or to increase or reduce the salary drawn by an incumbent of any such post. It may be pointed out that according to a suggestion made by the Joint Select Committee, a convention was to be adopted according to which the Secretary of State was not required to interfere in all fiscal matters where there was an agreement between the Government of India and the Central Legislature. A similar convention was adopted in regard to provincial sphere. And the Government of India was not required to interfere in
purely routine matters where the provincial government and the Legislative Council seemed to agree. (vii) Till the passage of the Act, the salary of the Secretary of State was being paid out of Indian revenues. This practice prevented the British Parliament from criticising the administration of the Secretary of State at the time of annual appropriation. The Act laid down that henceforth, his salary should be paid out of the British Exchequer. This enabled the British Parliament to exercise its control over the Secretary of State.

Changes in India Council. (i) The constitution of the Council of the Secretary of State underwent a great modification. Henceforth, it was to consist of not less than 8 and not more than 12 members, half of whom at least must have served or resided in India for not less than ten years at the time of their appointment. (ii) This tenure was also reduced from 7 to 5 years to ensure a continuous flow of fresh experience from India. (iii) The salary of a member was raised from £1000 to £1200 and an additional subsistence allowance of £600 a year, was to be paid to any member who at the time of his appointment was domiciled in India. (iv) The distinction between 'secret', urgent and other matters in the correspondence of the Secretary of State with the Government in India was done away with. (v) The Secretary of State was given wide discretion to direct the manner in which the business of the Secretary of State in Council or the Council of India was to be transacted. (vi) He was empowered to prescribe the procedure for the sending of orders and communications to India and in general for correspondence between the Secretary of State and the Governments in India.

The Indian States. (a) The Chamber of Princes. When Mr. Montagu and Lord Chelmsford were touring over the country, the Princes also represented their grievances to them. In the words of Dr. Rushbrook William, the princes asked for changes in the following directions. "They felt that they had no voice in the determination of all-India policy. Secondly, they deplored the lack of any impartial tribunal to decide disputes arising between them and the British Indian authorities, for it seemed to them that in a number of cases, the Government of India was at once a party and a judge. Finally they believed that the Political Department... occasionally acted in disregard of the treaties and in general, exercised an authority, which, if benevolent, was nevertheless in certain respects undeniably arbitrary." In order to remedy these defects, the Princes put forward a scheme for a deliberating assembly in which they could meet together and discuss their common interests. They also suggested the constitution of an impartial tribunal, to settle their disputes, and also the association of a committee with the political secretary in order to ensure harmony between the

general policy of the department and the sentiments and desires of the Princes.

The Montford Report accepted their main proposals which were considered at a conference of the Ruling Princes at the end of January, 1919. The Conference approved generally the project of instituting a Council of Princes. The recommendations of the Conference were submitted to the Secretary of State. The Viceroy in collaboration with the Secretary of State drafted a scheme for constituting the Chamber of Princes. The scheme was placed before another conference of the Princes in November 1919 which approved it. A Codification Committee was appointed to assist the Viceroy in drafting rules of business and resolutions concerning courts of Arbitration and Commissions of Enquiry. The Duke of Connaught formally inaugurated the Chamber of Princes on February 8, 1921. The decision to constitute this chamber was however conveyed through Royal Proclamation. It may be pointed out that the Act of 1919 contained no provisions whatsoever, regarding the creation of the new machinery for co-operation between British India and the Indian states.

The Chamber of Princes represented 108 states whose rulers were to be its members in their own right and also 127 other states which elected twelve representatives of their own. The Chamber thus consisted of 120 members in all. The Chancellor and Pro-Chancellor were to be elected annually from among its members. The Viceroy was to be the chairman of this newly constituted Chamber of Princes. The Chancellor presided in his absence. The Viceroy Lord Chelmsford made it clear that attendance and voting in the Chamber will be voluntary and that the Chamber will be a consultative and not an executive body. The institution of the Chamber was not supposed to debar an individual state whether represented in the Chamber or not, to communicate directly with the Government of India, as done heretofore. Nor was it allowed to discuss the internal affairs of any particular state or the actions of any individual ruler.

The Chamber was to meet once a year ordinarily in its own Hall of Debate known as Narrindera Mandal. The functions of the Chamber and limitations on its powers were defined by the Royal Proclamation which runs as follows:

"My Viceroy will take its counsel freely in matters relating to the territories of Indian states generally and in matters which affect those territories jointly with British India or with the rest of my Empire. It will have no concern with the affairs of individual states or their Rulers or with the relations of individual states to my Government while the existing system of the states and their freedom of action will be in no way prejudiced or impaired."

A standing committee which consisted of four to five members excluding the Chancellor, was annually elected by the Chamber on the condition that the Princes of Rajputana, Central India, Bombay and the Punjab must be represented thereon.
(b) Other provisions regarding States. Difficulties between two states or a state and a local government or the Government of India were to be referred for report by a commission, consisting of one nominee of each side and presided over by a judge. If the Viceroy did not accept their finding, he was to refer the same to the Secretary of State.

Moreover, in the case of charges against a ruler, investigation was to be entrusted to a judge, two ruling princes and two other persons.

Another important proposal of Montford Report was concerned with devising some machinery for collective consultation between the Princes and the British Indian authorities in matters affecting both the States and British India. The joint authors of the Report recommended that whenever the Viceroy deemed it necessary, he may "arrange for joint deliberation and discussion between the Council of State and the Council of Princes or between representatives of each body".

From the above proposals of the Montford Report, it is evident that "the Report recognised to the full the importance of the position of the states and the effect which the reform scheme must have on their interests".

It will not be irrelevant to point out that a few critics do not give any credit to the Act for the constitution of a Chamber of Princes. They are of the opinion that it was not until and after the publication of Joint Report that the idea took an effective shape. Hence they find no justification in turning to the Government of India Act 1919, for tracing out the institution of the Chamber of Princes.

The Civil Services in India. Keith remarks "Special provisions were felt necessary to regularize the position of the civil services in India, as they had developed in a somewhat haphazard manner, and the advent of control by the legislatures even in minor degree rendered it essential to move all legal doubts and to distribute control for the future."

(i) All existing rules regarding services were declared valid but they were subject to alteration by the rules to be made in future.
(ii) The Secretary of State-in-Council was vested with the power of making rules regarding the classification of the civil service in India, the methods of their recruitment and the conditions of their service, pay and allowance, discipline and conduct. He could however delegate the power to make rules to the Governor-General-in-Council or to local Governments. He was empowered to authorise the local or Indian Legislatures to regulate the public services.

3. Ibid., p. 270.
subject to the condition that any civil servant appointed before
the commencement of the Act, would retain his rights or receive
equitable compensation. Pensions, also, were not to be variable to
the disadvantage of the existing rights. (iii) It was laid down
that every person in the civil service of the Crown was to hold
office at pleasure and might be employed in any manner required
by a proper authority within the scope of his duty. (iv) No person
could be dismissed by an authority inferior to that by which he was
appointed. (v) The Secretary of State-in-Council was authorised to
reinstate any person dismissed. (vi) Any person appointed by the
Secretary of State-in-Council was authorised to secure the review
by the Governor personally, of any order passed against him by a
superior official. (vii) The Secretary of State was empowered to
frame rules with the concurrence of majority of votes at a meeting
of the Council of India for appointment to the Indian Civil Service
of persons domiciled in India, even if they did not satisfy the ex-
amination test prescribed by section 97 of the Government of India
Act, 1915. (viii) On the pattern of Civil Service Commission in
the United Kingdom and like bodies in Dominions, a Public Service
Commission was to be established in India. The Public Service
Commission was to discharge such functions in regard to recruit-
ment and control of public services, as were to be entrusted to it by the Secretary of State-in-Council. (ix) Provision was
also made for the appointment of an Auditor-General in India by
the Secretary of State-in-Council who was to assign functions to the
former as well. No office was to be added to or removed from the
civil service and no remuneration varied without consultation by
the Government concerned with a finance authority designated in
the rules.

Statutory Commission. Section 84A of the Act made a pro-
vision for the appointment of a Commission which was to be con-
stituted by the Secretary of State with the concurrence of both
Houses of Parliament and approval of the Crown. The Commission
was to enquire into the following matters: (i) working of the system
of government, (ii) growth of education, (iii) development of
representative institutions, (iv) matters connected with (i) and (ii)
and (v) any other matter affecting British India and the Provinces
which might be referred to the Commission by His Majesty.

The Commission was expected to report whether and to what
extent, it was desirable to establish the principle of responsible
government or to extend, modify or restrict the degree of respon-
sible government then existing therein. It was also required to
report whether the establishment of second chambers of the Local
Legislatures was or was not desirable. The Crown might also
refer to the Commission for report any other matter affecting British
India and provinces.

Such a Commission was however to come into existence ten
years after the passage of the Act. Keith remarks, "The structure
contemplated was obviously so complex that revision must be con-
templated. It was thought fit to give a breathing space of ten years from the passing of the Act."

§ 8. CRITICISM OF THE ACT

The publication of the Montford Report on the basis of which Act of 1919 was passed gave a rude shock to the Indians who were clamouring for 'self-government' embodying the "right of self-determination". Both the Report and the Act received universal condemnation except from the Moderates and Anglo-Indians. Mrs. Besant, an Extremist of those times, wrote in her book, 'New India' that the scheme was "ungenerous for England to offer and unworthy for India to accept". In fact a few concessions extended to Indians were hedged with so many limitations that its purpose of introducing partial responsible government and associating Indians with the Indian affairs stood defeated. A few glaring defects of the Act are enumerated below.

(a) Central Executive—a Yesmen body of the Governor-General. The Central Executive as envisaged under this Act was hardly a representative body. Its members represented nobody except themselves. The Governor-General added a few of his 'Yea men' in his Executive Council who according to Dr. Ishwari Prasad, basking in the sunshine of his patronage had no more ambition than to swell their bank balances and to provide jobs for their relatives. Moreover, since these members of his Executive Council were removable only by the Secretary of State, they did not feel any big responsibility to the Central Legislature which could not remove them by passing a vote of censure against them. Their responsibility to the Central Legislature was reduced to nothingness also because of the ordinary and extraordinary legislative, financial and administrative powers vested with the Governor-General. Thus the Indian members preferred to be henchmen of the Governor-General and assist him in collecting requisite information about Indian affairs and appreciating the issues concerning them. Moreover, the Indian members were entrusted comparatively unimportant departments like Law, Education, Health, etc., whereas the departments of significance were kept under the jurisdiction of the Britishers.

(b) Limited authority of the Central Legislature and narrow franchise. There is no denying the fact that a Bicameral Legislature was established at the Centre and the number of its elected members was increased and even its members were given more opportunities for discussion, yet the Central Legislature was devoid of any real significance. It was not equipped with vital powers of a Legislature. It could neither control the Executive, nor formulate legislation nor even direct the finance. Nearly 60% of the budget was non-votable. Regarding the remaining 40%, the Governor-General was empowered to restore any demand refused or

1. Keith A. B.: A Constitutional History of India, p. 271,
reduced by the Central Legislature. The Governor-General was also vested with the power of authorising any expenditure in emergency of which he was the sole judge. It is thus quite evident that nothing substantial was granted to the Central Legislature. Neither it controlled the purse nor the sole legislative authority. Previous sanction of the Governor-General was deemed essential for introducing certain types of Bills. He could veto a Bill passed by the legislature, and by his special powers of certification pass any Bill and sign it as a permanent law on his sole authority if the legislature was reluctant to agree to it. Secondly, the legislature was not a representative body in the real sense. The creation of a second chamber was in fact a move to checkmate the Assembly and constitute an impregnable citadel for the government.

Thirdly, the franchise for both the Houses was extremely restricted. High property qualifications, holding of titles or membership of the University Senate made the Upper House representative and custodian of the vested interests of zamindars and the capitalist classes. The franchise for the Assembly was also very high. Besides, the distribution of the seats of the elected members among the Provinces on the basis of their importance and not population, weightage to the minority communities and also to the smaller provinces of India made the Assembly undemocratic in character. The total number of electors in British India (excluding Burma) for the second General Elections to the Council of State did not exceed 17,000 while 1,128,331 were the total electors in British India (including Burma) for the Legislative Assembly for its election in 1926. Thus the limited franchise and undemocratic character of the Central Legislature make it crystal clear that introduction of a partial responsible government at the Centre was a mere dream which could not be realised.

(c) Division of subjects between the Centre and the Provinces
Defective. According to Punniah, the division was not clear-cut or definite. Overlapping of subjects between the two lists was discernible. For instance ‘Commerce’ and ‘Laws regarding property’ were placed in the Central List. Important sections like ‘excise’ and ‘Laws regarding land tenure’ were assigned to the Provinces.

Secondly, though all the subjects included in the Provincial List were provincial for administrative purposes, yet not all of them were so for purposes of legislation. Certain parts of them regarding which uniformity in legislation was desirable, were subject to legislation by the Indian Legislature. For example, borrowing and taxing powers of local self-governing bodies; infectious and contagious diseases of men, animals and plants; water supplies and irrigation so far as they were of inter-provincial concern; industrial matters including factories, electricity, settlement of labour disputes and welfare of labour; standards of weights and measures; control of newspapers, books and printing presses, etc., etc. fell in this
category on which Indian Legislature passed laws though for administrative purposes they were provincial.

Thirdly, "the division was highly flexible and not rigid as in a federation". Any doubt whether a particular matter did or did not relate to a provincial subject, was decided by the Governor-General-in-Council. The Centre was allowed to trench upon the provincial field and the Provincial Legislature was entitled to legislate on any central subject with the previous sanction of the Governor-General.

(d) Dyarchical experiment a failure. In order to meet the popular demand of responsible government in India, Dyarchical experiment was made in nine provinces from 1921 to 1937. The immediate object of the Act, however, was to impart training to the Indians in the art of responsible self-government preliminary to the "progressive realisation of responsible government in British India". But it failed in its mission. It was hoped that Dyarchy would prove to be a bridge between British bureaucracy and the Indian people but unfortunately it proved to be a bridge weak and unstable.

§ 9. CONCLUSION

There is no denying the fact that the Reforms of 1919 could not satisfy the people of India, yet they were not devoid of utility. The Act is truly considered as a great landmark in the constitutional history of India. It was the first milestone on the highway leading to self-government. It marked the end of benevolent despotism and dawn of new era of responsible government. In the words of Coupland, "The Act crossed the line between legislative and executive authority. Previous measures had enabled Indians increasingly to control their legislatures but not their governments. Some Indians, it is true, had been members of these governments, but they had been officially appointed and were responsible like their British colleagues to the Secretary of State and Parliament. Now Indians were to govern, so to speak, on their own. They were to take charge of great departments of provincial administration, not as official nominees but as the leaders of the elected majorities in their legislatures and responsible to them."1

The introduction of Dyarchy effected a radical change in the conception of the Provincial Government. For the first time, a large number of people got the right to vote. Despite the high property qualifications, the right to vote was extended to a large number of people in some of the provinces. Elections provided the people an opportunity to equip themselves with political education. The enlargement of the size of the Legislative Councils and their democratization was decidedly a marked improvement on the Legis-

1. R. Coupland: India—a Restatement, p. 113
lative Councils of the previous years. They were sufficiently akin to the Parliament. They could frame their own rules of business and pass laws subject to ratification of the Governor. The association of Indians in legislation and administration developed in them a sense of responsibility which could prove to be very conducive to them in running self-government—the ultimate goal of Indians.

Moreover, the presence of Indian ministers as heads of various departments increased the pace of Indianisation in the services. The recruitment of non-Indian civil servants in the transferred subjects gradually came to an end. Besides, the ministers and the members of the various committees of legislatures could easily have an access to the official secrets which hitherto were kept under mask.

The Indian ministers could effect much-needed reforms and eradicate evils which the Britishers were reluctant to touch fearing stigmatisation of interference in the customs and beliefs of the natives. The Hindu Religious Endowment Act of Madras and the Children's Act of Bengal constituted social legislation of far-reaching importance. The reorganisation and democratization of the municipal and district boards was done through the passage of various provincial Acts. In the words of Principal Sri Ram Sharma "... unlike the foreign bureaucracy, Indian ministers were not afraid of touching the pitch of social evils for fear, it might defile them. Several eradicable pieces of social legislation were undertaken which the foreign rulers of the country had avoided in their reluctance to interfere with established customs and belief."

The work of the reformed Central Legislature also was in no way less commendable. Though the Executive was not to be responsible to it, yet it was vested with large powers of influencing it. It had been critical of the attitude of the government. It often used its powers for the benefit of the people with reasonable regard to the difficulties of the new government and the anomalous position of a non-sovereign Executive. "Its legislative work has been far-reaching and comprehensive; its influence in matters of administration has not been directed either towards a weakening of the Central government or exercised without consideration of the supreme necessity of maintaining law and order. Its enthusiasm for social reform has been praiseworthy and it has been assiduous in its demand for Indianisation of the services and for a share in the national defence. It has effected considerable retrenchment in administration and has continuously impressed on the Government the necessity of economy."

Keeping in view these gains of far-reaching significance, we can safely conclude that with all the criticism levelled against the Reforms Act of 1919, it was an Act of great administrative and constitutional importance.

§ 10. DYARCHY AND ITS WORKING (1921-37)

What it meant. As already stated in the preceding pages, in order to pour oil over the troubled waters, the British Government decided to meet popular demand of responsible government in India. Hence a novel system of government, popularly termed as Dyarchy was introduced in the Indian Provinces.

'Dyarchy' is a derivative of two Greek words—'di' meaning 'twice' and 'archie' meaning 'rule'. Dyarchy was an experiment of 'Double Government' which was imported in India with the advent of Montford Reforms. Under this system the Provincial subjects after demarcation from the central subjects were divided into two parts—the 'Reserved' and the 'Transferred'. The former comparatively of more importance (e.g. Jails, Police, Justice, Finance etc.) were to be governed by the Governor and his Executive Council whereas the latter of less significance (e.g. Education, Agriculture, Local Self-Government etc.) were transferred to the Indian ministers and the Governor. These two halves of the Government were to function separately and distinctly, each of them being independent of the other. However, it was expected that they would function in collaboration with each other.¹

Its object. The British Government was not in favour of introducing full-fledged responsible government in the Indian provinces in a single stride. It wanted to relinquish authority by instalments as Indians were not thought to be competent enough to bear the burden of complete independence all at once. Hence the immediate object of the Dyarchical experiment was to impart training to the Indians in the art of responsible self-government preliminary to the progressive realization of responsible government in British India. Moreover, Dyarchy was expected to be a bridge between British bureaucracy and the Indian people.

§ 11. ITS WORKING (1921-37)

Dyarchy was introduced in eight Indian provinces viz. Bengal, Bihar, Madras, Assam, Bombay, the United Provinces, the Central Provinces and the Punjab on April 1, 1921. In 1932, North-West Frontier Province was also brought in its fold. The experiment was made for sixteen years. But right from its infancy, it had to face the opposition of the most important political party of the times—the Indian National Congress. The latter contested the elections firmly determined to wreck the constitution from within, rather than work it. Hence the constitutional machinery of the government broke down in C.P. and Bengal in 1924-26 and 1924-27 respectively. In 1929, for a few months its smooth functioning was again disrupted. In the rest of the provinces deadlocks between the Governor and the ministers were quite frequent. Under emergency provisions, the administration of the 'transferred half' was frequently taken over

¹. See pp. 107-8 for detailed definition (I Provision of 1919 Act).
by the Governors. The constitutional breakdown in C.P. and
Bengal and oft-repeated rumpers between the Governors and the
Indian ministers in the rest of the provinces exposed the inherent
defects of Dyarchy which was doomed to extinction in 1937, by the
introduction of 'Provincial Autonomy'. The question arises why
Dyarchy fell short of the expectations of its authors and failed
miserably?

Causes for its failure. (a) It was based on a faulty principle. The
division of Government into two water-tight compartments, each
completely independent of the other, one popular and elective in
origin and the other official and non-elective reflected the inherent
defect of Dyarchy. The state is like an organism. It could not be
divided into rigid compartments. Such a division was contrary to
all principles of political theory and practice. For instance "Sikh
Gurdwara agitation in the Punjab could not be allayed properly by
Member in-charge of Law and Order without the necessary legisla-
tion to be undertaken by the Minister in-charge of Religious Endow-
ment.

(b) Haphazard Division of subjects. Moreover a division of the sub-
jects was done so haphazardly and illogically that worse could not be
contemplated. Sir K.V. Reddi, a Minister of Madras said, "I was
a Minister for Development without the forests. I was the minister
for Agriculture minus irrigation. As Minister of Agriculture, I had
nothing to do with the administration of the Madras Agriculturists' Loans Act or the Madras Land Improvement Loans Act......Famine Relief, of course, could not be touched by the Minister for Agriculture. Efficacy and efficiency of a Minister for Agriculture without having
any thing to do with irrigation, agricultural loans, land improvement
loans, and famine relief is better imagined than described." Mr. C.V.
Chintamani, ex-minister, United Provinces cited an interesting case
to illustrate the impracticability of maintaining this division. In
1921, an enquiry was started in the Development of Agriculture on
the question of the sub-division and fragmentation of holdings with
the approval of the Governor. When the report was submitted in
1922 it was felt that the question should have been dealt with by the
Revenue Department. On the instance of the Governor, the case
was transferred to that Department. In 1924, the Governor-in-
Council issued a resolution on the report of 1922, that part of the
work should be done in the Co-operative Department—a transferred
department again. Besides, the division was made in such a way that
the Minister-in-charge of the transferred subjects "were never
in control of the whole of any single department". The Minister of
Education, for example, had nothing to do with European and
Anglo-Indian Education and with Chiefs Colleges and Institutions
run by Government for the benefit of the armed forces or members
or children of members of other public services. The division of
functions was done in such a way as to leave little freedom to the
ministers in administering their departments. In fact, the transferred
departments were relegated to the subservient position. They were
dependent on the reserved departments. Such a serious drawback of Dyarchy contributed a great deal to cause its failure.

(c) Governor not a Constitutional Head—The authors of the Report on Indian Constitutional Reforms never contemplated that the Government even in respect of Transferred Subjects should occupy the position of a mere constitutional head and always act on the advice of the ministers. Hence he was vested with the authority of controlling them and refusing assent to their proposals, if in his opinion such an assent was to entail grave consequences. They (the authors) however expected him to meet the wishes of the ministers to the furthest extent and promote their policy so far as possible. The Governor generally acted against the spirit of the Report. They started interferring too much in the affairs of the ministers. Mr. Kelkar of the Central Provinces complained that while he was allowed to have his way in matters of policy, he was constantly overruled in matters of details. "For an instance, I could not picture to myself," he said, "how a Governor could support my policy of non-interference with a Municipal Committee who wanted to hoist a national flag on the Municipal office and how the same Governor could ask me to uphold an order of a Deputy Commissioner who had suspended a committee's resolution to the effect that its servants should put on Khaddar dress." Mr. Chintamani went to the extent of saying—"The power is with the Governor and not with the ministers." Mr. Chintamani contended that the Governor interfered in all sorts of matters and he could gain his point in matters of importance involving a question of policy only by a threat of resignation. In the opinion of C.V. Reddi, however most of the ministers were anxious to retain office than relinquish it in the event of their being overruled. They preferred to be dependent on the Governor for the support of the official and nominated members in the legislature and for the co-operation of the Reserved Half and the services in their administration. They therefore sank to the position of glorified secretaries. Many of the ministers who were avaricious enough to accept executive cencillorship subsequent to their ministership, became mere boy-errands of the Governor. Raja of Panagal openly proclaimed in the Madras Legislative Council that he was responsible only to the Governor and to no one else.

(d) Lack of harmony between the services and the Ministers. The relations between the ministers and the services were not always happy or harmonious. The ministers expected the services to be obedient but the latter thought the former to be novices and expected them to act upon their advice and experience. Thus on many occasions, differences between the ministers and the services cropped up. According to the rules, if a minister differed from the opinion of the Head of the Department, Commissioner of a division or the Permanent Secretary, the matter was to be referred to the Governor for final decision. The Head of the Department and the Secretary could have a direct approach to the Governor. The Secretary generally had a weekly interview with
the Governor wherein he thrashed out all matters of vital importance concerning the department. Since the Governor, (three Presidencies being an exception) and the Heads of the Departments and the Secretaries belonged to the same class, the former was more akin to them rather than the ministers. Hence he generally favoured the Heads of the Departments and the Secretaries rather than the ministers. In the words of Punniah, "Nothing could be more irritating and humiliating to a minister than to see his subordinates take an appeal against his decision to the Governor and get it reversed." The ministers were not empowered to select their own subordinates when vacancies occurred in their departments, as the more important of these posts were kept reserved for the members of the All-India Services. In the case of Madras, when the post of Surgeon-General fell vacant, the minister concerned could not get his nominee appointed. An I.M.S. officer from Northern India filled up the post. The minister concerned desired to encourage the Indian system of medicine, the Surgeon-General did not agree with him. The minister was not even authorised to abolish a superfluous post in his department. Moreover, the ministers did not have control over the officers mainly in service of reserved departments though they had to perform certain functions for the transferred departments. In the case of the U.P., for instance, a district officer refused to apply for appeal in an excuse case as required by a minister. The member of the Executive Council in charge of the administration of justice lent him support in disobeying the ministers. All this made the position of the ministers awkward.

(c) Peculiar position of Finance Department. Another glaring cause of the failure of Dyarchy was the reservation of the Department of Finance in the hands of an Executive Councillor, though the department was to cater to the needs of both the reserved and the transferred departments. In the words of Mr. Chintamanikrishna, "The Finance Member was certainly more anxious to see that his reserved departments got all the money they required before other Departments got what they wanted."

In fact the Finance Secretary, as a member of the Indian Civil Service, did not sympathise with the popular aspirations represented by ministers. He generally exhibited keenness to fulfil the needs of the reserved departments rather than that of the transferred departments. The ministers often complained that the Finance Department refused to examine any scheme on the ground that the funds were not available. If money was available, the Finance Department declined to provide it on the plea that the demands had not been made at appropriate time. If such an excuse could not be possible they rejected the demands for money on the ground that the proposed schemes were not worth spending money on. In the case of the U.P. for instance, the Finance Department issued a circular to all the Heads of the Departments, directing

them not to forward proposals involving expenditure. Mr. Chintamani very well explained the nature of difficulties, the ministers had to face while giving a statement before the Reforms Enquiry Committee: "I am prepared to state this without any exaggeration that it was a very general experience of both the ministers in the United Provinces that they had to contend with great difficulties when they went to the Finance Department, pretty frequently they had to go before the Governor, pretty frequently the Governor did not side with them and pretty frequently they could only gain their point in the end by placing their offices at the disposal of the Governor." The proximity of the Reserved Departments with the Finance Department placed them in an advantageous position. Since every proposal for expenditure from every Department passed through Finance Department, the Reserved Department could easily come to know the schemes of the transferred departments. Such an information regarding the schemes of the Reserved Departments could not reach the transferred Departments. The Reserved Half could also seek earlier information than the Transferred Departments regarding the amount available in the course of the year for re-appropriation. The Executive Councillors were therefore in a position to apply for re-appropriation at a comparatively early stage. They therefore got monopoly of funds available by way of re-appropriation and could easily carry out their schemes while the ministers continued clamouring for non-availability of requisite funds. Thus the existence of a joint purse for the reserved and transferred department and its control in the hands of the Executive Councillors dealt a severe blow to Dyarchical experiment.

(f) Peculiar Composition of Legislative Council. The peculiar composition of the Legislative Council contributed most to the failure of Dyarchy. The nasty principle of representation of communities, classes and interests was continued under the Dyarchical system. The Legislative Council, thus consisted of communal groups. In the words of Punniah, "The development of parties in the sense in which they are understood in a country like England was thereby rendered almost impossible." Swarajist was the only well organized party with a definite programme. But they entered the Council to wreck the constitution and not to work it. They did not accept office and preferred to remain in opposition. Hence the ministers were driven into the arms of the Reserved Half. They depended upon nominated bloc which was the largest and best disciplined group. For example, out of 132 members of the Madras Council, a bloc of 46 members (officials 11, nominated non-officials 23, Europeans and Anglo-Indians 6, and Landholders 6) was always at the beck and call of the Reserved Half. It is thus quite obvious that with the support of 21 more members, the Governor could keep the ministers in power, as long as he wished. Till a ministry captured about 80 per cent of the elected seats (i.e.,

1. Ibid., p. 190.
67 out of 86 elected members) it could not function independently of the government bloc represented by the officials, nominated members and special interests. The elected members were to be taken out of three communities—the Hindus, Muslims and Christians which due to perpetuation of separate electorates was a House divided against itself. Hence it is quite evident that partly because of the absence of well-organised political parties and partly because of separate representation accorded to certain classes and interests, no ministry could function without the support of the official bloc. Thus the ministers began to be viewed as parts and parcel of irresponsible bureaucracy. An illustration would establish this fact beyond any doubt. In July 1927, the opposition in the Madras Legislative Council moved a resolution which could not however be passed as officials and nominated non-officials en bloc voted against it.

**(g) Lack of Principle of Collective Responsibility.** The ministers did not function as a team, collectively responsible to the legislature. They were selected by the Governor without any regard for political homogeneity. They functioned only as heads of departments and not a part of cabinet. Very often, they expressed conflicting views on the floor of the House—a practice contrary to the principles of a Cabinet Government. On Calcutta Municipal Bill, the Nawab Sahib and Sir Surender Nath Banerjea openly canvassed against each other in the Council. Sir Firoze Khan Noon openly criticised and publicly condemned the actions of his Hindu colleague in an Educational conference held at Jullundur in May, 1928. Panniah remarks, "Such unseemly bickerings between the ministers lowered their prestige before the public, weakened their position in the legislature and placed them completely at the mercy of the Governor and his nominated block". Moreover, the resignation of any one particular minister did not involve the resignation of the entire ministry. In Madras, for instance, two ministers resigned on the question of co-operation with the Simon Commission in 1927 whereas in Bengal a Minister tendered resignation on the issue of primary education in 1930, but, each time, the Governor reconstituted the ministry by making fresh appointments. As a matter of fact, since the ministers were chosen from different groups, they did not deem it their obligation to support each other by speech or vote in the legislature.

**(h) Undue control of the Governor over Public Services.** According to the instrument of instruction issued to the Governor at the time of his appointment, he was to act as the custodian of the rights and privileges of the public services. The Governors took undue advantage of the position. All matters relating to the services including those of transfers, postings and promotions even in the Ministers' Departments were brought under their control. Prior to 1922, the Governor made appointments with the concurrence of his colleagues.

in the Executive Council. At a later stage he made the appointments himself without caring for the concurrence of the members of the Executive Council. He merely informed the members of the fact. All this made the Provincial Governors very powerful. Thus Dyarchy which was expected to introduce responsibility resulted in the increase of irresponsible power of the Governors.

(i) The evasion of Principle of Separate Responsibility. The principle of Dyarchy and of separate responsibility were ignored almost completely. The ministers always banked upon the support of the Governor, the co-operation of the Finance Department and the assistance of the services for the execution of their plans and implementation of their programmes. They depended upon the Reserved Half for the steady support of the nominated bloc to maintain themselves in power. The Reserved Half, on the other hand, required the support of the ministerial groups for carrying their bills and their budget through the Legislature. Thus joint deliberation between the two halves of the Government was a normal feature in the working of government in almost all provinces. Under the presidency of the Governor, all questions of vital importance affecting either side of the government or both of them were not only discussed but even decided at joint meetings of members and ministers. Separate meetings of the Executive Council were infrequent and that of the Governor and the ministers still more rare. The Punjab Government spoke of 'joint decisions' and 'unitary' government. In Bengal, decisions were recorded on the files as those of the joint meeting. In Bombay, an effort to introduce the element of joint responsibility was said to be made. Under the regime of Lord Willington at Madras, the two sides of the Government were said to have worked together as members of a happy family.

It is thus clear that Dyarchy was not worked in the way in which it had been intended by its authors. Ministers were dubbed as 'government men' as part of irresponsible bureaucracy. They were retained in office with the support of the official bloc even when the thumping majority of the elected members voted against them. Thus we can agree with Punniah who asserts, 'The primary purpose for which Dyarchy had been introduced, viz., to establish within a definite sphere, responsibility of the ministers to an elected legislature, was not therefore realized anywhere.'

(ii) The Meston Award—a great blow to the provinces. The Meston Award fixed up substantial contributions to be made by the Provincial governments to the Central Government in order to meet the deficit of the latter. Thus due to the paucity of funds, the transferred departments of the provinces could not carry out their schemes of expansion. Though these contributions were abolished in 1928, yet the finances of the provinces could not improve due to economic depression which overtook the entire country owing to the
failure of monsoons. Prof. A.B. Keith remarks, "The financial anomalies under Dyarchy proved the essential unreality of talking about responsible government, when ministers were not effectively in control of any side of finance."

(k) Birth of Dyarchy under inauspicious stars. There is no denying the fact that the breakdown of Dyarchy was mainly due to its inherent defects, yet certain other factors made no insignificant contribution to its miserable failure. Dyarchy was introduced in India under most inauspicious stars. The entire country was seething with political discontent due to most shameful events. The deplorable massacre at the Jallianwala Bagh on April 13, 1919, the Khilafat movement and the passage of stringent acts had accentuated dissatisfaction, aggravated discontent and distrust against the Britishers. Indians were indifferent towards the British and their Reforms. The Duke of Connaught himself had noted the estrangement and bitterness between the Indians and the Britishers when he inaugurated the Dyarchy on January 1, 1921. The man in the street was aware of the fact that the Reforms of 1919 were in the nature of a half way house. They were confident of wresting more authority from the Britishers in no distant future. Hence they were disinterested in these reforms and not in a mood to give these reforms a fair trial.

(l) Non-co-operative attitude of the Congress. In the opinion of Prof. Appadori the Dyarchy was a failure due to non-cooperative attitude of the Indian National Congress and League. Mahatma Gandhi and other national leaders lost faith in the sincerity of the British Government. Hence, they launched countrywide civil disobedience movements in 1921, 1930 and 1932. During the period 1921 to 1937 their interest centred around the struggle of the Indian people as a whole to attain independence rather than work these reforms. Intemecine struggle among the various elements within the country to secure protection of their legitimate interests also gave a severe blow to the contemplated reforms. Swarajists—the only well-organized party led by C.R. Dass and P.T. Moti Lal Nehru was out to wreck the constitution and not work it. They entered the Councils to adopt a policy of obstructionism and make the reforms prove unworkable. They were very successful in their mission of wrecking the constitution in the C.P. and Bengal. In the other provinces, the party created deadlocks resulting into Governor's rule under emergency provisions of the Act.

All these factors led to the complete breakdown of Dyarchy. Regarding the working of Dyarchy, Sir H. Butler remarks, "In India it has almost become a term of abuse. I have heard one man shouting to another, "You are a Dyarchy". "I will beat you with a dyarchy", said one Indian boy to another and when questioned as to what Dyarchy was, replied, "a new kind of tennis racket". "I have been received in a Burma village by a dyarchy band braying against

Home Rule band with all the vigour of village faction neither having the least idea of what Home Rule or Dyarchy meant." In fact though the reforms were experimented for 16 years, they failed to fulfil their primary motive of imparting training to the people in responsible government. Prof. R. Coupland writes, "The new Constitution failed to fulfil its authors' primary purposes. It did not provide a training in parliamentary government and it did not bring about a subordination of communal allegiance and antagonism to the common public interest."

§ 32. CONCLUSION

A dispassionate analysis of the working of Dyarchy and its inherent defects will make us conclude that the system proved unworkable because it made a futile attempt to harmonise two ir reconcilable authorities—elective and non-elective. Hence constant friction between these two authorities was inevitable. Apart from this, the authority of the popularly elected ministers was hedged with so many restrictions that they were hardly in a position to assert. Moreover, the overriding powers of the Governor-General, the Governors and the Secretary of State for India gave a staggering blow to the Dyarchical experiment made with an idea to usher in an era of limited self-government. But with all this we cannot help saying that it proved to be a blessing in disguise. Enlargement of the size of the legislatures and their democratization did offer an opportunity to the Indians to manage their own affairs and launch reformation projects and initiate useful schemes to ameliorate the lot of their fellow brethren. Indianization of services was also given impetus because Indians were heading some of the departments. Thus increasing association of Indians in legislation and administration developed in them a sense of responsibility and an urge for self-government. Moreover, the masses got conscious of the blessings of the self-government—however truncated it was. Despite its shortcomings, the importance of Dyarchy should not therefore be minimised and its gains underestimated. It was undoubtedly first milestone on the highway leading us to one ultimate goal—'Purna Swaraj'.
National Movement

1. THE BIRTH AND GROWTH

In the words of Macdonald Indian nationalism has been "much more than the agitation of political coteries. It is the revival of an historical tradition, the liberation of the soul of a people."

In fact during the nineteenth century, the different phases of Indian life were permeated with the spirit of a renaissance and a great awakening. The people of India got conscious of humiliation they had to face at the hands of a handful of traders hailing from a land 6,000 miles away from India. Hence they were induced to strive for redemption of India from the state of allround degradation. The spirit of revival not only affected society, religion and literature, but also Indian political life. The earlier renaissance of the 17th century could not evolve one national movement embracing the whole of India. The Marathas and Rajputs ceased to make history after 1818 and the belated sprouting of the Sikhs could not of any national use after 1839. "The last poor fancies of political revival round the phantoms of the Peshwa or the Padshah perished in 1858...the frustrated urge of Indian nationalism sought to realize itself in a novel way, turning away from the barren political results of the earlier renaissance." The people could no longer bear the strain of the economic drain and political suppression and highly shameful intimidation. Thus started the first war of independence (1857) cynically called the Sepoy Mutiny by the British chronicles. This so-called sepoy revolt was, in reality, the outward manifestation of the deep and widespread resentment sweeping over the whole country. The movement failed and the repression unparalleled in the annals of history began with a boomerang effect. The East India Company—the commercial conqueror of India, was substituted by the Queen—the Empress of India. The story of exploita-

tion thereafter was the story of squeezing and strangling the economic life of the people under the guise of conferring benefits.

The question crops up how consciousness dawned upon the people of India? How did they feel an urge to throw off the yoke of the white traders whose despotic administration bled the people white and reduced them to slavery? How did they forge a united front against the alien usurpers? Various causes can be enumerated to answer these questions of vital importance in our national history. In fact these causes are responsible for the origin, growth and development of the Indian national movement.

§ 2. CAUSES OF RISE OF NATIONAL MOVEMENT

✓ Religious Awakening. The religious awakening of the 19th century was the first conspicuous factor causing the rise and growth of Indian nationalism. The religious leaders of various organisations like the Brahma Samaj, the Ramakrishna Mission, the Arya Samaj, the Theosophical Society generated in the minds of the Indians a feeling of regard for and pride in their motherland. The religious and social reformers like Ram Mohan Roy, Devinder Nath Tagore, K.C. Sen, P.C. Mazumdar, P.C. Sarkar, I.C. Vidyasagar, Dayanand Saraswati, Ramakrishna Paramhansa and Vivekananda exhorted the people to realize the greatness and universality of much of the ancient thought of their country. They aroused the people for national regeneration on the basis of the best in the past. In the words of Colonel Olcott, “Dayanand exercised great nationalizing influence...upon his followers.” Mrs. Annie Besant also was of the opinion that “it was Dayanand Saraswati who first proclaimed India for Indians”. He unfolded before his countrymen the glory and richness of their culture and goaded them to take pride in their rich heritage. He made the Indians brave and patriotic and infused in them a missionary zeal for the national cause.

The writings and speeches of Vivekananda also created an indelible impression upon the young minds of India. “The queen of his adoration” says Sister Nivedita “was his motherland.” Hans Kohan remarks, “Like Swami Dayananda, Vivekananda taught young India self-confidence and trust in her own strength.” Vivekananda’s celebrated teacher—Ramakrishna Paramhansa also exercised a nationalizing influence on the Indians’ minds. The theosophists like Blavatsky, Colonel Olcott and Mrs. Annie Besant gave impetus to the cause of Indian nationalism by their forceful writings and life’s work.

The role played by Raja Ram Mohan Roy, the founder of Brahma Samaj in 1828, is no less significant. He launched a crusade against social evils like sati, untouchability, caste system and advocated religious toleration. He stood for the emancipation of

women, and worked ceaselessly for the eradication of social inequalities. In fact he caused the rejuvenation of the Indian society and the subsequent emergence of the Indian nationalism. He is truly termed as the prophet of Indian nationalism. Thus all those social and religious reformers in one way or the other made a substantial contribution to the growth of Indian nationalism.

Western Education. The spread of English education furnished India with one of the best instruments for fostering nationalism among the Indians. English as Lingua Franca made it possible for a few enlightened people of India to know and understand one another better and exchange views and form a common forum to fight the tyrannies of alien despots. The western literature, philosophy and history inculcated in the Indians the love of civic liberty and national emancipation. In the words of Dr. Datta and Sarkar "On minds chastened by reborn religion and literature the growing acquaintance through the medium of western education with developing political ideas of the west and the stirring history of western nationalistic movements impressed the love of civic liberty and national freedom."  

The political theory of the West, as sponsored by Locke and Spencer and the eminent works of Mill, Milton, Macaulay and Burke instilled in the minds of the educated classes western ideas of liberty and equality and developed among them a sense of nationality and a sentiment of patriotism. The England-retumed Indians could no longer afford to feel happy in the slavish atmosphere prevalent in the country. They felt frustrated and discontented. G. N. Singh remarks "Stay in England gave them intimate knowledge of the working of free political institutions and taught them the value of freedom and independence and dispelled from their minds the clinging slavish mentality." Even historians like Macaulay looked forward to that "proudest day in English History when having become instructed in European knowledge, they shall demand European institutions."  

The research of European and Indian Scholars. The study and republication of ancient Indianlore by European scholars like Jones, Cobbrokee, Max-Muller, Monier Williams and Indian scholars like Ram Krishna Gopal Bhandarkar, Harprasad Shastri, Rajendra Lal Mitra, M.G. Ranade, "revealed to India herself scarcely less than to the western world the majesty and wealth of the Sanskrit language and the historical as well as literary value of the great body of Hindu literature which is the key to India's civilisation." In fact the greatness of 'Vedas' and 'Upanishads' was

3. Speech of Lord Macaulay, July 10th, 1833 as quoted in Speeches and Documents on Indian Policy, p. 265.  
brought to light. The people got aware of their rich heritage. Glory and greatness of their primitive civilisation was unmasked. Thus their minds got saturated with the ideas of nationality, liberalism and freedom. They regained confidence and pride indispensable for the development of nationalism.

Development of means of Communication. The development of swift means of communication by road and rail, post and telegraph in the sixties gave impetus to our national movement. The people living in the distant corners of the country were brought closer to each other. "Lines of communication knit up the vast country and turned geographical unity into a tangible reality." The leaders of the times could easily move from one place to another and carry on propaganda on a national scale. It was easy for the patriots throbbing with nationalism to arouse a sense of oneness and nationality among the teeming millions separated by huge distance. Thus material association of the leaders and the people enabled them to forge a united front against the foreign bureaucrats.

The Influence of Indian Press and Literature. The Indian press and literature acted as a powerful stimulant in arousing national consciousness in the country. In earlier stages, in the absence of a national platform, the press played a significant role. It awakened the educated classes and instilled in them patriotism and consciousness of nationality. The political influence exerted by papers like the Indian Mirror, the Hindu, Patriot, the Amrita Bazar Patrika, the Bangalore, the Bombay Samachar, the Soma Prakash, the Sulakha Samachar, the Comrade, the New India, the Hindu, the Kesari, the Arya Darshana and the Bandhava was in no way less insignificant. They exposed the evils of British imperialism and voiced the suppressed feelings of the natives. The popular literature also played a notable role. Bankim Chandra Chatterjee’s Anand Math—the Bible of Modern Bengali patriotism, served as a text-book of revolutionary nationalism in Bengal. Bande Matram—a famous national song which inspired the down-trodden masses emanated from the eminent work of B.C. Chatterjee. Three-fourths of the abundant poetry, songs and music linked with Indian nationalism was supplied by Rabindra Nath Tagore and D.L. Roy. Thus the Indian press and literature played a vital role in building the edifice of Indian nationalism.

Racial antagonism. Since the very inception of their rule, racial discrimination towards the Indians was the corner-stone of the Britishers policy in India. Such a racial discrimination attained climaxity in the post-mutiny period. The Britishers could not efface from their minds the ghastly atrocities of Kanpur and the Indians could not obliterate from their memories the reprisals and

1 Singh G.N.: Landmarks in Indian Constitutional and National Development, p. 112.
excesses of the white tribunals which inflicted inhuman punishments upon the defeated mutineers. Thus the flames of racial antagonism continued smouldering in the hearts of the rulers and the ruled. The repressive acts and anti-national measures further aggravated the mutual animosities and intensified the national movement.

Lord Lytton’s repressive policy. The repressive policy of Lord Lytton’s regime further accentuated the racial antagonism and paved the way for national struggle. The lowering of the age limit for admission to the civil service examination from 21 to 19, the abolition of the cotton import duties in the interests of Lancashire, the Vernacular Press Act which crushed the freedom of the Vernacular Press, the Indian Arms Act which debared Indians and not the Britishers from keeping or bearing arms without license, made the people feel disgusted with Lord Lytton’s regime and aroused a storm of opposition in the country. The holding of an Imperial Durbar at a time when Indians were facing a terrible and baffling struggle against a gigantic famine was another thoroughly unpopular measure adopted by Lord Lytton. All these repressive measures and unpopular events led to the emergence of various Indian associations to carry on agitation and propaganda among the people. In the words of Sir William Wedderburn, “The state of things at the end of Lord Lytton’s regime was bordering upon revolution.”

Denial of higher jobs to Indians. The Act of 1833 had clearly stated that henceforth fitness alone would be the criteria for eligibility to a government job. The same assurance was reiterated in 1858, by Queen Victoria. But this policy was seldom implemented. Indians were deliberately debared from the higher posts. The mutiny provided a sufficient excuse to exclude Indians from higher posts. The age of entrance was purposely kept low. The medium of competitive examination was English. The examination was held only in England. Thus it was pretty difficult for an Indian to go to England and compete for the examination. If perchance, any Indian came out successful in the examination, he was rejected on one pretext or the other. Mr. Surendra Nath Banerjee overcoming all the obstacles, passed the I.C.S. examination but was rejected because of a discrepancy of age. Arvinda Ghosh passed the said examination creditably but was disqualified in the riding test. All this gross injustice to the Indian talent resulted in the establishment of the Indian Association in 1876. Its founder, Mr. Banerjee who is generally considered as ‘the father of the Indian unrest’ toured the entire country to protest against sheer injustices meted out to Indians at the Britishers’ hands. Such a campaign led to the intensification of agitation against the Britishers.

Economic exploitation of Indians. Though since the passage of the Charter Act of 1813, the Britishers had been proclaiming themselves to be the custodians of the interests of the natives, yet the economic policy followed by them was highly detrimental to their interests. India was being impoverished gradually as her indigenous industries were being eclipsed by manufactured goods import-
ed from England. Indian textile industry suffered a great setback in 1877 when cotton import duty was abolished. The government was doing its best to crush Indian industries by not only adopting a policy of mere laissez faire but of deliberate free trade in the interest of England. The government in fact was preparing India to be an agricultural country, fit enough to provide raw material to England and a market for her finished goods. Even in the domain of agriculture, no serious efforts were made to introduce modern methods of cultivation. The failure of monsoons further deteriorated the economic condition of Indians. Unemployment was getting rampant. A feeling was growing among the people that their economic destitution was the outcome of foreign imperialism. In the words of G.N. Singh..."it is an undeniable fact that the deteriorating economic position of the country and the anti-national economic policy followed by the Government together with the policy of excluding Indians from the higher ranks of the services were responsible to no small extent for arousing anti-British feelings and the national spirit among the people in India".  

Healthy Influence of foreign movements. The political movements in Italy, Germany, Rumania, Syria, the establishment of the Third Republie in France, the passage of the Reform Acts in England and the American Civil War of independence exercised a very healthy influence on the minds of Indians. These movements, in fact, emboldened the Indians and encouraged them to launch a crusade for the liberation of their motherland.

Administrative integration. For the first time, in the two thousand years, India was politically united and administratively integrated. The diverse races practising different faiths and embracing different customs, speaking different languages and professing different cultures were subjected to the British rule. They had a common purpose, a common craving to free themselves from the yoke of the white imperialists. In the words of Punniah, "The whole of India from the Himalayas to Cape Comorin was now brought under one government and this gave her people a new sense of political unity". This spirit of political unity was the foundation-stone of Indian National Movement.

Controversy over Ilbert Bill. The Ilbert Bill controversy in the time of Lord Ripon brought all this smouldering discontent to a head. Prior to Lord Ripon's viceroyalty, Europeans could not be tried for a criminal offence except by a European Judge or magistrate. The law of land thus made a discrimination between Indians and European Magistrates. It was anomalous to empower a European Deputy Magistrate to try a European offender while his superior, the Indian District Magistrate was deprived of such a power. Lord Ripon

did not like to perpetuate this anomaly. Sir C.P. Ilbert, the Law Member of the Executive Council of Lord Ripon, introduced a Bill aiming at the removal of this discrimination which was contrary to the basic principles of the Rule of Law. The Bill entailed a wide controversy. A wild unprecedented agitation was launched by the Europeans and Anglo-Indians. They collected over a lakh and a half of rupees to carry on a struggle against the Bill. The Anglo-Indian community announced a social boycott against Lord Ripon and his Executive Council. They stopped attending the entertainments at the Government House and openly denounced Lord Ripon’s regime. They condemned Indian Judges as unfit for administering justice to a white man even if he was an accused. The Government of India was cowed down. It had to bow before this mass agitation of the White and the Anglo-Indians. The proposed legislation was withdrawn. This episode however was an eye opener for Indians who realized that they would have to face humiliation till they were freed from the clutches of alien imperialists. They were convinced that justice was apt to remain at stake whenever the privileges and vested rights of the ruling race were in question. The utter helplessness of the British Government in face of an organized agitation of Anglo-Indians established the fact that an organized agitation was the only effective means to make the government yield to their demands. In the words of G.N. Singh, “The folly of the Anglo-Indian agitation and the exhibition of petty-minded selfishness, racial bitterness and pride and vanity of the ruling race over the Ilbert Bill was needed to bring about the foundation of the ‘Indian National Congress’.”

3. BIRTH OF INDIAN NATIONAL CONGRESS

The Indian leaders therefore realized the necessity of an all-India organisation through which they should be able to voice their grievances and fight against the injustice they had to face at the hands of the Britishers. The credit for starting the Indian National Congress goes to A.O. Hume—a retired civilian from Poona. In 1883, Hume convened a National Conference and addressed an open letter to the graduates of the Calcutta University, exhorting them to spare fifty young men good and true for the constitution of a national organisation for ameliorating the lot of Indians i.e., “for the mental, moral, social and political regeneration of the people of India.” The letter had a miraculous effect on the minds of educated Indians. In December 1884, representatives from all parts of India who had come to attend the annual convention of the Theosophical Society at Adyar, in Madras resolved to “form themselves into a group of provisional committees to work for the establishment of a national organisation. About the same time, an Indian Union came into

existence which issued a manifesto in March 1885 convening a conference at Poona. A circular for calling such a conference was, however, issued under the joint signatures of Hume and S.N. Banerjee who stated the objects of the conference as follows:—(i) To enable all the most earnest labourers in the cause of the nation to become personally known to each other, (ii) To discuss and decide upon the political operations to be undertaken during the ensuing year. (iii) Indirectly, this conference will form the germ of a native Parliament and if properly conducted will constitute in a few years an unanswerable reply to the assertion that India is still wholly unfit for any form of representative institutions.

It may however be pointed out that before issuing the statement, commonly termed as Manifesto, Hume had consulted Lord Dufferin. On the latter’s suggestion, the All-India Organisation was given a political colour. The Viceroy, in fact, was keen to have in India an organisation which should play the role of Her Majesty’s opposition and point out to the Government the defects of the administration. After issuing the Manifesto, Hume proceeded to England to propagate his scheme. His scheme was applauded by Londoners. This official support proved very conducive to the Congress during its infancy.

On the 28th of December, 1885, the first session of the Indian National Congress which was scheduled to be held at Bombay was shifted to Poona was due to outbreak of cholera at its first venue. Shri W.C. Banerji presided and seventy two delegates drawn from various parts of India attended the session. The president placed the following objects before the Congress in his presidential address: (i) “The promotion of personal intimacy and friendship amongst all the more earnest workers in our country’s cause in the various parts of the empire. (ii) The eradication by direct friendly personal intercourse, of all possible race, creed or provincial prejudices amongst all lovers of the country and the fuller development and consolidation of those sentiments of national unity that took their origin in our beloved Lord Ripon’s ever-memorable reign. (iii) The authoritative record, after this has been carefully elicited by the fullest discussion of the matured opinions of the most important and pressing social questions of the day. (iv) The determination of the lines upon and methods by which during the next twelve months it is desirable for native (Indian) politicians to labour in the public interest.”

Gradually, with the passage of time, the organisation gained momentum. Its second session was attended by 450 members, the third by over 600 and the fourth by about 1250. In the subsequent years, its popularity continued to enhance, at a rapid stride. By 1906, it could claim itself to be the representative of a major section of the intelligentsia of India. In the words of G.N. Singh: “The Congress was a national organization and represented all the peoples of the country. The number of Muslim delegates, however, was small in the beginning otherwise the Congress was fully representative of the people and
till the split of 1907, contained almost all the noted Indians of the
day and also a number of able and liberal-minded Anglo-Indians
like Hume, Sir William Wedderburn, Sir Henry Cotton...” In
fact, in the initial stages, the Congress was a moderate organisation.
With the exception of Mr. Tilak and Gokhale, its leaders were not
prepared to make sacrifices for the emancipation of their motherland.
They were believers in “political mendicancy”. In the early years
of its development, the Congress recommended the abolition of the
Council of India as a necessary preliminary to all other reforms. It
demanded the institution of competitive examination for the recruit-
ment of the I.C.S. officers, both in England and India. It em-
phasised the repeal of the Arms Act and establishment of military
colleges for training Indian officers and also urged upon the govern-
ment to separate the judiciary from the executive. It exhorted the
Government to discourage the consumption of intoxicants and reduce
the salt tax. In its first session, it demanded reform of the Legis-
lative Councils. In the next session, it asked for the increase of
members in the Councils and inclusion of elective element in the
Councils to the extent of one-half of the total. Though, the pro-
gramme of Indian National Congress was of a moderate character in
the initial stages, yet it “with all its professions of loyalty, studied
moderation and appealing nay begging tone, did in those days a
great amount of spadework in national awakening, political educa-
tion, and in uniting Indians and in creating in them the conscious-
ness of a common Indian nationality”.

§ 4. ATTITUDE OF GOVERNMENT TOWARDS CONGRESS

The early relations between the Government and the Indian
National Congress were cordial. When Hume consulted Lord Dufferin,
the latter declared “that he found the greatest difficulty in
ascertaining the zeal, wishes of the people and that it would be a
public benefit if there existed some responsible organization through
which the government might be kept informed regarding the best
Indian public opinion”. Many Anglo-Indian officials and non-
officials attended the meetings of the Congress and even participated
in its deliberations, Lord Dufferin in 1886, and Lord Connemara
in 1887 invited the members of the second and third Congress held
at Calcutta and Madras respectively to garden parties at Government
House. The first two presidential addresses reflected faith of the
Congress in the British Government. As the Congress started a
vigorou campaign of agitation for the fulfilment of its programme,
this attitude of friendliness was vitiating. The Government felt per-
turbed at overzealous activities of the Congress and turned hostile.
In 1888, Sir Auckland Colvin assailed the Congress. In the same
year, at the annual St. Andrew’s dinner held at Calcutta, Lord

2. Ibid., p. 117.
Dufferin vehemently criticised the Congress in these words, "How could any reasonable man imagine that the British Government would be content to allow this microscopic minority to control the administration of that majestic and multiform empire for whose safety and welfare they are responsible in the eyes of God and before the face of civilization? It appears to me a groundless contention that it represents the people of India. Is it not evident that large sections of the community are already becoming alarmed at the thought of such self-constituted bodies, interposing between themselves and the august impartiality of English rule?"

In 1890, the Government by an official notification debarrd the government officials from attending the meetings of the Congress. The Congress thus developed into an opposition to the Government but not a friendly consultative opposition. Instead, it proved to be an opposition which challenged the status and the authority of the Government.

5. DIFFERENT PHASES OF CONGRESS HISTORY (1885-1919)

On the basis of the means adopted by the Congress to achieve its goal, its history falls into two divisions. The first period extends from 1885 to 1919 and the second from 1920 to 1947. During the first period it adhered to the method of political agitation, commonly termed as method of representation and during the second, it reposed faith in "Direct Action", devoid of violence, under the guidance of Mahatma Gandhi.

From the point of view of the modifications effected in its objectives from time to time, the history of the National Congress (synonymous with National Movement) can be easily divided into four distinct periods. For the first twenty years of its career i.e., 1885 to 1905, it was manned by the moderate Nationalists. Hence the said period constitutes the period of Moderate Nationalism. The second between 1906 and 1919, is a period of Militant Nationalism. During this period, Nationalism assumes an assertive and embarrassing form. 1920 to 1929 is marked as the third distinctive phase of its history and 1930 to 1947 is deemed as the fourth most momentous period of its development and ultimate fulfilment of its mission.

Moderate Nationalism (1885-1905). The years from 1885 to 1905 constitute the era of Reforms. During this period, the Congress aimed at securing piecemeal reforms for the country, e.g., the enlargement of the Legislative Councils, the increase of representative Indians in these Councils and separation of the Executive from Judiciary. In the words of Pradhan, "If we look at the early proceedings of the Congress, we are struck by the extreme moderation of its demands. The organisers and promoters of the Congress were not idealists who had built their habitation away on the horizon; they were practical reformers imbued with the spirit, principles and methods of mid-Victorian Liberalism and bent on winning freedom
by gradual stages, broadening from step to step. They therefore took scrupulous care not to pitch their demands too high. Some of them may have cherished in their heart of heart full-fledged Parliamentary Self-Government as a far-off ideal; but all of them wanted to work on the lines of least resistance and therefore framed their proposals of reforms on such moderate and cautious lines as not to arouse any serious opposition." It is a fact that in the initial stages, the Congress submitted its demands to the British Government in a very mild and prayerful language. Its annual meetings usually affirmed allegiance to the British sovereign and proclaimed an insistence on constitutional procedure. As already stated, its first session in Bombay was attended by a large number of government officials who participated in its deliberations. The attitude of the government also was extremely favourable in the beginning. Some of the earlier presidents of the Congress eloquently enumerated in their presidential addresses that they aimed at strengthening the bonds between India and England.

The Moderates were enamoured of efficacy of constitutional methods. They eschewed violent techniques for the achievement of their objectives. They believed in convincing the government by petitions, representations and deputations. This method is termed as the method of 'Political mendicancy'—begging for political concessions. They held revolutionary methods into great contempt. As a matter of fact, they were not in favour of coming into conflict with the government. They had full faith in the sense of justice and fair play of the British people and the Government. Particularly, the early Congress leaders were of the view that Englishmen were liberty-loving individuals, hence they would not hesitate in extending this privilege to the Indians when they were found fit for self-government. Thus they wanted to mobilize public opinion in England in their favour. A deputation was sent to England in 1890 to enlighten British public opinion on Indian demands and enlist its support for the Congress programme of Council Reform. Moreover, a Committee of five Englishmen was appointed to carry on work in England. Fairly good sum to the tune of Rs. 45000 was earmarked to meet the expenses. Five men Committee in England did a very commendable work. It issued pamphlets, furnishing general information, organized meetings in large towns and supplied speakers to social and political gatherings where Indian grievances were thoroughly discussed. It started a journal called 'India' in London in 1890, in order to reveal facts concerning India to the British public. In the later years, the journal was converted into a weekly paper.

Achievements of Moderates. The Congress of early years is often dubbed as an ineffective and impotent body. There is no denying the fact that its leaders were mostly men of ideas and not of action. They believed in petitions and prayers and not vigorous action. Of

course, these methods could not appeal to young revolutionaries. But it is an undisputed reality that the role of the Moderates in moulding the public opinion and drawing more and more people within the fold of Congress, was highly praiseworthy.

In the words of G.N. Singh, "With all its professions of loyalty, studied moderation and appealing, nay, begging tone, the early Congress did in these days a great amount of spadework in national awakening, political education and in uniting Indians and in creating in them the consciousness of a common nationality." Dr. Ishwari Prasad also eulogises the commendable work done by these Moderate leaders in these words "None can withhold the need of praising which its early leaders (Moderates)—men of high intellectual attainments, character and patriotism—deserve for doing pioneer work in the way of India's regeneration and championing the cause of the people against a powerful and alien bureaucracy strongly entrenched in its own citadel of obstinacy and prejudice." Undoubtedly, under the circumstances their's was the only practical, sagacious and far-sighted method. They were the pioneers in planting the sapling of freedom. It would be gross injustice to minimise the significance of the stupendous work done by the early patriots. Even in those early years Congress developed into an "Opposition to the Government—not a friendly consultative Opposition, but an Opposition which challenged the status and the authority of the Government".

**Emergence of Militant Nationalism (1906-1919).** The first phase of the activities of the Indian National Congress reflects that a majority of its leaders had a firm faith in the constitutional methods for securing concessions and getting their grievances redressed. Being the products of western education they were imbued with the spirit of British liberalism. They believed in the efficacy of moral persuasion rather than cult of bomb. They were out to convince the British public and the Government of the justice and reasonableness of their demand. Since the Congress in the early years had not developed into a mass movement, perhaps constitutional method was the only safest method to challenge the British bureaucracy and wrest constitutional reforms.

But revolutionary ideas and activities soon appeared in the various parts of our country. "A new term was given to Indian politics: 'the policy of mendicancy' as the Congress method was derisively called, was henceforth even more seriously assailed." In the meeting of Congress held at Benares in December 1905, under the chairmanship of Gokhale, the younger element raised the standard of revolt under the leadership of Bal Gangadhar Tilak, Lala Lajpat Rai and Bipin Chandra Paul. In the next session of the Congress convened

2. Dr. Prasad Ishwari; *History of Modern India*.
3. Mac Donald; *Government of India*.
4. Zacharias; *Renascent India*.
at Calcutta in 1906, an open rupture between the Moderates and Extremists was prevented by tactful intervention of the President—Dadabhai Naoroji—"India's grand old man." He proclaimed the ideal of "Swaraj" as the goal of the Congress, to pacify the young revolutionary element, imbued with the ideas of complete independence. But in reality to the Moderates, Swaraj meant the establishment of a parliamentary form of government, the Extremists took it for the attainment of complete independence. Bipin Chandra Paul asserted, "They (the Moderates) desire to make the Government of India popular without making it cease to be in any sense British; we desire to make it autonomous, absolutely free of the British control." Aravinda Ghosh joined the Congress this year. In his Nationalist paper, 'Bande Matram' he preached the "only two modes to effect the fulfilment of national desires: self-help and passive resistance." Bande Matram—the fiery national song taken from 'Ananda Math' of Bankim Chatterjee became the "National Anthem of Renascent India." Thus the Congress was a house divided against itself. The differences between the Right and Left wings of the Congress, i.e., the Moderates and the Extremists became irreconcilable.

**Surat Split (26th December, 1907).** "One of the saddest episodes in the history of the Congress which for 22 years had been marked by unity and unanimity was the split in the national ranks at the Surat Session." Though the rumblings of extremism were discernible at the previous session of the Congress at Calcutta, yet the proceedings of Surat session punctuated by rowdism were unprecedented in the history of Congress. Confusion and chaos of the worst order prevailed in this historic session of the Congress. Even the police had to intervene to restore order. Tilak headed the opposition. Dr. Rash Behari Ghosh was the president-elect of the session at Surat. The Extremists headed by Tilak wanted Lala Lajpat Rai to preside over the session, as a tribute to his ardent patriotism. Lala Lajpat Rai, however, declined to contest election. Instead, he supported Dr. Ghosh. The unruly element mobbed the platform, when Tilak's attempt to move an amendment was ruled out. A heavy shoe was hurled which struck Sir Pheroze Shah Mehta and Surrendranath Banerjee. It was a climax of disorder. The President adjourned the meeting "sine die".

On the next day, 900 of the 1600 delegates (the Moderates constituting the majority among them) met as a convention. Dr. Ghosh presided. Gokhale moved a resolution for constituting a committee for drafting a constitution for the Congress. A committee of 100 members was appointed. The Committee met at Allahabad on the 18th and 19th of April, 1908 and drew up a constitution. Article 1 of the Constitution ran as follows: "The objects of the Indian National Congress are the attainment of a system of Government similar to that enjoyed by the self-governing members of the British.
Empire and a participation by them in the rights and responsibilities of the Empire on equal terms with those members. These objects are to be achieved by constitutional means by bringing about a steady reform of the existing system of administration and by promoting national unity, fostering public spirit and developing and organising the intellectual, moral, economic and industrial resources of the country. Under this Constitution with the object of Congress stated clearly, the Congress met at Madras on the 28th of December, 1908 under the presidency of Dr. Ghosh. The Surat split was deplored and treated as a tragic interlude. Dr. Ghosh emphasised the necessity of safeguarding the Congress from disintegration and of following the creed of the Congress as indicated in Article I of the Congress Constitution.

Government's attitude towards Extremists and rise of Terrorist Movement. During all these critical years, the government was not a silent spectator. It tried to stamp out terrorism by strong and repressive measures. On 9th May, 1907, Lala Lajpat Rai and Sardar Ajit Singh of the Punjab were deported to Mandalay (Burma) without trial.

Even the Moderates like Gokhale vehemently condemned this act of the Government. The Newspaper Act was passed in 1908 to gag the press. The Criminal Law Amendment Act was passed in 1908, to prescribe a special form of trial for the terrorist offences. Many other terrorist leaders were deported out of India. For two flaky articles in the 'Kesari' in connection with a Bomb incident at Muzaffarpur in Bihar, Tilak was sentenced to six years' rigorous imprisonment, in 1908. The Seditious Meetings Act was passed vesting with the authorities arbitrary powers for refusing permission for the holding of certain meetings or addressing them. Several other Bengali leaders like Asvini Kumar Dutta, and Krishna Kumar Mitra whose influence was based on things nobler than politics and who were the leading spirits of the Swadeshi Movement were deported under Regulation III of 1818. Many editors, printers and publishers were rounded up. The policy of repression could not quell the agitation, rather it intensified it. Between 1906 and 1911, an unprecedented wave of terrorist crime swept over the country. Revolutionary societies modelled upon the Russian and Italian Secret Societies for executing acts of terrorism, came into existence. Cult of Bomb was openly preached through 'Yugantra' by B.K. Ghosh—the brother of Aurobindo Ghosh and Bhupendra Nath Dutta—the brother of Swami Vivekanand. A train carrying the Lieutenant Governor of Bengal was blown up. In December 1907, the District Magistrate of Dacca was shot at but without fatal results. In 1908, an attempt to kill Kingsford—the Chief Presidency Magistrate of Calcutta (who had passed sentences of imprisonment against the accused of political offences) was made, resulting by mistake into death of two innocent English ladies. Revolutionary societies led by V. Savarkar and S.K. Verma were actively and
vigorously propagating against the atrocities of the British Government in England.

The revolutionary movement was extremely active in Bengal and Punjab during 1913-16. Sixteen outrages were committed in Bengal in 1913 and twenty nine in 1914. In the words of G.N. Singh, "The revolutionary movement reached the crest of the wave during 1913 both in Bengal and the Punjab." Even dacoities accompanied by murders were committed for financing the terrorist movement. A few Punjab revolutionaries made an attempt on the life of Lord Harding—the Governor-General of India. The return of Sikh emigrants from Canada reinforced the revolutionary movement in the Punjab. A Ghadar Party was organized under Har Dayal. The activities of the revolutionaries attained climax when they took undue advantage of the outbreak of Great War by seeking help from Germany to push forward their scheme of work in India. The Bengal revolutionaries not only cast their net in Northern India but also developed contacts with Ghadar Party in America, and German Consul General at Shanghai. With all these hectic activities, the Revolutionary movement could not appeal to the bulk of Indians. It lacked a central organization which could effectively direct it on all-India basis. Moreover, leaders like S.N. Banerjee and Sir Ashutosh Mukerjee exhorted the government to adopt repressive measures to suppress the movement. The emergence of M.K. Gandhi—the messiah of peace and love, gave a terrible blow to this movement of the violent extremists. The sublime message of truth and non-violence started resounding in the Indian horizon. Gandhi insisted on non-violence while embracing the creed of the extremists.

Effect of Extremist Movement on National Struggle. There is no denying the fact that the Extremist Movement had a very healthy influence on the fortunes of the national struggle against the British bureaucracy. The methods of the Moderates lacked effectiveness. They were devoid of zeal and fervour so essential to give impetus to a national movement. The policy of political mendicancy alone would not have been enough to shake the citadel of British imperialism. Some sanction was essential to back up the national demand. The Extremists provided this sanction. Minto-Morley Reforms were hastened in order to placate the Moderates and save the national movement from falling into the hands of the terrorists who were even prepared to sacrifice their lives for the achievement of Swaraj. In fact the Extremists supplied a crop of martyrs whose blood nourished the sapling of freedom.

Causes of rise of militant nationalism. Before we discuss the role of 'Muslim Communalism' and influence of great war on the national movement, it is essential to enumerate briefly the causes of rise of 'Militant Nationalism' which had a strong bearing on the development of Indian nationalism.

(a) Inadequacy of Reforms of 1892. The Indians were highly dissatisfied with the Reforms introduced by the Indian Councils Act of
1892. They could not have an effective voice in the administration of their own country. Since 1892, the Congress started pleading through petitions and representations for the enlargement of the membership and enhancement of functions of these councils. But the Government paid no heed to these suppliant methods of persuasion. Hence younger element in the Congress felt disillusioned at the efficacy of constitutional procedure and preferred to take to the cult of bomb. They argued that an ounce of lead could work more wonders than a ton of argument and moral persuasion.

(b) Economic Destitution. During the last quarter of the nineteenth century, economic crisis occurred in the country. Between 1876 and 1900, eighteen famines broke out in the country. The most severe famine affecting about 70,000 square miles and a total population of about seventy millions occurred in 1896-97. The relief machinery set up by the government was most inadequate and extremely slow. The famines took a heavy toll of lives. People of India got conscious of the fact that a foreign government could not stand by them in the hour of distress. They realized that a national government would have staked its all to save the masses from the clutches of demon of famine and starvation. Hence, they determined to end the foreign domination by violence if constitutional methods could not be of much utility in the achievement of their goal.

(c) The Outbreak of Plague. The wounds inflicted by the famine had not yet healed, when to add to the misery of the people, an epidemic of bubonic plague broke out in the western parts of Bombay Presidency. The measures adopted by the Bombay Government to combat the disease caused great resentment and accentuated bitterness amongst the people. The gravest mistake committed by the government was, entrusting the entire relief work to the government officials most of whom belonged to English race and could not work so zealously, as non-official agencies could do. Moreover, the measures adopted by the Government were vigorous but the methods of enforcing them were unwise. Mr. Rands, the Plague Commissioner of Poona, requisitioned soldiers for the purpose. They went into the houses, examined the inmates and isolated those who were the victims of the epidemic. This isolationization of the affected people infuriated the orthodox Indians. Riots broke out. Press was critical of these unpopular methods. A sensitive youngman shot dead Mr. Rand and his associate Lt. Ayerst. Government could not tolerate these gruesome murders. A wave of repression swept over Maharashtra. Tilak, the editor of ' Kesari ' was tried for incitement through his paper and sentenced to 18 months rigorous imprisonment. Tilak's effort to take an appeal to the Privy Council failed. Tilak had already become the idol of Indian masses. His trial, imprisonment and subsequent refusal of permission to take an appeal to the Privy Council added fuel to the fire. The comments made by ' Hindu ' of Madras, threw enough light on the storm of indignation that followed Tilak's imprisonment. "Nothing has happened during
these forty years to remind the people more of their abject helplessness and to give more poignancy to the consciousness of their political subjection than the recent doings of the Bombay Government."

(d) Hindu revivalism. As already stated, the early Congressmen were intoxicated by the western civilization. They were enamoured of western political institutions. Simultaneously, another set of men like Swami Vivekanand, Tilak, B.C. Paul and Arvinda Ghosh unfolded the beauties and richness of the Indian culture and pristine glory of Hindu religion. Swami Vivekanand's teaching created in the young minds a feeling of adoration for their motherland. He emphasised that spiritual mission of India could be realized only after the achievement of independence. Tilak denounced every thing western and preached intense love for India and her rich heritage. Lala Lajpat Rai decried Anglicised Indians who imitated western civilization and effaced from their minds the greatness of their own hoary culture. B.C. Paul exhorted the down-trodden masses in the name of Durga and Kali to acquire strength and cultivate the capacity to strike. Arvinda Ghosh reminded the inhabitants of his motherland "Independence is the goal of life and Hindutva alone will fulfill this aspiration of ours." Thus the current of Hindu revivalism swept over the entire country and influenced, a great deal, youngmen, in particular. They were thus inspired to expedite the achievement of their goal by violent means.

(e) Indians' humiliation abroad. The treatment meted out by the Union Government of South Africa to the Indians residing there, the humiliating position of the Indians in the other British colonies and shabby behaviour of the English people towards Indians in England aroused a strong feeling of discontent and indignation. The Indians realized that outside their own country, they were looked down upon as an inferior race and were humiliated. Their children were debarred from receiving education from certain types of European schools. They were not even allowed to walk on certain footpaths and travel in the first class compartment. All this gave a fillip to the anti-British feelings in India. The foreign government was blamed for disgrace and utter humiliation that Indians had to face in the alien lands. Hence they made up their mind to strike hard, whenever the opportunity cropped up.

(f) Influence of Western Revolutionary doctrines. Western revolutionary doctrines also exercised a profound influence on the mind and outlook of the rising generation and helped the rise of Extremism. The struggles of freedom fought in France, Italy, Germany and America made it clear to the Indians that liberation from the foreign yoke could not be won by mere constitutional agitation. Force, rebellions and revolutions alone could enable them to achieve independence. Irish example was before them. The Irish had to shed

blood to attain their goal. Some of the Indians got convinced that it was impossible to usher in an era of political freedom, through the method of 'Political Mendicancy'. They exhorted their countrymen to resort to force and violence if the superstructure of white imperialism was to be toppled down.

(g) Explosion of myth of European Supremacy. By the end and the beginning of the nineteenth century, certain events of far reaching repercussions on Indian National Movement occurred in Europe. The defeat of Italy by Abyssinia in 1896 and national insurrections in Persia in 1906, China in 1907, Turkey in 1908, and Ireland filled Indian minds with hope and cheer, self-confidence and self-reliance. The resounding victory of Japan over Russia, signifying the triumph of an Eastern power over Western giant revolutionized the minds of the Indians. The myth of European supremacy over the Asians was exploded. The Indians deemed Japanese victory as the regeneration of the East. They were imbued with new hopes and aspirations. In the words of H. Mukerjee "Interpretations of contemporary events and a reverent resurrection of vanished glory combined to intensify a widespread desire to seek escape from foreign domination that had bound India, body and soul."

(h) Repressive policy of Lord Curzon (1899-1905). Lord Curzon was keen to improve efficiency of administration. The measures he adopted to secure efficiency were dubbed by the Indian nationalists as strong measures for tightening the hold of British imperialism in the country. Lord Curzon could not realise that "India presents not only political but psychological problems of the first magnitude and with all his intellectual gifts, Lord Curzon seldom, if ever, showed himself possessed of the spiritual vision, which is of the essence of real statesmanship". He believed in centralization and officialization and in discouraging self-government and Indianization. In 1904, he justified the exclusion of Indians from higher services in a very offensive manner. His convocation address at the Calcutta University, in February 1905, further enraged the people. He said, "The higher ideal of truth to a large extent is a Western conception and that truth took a higher place in the moral codes of the West before it had been similarly honoured in the East, where craftiness, diplomatic vile have been held in high esteem." Such an outburst was highly resented by the whole nation. During the regime of Lord Curzon, many unpopular measures as Calcutta Corporation Act of 1899, Indian Universities Act 1904, and the Official Secrets Act were enacted. His frontier policy and the Mission to Elaha were also not appreciated. He refused to see the deputation of Indians who wanted to communicate to the viceroy Indians' reaction towards his most unpopular measures. Lala Lajpat Rai who along with Gokhale was specially sent to England to bring to the notice of British Government the high-handedness of the steps.

2. Chitor: India, p. 115.
taken by Lord Curzon came back utterly disappointed and completely frustrated. On his return to India, he exhorted his countrymen to strike the blow hard, if they really cherished for the freedom of their country.

His last official act—the Partition of Bengal—was the worst of the series of unpopular measures enacted during his regime. The act was considered as a deliberate move to undermine the national movement in Bengal by weaning away the Muslims, and driving a wedge between Hindus and Muslims. His most irresponsible speeches to win over the Muslims resulted in breaking out of the riots.

It further influenced the passions of the indignant Indians. They got fully conscious of the sinister motives of Lord Curzon. Zacharias remarks “The whole purpose and effect of the measure was Machiavellian”. Instead of paying heed to the fervent appeals of the Congress opposition not to implement his scheme of partitioning Bengal, he added insult to the injury by condemning the opposition to his project as engineered by a few agitators. Such an inopportune condemnation exasperated the people who determined not to take this insult lying down. They realised that mere holding of meetings and passing of resolutions would not suffice or induce the Britishers to redress the grievances of the enslaved nation. As a retaliatory measure, Swadeshi movement gained momentum. British manufactured goods were boycotted by young and old men and women. The movement was a grand success. The government resorted to highhandedness. They adopted repressive measures to break it. The repression further aggravated bitterness and fanned public excitement. It, in fact, gave birth to “terrorist movement”. Even the Moderates like Gokhale had to admit that “Youngmen are beginning to ask what was the good of the constitutional method, if it was only to end in the partition of Bengal.”

Thus, the cumulative effect of the above-quoted facts was the emergence of a left-wing of the Congress which began to be termed as “Extremists”.

4.6. RISE OF MUSLIM COMMUNALISM

Its Origin. Far more vital in effect than the emergence of extremism was the rise of Muslim Communalism which was the deliberate creation of the British Imperialists to checkmate the rising tide of Indian Nationalism. The prudent imperialists had come to realise at a very early date that the only way was to set a house divided against itself. Mountstuart Elphinstone—a Governor of Bombay during the Company’s rule correctly revealed the mind of the alien rulers when he said “Divide et impera (Divide and Rule) was the old Roman motto and it should be ours.” As a matter of fact, soon after their arrival in India, the Britishers started attempting to apply this strategy of divide and rule to two major communities of India. In the words of Ashok Mehta, “With all their famed skill, which until recently had made their diplomacy the most powerful
in the world, the English rulers decided to put themselves between the Hindus and Muslims and so create a communal triangle of which they would remain the base.”1 The symptoms of this policy are discernible in the reorganisation of the Indian army after the mutiny. Before mutiny, commonly termed as the sepoy revolt, no division or separation by caste or clan existed in the army ranks. Thus no racial or sectarian prejudices persisted in the Indian army. Rather a spirit of comradeship prevailed in the army. This sentiment of unity made possible through esprit de corps proved suicidal to the British interests and made the uprising of 1857 possible. Hence, reorganisation of army was done on sectarian, caste or class basis. This new basis of reorganisation of army did not only develop caste-consciousness but also impeded the growth of national feeling.

Outside the army, the policy was implemented by encouraging the one and suppressing the other community. For a decade after the Mutiny, the wrath of the Britishers fell upon the Muslims as they thought that it was more of a Muslim than a Hindu Revolt. Hence the official policy continued to be anti-Mohammedan and pro-Hindu, during this period. Efforts were made to ruin the Muslims economically and educationally. Gradually, it dawned upon the Britishers that Muslims no longer constituted a threat to British rule in India “for the Mutiny representing basically the last bid for supremacy... had been effectively crushed... It would be expedient now once they were too weakened for independent rebellion, but while they were still influential, to take them into an alliance rather than continue to antagonize them. Especially as a new threat was discernible... the nationalism of the growing westernised and capitalist middle classes”.2 A few British officers urged upon the government the need for reconciliation and friendship between the Britishers and the Muslims. Since 1870, a change in British policy towards Muslims was clearly discernible. Sir Syed Ahmad Khan, a loyalist and Mr. Beck, Principal M.A.O. College Aligarh, played very notable role for cementing Anglo-Muslim friendship.

Soon after the Mutiny, Sir Syed Ahmed started a journal ‘Loyal Mohammedans of India’ to remove the stigmas of disloyalty associated with his co-religionists. He tried “to bring about a religious reapproachment between Mohammedans and Christians as he was fully aware that so long as religious antagonism, suspicion and distrust subsisted between the Cross and the Crescent, so long was it hopeless to expect either that the Indian Mussalmans should become loyally attached to British rule...or that their Christian rulers should on their part learn to regard them as loyal subjects and entitled as such to protection and patronage.”3 Thus with the sincere efforts of Sir Syed Ahmed, the ominous clouds that hung for quite some time over Muslim loyalty rolled away. The founding of M.A.O.

2. Smith W.C.: Modern Islam in India.
college at Aligarh was another substantial step in this direction. In his address to Lord Lytton on the occasion of laying the foundation stone of the college Sir Syed said, its aim was "to reconcile Oriental learning with Western literature and science to inspire in the dreamy minds of the people of the East, the practical energy which belongs to those of the West; to make the Mussalmans of India worthy and useful subjects of the British Crown."

At the same time, Sir Syed was not unaware of the sweeping current of national consciousness in the country. In 1877, when Surendranath Banerjee toured north India in connection with civil service agitation, Sir Syed presided over meetings held at Aligarh. But he was of the view, that it was not opportune time for Muslims to dabble in politics as "the memories of the mutiny still lingered in the bureaucratic mind. The Wahabi excesses were too fresh to be forgotten." He, however, supported Ilbert Bill and the principle of parity of justice between the English and the Indians. In 1884 in his Punjab tour, he eloquently made an impassioned appeal for Hindu-Muslim unity and cooperation. He said, "We (i.e. Hindus and Mohammedans) should try to become one heart and soul and act in unison. If united, we can support each other. If not; the effect of one against the other would tend to the destruction and downfall of both......" In his reply to the Indian Associations' address, he said "With me it is not so much worth considering what is their religious faith, because we do not see anything of it. What we do see is that we inhabit the same land, are subject to the rule of same governors, the fountains for benefits for all are the same, and the pangs of famine also we suffer equally."

Keeping in view his above utterances, we could expect Sir Syed to join hands with other national leaders for voicing the grievances of the people of India from a common forum. But unfortunately, his intense love for his community proved predominant. He chose not only to non-cooperate with the Congress but also organized a strong opposition to impede its activities by founding along with Raja Shiv Prasad of Banaras the 'Patriotic Association'. This transformation in Sir Syed from a progressive nationalist to a reactionary communist was due to the subtle influence exercised over the ageing leader by the European Principal of the Aligarh College. Mr. Beek, Principal of Aligarh College, misled Sir Syed "into believing that while an Anglo-Muslim alliance would ameliorate the condition of the Muslim community, the nationalist alignment would lead them once again to sweat, toil and tears......As a result, his unique influence was used to keep the Muslims, particularly in Northern India, away from the Congress." The influence of empire-builder—Mr.

Beck, was so great that about a month before the second session of the Congress, Sir Syed in an article in the 'Aligarh Institute Gazette' stated that the country was not prepared for popular government and called the Congress movement "seditious". Both the Central National Mohammedan Association and the Mohammedan Literary Society, the two well-known Muslim organizations in India declined to co-operate with the Congress when approached by the Reception Committee to send their delegates to attend its second session. In 1880, Sir Syed founded the Mohammedan Education Congress—a parallel organization to the Congress in the educational field. While Congress held its session at Madras, in a speech at Lucknow, he dubbed the Congress as a Bengali Movement and said to Muslims, "If you accept that the country should groan under the yoke of Bengali rule and its people lick the Bengali shoes, then, in the name of God! jump into the train, sit down and be off to Madras." In his subsequent speeches, he emphasised that the ultimate object of the Congress was to rule over the country; although they wished to do it in the name of all people of India, the Muslims would be helpless as they would be in a minority. Hence he proclaimed his and his community's dissociation with the Congress and often objected to the Congress's assertions that the Muslims had anything to do with it. In a speech delivered at Meerut, on 14 March, 1888, he said, "Let the delegates of the National Congress become the stars of heaven or the sun itself, I am delighted. But it was necessary and incumbent on me to show the falsity of the impression which by taking a few Mohammedans with them by pressure or by temptation, they wished to spread that the whole Mohammedan nation had joined them."

In 1893, Sir Syed started a political association for safeguarding the Muslim interests. This association was named as the Mohammedan Defence Association of Upper India. It was composed of selected representatives from the various provinces with Sir Syed and Principal Beck of the M.A.O. College as Secretaries. It aimed at promoting the Muslim interests by means of representation to Government and not through agitation and political propaganda. It stood for supporting measures aiming at stability of British rule in India and for engendering loyalty amongst the Muslims. It mainly aimed at keeping away the Muslims from the fold of Congress, widening the void between the Hindus and the Muslims and promoting Anglo-Mohammedan collaboration. Apart from the above quoted Association, at various other places Muslim associations like Anjuman-i-Islamia and Youngmen's Mohammedan Associations, sprang up in the country. But none of these associations can be categorised primarily as political associations. Young Muslim students hailing from Aligarh and other Indian and foreign universities felt the necessity of having a regular political association. It

1. Syed Ahmed Khan: On the present state of Indian Politics.
2. Ibid.
was only in December, 1906 that the All-India Muslim League came into existence.

7. ESTABLISHMENT OF LEAGUE AND INTRODUCTION OF SEPARATE ELECTORATES.

The way in which the Muslim League was ushered into existence throws enough light upon the working of the British policy of counterpoise of natives against natives. In order to allay the discontent roused in the country during the regime of Lord Curzon, Lord Morley, the then Secretary of State for India, suggested to the Government of India that it was most opportune time to introduce further reforms in the popular direction. In the light of Secretary of State's suggestion, Mr. Archbold, the principal of the M.A.O. College wrote to Nawab Mohsin-ul-Mulk, successor to Sir Syed as leader of the Muslim community and President of the said college:

"Colonel Dunlop Smith, Private Secretary of His Excellency the Viceroy, informs me that His Excellency is agreeable to receive the Muslim deputation. He advised that a formal letter requesting a permission to wait on His Excellency be sent to him. In this connection I would like to make a few suggestions. The Government decision to take a step in the direction of self-government should be appreciated. But our apprehension should be expressed that the principle of election, if introduced would prove detrimental to the interests of the Muslim Minority. It should respectfully be suggested that nomination or representation by religion be introduced to meet Muslim opinion. We should also say that in a country like India, due weight must be given to the views of Zamindars."

It is quite obvious from the extract of Mr. Archbold's letter to Sir Syed's successor that the idea of communal representation did not originate with the Muslims. It was the innovation of the Britishers' brain. According to Ramsay Macdonald, an ex-Prime Minister of Great Britain, the agency responsible for the demand of separate communal representation as well as its introduction was British officialdom. In the words of the late Maulana Mohammad Ali, the deputation of Muslims (led by Sir Aga Khan) that waited upon Lord Minto was a "command performance". It is said that the address presented by the Deputation to the Viceroy was drafted by Archbold himself. Following were the demands incorporated in the said address:—

(i) Separate electorates, (ii) weightage in the reformed legislature, (iii) greater representation in the services, (iv) help in founding a Moslem University, (v) protection of their interests, in case an Indian was appointed to the Executive Council of the Governor-General.

Lord Minto in his reply to the address accepted the position adopted by the Deputation and assured them "that their political rights and interests will be safeguarded in any administration with which I am concerned". His Excellency further said "...I am as firmly convinced as I believe you to be that any electoral representation in India would be doomed to mischievous failure which aimed at granting a personal enfranchisement regardless of the beliefs

1. Mehta and Patwardhan: The Communal Triangle in India, p. 62
and traditions of the communities composing the population of this continent." It is quite evident that Lord Minto was the author of this vicious system of communal representation which sowed the seeds of dissensions between the Hindus and the Muslims. Lord Morley, the Liberal Secretary of State, was opposed to this demand of Separate Electorates. He, instead, proposed a scheme of Joint Electoral Colleges for the election of all the candidates belonging to different communities. The 'Statesman' of Calcutta—a habitual supporter of the Government also condemned Minto's sponsored scheme of Separate Electorates. The Nationalists were bitterly opposed to the introduction of separate electorates which were bound to retard the national growth and sow the seeds of animosities between the two major communities in India. But in spite of all this vehement opposition, "the Muslims and their friends in the Bureaucracy insisted that Muslim interests could be protected only through separate communal electorates and that joint electoral colleges will not give them the right type of representatives; and ultimately they triumphed over the Secretary of State". Ramsay Macdonald's observation that the "Mohammedan leaders are inspired by certain Anglo-Indian officials, and that these officials have pulled wires at Simla and in London and of malice aforethought sowed discord between the Hindu and the Mohammedan communities by showing the Muslims special favours" is very correct. Thus the principle of separate electorates was accepted in the teeth of strong opposition by the Nationalists and also the Liberal Secretary of State—Lord Morley. It was embodied in the Minto-Morley Reforms Act of 1909. Lord Minto in fact was the real father of Pakistan which was the culmination of Hindu-Muslim antagonism originated in 1909.

Constitution of the League and its objects. Encouraged by the success of Simla Deputation, a group of well-to-do and aristocratic Mohammedans framed the constitution of the League, in December 1907, at Karachi. The constitution was ratified in March, 1908, at Lucknow. The first regular session of the League was held in December, 1908 at Amritsar with Sir Syed Ali Imam in the chair. The constitution of League, however, earmarked permanent presidency of the League for H.H. the late Sir Aga Khan who resigned in 1913 due to a radical change in the creed of the League. The constitution of the League defined its aims and objects as follows:— "(i) to promote among Indian Muslims feeling of loyalty towards the British Government and to remove any misconception that may arise as to the intentions of the Government with regard to any of its measures, (ii) to protect the political and other rights of Indian Muslims and to place their needs and aspirations before the Government in temperate language, (iii) so far as possible without prejudice to the objects mentioned under (i) and (ii) to promote friendly feelings between Muslims and other communities of India."

It is thus obvious that right from its inception, League was a communal body. It started its career as an institution of loyalist Muslims who were expected to promote loyalty towards the alien Government and undermine the National Movement. It did not command the universal support of the Muslim community. Mr. Jinnah who is termed as "Qaid-e-Azam" of Muslim League was opposed to its communal character in the initial stages. Nawab Syed Mohammed, Maulana Shibli Mauwani and Maulana Mohammed Ali, some of the most prominent Muslim leaders of the times were strongly against this communal League. A Nationalist Muslim made a very bold statement in Hindustan Review of April, 1909. "The attempt on the part of my co-religionists to create an irreconcilable ulster in India is not very laudable...This will veritably be the opening of Pandora's Box and India will then be confronted with a grave situation of the first magnitude." Nawab Sadiq Ali Khan, Bar-at-Law, said at Lucknow, in 1908, "The principle of class and religious representation is a most mischievous feature of the scheme...It is not good for Mohammedans to be taught that their political interests are different from those of Hindus...From a Mohammedan standpoint too, in my humble opinion, that principle is fraught with danger."

Change in League's Attitude. With the passage of years, however, the Muslim League assumed a more independent attitude. It started threatening the Britshers to get disloyal if the latter did not accede to their demands. The annulment of partition of Bengal, the uniting efforts of Nationalist Muslims, the callous attitude of the British to the Muslims in Turkey and other Muslim countries, the Balkan wars, the termination of the baneful influence of the British principal of the M.A.O. College Aligarh over the opinions of Muslims brought a tremendous change in the Muslim League politics. Progressive leaders like Maulana Mazhar-ul-Haq, Syed Wazir Hussain, M.A. Jinnah, Maulana Mohammed Ali and Hassan Imam exhorted the other members of the League to effect modification in the constitution of the League on progressive and patriotic lines to bring it in line with the creed of the Congress. Thus its constitution was amended in 1913.

Henceforth promotion of friendship and union between the Muslims and other communities of India and the attainment of self-government suited to the genius of India under the aegis of the British Crown, were also to be the objects of the Muslim League. Mr. Jinnah invited the next session of the League to Bombay where the Congress had to convene its annual deliberations. For several years, the two organizations held their sessions at the same place. This enabled the two bodies to come closer to each other and formulate a joint scheme of post-war reforms. To prepare this scheme,
a Committee of the League was constituted. It submitted its report at the joint session of the League and Congress at Lucknow.

**Lucknow Pact, 1916.** The report of the Committee was accepted by both the organisations. Thus Lucknow Pact 1916, providing the basis for Hindu-Muslim unity and embodying the intense desire of the Nationlists to foster unity among the two major communities was adopted by the League and the Congress. In the words of Rao, "The Lucknow session was remarkable for the complete unanimity among the Hindus and Muslims over the question of self-government." By this Pact, the Hindus and the Muslims joined hands in demanding Dominion Status on the basis of a scheme for representation of the two communities in the various legislatures. The scheme adumbrated the following significant points: (i) Provincial Councils were to consist of four-fifths elected and one-fifth nominated members. (ii) The franchise for electing their members was to be as wide as possible. (iii) Important minorities were to be given special representation. (iv) Muslims were to be represented through separate electorates. (v) Legislative Councils were to have the right of electing their Presidents. (vi) Four-fifths of the members of the Imperial Legislative Councils were to be elected and one-third of the elected seats were to be given to Muslims elected through separate electorates. (vii) The minorities were given the right of vetoing a legislation by the inclusion of a provision that no Bill or resolution affecting a community should be proceeded with in any Legislature if three-fourths of the representatives of the communities were against it.

Some of the above important communal provisions of the scheme reflect that the Congress went out of the way to appease the Muslim League. It accepted the introduction of separate electorates, once dubbed as anti-national and disruptive by it. It had to pay too heavy a price for the blunder. It became difficult for the Congress to discard the principle at a later stage. In the words of Dr. Ishwari Prasad, "the Pact marked the beginning of the appeasement policy of the Congress towards the League". As a matter of fact, the Congress accepted this principle as a lesser evil. It never wanted the national progress to be impeded by the communal forces. Moreover, the Congress was of the view that once the Hindu-Muslim unity was fostered, the Muslims would themselves unhastily do away with those communal safeguards. But it proved to be a wishful thinking. The Hindu-Muslim accord created by the Pact proved transitory and illusory. The Congress having once accepted the nasty principle of separate electorates, could not afford to go back on it. As the years elapsed, the communal demands began to appear in more and more alarming forms in all later constitutional projects and ultimately resulted in the partition of the country.

§ 8. GREAT WAR AND NATIONAL MOVEMENT

The Great War of 1914 considerably influenced the course of Indian politics. Due to the wise and sympathetic approach to the Indian problem by Lord Harding, India rendered splendid assistance to the British Crown through men, money and ammunitions. Her soldiers fought with commendable success in far-flung countries of the world. Lord Birkenhead remarks, "The winter campaign of 1914-15 would have witnessed the loss of the channel ports but for the stubborn valour of the Indian Corps....Without India, the war would have been immensely prolonged if indeed without her help, it would have been brought to a victorious conclusion...India is an incalculable asset to the mother country." The war also induced in India a new psychology. "It brought to her a new sense of self-respect and self-reliance and hastened enormously the development of consciousness amongst her peoples." Both the Hindus and the Muslims began to think in terms of one India. The Moderates and the Extremists patched up their differences. The credit for this reunion of the two wings of the Congress at Lucknow session goes to Mrs. Anne Besant, Subbarao and a few other sincere nationalists. The people of India who had hitherto shown indifference began to evince a new interest in the public affairs.

The Britishers, on the other hand, sought Indian help on the plea that they were fighting to make the world safe for democracy. The war was described as a struggle between right and might, between liberty and despotism. "It was a fight in defence of the rights of the small nations. It was fought to vindicate the right of all people to rule their own destinies." The Indians therefore realized that Britishers would not negate to the people of India the democratic right of self-determination and self-government. During the early stages of war, the leaders of the times generously responded to the Britishers call for whole-hearted support to them in the hour of distress.

But their patience was exhausted when the possibility of early ceasing of hostilities seemed remote. Hence they resumed agitation. In 1915, at the Bombay session of the Congress, Sir S. P. Sinha exhorted the British Government to declare in unequivocal terms "granting of self-government to the Indians as their goal". The government did not respond. It aggravated the discontent amongst the Indian leaders against the British Government.

§ 9. HOME RULE LEAGUES

Their object. The aggravation of discontent amongst the Indian leaders, against the British Government, gave an opportunity to the Extremists like Mrs. Besant and Lokmanya Tilak to strike while the iron was hot. In fact, Mrs. Besant had joined Congress

1. Quoted in Aiyer: Indian Constitutional Problems, p. 36.
in 1915 with the hope of achieving self-government through the influence of this well-established organization. She however found that the "Moderate Congress was too cautious and too hide bound to undertake the task of educating and organising the masses." Hence she had made up her mind to start Home Rule League. In September 1916, the Home Rule League was inaugurated in Madras. Lokmanya Tilak had already launched a Home Rule League at Poona in April 1916. Thus the two Leagues collaborated with each other in agitating for 'Home Rule' in the country. Tilak exhorted the masses through 'Kesari' and 'Maharatta' newspapers to shake their lethargy and strike at the root of British imperialism. He emphatically proclaimed, "We will remain in the Empire as equals. We will not live in the Empire merely as servants and load carriers.... The Indian people are now fully alive to their status and destiny. If the Japanese who are Asians like the Indians can enjoy the liberties and responsibilities of Sawaraj, why cannot we?" Likewise Mrs. Besant through her two newspapers—'New India'—a daily and the 'Commonwealth weekly' awakened the masses.

The Lucknow Session of the Congress held in 1916 not only brought the Muslim League and the Congress on the same forum but also abridged the void caused earlier in the Congress ranks by the departure of the Extremists. In fact, this session of the Congress demonstrated the virtual domination of the Extremists like Tilak and Mrs. Besant. Both the Home Rule Leagues under their leadership took upon themselves to popularise 'Congress-League Pact' amongst the masses. Frequent meetings were arranged to prepare the people for a mass agitation. Thus the year 1916 was a year of great significance for the Indians, since Home Rule propaganda had attained its climaxity during the course of this year. 'Home Rule is my birth-right and I will have it'—a favourite slogan of Tilak had become a catchword, throughout the country.

Government's reaction and Movement at its climax. Instead of winning the confidence of the masses, the government grew excited and poured oil over the troubled waters. It attempted to crush the movement by imposing restrictions on these two Extremists who had by now become the idols of the people. In May, 1916, proceedings against Tilak were instituted for delivering fiery speeches. He was ordered to execute a personal bond of Rs. 20,000 and furnish two sureties of Rs. 10,000 each to be of good behaviour for a period of one year. The said order of the Magistrate was quashed by the Bombay High Court, on November 9, 1916, on an appeal to the said court. On May 26, 1916 security of Rs. 2,000 was demanded from 'New India' which was forfeited on August 28, 1916. A new security of Rs. 10,000 was to be deposited. An appeal to Madras High Court and to the Privy Council against the confiscation order.

proved to be of no avail. But these repressive measures could not
deter the two Extremists from fanning bitterness against the
British Government. Instead, the Home Rule Movement reached
an unprecedented height. The publication of the report of Public
Service Commission in 1917 and issuing of a circular prohibiting
school and college students from attending Home Rule meetings
accentuated the feeling of discontent. With the internment of Mrs.
Besant and two of her colleagues Messrs. B. P. Wadia and G. S.
Aurandale, a wave of indignation and bitter resentment swept
over the entire country. The Nationalist leaders who had so far
refrained from joining Home Rule Leagues, chose to accept impor-
tant offices in these Leagues. The All-India Congress Committee at
a meeting held in July, not only condemned the repressive policy
of Government against Mrs. Besant and her associates but also
showered commendations on the patriotic work done by these
Leagues. Thus 'Home Rule Movement' acquired an All-India
character. The entire country "throbbed with new ideas and was
alight, with a new life as it had never been before". Of course a
few Moderate leaders like Gandhiji who banked upon the good
faith, sense of justice and fair-play of the alien bureaucrats did
not join the Home Rule Movement. (Post-war events made it
crystal clear to the Moderates that reposing faith in the sincerity
of the Britishers during war, was not a judicious step). Under
the inspiring guidance of Tilak, a dignified representation was
made to the Government to release all the interned leaders and
immediately grant a substantial instalment of 'Swaraj' failing which
the unrest in India would gain further momentum. Mrs. Besant
was elected President of the 17th session of the Congress though she
was as yet in the jail.

4.10. MESOPOTAMIAN MUDDLE

At such tempestuous times when the passions had run very high,
came the Report of the Mesopotamia Commission which had been
appointed by the Parliament in 1916, to investigate the causes lead-
ing to the disasters of the Mesopotamian campaign launched by the
government of India and its army against Turkey in Mesopotamia.
The Report of the Commission strongly denounced the conduct of
the Mesopotamian campaign as carried on by the Government of
Lord Harding and Mr. Chamberlain—the Secretary of the State for
India. The Report which was a revealing document read as follows:
'That wonderful system of government in India, which amongst the
British general public had hitherto been believed to be above any
possible question of complete 'coute blanche' to do or not to do what
in its own wisdom seemed good. The system itself was found to
have been quite unsound; the old myth that only the 'silent strong
man on the spot' could effectively get things done east of the Suez

had been shattered. Thus the glaring defects of the Indian system of Government were brought to light. The Secretary of State for India had to tender resignation. Mr. Montagu, known to be a sincere friend of India, succeeded Chamberlain as the Secretary of State for India. He made a historic declaration on the floor of the House of Commons in August 1917. The first instalment of self-government was promised soon after the war. Requisite steps to implement the declaration were immediately taken. The Secretary of State toured India, met Indian officials and important leaders and formulated proposals in collaboration with Lord Chelmsford—the then Governor-General of India. The proposals are popularly known as "Montagu-Chelmsford Scheme". On the basis of these proposals, embodied in this scheme, the Government of India Act, 1919 was enacted.

National Movement and Constitutional Development from 1919-35

§ 1. GANDHI'S APPROACH TO THE MONTFORD REFORMS

As already discussed in the preceding chapters, the Montagu-Chelmsford Reforms of 1919, did not evoke enthusiastic response from the Indian public. No self-respecting Indian could feel happy over the British policy of granting responsible government by instalments; on the plea that India was not fit for full responsible government at once. Moreover, the assertion of the British Government and the Parliament that they must be the judges of the time and measure of each such advance was inconsistent with their eloquent and oft-repeated proclamation of the principle of self-determination. Thus the Indian National Congress at its annual session in 1919, condemned these reforms as inadequate, unsatisfactory and disappointing. Prominent leaders like Tilak and Mrs. Besant decried these reforms as entirely unworthy to be offered by England or to be accepted by India. Yet under the influence of Mahatma Gandhi—the hero of passive resistance against the Government of South Africa—the Congress resolved to work the reforms 'so far as may be possible', in order to secure an early establishment of responsible government. The Indian masses were, however, feeling discontented and disgruntled. Even their unprecedented assistance to the British during the Great War could not melt the stone-hearted foreign bureaucrats. Instead tactless among them thought of adopting stringent measures to quell any sort of revolutionary agitation.

§ 2. ROWLATT ACT AND GANDHI'S DECISION OF NON-COOPERATION

The passage of Rowlatt Act, despite vehement non-official opposition in the Central Legislature and Gandhi's warning of launching Satyagraha in case of non-withdrawal of the Black Bill poured oil over the troubled waters. The Act vested the Police and the Executive with unlimited authority for suppressing civil liberties. A
reign of terror followed, Mahatma Gandhi was disillusioned. His faith in the good intentions of the Britishers was shattered. He was turned from a co-operator to a non-cooperator. He urged the country to resort to "satyagraha" against the Rowlatt Act. The passive resistance campaign was inaugurated with hartals. The 30th of March, 1919 was fixed for the suspension of all business and for fasting and prayers. Later on, the date was changed to the 6th of April. Unfortunately, hartals at certain places led to disturbances and disorders. Mahatma Gandhi’s arrest on the 8th of April at Patalganga, when he was on the way to Delhi further infuriated the masses and intensified the agitation particularly at Delhi, Ahmedabad and the Punjab. Dr. Satyapaul and Kitchlew’s arrest and subsequent deportation created a storm in the Punjab. Both the leaders hailed from Amritsar.

3. JALLIANWALA BAGH TRAGEDY

The inhabitants of Amritsar took out a procession and demanded the release of their leaders. The police fired at the non-violent mob which became extremely excited. Carrying the dead comrades, the mob moved back. They decided to take vengeance upon any European, they came across. Five Europeans were killed. A number of government buildings were set on fire. A missionary lady, Miss Sherwood, was attacked and left unconscious. The authorities retaliated. General Dyer—the iron man of the Punjab, determined to teach Indians a lesson. The entire city of Amritsar was turned into a sort of military camp. On the 12th of April, an order banning all public meetings was issued though it was, deliberately, not properly publicized. A ‘public meeting’ was announced for the 13th of April—Baisakhi day, in the Jallianwala Bagh. The modern historians like Dr. Hari Ram Gupta, emphasise that the meeting was, in fact, designed and planned by the Britishers themselves. The day scheduled for the meeting also was fixed, with ulterior motive of attracting more victims to the spot. On ‘Baisakhi day’ there is a big ‘mela’ at Amritsar, hence the possibility of huge crowd was quite obvious. A few traitors like Hans Raj were specially hired for widely publicizing the proposed meeting. Thus on that fateful day of Baisakhi, people in thousands were allowed to assemble at Jallianwala Bagh and made to wait for the President of the meeting and the speakers who had not to turn up. In the meantime, General Dyer entered the place at the head of 100 Indian and 50 British troops. Without sounding a note of warning to the peaceful mob, "he opened fire at about 100 yards range upon a dense crowd". 1650 rounds were fired. The bullets were aimed at the points where the crowd was the thickest. The casualties were heavy. According to official estimates 379 persons were shot dead and about 1200 were wounded and left unattended. "The panic-stricken multitude broke at once but for the conse-

1. Extract from statement of Sir V. Chiroli before the Hunter Committee.
cutive minutes, he (Dyer) kept up a merciless fusilade...on that seething mass of humanity caught like rats in a trap." The casualties would have been heavier still, if Dyer had succeeded in taking armoured cars fitted with machine gun on the spot. He could not do so because of narrow passage leading to Jallianwala Bagh. Thus Jallianwala Bagh tragedy will go in the annals of history not only as the most horrible of official atrocities in the Punjab but a great slur on British nation for all times to come.

Martial Law. Two days after the occurrence of this deliberate and unprovoked massacre, martial law was declared in five districts of Punjab and was enforced barbarically. Public flogging, mass arrests, confiscation and destruction of property, firing on innocent farmers, cutting of electric connections to tease the agitators, dropping of bombs and orders of crawling on bellies through a street where Miss Sherwood was assaulted, whipping of students, if they neglected to salute the Sahibs - are some of the tales of woes to tell during this martial law period. In the words of Punniah, "The outrages perpetrated on national self-respect by the brutal soldiers in the Punjab sent a thrill of horror throughout the country and stirred up feelings of bitter hatred against the government."

Hunter Committee. To crown all, the Government instead of punishing the wrong doers and granting adequate compensation to the sufferers, passed an indemnity bill shielding officials guilty of excesses, in quelling the disturbances. The Hunter Committee appointed by the Government to go into the whole matter attempted to wash off the guilt of General Dyer, as it reported that the General's conduct was based upon 'an honest but mistaken conception of duty' and that he exceeded the reasonable requirements of the case due to a 'grave error of judgement'. He was simply removed from the service. Some of the British Parliamentarians commended Dyer's services to the nation. He was presented a sword of honour and a purse of £20,000 by a few of his admirers of course a little later. The Anglo-Indian Press greeted the General as the saviour of British rule. All this reflected that a person responsible for a cold-blooded and calculated murder of innocent, unoffending, unarmed Indians, was not only not admonished by the British nation but patted by the callous masters. This had a decisive effect on Gandhiji and turned a co-operator to a non-cooperator. Surendranath Banerjee rightly remarked that the Rowlatt Act was the parent of non-cooperation.

4. THE KHILAFAT QUESTION

The Britishers' sincerity was further exposed over the Khilafat Question. Gandhiji was convinced of their evil intentions, with the publication of the Treaty of Sevres which aimed at dismemberment

1. Ibid.
of the Turkish empire and turning of Sultan into a virtual prisoner in the hands of an allied High Commission. To allay the Muslim fears, the Britishers had pledged during Great War that Turkey would not be deprived of its rich lands of Asia Minor and Thrace. Thus whole-hearted cooperation was extended by the Indian Muslims to the Britishers during the war. The end of the war and the subsequent formulation of ‘Sevres Treaty’ revealed that the Britishers were not going to stand by their promise. It shocked the Indian Muslims. Thus a powerful Khilafat agitation was launched. They demanded “the preservation of the Turkish empire... and the continued existence of the Khilafat as a temporal no less than spiritual institution”. A deputation to meet the Governor-General was organized under the guidance of Gandhiji and was led by Dr. Ansari. Another deputation was sent to England in March, 1920, with Maulana Mohammed Ali, as its leader. But these efforts did not bear any fruit. The Ali brothers joined the Congress and decided to follow Gandhi’s lead. To Gandhiji, the Khilafat movement seemed to offer such an opportunity for uniting Hindus and Mohammedans as would not arise in a hundred years. Thus the non-violent non-cooperation movement was started with the sole object of redressing the Punjab and Khilafat wrongs. Dr. Pattabhi Sitaramayya’s words are worth quoting “The Triveni of Khilafat and Punjab wrong and the invisible flow of inadequate reforms, became full to brim and by their confluence enriched both in volume and content the stream of national discontent.”

5. NON-COOPERATION MOVEMENT

Under the presidency of Lala Lajpat Rai, a special session of the Congress was convened in September, 1920 at Calcutta where the fateful resolution for launching non-cooperation movement was adopted by a huge majority. A large number of Muslims also attended the session. Gandhiji moved the resolution and Ali brothers and Pt. Moti Lal Nehru supported it. C.R. Dass, Mrs. Besant and Pt. Madan Mohan Malviya opposed it. Thus a vigorous campaign of boycotting Councils, courts of laws and schools and colleges was started. Surrender of titles and honorary offices and resignation from nominated posts in local bodies; refusal to attend government levees, durbar and other official and semi-official functions held by the government officials or in their honour; refusal on the part of the military, clerical and labouring classes and boycott of foreign goods—were some of the significant planks in the Congress Platform. Khilafat leaders and the Congress forged a united front. ‘Hindu-Muslim Unity’ was the watchword of the agitators. In the words of Pt. Nehru “In 1920, the National Congress and, to a large extent, the country took to this new and unexplored path and came into conflict repeatedly with the British power.” Mahatma Gandhi toured the whole country to

enthuse the masses. Hundreds of people renounced their titles and honours. Thousands of students left their institutions and participated in the struggle. The movement produced spectacular results though it could not attain 'Swaraj' in one year as promised by Gandhiji. Elections to the reformed Councils were boycotted. More than 2/3 voters abstained from voting. At some polling booths, the ballot boxes were found almost empty. National educational institutions like 'Kashi Vidyapith', the National Universities of Bengal and the Punjab and 'Jami Millia' of Delhi were established. The Khilafat leaders induced the Muslims to desert the army and police. Thus the Non-Co-operation Movement attempted to paralyse the government "by the withdrawal of Indian patriots from all associations with the political, economic and social institutions of British India". The Government was puzzled and perplexed. They did not know how to handle such an embarrassing situation.

The visit of Prince of Wales. The forthcoming visit of Prince of Wales further aggravated government's anxiety to have a peaceful atmosphere in India. The Congress proclaimed its decision to boycott all celebrations connected with the visit of the Prince. On November 27, the Prince landed on the soil of India. On the same date, a serious riot broke out, in Bombay wherever he went he was greeted with 'hartals' and 'mournings'. Pt. Malviya and Mr. Jinnah's efforts to bring about a compromise failed. The new Governor-General, Lord Reading, was willing to pay high price for peace and enter into a sort of an agreement with the Congress. Gandhiji also showed an inclination for a settlement provided that Ali Brothers were released. Unfortunately, the Governor-General did not agree to their release though he had agreed to call a Round Table Conference of the representatives of the Government of India and the Congress to settle the future Constitution of India. The failure of government to come to terms with the Congress further deteriorated the situation. The machinery of repression was let loose. The orders of "repress without hesitation" were issued to all local authorities. Before the end of 1922, all the topmost leaders except Gandhi were imprisoned. About fifty thousand arrests were made on political grounds. Public meetings were banned.

Ahmedabad session of the Congress, Dec. 1921. At its Ahmedabad session held towards the end of December, the Congress resolved to start "Civil Disobedience Movement" with Mahatma Gandhi as the sole executive authority. On February 1, 1922, Gandhi wrote a letter to the Governor-General intimating him his intentions to start 'no-tax campaign' unless the government gave ample proof of its sincerity and change of heart within seven days, by releasing non-violent non-cooperating prisoners and announcing a policy of absolute non-interference with all non-violent activities.

Chauri Chaura Incident. Before the expiry of seven days period, Chauri Chaura episode changed the course of Indian history. In this small town of U.P., an unruly mob of 3,000 people unleashed violence by killing twenty one policemen and one Inspector on February 4, 1922. Mahatma Gandhi was so deeply shocked at the outbreak of brute force, that he suspended the movement including the defiance of government laws and non-payment of taxes. This dramatic action of Gandhiji was highly resented and bitterly criticized by the rank and file of the Congress. Even the high ranking leaders like Motti Lal Nehru, Jawahar Lal, Subhash Bose, Lajpat Rai, Ali Brothers and C.R. Dass did not appreciate such a hasty decision at such a critical juncture. At a later stage, however, Pt. Nehru justified Gandhi’s momentous step. In fact, the Indian masses were getting out of control. They were gradually losing faith in Gandhi’s ideology of non-violence. Repetition of violent incidents might have resulted in further infuriating the government. In the words of Pt. Nehru, “This would have been crushed by the government in a bloody manner and a reign of terror established which would have thoroughly demoralized the people.” It may however be said that the countrywide criticism of Gandhi’s action brought his popularity to its lowest ebb.

Arrest of Gandhi. This sweeping tide of resentment against Gandhiji emboldened the government. Gandhiji was arrested and sentenced to six years imprisonment by Mr. Brounified—the Sessions Judge.

Appraisal of the Movement. Thus the Non-Cooperation Movement came to an end. It failed in the achievement of its objective—the Complete Swaraj, within a year. Instead a sense of frustration overtook the country when the voice that guided the destiny of the nation was hushed. The question arises whether the movement was altogether barren of results? Certainly not. It shook the citadel of British bureaucracy. It conveyed the message of ‘Swaraj’ even to the humblest strata of people. It intensified political agitation to an extent never dreamt before. It made the Congress a mass movement. In fact, it infused a new life into Indian Nationalism. It engendered a new spirit of fearlessness. Coupland has very well summed up the significance of the Non-Cooperation Movement in the following words, “He (Gandhi) had done what Tilak had failed to do. He had converted the national movement into a revolutionary movement...He had taught it to pursue the goal of India’s freedom.....not by constitutional pressure on the government still less by discussion and agreement but by force none-the-less force because it was meant to be non-violent. And he had not only made the national movement revolutionary, he had also made it popular.....Gandhi’s personality had deeply stirred the countryside.”

It is a hard fact that henceforth resentment and anger against the Government was no longer only whispered, it was openly uttered and boldly discussed. The movement gave fillip to constructive work as well. Hand-spinning and hand weaving became very popular. Swadeshi cloth began to be preferred. The 'Khadi' became the symbol of an Indian nationalist.

§ 6. THE BIRTH OF SWARAJIST PARTY AND COUNCIL ENTRY

The suspension of the Non-Cooperation Movement and the decision of Mahatma Gandhi to suspend defiance of government laws and ordinances was highly resented by a section of nationalists. S.C. Bose said "To sound the orders of retreat just when public enthusiasm was reaching the boiling point, was nothing short of a national calamity." Subhash Bose quotes C.R. Dass in 'The Indian Struggle' which further confirms the fact that a good number of leaders of the times were not happy at this hasty decision of Gandhiji. He says, "The Mahatma opens a campaign in a brilliant fashion, he works it up with skill, he moves from success to success, till he reaches the zenith of his campaign but after that, he loses this nerve and begins to falter." Thus C.R. Dass in Bengal, Pt. Moti Lal Nehru in North India and N.C. Kelkar in Deccan expressed resentment and dissatisfaction with Gandhiji and ultimately in 1923 formed a new party which was named as 'Swaraj Party'. The leaders of the Party emphasised the need of entering the Legislative Councils and wrecking the Montford Reforms through the tactics of non-cooperation and obstruction. Both C.R. Dass and Moti Lal preached the gospel of ending the Councils or mending them. They also stood for the attainment of 'Swaraj' which to them meant Dominion Status within the empire.

Swarajist Conference, March 1923. The first Swarajists' Conference was convened at Allahabad in March 1923, to frame the constitution of the new party and its place of work.

Thus an open rift between 'no-changers' led by C. Rajgopalachari and the Swarajists in some of the provinces was discernible. This was an unfortunate development. Hence a special session of the Congress was organized in Delhi in September 1923, to bring about a compromise between the two sections of the patriots. Maulana Azad presided. A sort of 'permissive' resolution was passed which stated "Such Congressmen as have no religious or other conscientious objections against entering the legislatures are at liberty to stand as candidates and to exercise their right of voting at the forthcoming elections." This amounted to a clear triumph of the Swarajists.

Gandhi's release, February 1924. Gandhiji was released in February 1924, due to failing health. Though he did not concur with the Swarajists programme, yet he was quite conscious of growing opposition of the masses and the rank and file in the Congress against his policy of Non-Cooperation. Hence he gave his tacit consent to 'Council Entry' though a compromise was reached between the two
wings, according to which a Congressman could choose between 'Council Work' or 'Constructive Work'. Thus the Swarajists' Party was to constitute a political arm of the Congress and participate in the parliamentary activities. Gandhi remained completely aloof.

**Swarajists' Achievement.** With their avowed object of wrecking the Montford Reforms, the Swarajists contested the elections of 1923, under the able guidance of Pt. Moti Lal Nehru and C.R. Dass. Their success in C.P. and Bengal was remarkable. In the other provinces also, they emerged as the largest party though they were not in a position to offer uniform, continuous and consistent opposition. In C.P. and Bengal, however, they paralysed Dyarchy. Formation of ministries in those provinces became impossible because the Swarajists who had captured an absolute majority would neither form the ministries themselves nor allow any body else to form them. The untimely demise of Mr. Dass in June 1925 gave a severe blow to Swarajist influence in Bengal, yet they managed to capture majority in the third term of the Legislative Council and forced the Governor to dissolve the House.

In the Central Legislature, however, they could secure 45 out of 145 seats, yet with the active help of the Independent members and the Nationalists, they could sometimes inflict defeat on the Government. It may, however, be pointed out that due to veto and power of certification vested with the Governor-General, they could neither impede the work of the government nor create deadlock. Their occasional 'walk-outs' could at best embarrass the Central Government. Hence their success of bringing the reforms to a standstill was limited to C.P. and Bengal only. Of course, on February 8, 1924, a very important resolution moved by Pt. Moti Lal Nehru and supported by the Swarajists and the Independents was passed by the Central Assembly.

**Moti Lal's Resolution: February 8, 1924.** It stated "this Assembly recommends to the Governor-General-in-Council to take steps to have the Government of India Act revised with a view to establish full responsible government for India and for the said purpose, (a) to summon at an early date representatives to a Round Table Conference, to recommend with due regard for the protection of the rights and interests of the important minorities, a constitution for India; and (b) after dissolving the Central Legislature to place the said scheme before a newly elected Indian Legislature and submit the same to the British Parliament to be embodied in a statute." It was, in fact in response to this resolution that the Government of India set up a "Reforms Inquiry Committee" under the chairmanship of its Home Member—Sir Alexander Muddiman, to make a critical appraisal of Montford Reforms.

## 7. Muddiman Committee, 1924

The Swarajists boycotted the Committee which had come into existence to scrutinise the Dyarchical experiment and report on its
working. The Committee had an official majority. Its report, however, could not attain unanimity. Some moderate and liberal politicians like Sir Tej Bahadur Sapru and Mohammad Ali Jinnah, who constituted non-official minority condemned Dyarchy as unworkable and unsatisfactory. They suggested that a radical change in the basic principles of Dyarchy was indispensable. The official majority on the other hand, found nothing inherently wrong with Dyarchy, though they suggested certain modifications in its mechanism. In September, 1925, the report of the Committee was placed before the Assembly for discussion and acceptance. Pt. Moti Lal Nehru condemned Dyarchy as unworkable and moved a resolution which was carried against the Government by thumping majority. Thus agitation for further reforms did not come to an end. The Swarajists continued embarrassing the government and exposing its bureaucratic tendencies, though they could not completely make it unworkable.

§ 3. CHANGE IN SWARAJISTS’ POLICY

No doubt C.R. Dass’s sudden demise gave a staggering blow to the Swarajists but the soundness and practicability of their policy of consistent and continuous obstruction was already being questioned. He himself had realized the futility of this sterile politics of negation, during his life time. After his death, the Swarajists drifted towards the policy of co-operation. Their original policy of wrecking the legislatures from within was substituted by responsive co-operation with the government. A few non-cooperators still believed in the policy of obstruction for obstruction’s sake. Hence a rift in the ranks of the party was quite discernible.

The Government took advantage of the situation and started cajoling the responsive co-operativists by offering them seats in the various committees. In 1924, some of the prominent Swarajists accepted seats on the “Steel Protection Committee”. In 1925, Pt. Moti Lal Nehru gladly accepted the membership of Skeen Committee. In 1925, V.J. Patil—a leading Swarajist, was elected the speaker of the Central Assembly. S.B. Tambe—the Swarajist President of the C.P. Legislative Council accepted the membership of the Governor-General’s Executive Council. Thus the Party was weakened. Its prestige suffered a decline. In the elections of 1926, it did not fare so well. Subhash Chandra Bose correctly said, “From the middle of 1925 onwards, there was a gradual watering down of the original Swarajists policy of unlimited opposition.” By the end of 1926, the wreckers had lost much of their fire. Nobody advocated the policy of “uniform, continuous and consistent obstruction against the government”.

Though Swarajists policy of obstruction seemed to its opponents as illogical and impracticable, yet its utility for the development of National Movement cannot be minimised. During those dark and

1 Bose S.C.: The Indian Struggle, p. 167
disorderly days, when Non-Cooperation Movement was suddenly ended and when sense of frustration and despondency had overtaken the nation, the Swarajists appeared as a silver lining in the dark clouds. They kept the torch of nationalism burning by ‘infusing life’ and enthusiasm in the masses who had felt utterly frustrated at the sudden switch off on the dramatic Non-Cooperation Movement. They taught the masses resistance to the Government which could not otherwise be cowed down.

Moreover, the presence of the Swarajists in the Legislative Assembly of India exposed the infirmities of the British Government. The latter’s autocratic and irresponsible nature stood unmasked. Thus the spirit of resistance against the alien rule got impetus from the Swarajist policy of “wrecking from within the Councils”.

§ 9. HINDU-MUSLIM RIOTS AND GANDHI’S FAST

Soon after the collapse of the Khilafat movement and the suspension of Non-Cooperation, Hindu-Muslim unity was shattered. Riots broke out in different parts of the country. The worst outbreak was in Calcutta in 1926 which lasted for more than a fortnight and had a heavy toll of lives. The causes of these riots have been of very trivial nature: music before a mosque, slaughter of a cow by the Muslims, and a clash between a procession of Muslim mourners during Muharram and Hindus celebrating Dussehra festival. The Britishers, however, exploited the situation. Their secret agents and hirelings deliberately sowed the seeds of dissension among the two communities.

Congress-League entente came to an end. Fears of Hindu Raj started haunting the minds of the Leaguers. To counteract the League, a rival organisation, the Hindu Mahasabha was organised for the protection of the rights of the orthodox Hindus against impending danger of Muslim domination. Thus the reactionary forces were once again let loose. In the words of Pt. Nehru, “Now they emerged from their retirement. Many others, secret agents and people who sought to please the authorities by creating communal friction worked on the same theme.” Mahatma felt much concerned over these unfortunate developments. He convened a ‘Unity Conference’ which met at Delhi and was attended by important Hindu and Muslim leaders and a few other prominent men like Arthur Moore, Editor of the Statesman and Dr. Westcott—the Metropolis of India. While the Conference was deliberating over the situation, Gandhi went on a fast for 21 days as penance for the misdeeds of his countrymen. The Unity Conference after prolonged deliberations appointed a National Panchayat, with Gandhi as its chairman and prominent leaders like Lala Lajpat Rai, Hakim Ajmal Khan as its members to promote communal harmony. For a year, there was a hull which only turned out to be a hull before the

storm. Thus the imperialists' intention of fomenting trouble and following the game of divide and rule bore fruit.

§ 10. GANDHI ON HELM OF AFFAIRS OF CONGRESS

As already said in the preceding pages, by 1926, the Swarajists suffered a terrible decline and Gandhi ji through his striving for Hindu-Muslim accord and other items of constructive programme emerged supreme as an undisputed leader of the Congress. In fact, by 1927, the national movement was at its lowest ebb. There was no exciting programme before the Indian masses. At this moment, the British Government committed a great blunder; which provided another opportunity to Indian leaders for a nationwide agitation. On 5th November, 1927, Gandhi ji and a few more leaders received the Viceroy's invitation to meet him at Delhi. Gandhi ji hastened to meet the Viceroy who handed over to him a sheet of paper announcing the appointment of a Statutory Commission known as the "Simon Commission" for a review of the political situation in India. It was an all White Commission. "The Simon seven were all Englishmen." Though the Commission was expected to frame future constitution of India, yet Indians were deliberately kept out of it on the plea that the Commission had to report to the Parliament. Hence it could not consist of other than members of British Parliament. It was a false pretext, for India had two of her sons as members of British Parliament. Thus the appointment of the Commission gave fillip to the national movement once again. It proved a signal for the unprecedented agitation in the country.

§ 11. SIMON COMMISSION

Why Commission was appointed earlier? In fact, the Commission was to be appointed at the expiration of ten years after the inauguration of Reforms i.e. it was instead appointed in 1927 four years earlier than the scheduled year. The question arises, why the Commission was appointed earlier? Outwardly, it was explained as a graceful concession to the Indian demand for review of the Mont ford Reforms at the earliest. In reality few other factors weighed heavily on the minds of British statesmen (i) The Conservative Government was keen to send the Commission in the year when the communal riots were at their worst. They wanted the Commission to carry a poor impression of the social and political life of Indians. (ii) The general elections in England were to be held in 1929. The Conservatives feared their defeat. Hence, they never wanted the Labour Party to handle the situation. They apprehended that the Imperialist interests might not be safeguarded by the Labour Party. (iii) The British politicians wanted to use the Commission as a bargain-counter and to disintegrate the

Swarajist Party. (iv) Prof. Keith is of the opinion that the appointment of the Commission was expedited due to appearance of the Youth Movement in India. In the words of Prof. Keith, "It was in these difficult conditions aggravated by the cleverness of the Congress in sponsoring at the suggestion of Jawaharlal Nehru and Subhash Chandra Bose, a youth movement which appealed to the excitable and half-educated young men with irresistible force, that the British Government decided to obtain the sanction of Parliament for the acceleration of the appointment of the Commission of Inquiry".¹

Boycott of Commission. Since the Commission was composed of seven white men with Sir John Simon as its chairman, and not a single Indian was included, the Indians decided to boycott it. The complete omission of Indians from the personnel of the Commission was taken for an insult and a humiliation of the Indians. Pt Moti Lal Nehru condemned it as 'a mere eye wash'. Not only Congress, even the Muslim League, the Hindu Mahasabha and the Liberal Federation condemned its composition. Except the reactionary wing of the Muslim League led by Sir Mohammed Shafi, nobody in the country welcomed the Commission. On its arrival in Bombay, on 3rd February, 1929, the Commission was greeted with a countrywide hartal. Slogans of 'Simon go back' rent the horizon. A few welcome voices were mere cries in the wilderness. Wherever the Commission went, it was accorded welcome with black flags and wild demonstrations. In the Punjab, Lala Lajpat Rai, the Lion of the Punjab, led a huge procession against the Commission. To disperse the crowd, the police indulged in 'Lathi Charge'. The lion was wounded but he roared, "The 'lathi' blows that are hurled on me will one day prove as nails in the coffin of the British Empire". Similar treatment was meted out to Pt. Nehru and G. B. Pant in the U.P. Lucknow was converted into an armed camp, during the Commission's stay in this historic town of U.P. Thus under these abnormal circumstances, the Commission continued holding its enquiry. It visited India twice and after more than two years completed its report which was published in May, 1930.

I 12. COMMISSION'S REPORT

The Simon Commission's report did hardly appeal to the Indians though British writers like Coupland remarked that the report added another work of first-rate value to the library of the British political science.² In the words of P. E. Roberts the report "will stand out as one of the greatest of Indian State Papers".³

Following were the recommendations of the Commission which constitute "The Simon Report".

2. Coupland : Indian Problems, p. 100.
(a) Dyarchy because of its inherent defects should be abolished in the provinces and the entire provincial administration should be entrusted to the Ministers responsible to the Legislature. Centre’s control should be reduced to minimum by abolishing reserved departments through which the Central Government and the Secretary of State exercised considerable control over the provinces. “Each Province should as far as possible be mistress in her own house.”

(b) Safeguards for the protection of the legitimate rights of the minorities and maintenance of peace and tranquillity of a province were considered indispensable. Hence the Governors should be equipped with special powers.

(c) In regard to the Central Government, no substantial change was recommended. The Central Executive was not to be responsible to the legislature till the results of a similar experiment in the provinces justified its expansion. Even the idea of Dyarchy at the Centre was rejected. But this position was not intended to last indefinitely. The Commission looked forward to a time, when the question of defence could be satisfactorily solved and responsible government introduced. Moreover, the unitary form of government was deemed unsuitable for India and a proposal was put forward for the establishment of an Indian Federation. Pending the establishment of Federation, it proposed to set up a Council of Greater India representing both British India and the states to discuss matters of common interest.

(d) In order to develop political consciousness amongst the masses, it was suggested that franchise should be extended and the legislatures enlarged. At least 10 to 15 per cent people should be enfranchised though the communal electorates should constitute the basis of representation.

(e) Burma should be separated from India and Sind from Bombay.

(f) The Indianization of army was thought essential but so long as India was not fully equipped, the British forces must be retained.

(g) The method of periodical parliamentary enquiry should be forsaken and “the new constitution should be so elastically framed as to enable it to develop by itself.”

(h) The method of indirect election, through the Provincial Councils, should be adopted for the constitution of both the Houses of the Central Legislature.

§ 13. APPRAISAL OF THE REPORT

There is no denying the fact that the Simon Report was strongly condemned by the Indians. Sir Sivaswamy Aiyar remarked that the Report “should be placed on a scrap heap”. Even the British

1. Chintamani: Indian Politics since the Mutiny, p. 172.
Government side-tracked it. But a dispassionate appraisal of the Report makes us conclude that its recommendations were in no way worse than the provisions of 1935 Act, which were implemented with the consent of the Indian leaders. Of course, the Commission erred in not mentioning the future goal of India as Dominion Status within the British Commonwealth. Of course, the suggestion of indirect election to the Central Legislature or retention of Communal Representation too could not be appreciated by the Indian leaders. Yet, its condemnation of unitary Government, foreseeing the establishment of a Federation in India and introduction of Provincial Autonomy in the Provinces cannot be easily overlooked. The critics rightly contend that if the recommendations of the Commission had been given serious thought, the so-called moth-eaten Provincial Autonomy that we accepted in 1937 could have been achieved a bit earlier. Prof. Keith rightly observes when he says: "It was probably foolish of Indian opinion to repudiate the report out and out. If it had been accepted, the British Government could hardly have failed to work on it and responsible government in the Provinces would have been achieved much earlier than it could be under any latter scheme...."

§ 14. THE NEHRU REPORT

While trying to justify the exclusion of Indians from the Simon Commission, the Conservative Secretary of State, Lord Birkenhead, had hurled a provocative challenge to the Indian leaders that they could not produce an agreed constitution for submission to the British Parliament. He could be bold enough to throw this challenge because he was aware of mutual bickerings amongst the Indian leaders belonging to the different parties. The Indian National Congress accepted the challenge and an "All-Parties Conference" was convened in Bombay, on the 19th of May, 1928, under the presidency of Dr. M.A. Ansari.

The Conference appointed a committee under the chairmanship of Pt. Motilal Nehru to draft a constitution. Sir Tej Bahadur Sapru, Sir Ali Imam, M.S. Aney, Sardar Mangal Singh, Shauib Qureshi, G.R. Pardhan and S.C. Bose were to be its other members. Shri J.L. Nehru was appointed its Secretary. The Committee strove hard for three months and produced a memorable report which in the words of Dr. Zacharias is "a masterly and statesmanlike report." In fact, the Committee made a critical appraisal of the main constitutional problems confronting the country with great political acumen and practical sagacity. Its recommendations were unanimous except in regard to the basis of the Constitution, while majority stood for Dominion status, a minority led by J.L. Nehru and S.C. Bose emphasised the goal of complete national independence. A compromise was, however, thought of.

Recommendations of the Committee. The Committee accepted (i) 'Dominion Status' not merely as a distant goal but as 'the next immediate step'. It however allowed liberty of action to those groups and parties which aimed at the attainment of complete national independence. (ii) The Report confined itself to British India only as it envisaged the ultimate establishment of a Federation where future link up of British India with the Indian States was a certainty. (iii) It emphasised the dire necessity of provincial autonomy. In other words, the Governors must act upon the advice of their cabinets. (iv) It contemplated a scheme of division of powers between the Centre and the Provinces. Residuary powers, however, were to be vested with the Centre. (v) The Report recognised that communal dissensions cast their shadow over all political work but hoped that the problem was likely to be solved in a free India, unhampered by foreign bureaucracy. It recommended the abolition of the Separate Electorates and proposed their substitution by Joint Electorates with reservation of seats for the minorities on population basis. Minorities were given the right to contest seats other than those reserved for them but weightage was not conceded. (vi) No seats however were to be reserved for any community in the Punjab and Bengal. Full protection was promised to the religious and cultural interests of the Muslims. (vii) The Report submitted a detailed list of nineteen Fundamental Rights which were to be embodied in the statute. Right to liberty, right to property, right to religion, right to free elementary education, right to equality which included equality before law, right to form associations for improvement of labour and economic conditions, right to keep and bear arms in accordance with the government regulations were some of the most important rights which figured prominently in the report. Protection was assured to the Depressed classes as well. (viii) The report suggested that N.W.F.P. should be accorded the same constitutional status as other provinces and that Sind should be separated from Bombay, in order to create four Muslim majority provinces. (ix) The Report recommended the preservation of the rights and the privileges of the rulers of the States but they were sounded a note of warning that in case of the constitution of a Federation, they would be allowed to embrace its membership if they established democratic form of governments in their respective states. All the existing rights and obligations of the British Government towards the states, under Paramountcy would be taken over by the newly established central government of free India. (x) It was also suggested that a Committee of Defence should be set up. The Prime Minister, the Minister of Defence, the Minister of Foreign Affairs, the Commander-in-Chief, the Commanders of Air and Naval forces, the Chief of the General Staff and two experts should be its members equipped with advisory functions on military affairs. The Budget for Defence should be subject to the vote of the House of Representatives—the popularly elected House of the Central Legislature. The rules and regulations concerning discipline and maintenance of the Forces
should be framed on the advice of the Defence Committee. (xi) It was recommended that a Supreme Court should be established as the final Court of Appeal in India. Appeals were no longer to be taken to the Privy Council. (xii) It provided for a Parliament of two Houses—the Senate and the House of Representatives. The Senate should consist of 200 members elected by Provincial Councils whereas the House of Representatives should be composed of 500 members elected by the people on an adult franchise basis. The tenure of the Senate should be 7 years whereas that of the House of Representatives only 6 years. (xiii) It further suggested that the Governor-General should be head of the State. He must act on the advice of the Executive Government which should be collectively responsible to the Parliament. (xiv) It further recommended that all the existing Civil Services would become officers of the Commonwealth. The Governor-General would appoint a Public Service Commission. The officers of the Army Service would be allowed to retain their existing rights regarding their salaries, allowances and pensions, etc.

Reaction to the Report. The Report was discussed thoroughly by the All-Parties Conference at Lucknow in August, 1938, and was ultimately adopted with eight minor amendments. The Muslim opinion was, however, divided on the issue. The Nationalist Muslims whole-heartedly supported the Report but the fanatic and orthodox Muslims repudiated it in the All-Parties Muslims Conference convened at Delhi on the 31st of December, 1928, under the chairmanship of Sir Aga Khan. Even a Muslim of Maulana Mohammad Ali’s stature joined the communal camp. Mr. Jinnah who was opposed to the scheme from the very beginning presented his ‘Fourteen Points’ through Muslim League as an alternative to Nehru Report.

Even the rulers of the Indian states could not appreciate the Report, as that aimed at sounding the death knell of their autocratic rule and transferring the paramountcy from British Crown to the Central Government of India. The reaction of the British Government also was not expected to be favourable. They dubbed it as a very progressive report. But a critical analysis of the Report from Indians point of view reflects that the Report was a comprehensive document embodying the aspirations of patriotic Indians of the times. Even the Constitution of free India bears a very close resemblance to the Nehru Report. Dr. Zacharias has very correctly said, “The Nehru Report deserves to be read and studied in all its details as it sheds light on every subject it touches and displays a practical commonsense which never loses itself in doctrinaire utopias but which equally spurs to shelter itself behind the enunciation of mere platitudes.”

§ 15. JINNAH’S FOURTEEN POINTS

As already said in the preceding pages, Jinnah was opposed to the constitutional scheme contemplated by the Nehru Committee. He
advanced his fourteen points to safeguard the Muslim interests. Dr. Rajendra Prasad has very well summarised these points in *India Divided*: (i) The form of the future constitution should be federal with residuary powers vested in the provinces. (ii) A uniform measure of autonomy for provinces. (iii) All legislatures and other elected bodies should be constituted on the definite principle of adequate and effective representation of minorities in every province without reducing the majority in any province to a minority or even equality. (iv) In the Central Legislature, Muslim representation should not be less than one-third. (v) Representation of communal groups to be by Separate Electorate. (vi) Any territorial redistribution not in any way to affect the Muslim majority in the Punjab, Bengal and N.W.F. Province. (vii) Full liberty of belief, worship and observance, propaganda, association and education shall be guaranteed to all communities. (viii) No bill or resolution or any part thereof shall be passed in any legislative or any other elected body if three-fourths of the members of any community in that body opposed it as being injurious to the interest of that community. (ix) Sind to be separated from Bombay Presidency. (x) Reforms to be introduced in the Frontier Province and Baluchistan as in other provinces. (xi) Adequate share for Mussalmans to be provided in the constitution of all services subject to requirements of efficiency. (xii) Adequate safeguards for the protection and promotion of Muslim culture, education, language, religion, personal laws. (xiii) No cabinet either Central or Provincial to be formed without at least one-third of the ministers being Muslims. (xiv) No change of the constitution by the Central Legislature except with the concurrence of the states constituting the Indian Federation.

The above mentioned points could hardly solve the communal problem yet they were embodied in Macdonald's award.

I. 16. CONGRESS ULTIMATUM TO THE GOVERNMENT. DECEMBER, 1928

In its Calcutta session, held in December under the guidance of Gandhi, the Congress decided to issue an ultimatum to the Government that either the Government should adopt the "Nehru Constitution" as laid down in the 'Nehru Report' in full on or before December 31, 1929, or the Congress will organise a campaign of non-violent non-cooperation by advising the country to refuse taxation.

I. 17. INSTALLATION OF LABOUR GOVERNMENT. MAY, 1929

In May 1929, the Labour Government came in office with Ramsay Macdonald as the Prime Minister and Wedgwood Benn as the Secretary of State for India. Shortly before the elections, Macdonald has proclaimed at a conference of Commonwealth Labour Parties: "I hope that within a period of months rather than years there will be another Dominion added to the Commonwealth
of Nations...a Dominion which will find respect as an equal within the Commonwealth, I refer to India." Hence, Indians were jubilant over his assumption of the office of the Prime Minister. The new Government was really prompt enough to call Lord Irwin the Governor-General of India for consultation. On his return to India, Lord Irwin made an announcement on October 31, 1939, on behalf of His Majesty's Government, in response to the ultimatum given to it by the Congress. The announcement was a masterpiece of diplomatic vagueness. The Indians who had pinned very high hopes in the Labour Prime Minister were disillusioned. The announcement ended with the following diplomatic words, "I am authorised on behalf of His Majesty's Government to state clearly that in their judgement, 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". He, however, made a clear reference of convening a Round Table Conference in London at which the representatives of British India and Indian states would meet the British Government to discuss the Simon Report and other proposals advanced in connection with the Indian constitutional problem.

The above proclamation reflects the ingenuity of brain of the British leaders. It was a sort of non-committal. It did not promise the immediate grant of dominion status to India. Of course, Dominion Status was the goal but its grant was postponed to uncertain future. Yet Indians hoped against hopes.

§ 48. REACTION TO THE ANNOUNCEMENT OF LORD IRWIN

Soon after the Governor-General’s announcement, a conference of the top leaders of the Congress Working Committee and prominent leaders in public life like Sir Tej Bahadur Sapru was convened at Delhi. A manifesto duly signed by important leaders like Gandhiji, Pt. Nehru, Sir Tej Bahadur Sapru, Pt. Madan Mohan Malviya, Dr. Ansari, Dr. Moonjee and Rt. Honourable V. S. S. Shastri and then Mrs. Besant and many others, was issued. In the manifesto, sincerity underlying the announcement was highly appreciated and was assumed that the proposed Round Table Conference would meet to discuss and frame the Dominion Constitution of India. An appeal was also made to the Government that "a more liberal spirit should be infused in the Government" and "a policy of general conciliation should be adopted", so that the people of India should be convinced that a new era had dawned. It was, however, suggested that a general amnesty should be proclaimed to release the political prisoners to ensure the success of the proposed conference which should be convened as expeditiously as possible.

It may not be out of place, to point out that the young blood like J. L. Nehru and S. C. Bose in the Congress, however, strongly resented the suggestions made in the manifesto. They craved
for complete independence. Hence they signed from the Working Committee as a protest against the Manifesto. Gandhiji, on the other hand, was all out for cooperation with the Government if they were sincere to confer Dominion Status upon India. He wrote to an English friend that he was "Dying for cooperation." "I can wait for Dominion Status" he stated, "if I can get real Dominion Status in action."

**Reaction of Government.** Despite her previous utterances, the Labour Party could not do any thing substantial for Indians. In fact, the vehement opposition of the Conservative leaders like Churchill who described Dominion Status for India as a crime, and the unsympathetic attitude of the Liberals who had joined with the Labour to form a coalition cabinet, deterred the Labour politicians from showing liberality to the Indians. They were more keen to allay the fears of the Conservatives than to humour the Indians. Selfish as the human nature is, the Labour Party did not opt to stake its very life for the sake of India. The Indian leaders, on the other hand, were persistent to know the mind of the Government clearly on this issue.

**Gandhi's interview with Viceroy.** A meeting between the Viceroy and Mahatma Gandhi was arranged on December 23, 1929. Some other eminent leaders like Moti Lal Nehru, Sir T.B. Sapru, Patel and M.A. Jinnah were also present. The Viceroy failed to give any concrete assurance that a constitution embodying Dominion Status for India would be framed at the Round Table Conference. The leaders, thus, came back empty handed. The news of the hopes that burst in the Viceroy's lodge disillusioned the leaders. A current of indignation swept over the entire country. The Lahore session of Congress held in December, 1929, under the presidency of J.L. Nehru—the doyen of the Indian youth gave an ample proof of militant mood of Indian nationalism. Gandhiji felt the pulse of the nation. He realized that the only alternative to a violent revolution which was bound to occur, was to launch Civil Disobedience Movement. He therefore moved a resolution at the Lahore Session declaring "Complete Independence" for India as the substitute for "Dominion Status" in conformity with the resolution passed at Calcutta a year ago. At midnight on December 31, 1929, the tri-colour flag of independent India was unfurled in the midst of very emotional and enthusiastic multitude. The Congress decided to boycott the Round Table Conference and empowered the A.I.C.C. to "launch upon a programme of Civil Disobedience including non-payment of taxes whether in selected areas or otherwise". 26th January was fixed as the day for celebration of Independence Day, in each succeeding year. A pledge charging the alien government for having ruined India economically, politically, culturally and spiritually and proclaiming 'freedom' as the inalienable right of every Indian was to be read and taken on each such day.
§ 19. CIVIL DISOBEDIENCE, 1930-31

The great and heroic struggle against the mighty British Empire commenced in 1930. There is no denying the fact, that reluctance of the British Government to accept the Nehru Report was the immediate cause of the Civil Disobedience Movement. Yet, there were other factors also which prompted the nation to launch a struggle against the alien Government. Economic Depression had engulfed the whole world, hence India was no exception. Agricultural prices had gone down considerably. The peasants’ lot had deteriorated to such an extent, that they could not afford a yard of cloth or a pint of lamp oil. In the words of Polak... "The plain fact was that they could not pay their taxes, their rents or their debts." The commercial and industrial classes also were feeling miserable over the Government’s new fixation of exchange value of Indian Rupee at 1s. 6d, which was to the advantage of Britishers. Thus the Indian industrialists and commercial class also was out to back the Congress both morally and materially. The plight of industrial workers also was most deplorable. In the words of J. L. Nehru, "The Labour Movement was becoming class conscious, militant and dangerous both in ideology and organization." The Government’s action against 36 of their leaders who were arrested in a conspiracy case and kept in a jail at Meerut for full four years, as under trial prisoners, and 27 of them ultimately were sentenced to long term imprisonments, created a stir among the labourers. Thus the situation was very explosive. Revolution was inevitable. There was every apprehension of this revolution assuming a very violent form. Mahatma Gandhi felt the pulse of the discontented nation. He sounded a note of warning to the British Government by sending a letter to the Viceroy on March 2, 1930 through his English friend R. Reynolds. "The party of violence is gaining ground and making itself felt" and declared "that the non-violent struggle he had decided to set in motion would combat not only the violent force of the British rule but also the organised violent force of the growing party of violence." He further stated in his letter his "eleven points" to introduce reforms in India and thus advised the government to avert the impending danger of a violent revolution. Since the Viceroy’s reply was disappointing, he decided to start the Civil Disobedience Movement after serving a notice to the Viceroy.

Dandi March, 12th March, 1930. The movement was to commence with a historic march by Gandhiji along with 79 members of his Ashram and students of Vidiya Pith from Sabarmati Ashram to Dandi where salt law was to be violated. The distance of 200 miles was traversed on foot by the Indian Messiah within 24 days. People in thousands greeted the caravan of patriots who had decided to shake the citadel of mighty British Empire by a non-violent move-

2. Nehru: Autobiography, p. 188.
ment. Subhash Chandra Bose compared this famous historic march with Napoleon’s march on Paris on his return from Elba and Mussolini’s march on Rome with an idea to seize political power. The press widely publicized the epic march. ‘Bombay Chronicle’ gave a graphical account of the march in these words, “Never was the wave of patriotism so powerful in the hearts of mankind as it was on this occasion which is bound to go down in the chapters of India’s national freedom as a great beginning of a great movement. It is a hard fact that by the time the marching column of these devoted nationalists reached its destination, the wave of patriotism had swept over the entire country.” In his autobiography, J.L. Nehru has very nicely portrayed this march—“As people followed the fortunes of this marching column of pilgrims from day to day, the temperature of the country went up.” The English press and the Anglo-Indian papers, however, minimised the importance of this historic march by ridiculing it. The ‘Statesman’ commented that Gandhi could go on boiling sea water till Dominion Status was attained. Brailsford, an English journalist, smiled at “the notion that the king Emperor can be unseated by boiling sea water in a kettle”.

On 6th of April—the first day of the national week celebrations to commemorate the Jallianwala Bagh Tragedy—after a night of fasting and prayers, Gandhiji broke the salt laws by picking up salt on the sea shore. Thus a British law was defied in a non-violent manner. It was a signal for starting the mass movement in the different parts of the country. At places where ‘salt law’ could not be defied because of absence of saline water or earth from which contraband salt could be prepared, other laws were openly violated. On April 9, Gandhiji explained the following programme for the movement. “Let every village fetch or manufacture contraband salt. Sisters should picket liquor shops, opium dens and foreign cloth dealers shops. Foreign cloth should be burnt: Hindus should eschew untouchability. Let students leave Government Schools and Government servants resign their services.”

Repressive Measures of the Government. The movement spread like wild fire. It set the whole country ablaze. In the C.P. ‘forest laws’ were violated. At Calcutta ‘sedition law’ was defied. In U.P., Madras, C.P., Bombay and Bengal, illegal salt-making was resorted to. Boycott of foreign cloth and other goods, and picketing of liquor shops was successfully launched. Women’s role also was most commendable. Even women of very orthodox and aristocratic families, casting aside their age-old tradition of observing ‘Purdah’ struggled shoulder to shoulder with the menfolk against the foreign government in non-violent way suggested by Gandhiji. More than 200 village Patels and Patwaris tendered resignation within a month. Hundreds of public servants threw up their jobs. In Dharsana, about 2000 volunteers raided salt depots. The Govern-

ment resorted to lathi charge. The ground was carpetted with prostate bodies of men writhing in pain with fractured skulls or broken shoulders." About half a dozen ordinances were issued by the Governor-General to meet the baffling situation. Demonstrations and public meetings were callously dispersed by frequent "Lathi Charges" and occasional firing at certain places. Mass arrests were made. Heavy penalties were imposed. It is estimated that sixty thousand men and women were locked up. Molestation of women workers by the police will go down as a great slur on the name of British nation, in the annals of history. To punish the no-tax-campaigners, the Government went to the extent of confiscation and auction of their personal belongings. The use of brute force, however, could not quell the agitation. Rather, it served as an incentive. The agitation gained more momentum.

It may, however, be pointed out that save at a few places, the Indians did not retaliate despite gravest provocation. In Madras, a group of terrorists did organize reprisals against the officials. In Kolhapur, an infuriated mob set six police stations on fire and killed a few policemen. In Peshawar, a few clashes between police and the crowds did occur. General disorder attained climax. The police abandoned the town for three days. The Red Shirt leaders maintained perfect order during this period. On the fourth day, the police reoccupied the town and barbarously butchered dozens of Red Shirt volunteers with machine guns. The ferocious Pathans witnessed this drama of barbarism and carnage but did not resort to retaliation. On April 16, Jawahar Lal was arrested. Gandhi was arrested on May 5, 1930 and was kept in Yerwada jail. Gandhi's arrest added fuel to the fire. The movement got further fillip from Gandhi's arrest. The Government promptly arrested thousands of 'satyagrahis'. They had to construct new jails and requisition new buildings to accommodate these persons whose number went up to little more than 60,000. The All India Congress Committee and its branches were banned.

§ 20. ATTITUDE OF MUSLIMS TOWARDS THE MOVEMENT

It is, however, a sad commentary that the bulk of Indian Muslims led by M.A. Jinnah—the founder of Pakistan, did not join the movement. Mr. Jinnah said in unequivocal terms, "We refuse to join Mr. Gandhi because his movement is not a movement for the complete independence of India but for making the seventy millions of Indian Mussalmans dependents of Hindu Mahasabha". 1 In fact, the Muslim League joined hands with British bureaucracy in condemning the nationalist movement as an attempt to place the Muslims of India at the mercy of the Hindu Mahasabhaies. The role of the Nationalist Muslims like Khan Abdul Ghaffar Khan—the Red Shirt leader of Peshawar, Maulana Azad and Dr. Ansari cannot be effaced from the annals of history.

1 Coupland: India: A Restatement.
SOLOCOMBE’S EFFORTS AND SAPRU-JAYKAR PEACE PARLEYS
AUGUST, 1930

When the nation was out to defy the authorities, howsoever repressive they may be, an energetic journalist, George Solocombe, sought permission to interview Gandhi and other national leaders in the jails. He aimed at abridging the gulf between the Government and the Congress leaders by knowing the mind of their leader and thus preparing the way for the Congress participation in the ensuing Round Table Conference. Gandhi, however, made it crystal clear to him that he was not prepared to call off the movement till he was assured that substance of independence would be conceded to him at the conference. He referred to four points which if accepted, could form the basis of suspension of the movement. Mr. Solocombe met Pt. Motilal Nehru and Jawaharlal Nehru also and drafted a statement which could in his opinion form the basis of mutual negotiation between the two contending parties.

In August, 1930, Dr. Jaykar and Sir Tej Bahadur Sapru also played the role of intermediaries to bring about an amicable settlement between the Congress and the Government. But they too like Solocombe failed in their mission. The Congress continued to campaign and the Government convened Round Table Conference at London on November 12, 1930 without the representatives of the largest national organisation of India.

FIRST ROUND TABLE CONFERENCE

While the Civil Disobedience Movement was gradually gaining momentum and the people were facing the ruthless suppression and evoked repression of the Government with undaunted courage, the Simon Commission’s Report was published. In the words of Dr. Zacharias, the report, “betrayed a monstrous lack of understanding, only equalled by a similar lack of sympathy”.

Hence the Report could not win appreciation at the hands of any political party. Rather none paid any heed to its recommendations. Even the Liberals who had agreed to attend the London Conference asserted that this Report should not form the basis of discussion in the Conference. Thus the Government had no other alternative but to convene the Round Table Conference at London. The Conference was inaugurated by His Majesty the King on November 12, 1930. Ramsay Macdonald—the Prime Minister of England—presided. 80 delegates of India out of which 57 represented the British India and 16 represented the Indian States, attended the conference, 16 members were drawn from all the three parties of the British Parliament. The representatives from British India were nominated by the Viceroy and the representatives from States, also were selected by him. In fact, all these representatives were the yesmen of the British Government.

Congress which represented the Indian aspirations had boycotted it. Writing on the composition of the Commission, Brailsford says "In St. James Palace there did assemble, Princes and Untouchables, Sikhs, Musalmans, Hindus and Christians, spokesmen of Landowners, Trade Unions and Chambers of Commerce but Mother India was not there."

The Basis of Discussion in the RTC. Prime Minister Macdonald suggested some principles on the basis of which discussion was to take place in the conference. Firstly, a federation was proposed for India. Second, provinces were to be given full responsible government with necessary safeguards. Thirdly, partial responsibility was to be introduced at the Centre subject to certain reservations.

Reaction of the members to these Principles. The federal principle was accepted by all the representatives including the princes of the states. It was a welcome move since the princes had always been opposing their joining the All-India Federation. Sir Tej Bahadur Sapru remarked that they would constitute a "stabilizing factor in our constitution". In fact, the British Government coaxed them to express willingness for joining the Federation just to counteract the activities of the progressive leaders of British India in the Central Legislature. The statement made by Maharaja of Bikaner on behalf of the princes makes clear the Princes' attitude towards proposed federation. He said, "the princes would be on the side of progress and would not allow themselves to be arrayed against the realization of the just hopes of their fellow countrymen in British India."

Regarding the granting of Provincial Autonomy to the provinces, there could not be any possibility of a difference of opinion. The Indian representatives stood for it. Of course, some differences did crop up regarding the safeguards to be introduced on the checks to be imposed on the responsible ministers in the provinces.

The idea of introducing partial responsibility at the Centre also was commended and welcomed. Sir Tej Bahadur Sapru and Dr. Jaykar exhorted the British Government to concede Dominion Status to the Indians. Dr. Jaykar emphasised, "If you give India Dominion Status today, the cry of independence will die out."

The communal issue, however, entailed lot of discussion and difference of opinion. As usual, the Muslims stood for separate electorates. Jinnah strongly supported his "Fourteen Points Formula". Dr. Ambedkar—the spokesman of Scheduled Castes also insisted on the provision of Separate Electorates. The Hindu delegates, however, advocated strongly the cause of Joint Electorates with reservation of seats for the minorities. Thus the delegates who in fact constituted a heterogeneous crowd vied with one another over this very vital issue which remained unsolved.

1. Brailsford H.N.: Subject India, p. 46.
The Conference was adjourned sine die, in January, 1931. The Prime Minister in his winding speech summed up all those points on which the delegates had come to a sort of mutual agreement. He also expressed hope that the Congress would in future join the deliberations of the conference and help in framing the Indian Constitution.

It may, however, be said that nothing substantial came out of the conference which was boycotted by the real representatives of the half famished and half naked millions. The nationalists like S.C. Bose remarked that the conference offered India "two bitter pills... Safeguards and Federation. To make the pills eatable, they were sugar-coated with responsibility".

§ 23. GANDHI-IRWIN PACT

In order to enable the representatives of the mass organisation to participate in the future meetings of the R.T.C., the Viceroy lifted the ban on the Congress Working Committee on the 26th of January, 1931 and ordered an unconditional release of its members. By the 6th of February the Indian Delegates to the first R.T.C. came back. Dr. Jaykar and Sir T.B. Sapru played the role of intermediaries between the Viceroy and Gandhiji. Rt. Honourable V.S.S. Sastri also strove his utmost to convince Gandhiji of sincerity of motive of the Labour Government. The Congress Working Committee authorised Mahatma Gandhi to negotiate a settlement with Lord Irwin, on behalf of the Congress. Thus negotiations between the Viceroy and the Indian leader commenced in a very cordial atmosphere. After prolonged deliberations, a pact was signed by the two, on March 5, 1931. The Pact popularly known as Gandhi-Irwin Pact, was ratified by the Congress at its Karachi session on March 31, 1931. According to the terms of the Pact, the Viceroy agreed (i) to release all political prisoners excluding those who were guilty of violence, (ii) to restore confiscated property, (iii) to permit persons residing within a certain distance of the sea-shore to collect or manufacture salt free of duty, (iv) to withdraw all ordinances and pending prosecutions, (v) to permit peaceful picketing of liquor, opium and foreign cloth shops.

The Congress, on the other hand, agreed (i) to suspend Civil Disobedience Movement, (ii) to give up its demand for an impartial inquiry into police excesses, (iii) to stop all boycott and (iv) to participate in the second session of the Round Table Conference on the basis of Federation and Responsibility with reservations or safeguards in the interest of India.

§ 24. REACTION TO THE PACT

The Pact was highly applauded by thumping majority in the Congress though leftwingers dubbed it as a surrender to the Govern-
ment. Mr. Subhash Chander Bose denounced it outright. Mr. Jawahar Lal Nehru felt a tremendous shock on account of the clause relating to safeguards in regard to matters like defence, external affairs and the position of the minorities. In his opinion, the provision of such safeguards was irreconcilable with independence. The youth of the country also felt frustrated as Gandhiji could not even succeed in getting death sentence of Sardar Bhagat Singh and his two comrades commuted to life imprisonment. Hence Mahatma Gandhi was greeted with slogans of "Down with Gandhi", "Gandhi truce has sent Bhagat Singh to the gallows" when he proceeded to Karachi to attend the Congress session and get the Pact ratified. Since Karachi session of the Congress was held soon after the execution of these revolutionaries, the Indian youth was deeply stunned and woefully shocked. Mahatma's tasteful and pathetic speech averted his defeat at the said session. He emphasised that beyond a certain limit, the sufferings of the people could not go. There was a necessity of respite after such tremendous sufferings. His sentimental appeal induced the delegates of the Congress to ratify the Pact and ultimately paved the way for the participation of the Congress in the second Round Table Conference which opened on September 7, 1931.

§ 25. SECOND ROUND TABLE CONFERENCE, SEPTEMBER 7, 1931

Before the convening of the Second Round Table Conference, a very significant change occurred in British political scene. The Labour Government tumbled down. MacDonald was no doubt still the Prime Minister but he now headed a National Government constituted by a coalition between the Liberals and Conservative parties. Sir Samuel Hoare, a staunch Conservative replaced Mr. Wedgwood Benn as the Secretary of State for India. Lord Irwin, a liberal Viceroy and a noble soul was replaced by Lord Willington—a blood and iron man. These inopportune changes in the British leadership gave a great setback to Gandhi-Irwin Pact. The Indians alleged that the Pact was honoured more in breach than in observance. Hence Gandhiji informed the Viceroy of his reluctance to attend the R.T.C. under such circumstances. Ultimately, an interview between the Viceroy and Gandhiji was arranged at Simla which resulted in a mutual understanding between the two leaders. Gandhiji agreed to attend the Conference as the sole representative of the Congress. The Conference was attended by Mrs. Sarojini Naidu and Pt. Madan Mohan Malaviya as well, in their individual capacities.

The Session of the Conference commenced on the 7th of September though Mahatma Gandhi reached London five days later. As already said, the Conference met under very unfavourable circumstances. Hence nothing substantial came out of it. In the words of Dr. Zacharias, "Under Mr. Benn, the Conference in 1930 had been a real joint deliberations of peers; under Sir Samuel Hoare in 1931 it was a tiresome legacy of a pompous debating
society that was being liquidated”. Two sub-committees, one on “Federal Structure” and the other on the “Minorities”, were formed to re-examine and amplify the reports submitted by the corresponding sub-committees of the first R.T.C. Where these vital issues came up for discussion, Gandhi emphasised the demand of ‘full responsibility’ at the Centre as well as in the Provinces. In Gandhi-Irwin Pact, in fact, responsibility had been agreed upon. Of course, a few safeguards were expected to be in the interest of India. The discussion on the issue revealed that these safeguards (which were resented by Mr. J.L. Nehru) really proved detrimental to the interests of India and great impediments to responsibility.

The decisions of the Minorities Committees also were shocking to Gandhiji who wanted the safeguards to be whittled down and the era of self-government to usher in. In fact, the delegates representing the minorities struggled for loaves and fishes. None was ready to budge an inch from his diehard policy. Each one of them was keen to further the interests of his community at the cost of the national interest. The British politicians also played a conspicuous role in sowing the seeds of dissensions amongst these minorities to perpetuate the British rule in India. The demands made by these communalists were incompatible with each other. The Muslims craved for absolute majority in the Punjab and Bengal; the retention of excessive weightage in the provinces where they were in minority and one third representation in the Centre. The Sikhs, on the other hand, demanded weightage in the Panjab on the similar lines as granted to the Muslims in Assam, Bombay, the U.P. and Madras. Thus the Muslims’ claims for absolute majority in the Panjab clearly conflicted with the Sikhs’ claim for weightage. Likewise, the Muslims’ claim for majority in Bengal could not be reconciled with the demands of Europeans for weightage. The Scheduled Caste representatives also did not lag behind. They demanded separate electorates for the depressed classes. Mahatma Gandhi’s efforts to bring round these communalists did not bear any fruit. He felt utterly disillusioned at the anti-nationalistic attitude of the minorities in general and Muslims in particular. The communal issue which was deliberately brought in the limelight by the British reactionaries to shelve the main issue, could not be solved. Thus while moving a vote of thanks to the chair at the end of the conference, Gandhiji frankly confessed that he and the Prime Minister had come to the parting of ways. The communal problem was left to be solved by the Prime Minister himself. Thus the motive for which the Conference was convened stood defeated.

The emptiness of the proceedings of the London Conference has very well been portrayed by Mr. J.L. Nehru in his Autobiography. Its reference will interest the reader. He writes “The scales were terribly loaded against us at that Conference...... we saw the pitiful and absurdly inadequate attempts to scratch the surface of national and economic problems, the pacts and intrigues and manoeuvres, the joining of hands of some of our own countrymen with the most
reactionary elements of the British Conservative Party; the endless talk over petty issues, the deliberate shelving of all that really mattered, the continuous playing into the hands of the big vested interests and especially British imperialism, the mutual squabbles, varied by feasting and mutual admiration. It was all jobbery...... different groups seemed to prowl about like hungry wolves waiting for their prey—the spoils under the new constitution...... No one thought in terms of independence...... of the solution of any of the vital and urgent economic problems facing the Indian people...... In that crowded and gilded hall Gandhiji sat...... with amazing patience he carried on and made attempt after attempt to find some basis of agreement." Really, Gandhiji was the lone voice for the national interests. He described the unbusinesslike character of the proceedings of the Conference as "long, slow agony". The R.T.C. wound up its Session on December 1, 1931 and Gandhiji came back to India empty handed.

§ 26. REVIVAL OF CIVIL DISOBEDIENCE MOVEMENT

During Gandhi's absence from India, Gandhi-Irwin Pact was violated by British bureaucracy under the guidance of Lord Willington. Rule of Governor-General's ordinances had commenced in Bengal, N.W.F.P. and U.P. Arrests of leaders like Khan Abdul Ghaffar Khan—the Red Shirt leader and Pt. J.L. Nehru had been effected. Gandhi on his arrival in India was pained to find changed attitude of the Government. He sought an interview with the Governor-General who was callous enough to refuse. Thus there was no other alternative before the Congress but to resume its struggle. The Government also was ready to face any eventuality. Gandhi and Patel were arrested on January 4, 1932. This was followed by more arrests of the Congress leaders. The Party was declared unlawful. Its offices were raided promptly and its records were seized.

A few more ordinances were issued which vested the Executive with extraordinary powers of arresting the people even on mere suspicion. The Press was gagged. 'Lathi Charges' became the order of the day. Shooting was also resorted to. Property of the agitators was confiscated. Heavy fines were imposed on those who participated in the Movement. Thus repressive forces were unleashed. In about six months period, 120,000 persons were sent behind the bars. As the time elapsed, the movement started losing its usual vigour. It, however, dragged on till May 19, 1933, when Gandhiji decided to suspend it for 12 weeks. In fact Gandhiji had resorted to 21 days fast to atone for the sins of the Hindu community against the Untouchables on May 8, 1933. On the same day, he was released unconditionally. Though Gandhiji suspended the movement he allowed 'Individual Satyagraha' for eight months more. He was rearrested and was sentenced to one year's imprisonment. He undertook fast in the jail hence he was once again released. On his release, he found that the movement had lost its vigour and the
nation was feeling a little demoralised. Hence he suspended the entire movement on April 7, 1934.

There were again protests raised against the drawing of curtain over the movement, by the young patriots. Subhash Chander Bose and V.J. Patel who were in Europe, condemned the move of suspension of the movement as a clear confession of defeat. They went to the extent of stigmatizing Gandhi as an unsuccessful Indian leader. J.L. Nehru also felt frustrated at this decision of Gandhiji and bitterly criticised him. But under the circumstances, Gandhiji was perfectly justified in suspending the Movement. The repression was more brutal. The communal organizations were also playing a tool in the hands of British bureaucracy and trying to wreck the national movement. Misery and sufferings of the people were at their heights though the people braved these hardships unflinchingly.

27 MACDONALD AWARD (COMMUNAL AWARD), 16TH AUGUST, 1932

It has already been discussed in the preceding few pages that the first two sessions of the R.T.C. could not solve the baffling communal problem. At the end of the second session, Macdonald had made it clear that if the various communities failed to come to an agreement over this issue, the Government would be compelled to apply a provisional scheme of its own. As such, an agreement could not be made, the Prime Minister announced his decision on the 'Communal issue' on August 16, 1932. It was at the same time announced that "if the Government were satisfied that the communities concerned were mutually agreed upon an alternative scheme, they would be prepared to recommend to Parliament that the alternative should be substituted for the provisions outlined in the Communal Award".

Provisions of the Award. Following were the important provisions of the Award:

(i) Separate Electorates for special interests and minorities and for Muslims in Bengal and the Punjab, although they were in majority in these provinces, were retained. Provision was to be made in the new Constitution of India to allow the revision of electoral arrangement after a period of ten years with the assent of the communities affected. (ii) Weightage was conceded to the Muslims in provinces in which they were in a minority and also to the Sikhs and Hindus in the Punjab. (iii) About 3% of the seats in each Provincial Legislature except in the N.W.F.P. were kept reserved for women. Of course, these seats were to be further divided amongst women of different communities. (iv) The Depressed Classes were accorded recognition as a minority community. They were given right to vote in the general constituencies. Moreover, a specific number of seats was earmarked for

them to be filled by election from special constituencies in which only qualified voters of Depressed Classes were entitled to vote. Thus the qualified voters of the Depressed Classes were entitled to two votes. The special constituencies were to be constituted in those selected areas where the Depressed Classes were most numerous. In Bengal where the Depressed Class voters were holding a majority even in some general constituencies special constituencies were not formed for them. It was, however, declared that the special Depressed Class constituencies would exist for a maximum period of twenty years. (v) Indian Christians and Anglo-Indians were also given the right of Separate Electorates. (vi) Special seats were allotted to labour, commerce, industry, mining and planters, etc., to be filled in by their respective association. (vii) Seats allotted to landholders were to be filled by the landholders constituency.

§ 28. CRITICISM OF THE AWARD

(a) Hardly an Award. It is a misnomer to call Communal Award an 'Award'. An award implies a judgement of an arbitrator between parties who have, on their own accord, agreed to an arbitration. In this case, the Congress had never requested the Britishers to arbitrate. In fact, they had thrust their decision on the contending Indian parties. In the words of M. P. Masani, "An award presupposes arbitration and arbitration is a process voluntarily resorted to by free and equal parties. In the present case there was no voluntary submission of the dispute to the Premier".

(b) Unfair to Hindus. The Award was highly unfair to the Hindus particularly of Bengal and the Punjab where they were in minority. For instance, in Bengal, they constituted 44.8% of the population, yet out of 250 seats in the Provincial Legislature only 80 seats were given to them i.e., only 32% of the seats. 10% seats were given to the Europeans who were only 0.01%. There is no denying the fact that a cut was effected in the quota allotted to the Muslims as well. They constituted 54.8% of population yet they were assigned only 47.6% seats. Yet, it is obvious, proportionately, Hindus were comparatively more losers. In the Punjab also, the Hindus instead of getting weightage as a minority, had their representation cut down to give some weightage to the Sikhs. The Sikhs also were not kept on par with the Muslims as regards granting of weightage. According to Attlee, the award was weighted on behalf of the Muslims and against the Hindus.

(c) Over-representation to Christians and Europeans. The Award was most unjust and unfair because the Indian Christians, Anglo-Indians and Europeans were accorded 300 per cent and 25,000 per cent weightage respectively.

(d) Aimed at disruption of Hindu Community. The Award had a sinister motive of disrupting the Hindu community by separating
a bulk of Depressed Hindu classes from the parent community by making a provision for ‘Separate Electorates’ for the Scheduled Castes. It created a storm in India and made Gandhiji to resort to a fast.

(e) An attempt to perpetuate division amongst the Indian classes. The Award was regarded as clever Machiavellian advice of the Government to widen the existing gulf between the various communities. This has been strictly in accordance with the Britishers policy of ‘Divide and Rule’. In the words of Mehta and Patwardhan “The Electorate in 1919 was broken up in ten parts; now it is fragmented into seventeen unequal bits. Separate Electorates were thrust against their wishes on women and Indian Christians. The Hindu community was further weakened by giving separate representation to the Scheduled Classes. Divisions on the basis of religion, occupation and service were made. Every possible cross-division was introduced.”

(f) Detrimental to National Unity. The perpetuation and extension of the Separate Electorates was apt to turn India into a hotbed of intrigues and wreck our national unity. The seeds of Pakistan can be traced to the gradual extension of ‘Separate Electorates’ principle.

(g) An undemocratic principle and a prelude to a despotic government. The ‘Separate Electorate Principle’ was an undemocratic principle. Democracy stands for fellowship and tolerance. The extension of separate representation to the minorities reflected that the minorities did not repose faith in the majority community. Hence the Separate Electorates were thought indispensable. The provision of such a representation was bound to be a prelude to a despotic government. In the words of Pt. Madan Mohan Malviya, “At present, we are living under one Government, of course a foreign government, but what shall we get by means of this Communal Electorate? Not a Government by the people, for the people and of the people, but a government of one community over another. In the Punjab, it will be a Government by Muslims, of Hindus and in the United Provinces it will be a Government by Hindus, of Muslims. It will not be a democracy. It will be a special kind of despotic government. It will be a tyranny of one community over another and it is this despotism which the Communal Award seeks to instal.”

(h) No historical basis. The critics pointed out that the Communal Electorates had no historical basis. In no other civilized country of the world, separate electorates have ever existed on the basis of caste, religion or sex.

Because of the above mentioned shortcomings, the Award was

2. Extract from M. M. Malviya’s Presidential Address to the National Party Conference, held at Calcutta in August 1934.
generally condemn by the nationalists in India. The Congress Working Committee adopted a strange attitude. They neither accepted it nor rejected it though most of its members dubbed it as thoroughly obnoxious. Pt. Madan Mohan Malviya and Shri M. S. Aney were so much disgusted with such a strange and irresolute attitude of the Congress that they formed the 'Congress Nationalist Party' to continue their struggle against the Award. The Muslims were, however, perfectly satisfied with the Award.

§ 29. GANDHI’S FAST AND POONA PACT, SEPTEMBER 20, 1932

Gandhi was in the jail, when the Award was announced. He was shocked at this nasty attempt of the Britishers to dismember the Hindu community. He warned the Government to reconsider its decision but nobody paid any heed to it. He decided to stake his life, to undo this mischievous move of the British Government. He resorted to fast unto death on September 20, 1932. The callous and despotic Governor-General did not bother. When Gandhi’s condition deteriorated, some prominent leaders like Rajagopalachari, Dr. Rajendra Prasad, Pt. Malviya, Dr. Ambedkar and M.C. Rajah conferred at Poona for about 6 days to save the precious life of the great leader. As a result of their sincere efforts, a compromise formula was evolved which was agreeable to both Gandhi and Dr. Ambedkar. The formula, popularly termed as Poona Pact, was accepted by the British Government as well.

Provisions of the Pact. (i) According to this Pact, Harijans—a new substitute for the Depressed Classes coined by Gandhi, were given more seats than provided in the "Communal Award". 148 seats were reserved for them in the Provincial Legislatures as against 71 seats provided to them by the Communal Award. (ii) Election to these seats was to be conducted in two stages. In the first stage, the Scheduled Caste voters were to elect a panel of four candidates for each seat reserved for them. In the final stage, both the Hindus and the Harijans were to vote jointly to elect one out of the four Scheduled Caste candidates. The system of preliminary election for a panel of candidates was to last only for ten years. (iii) In addition, Harijans were given an additional vote in the election for general seats not reserved for them. Thus the Poona Pact managed to retain Joint Electorates for the Scheduled Castes along with their Hindu brethrens. This agreement termed as ‘Poona Pact’ was adopted on September 26, 1932 and the same day the Great Mahatma broke his fast.

§ 30. THIRD ROUND TABLE CONFERENCE, NOVEMBER 17, 1932

The truncated session of the Round Table Conference opened on November 17, 1932. It was with great reluctance that Sir Samuel Hoare convened the third R.T.C. India was represented by ultra loyalists, the communalists and liberals and England by reactionary elements. The Labour Party did not like to be a party to such an ineffective and unrepresentative conference. The Conference did not do any thing substantial. It simply re-affirmed the decisions
already arrived at and discussed the Reports of the sub-committees constituted during the second R.T.C. Some more details regarding the new constitution were also discussed. Some progressive proposals were suggested by the Indian delegates but they were not attached any importance. The Indians suggested the inclusion of a Bill of Rights for the citizens in the new constitution, but it was shelved on frivolous pretexts. The Conservatives who were holding the reins of Government could not afford to respect Indian aspirations. They were out to dominate over the subject nation like staunch Imperialists. The session of the Conference was over by the 24th of December.

§ 31. WHITE PAPER (MARCH, 1933)

The conclusions reached in the R.T.C., with a few significant changes designed to meet conservative point of view were embodied in a White Paper which was issued by the British Government in March, 1933. In the words of C.Y. Chintamani, the proposals enumerated in the White Paper were “so reactionary as to be utterly unacceptable to any section of progressive Indian opinion.” In April 1933, a Joint Select Committee was appointed to discuss in details the ‘White Paper’. The Committee consisted of 16 members chosen from both the Houses of the Parliament with Lord Linlithgow, as its Chairman. The Committee invited representatives both from the British India and the Indian states. After examining many witnesses, studying the Memoranda received from the Indian Association and listening to the liberal Indian politicians like Dr. Jaykar and Sir Tej Bahadur Sapru, the Committee submitted its Report on November 22, 1934. The Committee’s recommendations were still more reactionary. The ‘White Paper’ had suggested Direct Election to the popular House of the Central Legislature. The Committee recommended indirect elections. The scope of the Separate Electorates was further extended. The princes were vested with the power of nominating the representatives of the States. The White Paper had empowered the Central Legislature to abolish the second chambers in the Provinces, the Committee suggested that this power be retained by the British Parliament. The Committee further enhanced the restrictions on the Federal Court and established the supremacy of the British Privy Council in all cases.

When all these suggestions of the Joint Parliamentary Select Committee were thoroughly discussed and given final shape by it, a Bill was drafted on those lines and was introduced in the House of Commons on February 5, 1935. The Labour Party very vehemently criticized the Bill for its many limitations whereas diehard Conservatives like Churchill not only supported it but tried to introduce reactionary elements into it. Ultimately it was passed by the House of Commons on June 4, 1935, and by the House of Lords in July, 1935. The Bill received the royal assent on August 2, 1935 and became Government of India Act, 1935.

Government of India Act, 1935

1. FEATURES OF THE 1935 ACT

Some of the most significant features of the 1935 Act which is generally considered as the second milestone on the highway leading to full responsible government are enumerated as follows:

Lengthy Document. The Government of India Act of 1935 was the most detailed and complicated statute, because apart from dealing with a highly complex type of a federal government, it made a provision for legal safeguards which were supposed to restrict the activities of Indian minorities and the legislators.

Supremacy of the British Government. Supremacy of the British Parliament over Indian affairs was maintained. The British Parliament was allowed to retain its power of amending, altering or repealing the Constitutional Law concerning India. The proposed Federal Legislatures and Provincial Legislatures were not vested with constitutional powers. They could only recommend changes under certain prescribed conditions and in certain specified matters.

Preamble. In fact, the Act was passed without any Preamble, since the framers of the Act felt that no new pronouncement of policy or programme was intended. The Liberals were keen to include 'Dominion Status as the ultimate goal of the British Policy in India' in the Preamble. The authors of the Act could not agree with the Liberals on the plea that it was already implied in Government of India Act, 1919. Still they too apprehended that the Indian people might suspect the intentions of the Government and omission of the Preamble might be construed as a deliberate attempt to go back even on the goal fixed in 1919. Hence the Preamble of 1919 Act was not repealed along with the Act itself. Thus for practical purposes, the Preamble of 1919 Act was to be taken for Preamble of the 1935 Act.

Distribution of Powers. Since the Act aimed at the establishment of a Federation in India, the spheres of the Federal and the Provincial Legislatures were apt to be demarcated. Which of the two systems—American or Canadian—be opted for, was a moot
question? At the R.T.C. the Muslims favoured American model and the Liberals stood for the Canadian model. Ultimately, Lord Sankey, the Chairman of the Federal Structure Committee, suggested that neither of the two should be followed. The Powers of both the Centre and the Provinces should be enumerated in exhaustive details. Hence 59 items were kept in the Federal List, whereas 54 items were included in the Provincial List. Another list termed as 'Concurrent List' containing 36 items was also created. Subjects which were of common interest were included in the Federal List. For instance, Armed Forces, Currency, Railways, Posts and Telegraphs, Central Services, Arms and Ammunition, Customs, Duties, Succession Duties, Weights and Measures, etc., etc., comprised the Federal List.

The subjects of Provincial interest which hardly necessitated uniformity of treatment throughout India were placed in the Provincial List. Public order, Justice and Courts, Police, Education, Local Self-government, Land Revenue and Public Health, etc., etc. fell in this category.

The third List on which both the Centre and the Province could make laws contained subjects like Criminal Law and Criminal Procedure; Civil Procedure; Marriage and Divorce Bills; Adoption; Wills; Registration of deeds and documents; Contracts; Arbitration; Bankruptcy; Newspapers; Factories; Old Age Pensions; Trade Unions; and Electricity, etc., etc. In case of conflict between the Centre and the Provinces over such subjects, the will of the former was to prevail.

The residuary powers if any were vested with the Governor-General who could in his discretion empower either of the two Legislatures to make laws regarding such subjects.

**Dyarchy at the Centre.** The Act abolished Dyarchy in the Provinces but reintroduced it at the Centre. The Federal subjects were divided into two parts—the 'Reserved' subjects and the 'Transferred' subjects. The Reserved subjects like Defence, Ecclesiastical Affairs, External Affairs and the Administration of Tribal Areas were entrusted to the Governor-General who was authorised to appoint not more than three Councillors to assist him in this administration. He possessed discretionary powers as regards these affairs. The 'Transferred' subjects on the other hand, were to be administered by the Governor-General and a Council of not more than ten ministers who were to be appointed by the Governor-General but were responsible to the Legislature.

The representatives of the Indian States and also of important minorities were also to be included in the ministry though it was not obligatory for the Governor-General to do so under the Act, yet Instrument of Instructions to be issued to him at the time of

1. In the U.S.A. the powers of the Centre are specified and residuary powers vest with the States.
2. In the case of Canada the order is reverse to (1).
Governor-General's appointment exhorted him to secure such representation to the best of his knowledge. Although the Central Executive was divided into two halves, yet the Instrument of Instructions instructed the Governor-General to encourage joint consultations between himself, the Councillors and the Ministers. It may however be pointed out that owing to the 'Special Responsibilities' vested with the Governor-General, the Council of Ministers could hardly prove effective. In the words of Prof. K.T. Shah, "The position assigned under the new constitution to the Council of Federal Ministers is ornamental without being useful, onerous without ever being helpful to the people. They are supposed to represent responsibility without power, position without authority, name without real influence."

**Proposed "All India Federation".** The Act made a provision for an "All India Federation" which was to consist of eleven Governors' Provinces, six Chief Commissioners' Provinces and of such Indian States as would agree to join the Federation. It is thus obvious that though it was obligatory for the British Provinces to join the Federation, yet it was to be purely voluntary action on the part of each State, howsoever insignificant it might be. If a State willed to join the Federation, its ruler was to execute an Instrument of Accession, specifying the powers it would readily delegate to the Central Government. The Crown was not allowed to accept an Instrument of Accession if its terms were incompatible with the scheme of the Federation. The Federating units were accorded autonomy within their own spheres. Powers were divided between the Centre and the States. A Federal Court was established to decide the disputes which might crop up between the centre and units or amongst the units themselves. The method of amending the constitution was to be rigid.

The establishment of Indian Federation was to be conditional. It had to be constituted if the Rulers of the States representing not less than half of the aggregate population of the States and entitled to not less than half of the seats to be allotted to the States in the Federal Upper Chamber had acceded to the Federation and an address had been presented to the King by both the Houses of the Parliament requesting him to proclaim the establishment of such a Federation.

The Federal Government was to consist of the Federal Executive and Federal Legislature. His Majesty the King of Britain was to be the Executive Head of the Federation, though his authority on his behalf was to be exercised by the Governor-General. This authority of the Governor-General was to extend to those matters which were placed in the Federal List and regarding which the Federal Legislature had the right to make laws. The Governor-General's jurisdiction could extend to those rights also which were exercisable by His Majesty, by treaty, grant and usage.

The Federal Legislature was to be composed of two Houses,
known as the Council of States and the Federal Assembly. The Indian States were to send 125 members to the Federal Assembly and 104 members to the Council of States. The Provinces, on the other hand, were to send 250 members to the Federal Assembly and 156 members to the Council of States. The representatives of the provinces were to be elected on the basis of Separate Electorates and that of the Indian States were to be nominated by the rulers.

**Peculiarities of the Indian Federation contemplated under the Act.**
The Federal Constitution as contemplated under the Act of 1935 had some peculiar features which are conspicuous by their absence in most of the federations of the world. These peculiarities can be attributed to its authors—the British Government which wanted to impose this new mechanism of government upon the Indians. The people of India did not, on their own accord, opt for it. Following are its peculiarities:—

(i) Generally, the federation comes into existence by uniting hitherto independent states, in India, Federation was to come into existence by splitting up of the Unitary British India into autonomous provinces and then joining them with such Indian States as might voluntarily opt for Federation. 

(ii) Federation is derived from ‘foedus’ which means a treaty—an agreement. Federation is the result of a treaty among the states voluntarily agreeing to form a sort of union for their economic betterment or for safeguarding themselves against foreign invasions. In case of India, as already said, the Federation was a sort of an imposition from above.

(iii) Its units were not of the same status and character. The Indian states were being ruled by autocratic rulers who denied civil and political rights to the citizens. The representatives from these States in the Federal Legislature were to be the nominees of the rulers whereas the representatives from the British Provinces were to be elected—directly in the case of Lower and indirectly in the case of Upper Chamber. 

(iv) Generally, equality of representation is accorded to the Units in the Upper Chamber of the Federal Legislature in order to safeguard their interests. But the units of the proposed Indian Federation were to be unequally represented in the Council of States—the Upper Chamber.

(v) Direct election of the Lower Chambers in a Federation is a universally accepted principle. In India the members of the Lower Chamber were to be indirectly elected. 

(vi) In a federation, the method of amending the Constitution is rigid and complex. Constitution amending body generally exists in the Federation but in the case of proposed Indian Federation, the power of amending the Constitution was to vest with the British Parliament. In some matters of vital importance, the States joining the Federation could impede the amendment by disagreeing to the proposed Amendment. 

(vii) The Indian States willing to join the Federation were allowed to have direct dealings with the Crown. Thus the relation of these Rulers States remained outside the Federation. The British Provinces on the other hand were deprived of any such privilege of dealing directly with the Crown. 

(viii) Generally, the federations function independently.
Their day to day work cannot be interfered with by any outside authority. In case of the Indian Federation, however, the Secretary of State for India and the Governor-General were equipped with lot of such authority of intervening in the affairs of the Federation.

**Flaws of the Proposed Federation.** In fact, Federation was the crying need of the hour. A vast sub-continent inhabited by diverse races, embracing varied faiths, speaking different languages and professing different cultures, would have normally welcomed the idea of federation embodied in the Act. But the peculiar type of federation as outlined in the 1935 Act, could not enthuse the masses. It was condemned outright by all shades of opinion in India. The Congress, the Muslim League, the Hindu Mahasabha and the Sikhs denounced it very emphatically. Even the interest of the Indian Princes who were assured privileged position in the Federation, gradually got slackened. Thus none in India save the Liberals stood for the Federation. Hence it died a premature death. The question arises, why the Federation which should have been accepted cheerfully, could not win appreciation and command universal acceptance? The reasons are quite obvious and not far to seek.

**Blend of Autocracy and Democracy.** The Federation as designed by the Act was to be an ingenious blend of autocracy and democracy. The British Indian provinces having partially democratic institutions were to have an alliance with the Indian Princes who rode rough-shod over the so-called democratic rights of their subjects and ruled despotically. In fact, the clever alien masters were keen to reconcile British imperialism, Indian Nationalism and Feudal autocracy of the Indian States. But these antagonistic forces were bound to doom the Federation itself. In the words of N.S. Pradasani, the Federation was really a "Constitutional misalliance between the people rapidly approaching the goal of self-government and the rulers accustomed to expect and exact unquestioned loyalty from their subjects." This constitutional misalliance would have surely wrecked the Federation in its infancy, had it come into existence.

**Federal Power not to extend equally to the units.** The range of Federal power over the units differed from unit to unit, while the Provinces were to join Federation automatically. Each State was to execute Instrument of Accession with the Crown and decide what subjects it had to surrender to the Federal State. Thus it is obvious that the range of Federal Powers was not only to be difficult in cases of Provinces as against the States but it could differ even from State to State. This was an unprecedented anomaly which would have made the working of Federal mechanism impossible.

**Unequal Representation to the Units.** The States were given undue heavy representation in the Houses of the Federal Legislature. Though their population was approximately $\frac{2}{3}$ of the population of British India, the States were allotted 104 seats out of 260 in the

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1. Pradasani N.S.: *How India is Governed*, p. 137.
Council of States and 125 seats out of 375 in the House of Assembly. Thus the weightage given to the Indian States was quite substantial, though it was inconsistent with the principles of a true federation.

Fear of Reactionary elements. As already stated the representatives of the Indian States were to be nominated by their respective princes. Such representatives were bound to dance to the tune of their autocratic masters who were "the disciplined vassals of the viceroy and the British Crown". Hence they could hardly see eye to eye with the democratic element in the Federation. Rather they were to serve as insuperable barrier in the way of progressive development of the country. Moreover, it was apprehended that the representatives of the minorities and of landed and commercial interests would also very likely join hands with the States' contingent and impede the work of democratic forces in the Federal Legislature. Prof. Keith, keeping in view the position and the role of the Indian States in the proposed Federation, rightly remarked, "It is difficult to deny the justification of the contention in India that federation was largely evoked by the desire to evade the issue of extending responsible Government to the Central Government of British India."

Indirect Election to the House of Assembly. Indirect election of the Lower Chamber was not only an unprecedented undemocratic practice but also was a deliberate attempt to minimise the influence of nationalist and radical elements at the Centre. Such a retrograde provision was deemed to have retarded the pace of political consciousness in India by depriving the Indian voter to constitute a Popular House.

Provision of Safeguards. A vast number of safeguards provided in the Act could throttle democracy. The Governor-General and the Secretary of State were equipped with vast authority of interference in the working of Federal Legislature. The Governor-General's power of issuing ordinances and passing Governor-General's Acts, of declaring the breakdown of the constitution and assuming power in his own hands could reduce the so-called autonomy of the ministers to a mere farce. Moreover, the Provincial Governors were subject to the authority of the Governor-General when they had to act in their discretion or exercise their individual judgement. Besides Governor-General's 'Special Responsibility' of maintaining peace and tranquillity of India enabled him to issue directions to the provinces whenever he deemed essential. Thus the provision of so many safeguards made it clear that the hand that gave had taken away also.

Power of amending the Constitution not within India. The power of amending the constitution was not vested with the Indians. British Parliament alone could amend the constitution. This was bound to be resented by the progressive forces in the country. They

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1. Brailsford H.N.: Subject India, p. 50.
felt that once they joined Federation, they might not be able to come out of it. The provision of Dyarchical Centre was the main pin prick. Though the Britishers termed it a transitory phase, yet, in the absence of power of amendment, there was every apprehension of its perpetuation.

Dyarchy—an eyesore. Dyarchical experiment had already proved to be a miserable failure in the provinces. Its introduction at the Centre could hardly be appreciated. Subjects of vital importance like Defence and Foreign Affairs were to be with the Governor-General and his Councillors. The Indian Ministers were to be deprived of administrative powers as regards those subjects which command the greatest importance. Thus the defects of the Federation were so glaring that it perished before it could be put to a test. It entailed scathing criticism from all quarters. Pt. J. L. Nehru’s reaction to the Act in general and Federation in particular is worth quoting. He says that it “provided for some kind of Provincial Autonomy and a Federal structure but there were so many reservations and checks that both political and economic power continued to be concentrated in the hands of the British Government. The Federal Structure was so envisaged as to make any real advance impossible...Thus reactionary as this structure was, there were not even any seeds in it of self-growth...The Act strengthened the alliance between the Government and the princes, landlords and other reactionary elements in India...it retained in British hands complete control over Indian finances, military and foreign affairs; it made the Viceroy even more powerful than he had been”.

Suspension of Federal Scheme. The Government of India Act, 1935 had provided that the Federation was to be brought into existence by a Royal Proclamation which was to be made after fulfilment of two conditions—(a) an address was to be presented to the king by each House of the Parliament (b) such an address could be presented only when Rulers of States representing not less than one half of the total population of the States and entitled to not less than half of the seats assigned to the States in the Council of States, had expressed their assent to join the Federation.

When the Provincial Part of the Act was enforced on April 1, 1937, the Indian Princes showed great reluctance to join the Federation, of course much against the expectations of the British Government. The Princes got fully conscious of a curb on their sovereignty if they chose to join the Federation. Hence, they did not like the idea of losing their autonomy for the sake of unity of India, as visualized in a Federal Polity. The British Government was wise enough to feel the pulse of the nation. Hence, they postponed the introduction of Federation. The outbreak of the World War in 1939, sounded its death knell. Federation could hardly satisfy the aspirations of Indians—was a fact crystal clear to the Britishers. In

his speech on September 11, 1939, the Governor-General drove last nail into its coffin by declaring its suspension.

**Provincial Autonomy.** The Act abolished Dyarchy in the Provinces and introduced Provincial Autonomy. After removing the distinction between Reserved and Transferred Departments, the entire provincial administration was entrusted to the responsible ministers who were removable by the Provincial Legislative Assembly. It seemed to be an important milestone on the road leading Indians to the goal of complete independence. But in fact provincial autonomy was a mockery. The Governors were equipped with special responsibilities which could enable them to overide the ministers whenever they so liked. Moreover, the Provincial Legislatures were not granted these powers which could make them effective legislatures. 'Provincial Autonomy' as explained by its authors meant establishment of Responsible Governments in the Provinces and relaxation of Central control over them. Both these characteristics were denied deliberately. In the presence of communal electorates and special responsibilities of the Governors, the Ministers could neither forge a united front nor effectively exercise their powers.

The Governor-General could also on the plea of special responsibilities poke his nose in the internal affairs of the Provinces. Thus the so-called Provincial Autonomy was a myth. It made the Governors more autonomous than the Ministers. In the words of Dr. Rajendra Prasad “It would be mere camouflage and a fraud to declare that such and such subjects had been transferred when the responsibilities with regard to them were reserved with the British. The wide powers vested in the Governor, Governor-General and also in the Crown and the Parliament negativied the very essence of the Provincial autonomy—the great prize awarded to the Indians.”

**Safeguards.** Safeguards constituted the most controversial feature of the Government of India Act of 1935. From constitutional point of view, the safeguards serve as limitations and restrictions on such undesirable tendencies which the constitutional pandits want to avoid. As regards the safeguards provided in the Act of 1935, the critics contended that they were incompatible with the spirit of democracy and were deliberately provided in the Constitution to perpetuate British rule in India by vesting with the Governor-Generals and the Governors such drastic powers which could easily be misused. Following were the safeguards which entailed very severe criticism at the hands of the Indian nationalists—(i) In the proposed Federation, Defence, External Affairs, Ecclesiastical Affairs and the administration of Tribal Affairs were to be entrusted to the irresponsible Councillors as they were to be 'Reserved Departments'. The Governor-General had to deal with these matters in his own discretion. Thus they were completely outside the purview of the popular ministers. (ii) The Governor-General and the Governors were loaded with "Special Responsibi
ilities" which entitled them to exercise individual judgement i.e., they had to consult the ministers but might or might not act upon their advice. "Special Responsibilities related to prevention of grave menace to the peace and security of India or a Province in case of the Governor; the protection of legitimate interests of the minorities; safeguarding of the rights of the services; protecting the rights of the Indian States and the dignity of the Indian rulers; the prevention of discrimination against British goods. On the plea of these responsibilities, the Governor-General and the Governors could easily interfere in the affairs of the ministers and impede their policies. To crown all this, it was stated in the Act that they were to judge in their discretion when these Special Responsibilities were involved. It may, however, be pointed out that while acting 'in their own discretion' or 'individual judgement', the Governor-General had to act according to the instruction of the Secretary of State for India and the Governors had to carry out the directions of the both. Thus these safeguards enabled the outside authority to intervene in the Indian affairs. The financial and legislative powers of the Governor-General and the Governors were so many and so imposing that they could reduce their respective legislatures to mere impotent bodies. With the approval of the Governor-General, the Governor could proclaim constitutional breakdown in a Province and assume entire administrative authority of the province in his hands. The control of finance both in the Centre and the States was kept under a responsible minister but the entire expenditure was placed beyond his control or that of the Legislature. Similarly, the currency and monetary policy of India was to be implemented by the Governor of the Reserve Bank who was to be responsible to the Governor-General and not to the Legislature. Since one of the Governor-General's Special Responsibilities pertained to safeguarding of the financial stability and credit of India, he could veto any measure proposed by the Minister of Finance.

Comments on the Safeguards. A critical appraisal of these safeguards reflects that they were primarily intended to safeguard the interests of the Britishers in India. The Britishers had always been believing in the policy of 'Divide and Rule'. The safeguards too were purposely provided to appease the conservative forces of India and form an alliance with them to curb the national forces. Special representation to the minorities and weightage to the States in the Federal Legislature unmasked the Britishers' intentions of unduly exploiting their fears and suspicion against the national democratic forces of the country. Punniah has nicely elucidated the above point in the following words, "A realistic analysis of the nature and content of these safeguards, however, reveals the fact that the British were trying to safeguard their vested interests by forming an alliance with the conservative forces in India—the Muslims and the Indian Princes against the rising tide of democratic nationalism. As the Indian Princes were opposed to democracy and the Muslims to majority rule, British rulers found it
easy and useful to exploit their fears for their own ends." A representative of these Princely States disclosed the above fact at the Round Table Conference when he said, "They (the States) were once again doing for England what they did in 1857 namely coming to England’s rescue."

Moreover some of these safeguards, intended to safeguard the interests of the minorities, in fact, did not aim at the protection of the interests of major minorities like Muslims, Sikhs, or other minority communities. Instead, in the words of Dr. Rajendra Prasad, they were designed to protect the interests of the "birds of passage who came from thousand of miles, made hay while the sun shone and then disappeared in the evening of their days to enjoy the fruits in their native land again or to keep the Indian communities warring with one-another".

The safeguards regarding the protection of the interests of 'Civil Services'—the henchmen of the British Crown further detracted a great deal from the so-called responsible government in the Provinces. The position of the Indian ministers was apt to be reduced to a mere farce, when they did not possess the entire authority of dealing with their subordinates. These safeguards could enable the services to flout the orders and decisions of their superiors. Thus deadlocks and disputes were bound to occur in the departments and the ministers were bound to be held responsible for chaotic administration and ultimately declared unfit to run the affairs of their country.

The safeguards aiming at the financial stability and credit of our country were synonymous with the Britishers', profits at the cost of India. Moreover British vested interests had apprehended that the Indian Finance Minister might follow a policy detrimental to their interests. Hence the Governor-General was vested with this special responsibility of safeguarding the financial stability and credit of the Federal Government.

To cut short the discussion, we may say that these safeguards were intended to entrench British Imperialism firmly on the soil of Indians who had started pasturing the white masters to free them from their clutches and to nullify the so-called Provincial Autonomy that the Act had designed as another step towards self-government. Maulana Azad's analytical portrayal of the 1935 Act throws enough light on the points referred to in the preceding lines. He says, "The Government of India Act, 1935 provided for Provincial Autonomy but there was fly in the ointment. Special powers were reserved to the Governors to declare a state of emergency and once a Governor did so, he could suspend the constitution and assume all powers to himself. Democracy in the provinces could therefore function only so long as the Governors permitted it. The position was even worse so far as the Central Government was concerned......Not only was

the Central Government to be a weak Federation, but it was also over-weighed in favour of the Princes and other vested interests. These could generally be expected to side with the British rulers of the country.11

Establishment of a Federal Court. The Act provided for the establishment of a Federal Court which came into existence on October 1, 1937. It had to consist of a Chief Justice and six other judges who were to be appointed by His Majesty, the King-Emperor by warrant under the Royal Sign Manual. Their number could be increased on an address presented by the Federal Legislature to His Majesty through the Governor-General, requesting for such an increase. Following were qualified to be judges:—(i) A judge of a High Court in British India or in a Federal State of at least five years' standing or (ii) barrister of England or of Northern Ireland of at least 10 years' standing or (iii) a member of the Faculty of Advocates in Scotland of at least ten years' standing or (iv) a pleader of a High Court in British India or in a Federal State of at least 10 years' standing.

The Chief Justice was to be at the time of his appointment a barrister, an advocate or a pleader of at least fifteen years' standing. The Governor-General could however appoint any of the federal judges as the Chief Justice in a temporary vacancy.

Jurisdiction of the Court. The Federal Court was equipped with both original and appellate jurisdiction.

Original. As a Court of original jurisdiction (i) it had to deal with disputes between the Centre and the units or between a province and a state or between two or more provinces or states, on any question arising out of the interpretation of the Constitution. (ii) It also dealt with matters involving interpretation of the constitution.

Appellate. (i) As an Appellate Court, it could hear appeals from the High Courts of the Provinces if the latter certified that the case under appeal was fit for an appeal and involved a substantial question of law concerning the interpretation of the Constitution. Act or of an Order in Council made thereunder with the previous sanction of the Governor-General in his discretion (ii) The Legislature could provide for appeals from High Courts without certificate if the amount at issue was Rs. 50,000 or such sum not below Rs. 1,500 as the Act specified or if property of like value was involved. (iii) Likewise, an appeal could be carried from the decision of a federated Indian State subject to the terms of the Instrument of Accession and with the approval of the Ruler of the State concerned.

Since the idea of formation of Federation could not materialize, the Federal Court never acted as an "Appellate Court" as regards these states.

Advisory Jurisdiction. Apart from original and appellate jurisdiction, the Federal Court was vested with advisory jurisdiction. The Governor-General could seek its advice on any point of law. Such an advice was tendered in the open court. It was not stated whether such an advice will have a binding effect on the Governor-General.

As the Highest Court. The Federal Court was accorded the status of the highest court in the country. As such, it was empowered to make rules and regulations concerning its own business and the rest of the courts in India.

Extra work. The Governor-General was authorised to assign any extra work to any judge of the Federal Court, in his individual capacity. For example, dispute between the Ruler of Rajkot and Vallabhbhai Patel was referred to Sir Maurice Gwyer by the Governor-General.

Not a Supreme Court. The Federal Court established by the Act of 1935 was not a Supreme Court as is necessitated in a Federation. Its decisions were not to be final. Appeals from its decisions could be carried without its permission to the Judicial Committee of the Privy Council in certain cases as—(i) those involving an interpretation of the Constitution or any Order-in-Council made thereunder, (ii) those involving an interpretation of an agreement made for the administration of federal laws within the territories of a state, (iii) those relating to the extent of legislative and executive authority vested in the Federation by virtue of an Instrument of Accession executed by a state. Apart from the above cases, appeals could be carried to the Privy Council with the permission of the Federal Court or of His Majesty in Council.

As a Court of Record. The Federal Court was to be a Court of Record as well. Its proceedings and judgments were to be officially recorded and cited as authority before subordinate courts.

The working of the Federal Court. The Federal Court was established in 1937 with Sir Maurice Gwyer as its Chief Justice. It functioned impartially and quite independently. Though Federation could not come into existence, yet the Federal Court performed those functions which an impartial Judicial Tribunal is supposed to perform in a Federal Polity. It decided the disputes between the Centre and the Provinces and restrained them from crossing their legal boundaries. For example, the Government of C.P. and Berar levied a tax on the sale of petrol and lubricants. The Government of India disputed it. The matter was referred to the Federal Court, which decided the case in favour of the Provincial Government on the plea that the new tax was within the jurisdiction of the Provincial Government.

The Court acted as palladium of People's Civil Liberties. During World War II, thousands of Indians were arrested and detained without trial under section 26 of the Defence of India Rules which authorised both the Central and the Provincial Governments to
detain suspects. When a regular case was instituted against the said section of the Defence Rule, Chief Justice Gwyer declared that section 26 was ultra vires. Similarly the law of sedition which did not permit even legitimate criticism of the Government was accorded 'a rational and realistic basis'. The Court decided that "Public disorder on the reasonable anticipation or likelihood of public disorder" should be the basis of offence. Thus it is obvious that the Court safeguarded the liberties of the people though sometimes much against the wishes of the Government of India which quite occasionally tried to curb its powers and undermine its independence by promulgation of ordinances sometimes with retrospective effect. The credit for its excellent functioning goes to its Chief Justice whose inaugural speech on the inauguration of the Federal Court enables us to have a peep into the mind of British legal luminary. He said, "The Federal Court will become like similar Courts in other countries at once, the crucible in which the flux of current of political thought is tested and refined and the anvil on which the more stable and permanent elements of it are hammered into shape, to take their place in that armoury of ideas with which each generation seeks to solve its own problems. Independent of Governments and Parties, the Court's primary duty is to interpret the Constitution. It would be its endeavour to look at the Constitution, not with the cold eyes of an anatomist but as a living and breathing organism which contains within itself, as all life must, the seeds of future growth and development..." Really, the Federal Court which continued functioning till 1950, not only made a very valuable contribution in the constitutional development of the country but created an ineffacable record of its most impartial and judicious decisions.

The Home Government. The Act of 1935 effected only a few formal changes in the Home Government. According to the Act of 1919, the Secretary of State was empowered to superintend, direct and control the affairs of the Government of India. Both the Governor-General and Governors were to obey his orders. The introduction of 'Provincial autonomy' and establishment of 'Dyarchy at the Centre' under the Act of 1935 presumably, reduced the powers of the Secretary of State considerably. In reality, the change effected in his control over the Indian affairs was nominal and a mere eye-wash since he was still vested with the power of supervision and control over the Governor-General and the Governors when they acted in their discretion or exercised their individual judgment. The 'discretionary powers' of the Governors and the Governor-General and their 'special responsibilities' were so substantial that the Secretary of State's control over the Indian affairs could not be curtailed.

Powers of Secretary of State (still retained by him). He still exercised control over the Reserved Departments of Defence, External Affairs, Tribal Areas, Ecclesiastical Affairs, the Federal Railway Authority and the Reserve Bank of India. (ii) He could issue ap-
propriate directions to the Central and Provincial Administrations in the sphere of their special power and special responsibilities, and thus exercise control over the whole administrative machinery of India. (iii) He possessed the power of appointing officers belonging to the Indian Civil Service, Indian Public Service and Irrigation service and also of determining their conditions of service, salaries, allowances and pensions. (iv) He was to act as the constitutional adviser of the Crown as regards the Indian affairs. He was to advise the King regarding vetoing of a Bill reserved by the Governor-General for His Majesty’s consideration over a Bill which had already obtained the consent of the Governor-General. He had to tender advice to the King when the latter had to make appointments of the Governors and judges of the High Court. (v) He had to place all the drafts of ‘Instrument of Instructions’ to be issued to the Governors and the Governor-General at the time of their appointment before the Parliament for its ratification. (vi) He was required to place before the Parliament all orders in a Council to be issued by His Majesty under the Act. (vii) As a member of the British Cabinet and an agent of the Parliament, it was his duty to furnish information and to answer questions concerning the Indian affairs on the floor of the Parliament. In fact, it was through him that the British Parliament exercised control over the Government of India and kept itself fully aware of the affairs of a big Dependency. (viii) He regulated the currency and exchange system of the country which were to be managed by the Reserve Bank. (ix) He was empowered to borrow money in the British Market on behalf of the Federal and Provincial Governments.

Thus a critical appraisal of the above mentioned powers of the Secretary of State reflects that though a fundamental change in the legal status of the Secretary of State for India was made, by the Act, yet his powers to control the Indian Affairs in no way suffered an eclipse. Of course, unlike the Act of 1919, the Act of 1935 did not explicitly mention the Secretary of States’ power of “superintendence, direction and control” over the administration of India. This power was now vested with the Crown. But, in fact, the Crown exercised all the powers on the advice of its Constitutional Adviser—the Secretary of State for India. Thus he was still the master of the show. Prof. K.T. Shah has very well described the position of the Secretary of State for India in the following words, “His powers may not be so imposing in appearance as those of the Governor-General or the Provincial Governors. But these are merely his creatures obedient to every nod from the Jupiter of White Hall, amenable to every hint from this juggler of Charles Street. His powers extend not merely to matters of fundamental policy, to the protection of British vested interests, to the safeguarding of Britain’s imperialist domination. They comprise even matters of routine administration, the more important doings of the Indian Legislatures and even the appointment, payment or superannuation of certain officers in the various Indian Services or Governments.
He has, in fact, all the power and authority in the governance of India with little or none of its responsibility."

Abolition of India Council and its substitution by Advisers. The India Council which was established by the Act of 1858, along with the office of the Secretary of State, was abolished in response to the wishes of a strong nationalist opposition. But it was realized that the Secretary of State must be assisted by a body of advisers. Hence it provided the Secretary of State with not less than three and not more than six advisers of whom at least one must have served in India for not less than ten years and must not have relinquished their office more than two years before their appointment. They were to hold office for a period of five years only. They could not be re-appointed after the expiry of their term of office. They could, however, resign their office earlier and could be removed from office by the Secretary of State on the grounds of infirmity of body or mind. The Secretary of State was not bound by their advice which might have been tendered individually or collectively. The Act provided that "It shall be in the discretion of the Secretary of State whether or not he consults his advisers on any matter, and if so, whether he consults them individually and whether or not he acts in accordance with any advice given to him by them". Concurrence of at least half of them was essential as regards Civil Services Rules. They drew salary of £1350 a year with £600 extra for those of Indian domicile from the British Exchequer.

It may, however, be pointed out that the detailed provisions regarding the Advisers were not implemented as they were to be implemented after the constitution of a Federation which have come into being.

Comments. The progressive Indians could not appreciate the creation of Advisers in place of 'India Council' since in their opinion 'Advisers' constituted 'India Council' in a disguised form. The qualifications specified for the office of Advisers indicated that reactionary and conservative element was to form 'Advisory Body' of the Secretary of State who was apt to be influenced by their unprogressive opinions. Sir Reginald Maxwell's appointment as adviser to the Secretary of State further infuriated the nationalists since Maxwell during his stay in India had played a significant role in repressing the national movement and crushing the Indians' aspirations.

Even payment of their salaries from the British Treasury instead of Indian revenues did not in fact make much of difference. Before the passage of the Act of 1935, the expenses of the India Office, no doubt, were to be borne by Indian Treasury but an annual grant of £150,000 was made by the British Treasury to defray the expenses of the India Office. Henceforth, the post of the India office was to be met by the British Treasury, but Government of India was re-

required to make a liberal contribution towards the cost, as determined by the Treasury and the Governor-General. Thus from financial point of view, Indians were in no way gainers.

**High Commission for India** (Origin of the office). The office of the High Commissioner for India in the U.K. was created under Section 29 of the Act of 1919 for the performance of commercial and agency functions formerly discharged by the Secretary of State for India. In fact, prior to the creation of this office, the Secretary of State was empowered to make large purchases of army materials, ammunition, aeroplanes, tanks, ships, stationery, building material, etc., etc., from foreign markets. Being an important member of ministerial party in England, the Secretary of State banked upon the assistance and support of important financial and industrial interests in the country. Hence he would like to give them contracts for the supply of materials needed by the Government of India caring not a bit for the quality of the material or its cheapness. It amounted to infliction of intolerable and unjustified monetary loss on India. Hence to provide fair opportunities to the Government of India for making purchases from the cheapest market, provision of High Commissioner's office was made.

The Act of 1935 retained the office though a slight change as regards method of his appointment was effected. He was to be appointed by the Governor-General in his individual judgement, if the Federation came into being. According to 1919 Act, he used to be appointed by Governor-General-in-Council. Since the Federation did not come into existence, hence the change in his appointment could not actually be effected. The Act did not suggest any substantial change in the position, status or functions of the High Commissioner.

His salary was to be determined by the Governor-General and paid out of Indian revenues. He was to be appointed for a period of five years.

**His functions.** (i) He was to procure for the Federal Government, the Provincial Governments and the Indian States joining the Federation and also for Burma those commodities which they required at the cheapest rates on the basis of lowest tenders. Though Federation did not come into existence, yet the Central Legislature exposed him if he made purchases or entered into contracts ignoring Indian commercial or industrial interests. (ii) He was to look after the interests of the Indian students studying in U.K.

**Difference between Dominion High Commissioner and Indian High Commissioner.** The office of High Commissioner existed in the Dominions also. But there was a fundamental difference between the Dominion High Commissioner and the Indian High Commissioner. The former acted as a channel of communication between the Imperial Government and the Dominion Government and represented the point of view of his Government in U.K. but the latter did not play that effective role. It was only in 1946, when with the setting up of interim Government, the High Commissioner began to be appointed by the popularly elected representatives of India, and
started playing the role of a High Commissioner like that of his counterparts in the Dominion in the best interests of India.

Retention of Class and Separate Electorates and Weightage. The Act retained Separate Electorates for according special representation to communal and special interests both in the Federal and the Provincial Legislatures. The principle of communal representation was further extended to Anglo-Indians, Indian Christians and Europeans as well. The British Government had a keen desire to assure Separate Electorates to Harijans as well, but Gandhi's fast unto death did not allow them to carry out their fell designs. Moreover, Special Electorates for labour and women were added for the first time. The nasty system of weightage was also continued. The Muslims, for an instance, were assigned 13% seats in Madras and 27% in U.P. as against 7.1% and 14.8% of population respectively. The Europeans constituting a population under 1/35th of 1% were given 3% seats in the Provincial Legislature and 5½% seats in the proposed Federal Assembly. All this was detrimental to the interest of our country and wrecked our national solidarity.

Franchise Qualifications lowered. The Act of 1919 had conferred right to vote on 3% of the total population only. The Act of 1935 on the other hand lowered the property and literary qualifications with the result that 35 million persons, including 6 million women, were enfranchised. Thus 27% of the adult population of India got the right to vote.

Burma, Berar and Aden. The Act separated Burma from India. Aden was also transferred from the administrative control of the Indian Government to the Colonial office with effect from April 1, 1937. Thus Burma appeared on the map of the world as a separate country and Aden became a Crown colony. Berar was henceforth to be deemed a part of Governor's Province known as "Central Provinces and Berar".

12. REACTION OF THE INDIAN LEADERS TO THE ACT

The Government of India Act, 1935, the features of which have been critically discussed in the preceding pages entailed scathing criticism at the hands of all political parties of India. Mr. M.A. Jinnah, the leader of the Muslim League, condemned it as "thoroughly rotten, fundamentally bad and totally unacceptable". Mr. Jawahar Lal Nehru denounced it as a "machine with strong brakes and no engine". Pt. Madan Mohan Malaviya, another veteran Congressite dubbed it as democratic from without. Rajagopalachari called the new constitution "worse than Dyarchy". In fact, the Act was an ingenious blend of plus and minus, addition and substraction, progress and regress. The hand that gave had taken away also. Thus it amounted to a sort of self-cancelling business with the act result of zero. Mr. Fazal-ul-Haq, Premier of Bengal, rightly observed when he proclaimed that under the Act, there was to be neither Hindu Raj nor Muslim Raj but the British Raj.

1. Extract from Presidential Address at Bombay, 1934.
Federal Legislature and Executive

§ 1. FEDERAL EXECUTIVE

Though the Federation remained a mirage, yet it is essential to discuss in details the Federal machinery. The Federal Executive was to consist of (i) The Governor-General and Crown’s Representative, (ii) the Councillors and (iii) the Council of Ministers.

Governor-General and Crown’s Representative—Why bifurcation?
The Governor-General was to be the Chief Executive of the Federation and the Crown’s Representative was to be the in-charge of the Indian States. Since these dual duties were to be performed, hence the Act permitted the appointment of two persons to cope with the work. But in actual practice the Governor-General continued to perform both these functions. This bifurcation in the office of the Governor-General was a sort of concession to the Indian States which aspired to be under the Crown and not the Government of India. In fact, the princes anticipated transfer of power to Indians in no distant future and apprehended the danger of losing their autocratic power when democratic self-government was established at the Centre. The response of the British Government to this demand of theirs was to be favourable as it meant a possibility of the Indian States remaining in the fold of the British Empire even after conferring of independence upon the British provinces. Moreover, the bifurcation of the office could enable the Crown to have separate control over the non-federating Indian States and also over that part of the activities of the federating states which was not to be surrendered to the Federation.

§ 2. THE GOVERNOR-GENERAL

The Governor-General was to be the corner-stone of the Federal edifice. He was to be appointed by His Majesty on the advice of the British Prime Minister for a period of not less than five years. He was to get Rs. 251, 800 as salary and a number of other allowances fixed by the King-in-Council. Rs. 18,00,000 in toto were to
be spent on him every year. The amount was chargeable on the
Indian revenues. It will interest the reader if we reveal that no
other incumbent in the world received such a high remuneration. It
was a sort of "rolls royce institution in the bullockcart country".

Powers of the Governor-General. As a representative of the
British vested interests in India, he held a pivotal position in the
country. He was equipped with vast authority which he exercised
in three different capacities—(i) Ordinarily he had to act on the
advice of the Council of Ministers, as such he was expected to be a
mere "Constitutional Head"; (ii) As a custodian of India interests,
he was armed with special responsibilities, where he had to exercise
"Individual judgment" i.e., he had to consult the Council of
Ministers though he might or might not act on their advice; (iii) As
the saviour of British Imperialism, he was entrusted vast discrecionary
powers which permitted him to exercise authority without
consulting the ministers.

Powers where he exercised individual responsibility. The Governor-
General was empowered to exercise individual judgment on the
following matters which were termed as the "Special Responsibilities
of the Governor-General" and which were mentioned in 32 sections.
(i) Prevention of any grave menace to the peace or tranquillity
of India or any part thereof. (ii) The safeguarding of
the financial stability and credit of the federal government. (iii) The
safeguarding of the legitimate interests of the minorities. (iv) The
prevention of discriminatory taxation against goods of British
origin or Burmese origin. (v) The prevention of commercial disrimination.
(vi) Protection of the rights of any Indian State and
the rights and dignity of the Ruler thereof. (vii) Safeguarding the
legitimate rights of the public servants and their dependents. (vii)
The securing of the due discharge of an action taken by the Governor-
General in his discretion or individual judgment.

Discretionary Powers. 94 Sections of the Act were devoted to the
mentioning of Discretionary Powers of the Governor-General. Only
a gist of selected few is given below.

Executive. (i) Administration of four "Reserved Subjects" like
the Defence Department, Ecclesiastical Department, Tribal Areas
and Foreign relations, excluding relations with the Dominions. (ii)
Choosing, summoning and dismissing of Ministers. (iii) Presiding
at the meetings of the Council of Ministers. (iv) Appointment of
the Councillors, Financial Adviser and his staff and also determining
their salaries, allowances and conditions of service; the appointment
of the Chief Commissioners for Delhi, Ajmer, Marwara, Coorg and
Baluchistan, the appointment and removal of the Governor and the
Deputy Governor of the Reserve Bank and approval of their salaries
and allowances; the appointment of 3/7 of the members of the
Federal Railway Authority and the President; the appointment of
the President of the Railway Tribunal and selection of the rest of the members of the Tribunal; the appointment of the Directors and Deputy Directors of Indian Railway Companies, of temporary and additional judges of High Courts and of the officiating Chief Justice; the appointment of the Chairman and other members of the Federal Public Service Commission and also determining of their salaries, tenure of office and conditions of services. (v) Framing of rules for the convenient transaction of Governmental business and the distribution of work among the ministers. (vi) Authentication of the orders and instruments of the Government. (vii) To make regulations for the peace and good government of British Baluchistan, Andaman and Nicobar Islands. (viii) To make regulations necessitating consultation with the Public Service Commission regarding Federal appointments.

**Legislative Powers.** In the domain of legislation also, he possessed vast authority as—(i) the power to summon and prorogue the legislature and dissolve the Lower House, (ii) the power to send messages to the Legislature regarding the bills being discussed on the floor of the Houses, (iii) the power to summon joint session of the two Houses, (iv) the power to disallow the introduction of certain bills in the legislature and the refusal to assent to Bills passed by it or to reserve them for His Majesty’s pleasure, (v) the power to accord sanction for the introduction of certain Bills, (vi) the power to enact the G.G.’s Acts without consulting the legislature or even opposed to its wishes for the satisfactory discharge of his discretionary functions or performance of his Special Responsibilities. Only a message to the Legislature explaining the circumstances necessitating such an Act was to be enough. He could, if he so liked, send the Draft of the Act to the Legislature and invite its suggestions which were not binding on him, (vii) the power to issue ordinances. Ordinances were to be of two types—those to be promulgated by the Governor-General during the recess of the Federal Legislature and subject to subsequent ratification of the Federal Legislature within six weeks of the commencement of the session; those that could be promulgated by him at any time, for the satisfactory discharge of his discretionary functions or those functions regarding which he could exercise individual judgment. Such an ordinance could remain in force only for a period of six months at a time. It could be renewed for a further period of six months by issue of another such ordinance, (viii) the power to issue Emergency Proclamation, suspend the Constitution and the assumption of specified powers. It may be pointed out that the proclamation suspending the Constitution was to be communicated to the Secretary of State for India who was to lay it before the Parliament. Such a proclamation was to cease to operate after six months unless revoked earlier by another Proclamation, (ix) to exercise control and issue directions to the Governors when the latter acted in their own discretion or exercised individual judgment.

**Financial.** His discretionary powers extended to following financial
matters as well—(i) Recommending proposals for taxation and expenditure, (ii) exercising complete control on non-votable heads of expenditure constituting over 80% of the whole, (iii) restoring any demand for grant reduced or rejected by the legislature.

The above mentioned discretionary powers of the Governor-General do not cover the entire list of subjects falling in this category but still throw enough light on the unbridled authority of the Governor-General.

Powers to be exercised on the advice of Council of Ministers. The rest of the powers which in fact were insignificant were to be exercised by the Governor-General on the advice of the ministers. Though the powers of the ministers in this sphere seemed to be significant and real, yet in reality they were not so effective. The Special Responsibilities of the Governor-General were so vague and elastic that they could reduce the powers of the ministers to a mere mockery.

3. INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR-GENERAL

Before we critically analyse the powers of the Governor-General, as specified above, in three categories we deem it essential to make a casual reference to 'Instrument of Instructions' to be issued to him at the time of his appointment. The 'Instrument of Instructions' was a sort of a document embodying certain instructions of the British Government to the Governor-General. Its draft was to be prepared by the Secretary of State and laid before the Parliament for its approval. The Instrument laid down the manner in which the Governor-General was to exercise his powers in his discretion and individual judgment. It also instructed the Governor-General to include as far as possible among the ministers, members of the minority community and also representatives of the Indian States. It directed the Governor-General to encourage collective responsibility among the Ministers as far as possible and make a choice of his ministers on the advice of the leader of the majority party in the Lower House of the Legislature. It also intended him to consult his ministers in matters pertaining to the defence of the country and the Indianization of the Army or the employment of the Indian troops abroad. He was in short instructed to exercise his powers in such a way that "partnership between India and the U.K. within one Empire may be furthered to the end that India may attain its due place among our dominions". The Instrument was to serve as the vehicle of the development of responsible Government in India. Of course, its constitutional importance was great but it was not legally enforceable. If the Governor-General failed to pay due attention to its instructions, the people of India could not challenge him in the court of law.

4. COMMENTS ON THE POWERS OF THE GOVERNOR-GENERAL

Keeping in view the discretionary powers of the Governor-General
and his “Special Responsibilities” which were to enable him to exercise his individual judgment, the ineffectiveness of the Instrument of Instructions, and pitiable helplessness of the ministers who were to head the transferred departments of proposed Dyarchy at the Centre, we can agree with Churchill who said that "The Viceroy or the Governor-General was armed with all powers of Hitler or Mussolini. By a stroke of pen, he could scatter the Constitution and decree any law to be passed... such a functionary was a dictator and he had a very powerful army." There is no denying the fact that the Governor-General was to act as the corner-stone of the Federal edifice. The entire administration of the country was to revolve round him. 80% of the budget was to be under his control. Legislation was to be at his mercy. His Ordinances and Acts were to turn him into a dictator.

The Councillors were to be his boy-errands. They were to dance to his tune while administering the 'Reserved' subjects. His control over the 'Transferred' subjects was also equally great. The Council of Ministers could not have succeeded in formulating and implementing policy personally obnoxious to the Governor-General since his 'Special Responsibilities' could easily enable him to impede their work. For instance, 'law and order' was one of the transferred departments and was subject to control by a minister. But Governor-General's 'Special Responsibility' of prevention of grave menace to the peace and tranquility of India or any part thereof could easily enable him to combat terroristic activities, and Civil Disobedience Movement or any such attempt to attain independence even if the Indian Minister for Law and Order was not willing to impede such movement or attempt under the guise of 'Special Responsibility' towards Indians, he could interfere in the day to day working of ministries whenever he so wished. Similarly, finance was a Transferred department and was kept under the control of a popular minister. But the Governor-General was equipped with the Special Responsibility of safeguarding the financial stability and credit of the Federal Government simply because British vested interests were to be protected. Thus the Finance Minister's powers were apt to be hampered. Likewise, the vague terms like 'protection of legitimate interests of the minorities' and the civil services etc., could be stretched to such an extent as to enable the Governor-General to act arbitrarily.

Governor-General’s veto power also was to prove quite embarrassing. He was empowered to veto Bills passed by the Federal Legislature. It was bound to discourage a minister though enjoying a majority support to initiate a Bill which was opposed by the Governor-General.

It is thus obvious that the hands of the ministers were tied. Their administrative capacity was to be tested "exactly as a man's capacity for swimming is tested by throwing him into a river with his hands and feet tied".

Prof. K.T. Shah has very well described the position of the
Ministers _vis-a-vis_ the Governor-General in the following words: "It seems extremely doubtful if the 'popular' ministers of the Federation of India will have any real opportunity to inaugurate a constructive scheme of economic betterment or social reconstruction. The necessary funds are either unavailable because they are earmarked already for non-productive expenditure and lavish scale of overhead charges, or difficult to find in the absence of new taxation proposals which the Governor-General may not always view with favour...if the communal curb upon ministerial enthusiasm does not prove quite effective there are the enormous powers of the Governor-General as protector and champion of the vested interests and imperialist exploitation which are bound to be employed to impede or frustrate too enthusiastic ministers." In fact, plenitude of powers vested with the Governor-General under the Act were to enable the Britishers to perpetuate the domination and exploitation of the Indian people and further strengthen the Imperialists' hold on India.

§ 5. FEDERAL LEGISLATURE

The Federal Legislature, as provided in the Act, was to consist of two Houses—the Council of States and the House of Assembly.

**Composition of Council of States.** The Council of States (Upper House) was to contain not more than 260 members. Out of these, 156 were to represent British India. 150 of these representatives of the British India were to be elected directly and 6 were to be nominated by the Governor-General in his own discretion. 104 were to be nominated by the Princes of the Indian States. The direct election of majority of its members was a departure from the usual practice in other Federations of the world.

Since the property qualification was kept high, only 100,000 got the right to vote for electing the representatives from British India. Equality of representation to all the units of Federation was not accorded by the Act. The distribution of seats among the different British Provinces was as follows:

<table>
<thead>
<tr>
<th>Province</th>
<th>Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bengal</td>
<td>20</td>
</tr>
<tr>
<td>Madras</td>
<td>20</td>
</tr>
<tr>
<td>United Provinces</td>
<td>20</td>
</tr>
<tr>
<td>Bombay</td>
<td>16</td>
</tr>
<tr>
<td>Bihar</td>
<td>16</td>
</tr>
<tr>
<td>Punjab</td>
<td>16</td>
</tr>
<tr>
<td>C.P. &amp; Berar</td>
<td>8</td>
</tr>
<tr>
<td>Assam</td>
<td>5</td>
</tr>
<tr>
<td>Oriissa</td>
<td>5</td>
</tr>
<tr>
<td>N.W.F.P.</td>
<td>5</td>
</tr>
<tr>
<td>Sind</td>
<td>5</td>
</tr>
<tr>
<td>Baluchistan</td>
<td>1</td>
</tr>
<tr>
<td>Delhi</td>
<td>1</td>
</tr>
<tr>
<td>Ajmer-Marwar</td>
<td>1</td>
</tr>
<tr>
<td>Coorg</td>
<td>1</td>
</tr>
<tr>
<td>Non-Provincial</td>
<td>10</td>
</tr>
</tbody>
</table>

Since the communal and class representation was deliberately perpetuated, rather extended, following allocation was done communitywise:

General 75 Europeans 7
Scheduled Castes 6 Anglo-Indians 1
Muslims 49 Indian Christians 2
Sikhs 4 Women 6

Tenure. The Council of States was to be a sort of permanent body, not subject to dissolution. Each member, however, was to enjoy the membership of the House for nine years, 1/2 of its members retiring after every three years.

Federal Assembly or House of Assembly. The lower House was to be designated as the Federal Assembly or House of Assembly. It was to consist of 375 members out of which 250 were allotted to the British Indian Provinces and 125 to the Indian States.

Out of 250 seats from British Indian Provinces, four were non-provincial assigned to commerce, industry and labour. The rest of the seats (246) were assigned to the Provinces as follows:

<table>
<thead>
<tr>
<th>Province</th>
<th>Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Madras</td>
<td>37</td>
</tr>
<tr>
<td>United Provinces</td>
<td>37</td>
</tr>
<tr>
<td>Bengal</td>
<td>37</td>
</tr>
<tr>
<td>Bombay</td>
<td>30</td>
</tr>
<tr>
<td>Punjab</td>
<td>30</td>
</tr>
<tr>
<td>Bihar</td>
<td>30</td>
</tr>
<tr>
<td>C.P. &amp; Berar</td>
<td>15</td>
</tr>
<tr>
<td>Assam</td>
<td>10</td>
</tr>
<tr>
<td>Orissa</td>
<td>5</td>
</tr>
<tr>
<td>N.W.F.P.</td>
<td>5</td>
</tr>
<tr>
<td>Sind</td>
<td>5</td>
</tr>
<tr>
<td>Baluchistan</td>
<td>1</td>
</tr>
<tr>
<td>Delhi</td>
<td>2</td>
</tr>
<tr>
<td>Ajmer Marwar</td>
<td>1</td>
</tr>
<tr>
<td>Coorg</td>
<td>1</td>
</tr>
</tbody>
</table>

Total 246

Following was the representation accorded to the various communities, classes and interests:

<table>
<thead>
<tr>
<th>Class</th>
<th>Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>General (inclusive of 19 seats for Scheduled Castes)</td>
<td>105</td>
</tr>
<tr>
<td>Muslims</td>
<td>82</td>
</tr>
<tr>
<td>Europeans</td>
<td>8</td>
</tr>
<tr>
<td>Indian Christians</td>
<td>8</td>
</tr>
<tr>
<td>Sikhs</td>
<td>10</td>
</tr>
<tr>
<td>Anglo Indians</td>
<td>4</td>
</tr>
<tr>
<td>Commerce and Industry</td>
<td>11</td>
</tr>
<tr>
<td>Labour</td>
<td>10</td>
</tr>
<tr>
<td>Landholders</td>
<td>7</td>
</tr>
<tr>
<td>Women</td>
<td>9</td>
</tr>
</tbody>
</table>

Total 246

Why indirect elections? The representatives from the British Indian provinces were to be indirectly elected by the respective Provincial Legislatures by the system of Proportional Representation on a single transferable vote basis. This unprecedented method of indirect election for the Lower Chamber was recommended on the plea that the size of constituencies would be unwieldy and unmanageable due to extended franchise. Moreover, it was argued that
though an intimate contact between the voter and the representa-
tive was desirable yet it could not be possible in a huge constituency
having so many voters. Lastly, it was emphasised that introduction
of indirect election in the initial stages was a sort of an experiment.
If successful, it would be changed to Direct Election whenever
deemed fit. But introduction of adult suffrage right from the very
beginning amounted to introduction of adult suffrage before it was
practicable.

**Tenure.** The Assembly was to have normal tenure of five years,
unless dissolved earlier by the Governor-General in his discretion or
unless its life was extended.

**Presiding Officers of the Houses.** The Presiding officers of both
the Houses were to be elected. In the case of the Federal Assembly,
they were to be designated as Speaker and the Deputy Speaker
whereas the presiding officers of the Upper House were to be termed
as the President and Vice-President.

The Federal Councillors and the Advocate-General were also
permitted to participate in the proceedings of these Houses though
they were not entitled to vote.

§ 6. **POWERS OF THE FEDERAL LEGISLATURE**

The Federal Legislature was not only undemocratic in its structure,
its powers were also extremely limited.

**Legislative Powers.** The Federal Legislature was empowered to
make laws for the British Indian provinces with regard to those
subjects which were kept in the Federal and the Concurrent lists.
Also during emergency, it could make laws on the provincial
subjects. As regards the Indian States joining the Federation, the
Federal Legislature could make laws regarding those subjects only
which the States concerned had surrendered to the Federation under
the Instrument of Assession. It could make laws for the Chief
Commissioners' Provinces in all matters. It could also make laws
for all British subjects domiciled in any part of India and also for
ships and aircrafts registered in British India or any Federated State
and for persons on them. However, a Bill passed by the Federal
Legislature required the assent of the Governor-General who could,
if he liked, exercise veto power or reserve the Bills for the considera-
tion of His Majesty. Certain type of Bills could not be introduced
in the Legislature without the previous sanction of the Governor-
General. He could even stop further consideration of a Bill if he
considered it necessary in the interest of peace and tranquility of
India. His power of issuing ordinances and passing Governor-
General's Acts without the concurrence of the Federal Legislature
could enable him to flout the will of the Federal Legislature.

Moreover, the Legislature was not equipped with the power of
amending the Constitution Act or of amending or repealing Acts of
British Parliament applicable to India. Thus it is obvious that the
Federal Legislature could not have enjoyed those powers which a truly representative body was supposed to enjoy.

**Financial Powers.** The financial powers of the Federal Legislature also were extremely circumscribed. Both the Houses had co-equal powers. The Governor-General was to get the "Annual Financial Statement" prepared and cause it to be placed before both the Houses of Federal Legislature. But over 80% of the expenditure was to be non-votable. Following items were covered under "non-votable expenditure"—(i) The salary and allowances of the Governor General and other expenditure relating to his office. (ii) Debt charges for which the Federation was liable. It included interest, sinking fund charges and redemption charges, other expenses relating to the raising of loans and the service and the redemption of debt. (iii) Salaries and allowances of Ministers, Councillors, the Financial Advisers, the Advocate-General, Chief Commissioners, and of the staff of the Financial Adviser. (iv) The salaries, allowances and pensions to be paid to the judges of the Federal Court and of the High Courts. (v) Expenditure in connection with the administration of Reserved subjects, i.e., Defence, External Affairs and Ecclesiastical Affairs. (vi) Any grant to be advanced for the administration of excluded areas in the provinces. (vii) Any sums needed to satisfy any judgment, decree or award of any court or arbitral tribunal. (viii) The sums payable to His Majesty under the Act out of the Federal revenues, as regards expenses incurred by the Crown in relation to the Indian States. (ix) Any other expenditure declared to be so charged by any Act of Federal Legislature, etc., etc.

Whether a particular demand for grant fell under the non-votable head or not was to be decided by the Governor-General whose decision was final.

Regarding the remaining 20% of the expenditure which was votable, the Governor-General was empowered to restore a grant refused or reduced by the Assembly if it appeared to him necessary for the proper discharge of any of his special responsibilities. The Money Bills moreover required his previous consent. No proposal for taxation or borrowing could come before the House save on the G.G.’s recommendations.

Prof. K.T. Shah has very well summed up the financial powers of the Federal Legislature in the following words...."...We cannot but recognize that the field of finance open to the Legislature is strictly limited. Even in the limited field every attempt is made to drown or centralise the voice of the chosen representatives of the people in the Lower House. At every stage in the course of the passage of the annual budget through the Federal Legislature, the Governor-General is given powers of intervention, suggestion and dictation. The last word rests with the Governor-General and his
word shall prevail even after the combined vote of the two chambers of the National Legislature has decided a case against the suggestion of the Governor-General." It is a fact that the initiation and the last word in the matters concerning finance rested with the G.G.

Control over Executive. The executive power of the two Houses were not identical. The Council of Ministers was to be responsible to the Lower House alone. A vote of no-confidence passed by the Lower House against the Council of the Ministers alone could oust it. Even an individual minister could be removed by a majority vote in the Assembly. However, both the Houses could ask questions and supplementary questions from the ministers and move resolutions and adjournment motions to influence them. The Governor-General and the Councillors were not responsible to either House. They were to be outside their control.

From the above account of its powers and composition, we can safely conclude that the Federal Legislature as envisaged by the Act was not to be a sovereign law-making body, representing the popular opinion in the country. Its powers were hedged with so many restrictions that it could hardly be considered a legislature in a parliamentary form of government. Neither could it control the purse, nor remove the Executive. M.R. Palande correctly said, "The absence of financial power imparted an air of unreality to the responsible government and tended to reduce it to a mockery." It could not even amend the constitution or any of its provisions. In fact, British Parliament reserved to itself the right not only of determining the Indian Constitution but also legislating for India. Hence our Federal Legislature would have played only second fiddle to the British Parliament, if at all it had come into existence.

§ 1. PROVINCIAL EXECUTIVE

Though the idea of federation as envisaged by the Act could not materialise, Provincial Autonomy was introduced in eleven provinces namely Madras, Bombay, Bengal, the United Provinces, Punjab, Bihar, the C.P. and Berar, Assam, the N.W.F.P., Orissa and Sind. The constitutional machinery in all these provinces was identical. Some of the backward areas in some of the provinces called 'Excluded and Partially excluded areas' were not to be governed by the popular ministers. Their administration was made a 'Special Responsibility' of the Governor. Similarly, special administrative set up was established in the Chief Commissioners' provinces like Delhi, British Baluchistan, Ajmer-Marwara, Coorg and the Andaman and Nicobar Islands. They were to be administered by the Chief Commissioners who were appointed by the Governor-General and were accountable to him.

The Provincial Executive was to consist of a Governor and a Council of Ministers.

Governor. The position of the Governor was to be analogous to the Head of the Central Government—the Governor-General, though due to introduction of Provincial Autonomy, the former was to differ a bit from the latter. He was to be appointed by the British King under the Royal Sign Manual. The Act fixed up his salary. In fact, Governorship was a coveted post which was usually assigned to those brilliant I.C.S. officers who had meritorious record of service.

His Powers. The Governor was accorded pivotal position in the Provincial Administration. Like the Governor-General, the Governor was to act in three different ways: (i) to act in his discretion, (ii) to exercise individual judgment on the 'Special Responsibilities' devolved upon him by the Act, and (iii) to act on the advice of the popular ministers in the rest of the matters.

(a) Discretionary Powers. With the abolition of Dyarchy from and introduction of Provincial Autonomy in the provinces, it was
hoped that the Governor would be merely a constitutional ruler. But the hopes were belied when the Governor was armed with a plentitude of powers which could enable him to reduce the so-called Provincial Autonomy to a farce and enable him to become an autocrat. The Governor’s discretionary powers in the domain of the Executive were really very imposing. Prof. K.T. Shah has given a detailed list of such powers, part of which are enumerated below:—

(i) the administration of excluded areas;
(ii) the choice and dismissal of ministers and fixing their salaries till they were fixed by the Provincial Legislatures;
(iii) to preside over the meetings of the Council of Ministers;
(iv) the prevention of violent and subversive crimes aiming at the overthrow of the Government;
(v) the prevention of the information of the Intelligence Department from being disclosed to persons (including Ministers) not authorised by him;
(vi) to make rules for the convenient transaction of the business of the Province Government;
(vii) to appoint the Chairman and members of the Provincial Public Service Commission.

(viii) In the legislative sphere, he was empowered to summon, prorogue the Provincial Legislature or dissolve the Provincial Legislative Assembly;
(ix) to remove certain disqualifications of a person, thus enabling him to contest for the legislature;
(x) to convene a joint session of the two Houses of the Legislature if differences between the two houses cropped up;
(xi) to stop discussion or further discussion on a Bill or a clause of a Bill in certain cases;
(xii) to enact Governors’ Acts and promulgate ordinances;
(xiii) to make rules and regulations for peace and good government of Excluded Areas;
(xiv) to accord sanction for the introduction of a certain Bill in the Legislature;
(xv) to assent to, veto or reserve for the G.G.’s consideration Bills passed by the Provincial Legislature.
(xvi) In the financial sphere, he could decide whether a particular item of expenditure was votable or non-votable. He could restore any demand for grant reduced or rejected by the Provincial Legislature.
(xvii) He could execute the Governor-General’s directions regarding Defence;
(xviii) Section 93 of the Act, vested with the Governor, the power of issuing a Proclamation of Emergency on the plea that the Government of the Province was not being carried on according to the constitution. As such, all the legislative and executive powers were to be assumed by the Governor himself. In fact, it was on the basis of this power that a bureaucratic regime was installed in November, 1939, when the Congress ministries had tendered resignation.

(b) Powers exercised in his Individual Judgment. Section 52 of the Act entrusted “Special Responsibilities” to the Governor. In the exercise of these Responsibilities, the Governor was to send for the advice of ministers, though their advice was not binding upon him. Following were the Special Responsibilities of the Governor—

(i) Prevention of grave menace to the peace and tranquility of the Province or any part thereof;
(ii) protection of legitimate interest of the minorities;
(iii) the safeguarding of the rights of the States and
the dignity of the rulers; (iv) the protection of the rights of civil servants; (v) prevention of commercial discrimination; (vi) administration of partially excluded areas; (vii) execution of orders and instructions issued to him by the Governor-General. (viii) The Governor of Sind had special duty of securing proper administration of the Lloyd Barrage and Canal Scheme. (ix) The Governor of C.P. had to see that reasonable share of the provincial revenues was spent for the benefit of the residents of Berar.

In addition to the above, the Governor was empowered to exercise his individual judgment in appointing the Advocate General of the Province and also making or amending the rules affecting the police.

(c) Powers to be exercised on the advice of the Ministers. In all other cases where the Governor was not to act in his discretion or exercise his individual judgment, he was apt to follow the advice of his Council of Ministers. In fact, the powers referred above were so comprehensive that the residue left for this category was very little and insignificant.

§ 2. COMMENTS

A critical analysis of the discretionary powers of the Governor and his Special Responsibilities reveals that he was not a mere constitutional ruler as is generally the case wherever parliamentary government is established. His legislative powers were unlimited. His power of issuing the ordinances enabled him to issue ordinances during the recess of the Legislature if he was satisfied that the circumstances so warranted. Such ordinances were subject to approval by the State Legislature within six weeks of its reassembly. But such an approval was not at all difficult because the Legislature was to be a house divided against itself. He could also issue ordinances if he considered an immediate action necessary to discharge his responsibilities in his discretion or in his individual judgment. Such ordinances were valid for six months and could be extended for a further period not exceeding six months. Of course, such an extension of the period of ordinance was to be communicated to the Secretary of State, through the Governor-General and was to be laid before both the Houses of the Parliament. But in no way, it could be of any consolation to the Indians. The form of enacting Governor's Act was again a unique power entrusted to an Executive Head who was expected to be a mere ceremonial head. The said power could enable him to enact forthwith a Bill containing such provisions as he deemed essential or send a draft of the Bill in question to the legislature for passage. In the latter case also, after expiration of one month's period, he could enact as Governor's Act, the Bill proposed by him with such amendments as he thought essential. Every such Act also was supposed to be communicated to the Secretary of the State through the Governor-General and was to be laid before the Parliament for its approval. Thus it is quite obvious that his extra-ordinary powers of issuing ordinances and
passing of Governor's Act were very drastic and arbitrary. Moreover, Governor's power of exercising veto over the Bills passed by the Legislature or reserving these for the King's or Governor-General's approval could hardly enable the Provincial Legislatures to function effectively.

Section 93 of the Act which empowered the Governor to proclaim emergency in case of constitutional breakdown in a Province and assume the entire or part of authority in his hands was not only an undemocratic provision in the Act but was also a clear reflection of Britishers' evil intentions to perpetuate British rule in India. Such a Proclamation was to be issued for a period of six months and was to be communicated to the Secretary of State and was to be laid before both the Houses of the Parliament for its approval. If it was approved by the latter, it could be extended for a further period of 12 months. Its maximum duration with the approval of the Parliament was to be three years. Such a Proclamation was to be issued by the Governor in his discretion though with the concurrence of the Governor-General. It is obvious that for a period of six months without the approval of the British Parliament, such a breakdown could be made to persist and the so-called autonomy of the province could be kept in abeyance. How could British Parliament afford to differ from their "chosen representative of the British government" ruling over the destiny of the residents of a province? Establishment of bureaucratic governments in the provinces after the Congress had resigned in November, 1939, remind us of the effective use to which this power was put by the alien Governor.

It is thus obvious that the Governor was equipped with formidable discretionary and reserve powers which not only impeded the development of the Responsible Government in the Provinces but also reduced the so-called Provincial autonomy to a mere mockery. In the words of Sir Chimanlal Setalwad "Provincial responsibility was buried in a file of reservations, safeguards and discretion. The so-called introduction of self-government in the provinces was an illusion, rather an artifice to hoodwink the teeming millions. A critic of the Act has nicely said, "To call the new Indian Constitution an edifice of self-government is a grim joke which the joker may enjoy but not those at whose expense it is cracked." Autonomy in fact was not accorded to the ministers but to the Governors who were armed to the hilt with those powers which enabled them to reduce the Legislature to an impotent body and the ministers to the boy errands who were to dance to the tune of the "White Bureaucrats"—the Governors.

1.3. COUNCIL OF MINISTERS

Appointment. The Act of 1935 conferred Provincial Autonomy upon the Indian Provinces. Obviously, to make the so-called Provincial Autonomy workable in the real sense, establishment of

1. Chintamani and Masani: India's Constitution at Work, p. 93.
responsible form of government was indispensable. Hence the Act provided for a Council of Ministers to advise the Governor in the exercise of his multifarious functions. These ministers were to be appointed by the Governor and were dismissable by him according to the Act. The 'Instrument of Instructions' issued to the Governor, however, exhorted him to invite the leaders of the majority party or a person commanding stable majority to form the Council of Ministers. The leader was to be the Chief Minister and the rest of the members of his team constituted the Council of Ministers. Under the Instrument of Instructions, the Governor was advised to include as far as practicable members of the important minority communities, as well. The Instrument further required the Governor to foster joint responsibility.

Dismissal. As regards their dismissal, the Act laid down that the Ministers held office during the pleasure of the Governor. This implied that the ministers were dismissable by the Governor. But the 'Instrument of Instructions' clearly laid down that the ministers should collectively command the confidence of the Legislature. It signified that they were to resign office if the Legislature showed lack of confidence in them. Thus it is obvious that the principle of responsible government in the provinces was sought to be established through 'Instrument of Instructions'. Some autocratic Governors like that of Bengal and Sind, however, dismissed their Premiers flagrantly.

Qualifications. No special qualifications were specified for the ministers except that they should be members of either of the Houses of the Provincial Legislature. If a non-member was accorded the privilege of being included in the Council of Ministers he was to cease to be its member if he could not get elected as a member of either Houses of the Legislature within a period of six months.

Salaries, etc. The salaries, etc. of the ministers were to be fixed by an Act of the Legislature and could be variable from time to time by the Act of the Legislature. But the salaries once fixed could not be changed to the disadvantage of the ministers, during the term of the Ministry and were not yearly votable. This was certainly an improvement upon 1919 Act which provided for yearly voting on the salaries of the ministers.

Tenure of the Ministry. The tenure of a ministry in a parliamentary government is never specified since it runs generally with the tenure of the Lower Chambers. Hence it can be presumed that since the life of the Legislative Assembly was five years, a ministry once installed could remain in office for a period of five years unless the House was dissolved earlier or the ministry was outvoted in the Legislature.

Number of Ministers. The Act did not say anything about the number of ministers in each Provincial Council of Ministers. Hence, their number varied from province to province. In fact, size and population of the province was taken into consideration.
while fixing up the number of members in the Council of Ministers. Sometimes exigencies of party politics also played their role in determining the number of provincial ministers. For instance, Bengal had eleven ministers whereas C.P. only five and Orissa only three.

**Working of the Council.** The Council worked on the Portfolio system. Each minister was assigned one or more departments. Ordinary and routine administrative matters could be tackled by the minister himself in individual capacity but important questions of policy were not only to be discussed but also decided by the Council of ministers as a whole. A couple of parliamentary secretaries were also to be at the disposal of the ministers to assist them in the performance of their day to day administrative and parliamentary duties. The system built a valuable reserve from which future ministers could be selected.

### 4. COMMENT

Though the Provincial Executive looked like a Parliamentary Executive, yet in reality, the discretionary powers of the Governors and their Special Responsibilities restricted the scope of a true self-government of parliamentary type to a great extent. Perpetuation of Separate Electorates, the plan of representation in the Provincial Legislature and the power of the Governor to suspend the Constitution by an Emergency Proclamation were incompatible with the principles of Responsible Government. Mere good intentions of the Governors or their eloquent statements could not be of any practical utility. Sir Hallett, the Governor of U.P., for instance, said, “After all the relations of a Governor and his ministers were not those of a master and his servant: rather they are partners in a common enterprise—a good government of the provinces.” But the Congress ministry could not pull on with the same Governor.

Moreover, two contradictory things were referred in the Instrument of Instructions. On the one hand, the Governor was exhort to foster ‘joint responsibility’. On the other hand, the Governor was asked to include as far as practicable, representatives of important minority communities in his Council of Ministers. This contradiction created a problem. In U.P., for example, where the Congress captured an absolute majority, it decided to include only those Muslims in the ministry who were prepared to opt for a regular membership of the Congress Party. The Muslim League which had been able to capture many of the Muslim seats in the U.P. Assembly, refused to co-operate on these terms. Hence Muslims belonging to the Congress Party could only be included in the Ministry. The Muslim League complained to the Governor against the Congress on the ground that they (the League) represented the majority of the Muslims in U.P. and not the Congress. Hence their elected representatives should have been appointed as
ministers and not stooges of the Congress. But the Governor refused to interfere in the matter on the plea that the Congress enjoyed the confidence of the majority in the Legislature as a whole. Such type of rifts were possible in the Congress-ridden Provinces. Thus harmonious working of such ministeries was to be rather difficult.

§ 5. PROVINCIAL LEGISLATURE

Why Bicameralism? For the first time, bicameral principle was introduced in the provincial sphere. In six out of eleven provinces, second chambers were established though progressive opinion in India was highly opposed to the constitution of second chambers. It was emphasised that the second chambers were too expensive for a poor country like India. Moreover, the Governors armed with so many discretionary powers could easily impose checks on hasty and ill-considered legislation passed by the popular chamber. It was further emphasised that the second chamber would be merely the fortress of wealthy classes who were apt to play reactionary role and impede the progressive development of the country. Sir Tej Bahadur Sapru, however, remarked that they were likely to play a reactionary role and block progressive legislation. But these arguments of the natives did not weigh heavily with the British politicians. They asserted the utility of the second chambers on the ground that they served as revisory chambers and imposed healthy check on the radical tendencies of the Lower Houses. Moreover, they interposed delay in the passage of legislation which enabled public opinion to express itself fully. In fact, the Britishers wanted these citadels of reaction to be created to blockade the radical changes effected by the popularly elected chambers. In actual practice, however, these second chambers could not play nasty role as the Congress captured absolute majority in almost all the provinces having bicameral legislatures and in case of conflict between the two chambers joint session of the two Houses had to decide the issue by a majority vote. Since the progressive element in the Houses was preponderating, the reactionary element was outvoted. Moreover, it may be stated that these second chambers were established in all (except Bengal) Hindu dominated provinces where the Congress could be sure of its victory. Thus the motive of British reactionary forces could not be fulfilled.

§ 6. LEGISLATIVE COUNCIL

Composition. The number of members of the Legislative Councils varied from province to province. The table given on the next page would enlighten the reader regarding their composition.

It is quite evident that each Province having second chamber had different interests represented in the house. In fact the voting qualifications for the membership of the Council also were not
the same in all the provinces. Mostly aristocratic sections of society possessed the privilege of casting vote for these chambers. Apart from the rich title holders, Executive Councillors, ex-members of a Legislature, High Court Judges, Presidents of Municipalities and Local Boards, Chairmen of Central Cooperative Banks, Members of the Senates of the Universities, etc., constituted the electorates for the Legislative Councils. Thus it is obvious, that franchise for the election of these upper chambers was very high. Moreover, the constituencies which elected them were very narrow. Thus inevitably, the House was turned into a repository of vested interests.

<table>
<thead>
<tr>
<th>Province</th>
<th>Total of Seats</th>
<th>General Seats</th>
<th>Muslim Seats</th>
<th>European Seats</th>
<th>Indian Christian Seats</th>
<th>Seats to be filled by the Legislative Assembly</th>
<th>Seats to be filled by the Governor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Madras</td>
<td>Not less than 54</td>
<td>35</td>
<td>7</td>
<td>1</td>
<td>3</td>
<td>Not less than 8</td>
<td>Not more than 10</td>
</tr>
<tr>
<td>Bombay</td>
<td>Not less than 29</td>
<td>20</td>
<td>5</td>
<td>1</td>
<td>—</td>
<td>Not less than 3</td>
<td>Not more than 4</td>
</tr>
<tr>
<td>Bengal</td>
<td>Not less than 63</td>
<td>10</td>
<td>17</td>
<td>3</td>
<td>—</td>
<td>Not less than 6</td>
<td>Not more than 8</td>
</tr>
<tr>
<td>United Provinces</td>
<td>Not less than 38</td>
<td>34</td>
<td>17</td>
<td>1</td>
<td>—</td>
<td>Not less than 6</td>
<td>Not more than 8</td>
</tr>
<tr>
<td>Bihar</td>
<td>Not less than 29</td>
<td>9</td>
<td>4</td>
<td>1</td>
<td>—</td>
<td>Not less than 3</td>
<td>Not more than 4</td>
</tr>
<tr>
<td>Assam</td>
<td>Not less than 21</td>
<td>10</td>
<td>6</td>
<td>2</td>
<td>—</td>
<td>Not less than 3</td>
<td>Not more than 4</td>
</tr>
</tbody>
</table>

Tenure. Like that of the 'Council of States'—federal upper chamber, the Legislative Council was also to be a permanent house. One-third of its members had to retire after every three years. Their total tenure, however, was to be nine years.

Presiding Officer. The Presiding Officers of the Legislative Councils were to be termed as President and the Deputy President. The President had the right of vote only in case of a tie.

§ 7. LEGISLATIVE ASSEMBLY

Composition. The size of the Legislative Assembly also differed from province to province. The chart given on the facing page would interest the reader.
<table>
<thead>
<tr>
<th>Province</th>
<th>Total Seats</th>
<th>Total General Seats</th>
<th>General seats for Scheduled Castes</th>
<th>Seats for Backward Areas &amp; Tribes</th>
<th>Sikh</th>
<th>Muslims</th>
<th>Anglo-Indians</th>
<th>European</th>
<th>Indian Christians</th>
<th>Commerce Industry, Mining, Planning</th>
<th>Land Holders</th>
<th>Universities</th>
<th>Labour</th>
<th>General</th>
<th>Sikhs</th>
<th>Madras</th>
<th>Anglo-Indians</th>
<th>Seats for women</th>
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<td>Madras</td>
<td>215</td>
<td>146</td>
<td>30</td>
<td>1</td>
<td></td>
<td>28</td>
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<td>Madras</td>
<td>1</td>
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<td>175</td>
<td>114</td>
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<tr>
<td>U.P.</td>
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<td>149</td>
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<td>64</td>
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<td>6</td>
<td>1</td>
<td>3</td>
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<td>U.P.</td>
<td>1</td>
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<tr>
<td>Punjab</td>
<td>175</td>
<td>42</td>
<td>8</td>
<td>1</td>
<td></td>
<td>31</td>
<td>84</td>
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<td>1</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>Punjab</td>
<td>1</td>
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<tr>
<td>Bihar</td>
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<td>86</td>
<td>15</td>
<td>7</td>
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<td>4</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>Bihar</td>
<td>1</td>
</tr>
<tr>
<td>C.P. &amp; Berar</td>
<td>132</td>
<td>84</td>
<td>20</td>
<td>1</td>
<td></td>
<td>14</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>C.P. &amp; Berar</td>
<td>1</td>
</tr>
<tr>
<td>Assam</td>
<td>108</td>
<td>47</td>
<td>7</td>
<td>9</td>
<td></td>
<td>34</td>
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<td>1</td>
<td>11</td>
<td>4</td>
<td>1</td>
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<td>4</td>
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<td>1</td>
<td>Assam</td>
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<tr>
<td>N.W.F.P.</td>
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<td></td>
<td>3</td>
<td>36</td>
<td></td>
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<td>2</td>
<td></td>
<td></td>
<td></td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>N.W.F.P.</td>
<td>1</td>
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<tr>
<td>Orissa</td>
<td>60</td>
<td>44</td>
<td>6</td>
<td>5</td>
<td></td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>Orissa</td>
<td>1</td>
</tr>
<tr>
<td>Sind</td>
<td>60</td>
<td>18</td>
<td></td>
<td></td>
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<td>33</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td></td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>Sind</td>
<td>1</td>
</tr>
</tbody>
</table>

The voting qualifications in case of the Legislative Assemblies were considerably brought down as compared with the Act of 1919. Of course, these qualifications varied from province to province. In general, literacy and the payment of a certain amount of income tax or land revenue, or house rent or municipal or vehicle tax were the qualifications of voters for the Lower House. Women equipped with similar qualifications were also accorded a right to vote. About 14% of the total population of British India was thus enfranchised, though according to 1919 Act, only 3% of the people were entitled to vote. It was a marked advancement towards popular government though much was yet to be achieved. The constituencies were to be earmarked in each province and seats were to be assigned to various communities, classes and interests. The 'Separate Electorate' system was not only perpetuated but was further extended. Women and labour also were assigned separate seats.

**Tenure.** The tenure of the Assembly was five years, though it could be dissolved earlier by the Governor in his discretion. Its life could be extended during emergency. During World War II, the Governors really extended the life of Assemblies, as during abnormal times holding of elections was not thought advisable.

**Presiding Officers.** The Assembly had to elect a Speaker and a Deputy Speaker from among its members. These officers could also be ousted by a vote of no-confidence passed by a majority against them, though 14 days' notice was to be served for such a move.

**Quorum of the Chambers.** 1/6th of the members constituted the quorum in the Legislative Assembly though the presence of only ten members was enough to constitute quorum of the Legislative Council.

**Sessions of the Legislature.** The Provincial Legislatures were to
meet at least once a year though its meetings were far more frequent.

§ 3. POWERS OF THE LEGISLATURE

Legislative. The provincial legislatures were vested with the powers of making laws regarding those subjects which were included in the "Provincial List" and also the "Concurrent List". Of course, a provincial law concerning the concurrent subjects was to be null and void if it conflicted with the central law passed on the same subject. The legislative powers of the Provincial Legislature were however hedged with so many restrictions. Prior to the introduction of certain Bills, previous sanction of the Governor was to be obtained. For instance, any Bill which repealed or amended, or was repugnant to any Governor's Act or any ordinance issued by the Governor in his discretion or any bill which repealed, amended or affected any Act, relating to Police Force, needed previous sanction of the Governor. The Governor was empowered to exercise veto over the Bills passed by the Provincial Legislature. He could reserve the Bills for the consideration of the Governor-General or His Majesty the King. Moreover, Governor's powers of issuing ordinances and passing Governors' Acts, also detracted a great deal from the powers of the Provincial Legislature. Previous sanction of the Governor-General also was essential for the introduction of Bills which (a) repealed or amended or was repugnant to any provision of any Act of Parliament extending to British India, or (b) repealed or amended or was repugnant to any Governor-General's Act or any Ordinance promulgated in his discretion by the Governor-General, or (c) affected matters regarding which the Governor-General had to act in his discretion, or (d) affected the procedure for criminal proceedings in which European British subjects were concerned.

Control over Finance. With the introduction of Provincial Autonomy, the financial powers of the Provincial Legislature were considerably enhanced, but still, there were some limitations imposed upon it. Like the Federal Legislature, a Provincial Legislature was deprived of initiative in financial matters. Proposals for imposing or increasing taxation, borrowing money and for charging expenditure on provincial revenues could be discussed on the floor of the Legislature only on the previous recommendations of the Governor. Similarly, it was the Governor who caused the 'Annual Financial Statement' to be laid before the Legislature before the commencement of the financial year. About 30% of the items of expenditure were not votable. Under Section 78 (3) of the Act, the following items of expenditure were to be non-votable: (i) the salary and allowances of the Governor; (ii) Debt charges for which the Province was liable including interest; (iii) salaries and allowances of the Ministers and the Advocate-General; (iv) salaries and allowances of the judges of High Court; (v) expenditure incurred in connection with the administration of Excluded Areas; (vi) sums required to satisfy any judgment, decree or award of any court or Tribunal.
(vii) and any other expenditure declared by this Act or any Act of the Provincial Legislature to be so charged. All these non-votable items except the salaries and allowances of the Governor could be discussed in the Houses, though they were not subject to vote of either of them. The remaining about 70% items of expenditure were to be submitted to the vote of the Assembly and were termed as demands for grants. It was clearly specified in the Act that no demand for grant could be made save on the recommendation of the Governor. The Assembly could refuse a grant, reduce it, or assent to it. It could not increase or transfer it. It may, however, be stated that any such reduced or refused grant could be restored by the Governor on the plea of due discharge of any of his Special Responsibility. It is thus obvious that even in the votable part of the budget, the Governor could clip the wings of the Provincial Legislature whenever he so desired.

Control over the Executive. The Provincial Legislature exercised quite a substantial control over the Council of Ministers. It was empowered to expose the infirmities of the government, voice the disapproval of the government's policies and ventilate the public grievances through questions, supplementary questions, adjournment motions and budget debates. A vote of no-confidence against the Ministry also could be passed by the Assembly. A Ministry could be overthrown by a defeat on some major piece of legislation initiated by it on the floor of the House. This made the Provincial Ministry subservient to the will of the Assembly to a great extent. Moreover, the question hour provided an opportunity to the Legislature to unmask the acts of omission and commission of the Executive.

Deliberative Powers. Barring aside questions and resolutions on a few subjects, discussion on which could be prohibited by the Governor, the Provincial Legislature was fully authorised to move resolutions and discuss important questions of national policy. In fact, this deliberative power of the Legislature which enabled it to mould and shape the policies of the Provincial Executive was not circumscribed with so many restrictions as it was done in the case of its other powers referred above.

§ 9. EVALUATION OF THE PROVINCIAL LEGISLATURES

There is no denying the fact that the Provincial Legislatures under the Act of 1935 showed a marked improvement upon 'the previous arrangements'. The membership of the Legislature was considerably enlarged. Direct election was introduced. The Assemblies were to be directly elected bodies in toto whereas only an insignificant nominated non-official element was traceable in the Councils. Franchise was lowered, hence the number of electorates had gone up considerably. The Legislatures were empowered to make laws regarding all the subjects enumerated in the Provincial List.

But all these substantial improvements should not make us con-
clude that the Provincial Legislatures were truly representative bodies vested with real powers. The assignment of seats on the communal and class basis hardly made the Legislature representative of the true interests of the masses. As already said, the Councils represented the aristocratic element of the country which was apt to prove a citadel of conservatism and reaction. Talking on the undemocratic constitution of the Upper Chambers in the Provinces and their role, Palande remarks, "A House which was comprised mostly of big landlords, millionaires, merchants, princes and impecunious fragments of a dilapidated aristocracy became an organized stronghold of conservatism and reaction." The Assembly also was a heterogeneous body, representing different conflicting interests. The communal and the separate electorates were not only perpetuated but further extended. Thus the Assembly was a house divided against itself.

Moreover, lowering of franchise qualifications entitled only 14% of adult population to vote. About 86% of the adult population was still debarred from exercising most essential democratic right.

Last though not the least in the importance, were the restrictions imposed upon the Provincial Legislatures by the Act. Governor's Discretionary Powers and Special Responsibilities gave a great setback to the so-called autonomous legislatures. Its legislative powers were curtailed. Its financial powers were curbed. Its control over the Council of Ministers also could not be effective since it was representing various interests and classes differing from each other fundamentally. The Police Department, the superior services and the administration of the partially excluded areas were also beyond its control. Thus it is obvious that the little autonomy given to the Provincial Legislatures was a truncated autonomy which could be reduced to a mere farce by the overbearing Governors.

Provincial Autonomy at Work

§1. ACT WIDELY DENOUNCED

We have stated in the preceding pages that the Act of 1935 was vehemently denounced by leading sections of the Indian opinion. The Indian National Congress dubbed it "a prodigy of imperialist statesmanship" devised to secure the continuance of British Rule in India. Pt. Nehru condemned the Act as "a new Charter of bondage". The Princes, the disciplined vassals of the British Government, who had formerly welcomed the idea of Federation "recoiled from the warm approval they had given to the Federal Idea in 1930" and did not show their keenness to accede to the Indian federation. Hence All-India Federation could not materialise. But Part III of the Act which aimed at the establishment of 'Provincial Autonomy' in the provinces was put into operation. The Indian Liberals though critical of the limitations which the Act imposed on self-government were prepared to give a fair trial to this part. The Muslim League which strongly condemned the safeguards provided in the Act recommended that "the provincial scheme of the Constitution be utilised for what it is worth".

Reaction of the Congress. The Congress was not favourably inclined to the Act as a whole, though it made up its mind to contest the elections not to work the new constitution but to wreck it. By April 1, 1937, elections were complete.

§2. 1937 ELECTIONS

In six provinces—Madras, Bihar, Bombay, U.P., C.P. and Orissa, covering about two-thirds of the population of British India, the Congress captured absolute majority. It emerged out as the largest single party in another three. The Muslim League on the other hand suffered great reverses. It captured only 51 out of 482 Muslim seats in all provinces.

Controversy over office acceptance. Victory of the Congress in the elections posed a question whether or not to accept offices? The left wing of the Congress led by Pt. Jawahar Lal Nehru was strongly
opposed to the formation of ministries in the Provinces. Pt. Nehru said, any such step would be a "betrayal of the cause we have espoused". Subhash Chander Bose proclaimed that the office acceptance would be tantamount to an admission of defeat. The 'rightists' like Dr. Rajendra Prasad, Rajgopalachari, Sardar Patel and Maulana Azad on the other hand stood for the acceptance of offices. Maulana Azad reveals the above controversy very clearly when he states "......A section of those who had participated in the elections opposed assumption of office by Congress nominees. They argued that with special powers reserved to the Governors provincial autonomy was a mockery. Ministers would hold office at the Governors' pleasure. If Congress wished to carry out its election pledges, a clash with the Governor was inevitable. They argued that Congress should therefore try to wreck the constitution from within the legislature. On this issue also I held the opposite view and argued that the powers given to the Provincial Governments should be exercised to the full. If a clash with the Governor arose, it should be faced as and when occasion demanded. Without actual exercise of power the programme of the Congress could not be carried out."!

In the A.I.C.C. meeting held at Delhi in March 1937, after prolonged discussions and persuasions, the viewpoint of the Rightists prevailed. It was, however, decided that the Congress should be permitted to accept offices in the provinces where it commanded majority in the Legislatures, on the condition that they should obtain an assurance from the Governors that they (Governors) would not use their extraordinary powers mentioned in the clauses relating to reservations and safeguards for overriding the advice of the ministers as regards their constitutional activities. In fact the Congress was keen to establish a convention that the advice of the ministers might not be flouted even when the Governors had to act in their own discretion or exercise their individual judgment. The Governors with the full assent of the Governor-General and the Secretary of State for India declined to make any commitment on this point. Hence, the leaders of the Congress Party, in the Legislatures of Congress majority provinces, refused to form ministries.

The British Government was opposed to such assurance as in their opinion it was repugnant to the constitution, and could not be given till an amendment in the constitution was effected. Gandhi, on the other hand opined that nothing in the constitution prevented the Governors from exercising their special powers on the advice of the ministers and that conventions could be developed in the same direction within the Act itself.

§ 3. INTERIM MINISTRIES

When the Governors found that the Congress was hesitant to form the ministries, they sent for the parties having the second largest

support in the Legislature even though they did not muster a majority vote. These interim ministries were apt to fail as they were formed by non-Congress and in some cases anti-Congress elements. These unpopular ministries could neither face the Legislature nor get their budgets passed. These ministries functioned for three months under very favourable circumstances. Ultimately the Governor-General appealed to the people of India to make full use of the Act and said, "I am convinced that the shortest road to that fuller political life which many of you so greatly desire is to accept this constitution and to work it for all that it is worth... you may count on me in face of even bitter disappointment to strive untiringly towards the full and final establishment in India of the principles of parliamentary government." Though clear undertaking was not given, Lord Linlithgow—the then Viceroy, however assured that "the Governor's special powers would not be used to interfere with the day to day administration". Prof. Coupland remarks "The Viceroy's statement surrendered no constitutional ground". Still the reaction of the Congress was very responsive. On July 7, 1937, the Congress Working Committee authorised the formation of Congress ministries. "This was a historic decision for till now Congress had followed only a negative policy and refused to undertake the responsibility of office. Now, for the first time, Congress adopted a positive attitude towards administration and agreed to take up the burden of Government." The interim ministries tendered resignation after this momentous decision of the Congress and Congress ministries were forthwith formed in all the six Congress majority provinces. A little later, the Congress could succeed in forming ministries in Assam and N.W.F.P. as well. In the remaining three provinces viz., Punjab, Sind and Bengal, coalition ministries were formed. Thus ushered in a new era of so-called self-government in the British provinces, "era of constructive statesmanship as against the old era of fights, disobedience and imprisonment". 

Record of Congress Ministries. With the dawn of new era, the rebels and the jailgoers started playing the role of administrators in collaboration with their bureaucratic antagonistics—the Governors and the I.C.S. officials. So long as the Congress ministries remained installed in power, the Governors refrained from exercising their extra-ordinary powers. In the 51st session of the Congress it was admitted that "a measure of co-operation was extended by the Governors to the ministers." In 1939, even Gandhi declared that the "Governors played the game". The ministers also did not provoke the Governors. Hence, the safeguards were always kept in the background of discussions between the ministers and the Governors. It, however, does not mean that the Governors were reduced to mere constitutional rulers. A few clashes—in fact trial for strength—did occur in certain provinces.

1. Quoted by Prof. Coupland in Constitutional Problems, p. 20.
Clash in U.P. and Bihar. In 1938, there occurred a clash between the Governors and the ministries in U.P. and Bihar over the questions of release of political prisoners. The Congress ministries of U.P. and Bihar, determined to release them but the Governor-General issued a directive to the Governors under section 126 of the Act, not to accept the advice of the ministers. As such an action affected his Special Responsibility for the maintenance of peace and tranquility of the country. Hence the Governors did not agree to the release of political prisoners. The ministries resigned in protest on February 16, 1938, since Centre's undue intervention was quite evident. The Congress held that the interference of the Governor-General was a clear contradiction of his assurance and amounted to misapplication of section 126 (5) of the Act. The deadlock was overcome by negotiations and evolving of a compromise formula according to which the Governors and the ministers agreed to the gradual release of the prisoners after individual examination of each case.

Clash in Orissa. In Orissa, a similar crisis occurred over the appointment of Mr. J.B. Dain, Revenue Commissioner of Orissa as acting Governor during the absence of the Governor, Sir John Hubback. It was in fact unconventional to appoint a subordinate of the ministers as their head. Gandhiji also did not agree with such an appointment. He said, “It was incongruous and unbecoming and reduced autonomy to a farce.”

The ministry threatened to resign, if such an appointment was not undone. The crisis was averted by cancelling leave of the permanent Governor.

Another episode of Orissa Ministry also is worth mentioning. The Orissa Legislative Assembly passed “Orissa Amendment Bill” on February 5, 1938 making a provision for alteration of the rate of rent in the permanently settled areas without compensation. The Governor reserved the Bill for the consideration of the Governor-General under Section 76. The Chief Minister of Orissa condemned this step of the Governor as an encroachment on the ministerial responsibility. The issue did not result in a constitutional crisis.

Khare controversy in C. P. Dr. Khare— the Chief Minister of the C. P. wanted to reconstitute his cabinet, hence he demanded resignation of his colleagues. Two of his colleagues showed reluctance to resign on the plea that Congress High Command had not issued instructions to that effect. The Chief Minister got infuriated and resigned in protest. The Governor went out of the way to oblige Dr. Khare as he dismissed both the ministers who had defied the Chief Minister. The Congress High Command resented such an intervention on the part of the Governor and blamed him for driving a wedge in the Congress ranks. The Congress High Command went to the extent of replacing the Chief Minister—Dr. Khare by Pt. Ravi Shankar Shankla. Such a bold stand of the Party High Command went a long way to tone down the overbearing Governors.
Barring aside such stray incidents, the experiment of Provincial autonomy was successful on the whole in the Congress provinces. In fact, the success of the experiment in the provinces can easily be attributed to the strength and discipline of the Congress parties in the Provincial Legislatures. The Governors were fully aware of the overwhelming support enjoyed by the Congress ministries in the Legislatures. Hence they purposely avoided clashes with the forces of democracy. The disciplined strength of the Congress party in the Legislatures was not simply due to the majority backing but also owing to the rigid and unified control of the Congress Parliamentary Board which consisted of diehard nationalists like Sardar Patel, Dr. Rajendra Prasad and Maulana Azad. The Board functioned very effectively. It not only supervised the work of the ministries but gave them general guidance on matters of policy. Prof. Coupland does not appreciate such an interference of Parliamentary Board. He remarks, "The unitarian policy of the Congress violated provincial autonomy and responsible government".1 He emphasises that the Congress ministries danced to the tune of the Congress centre. The Congress, on the other hand, was of the opinion that the Parliamentary Board exercised a very healthy influence on the development of national outlook and prevention of the growth of parochial tendencies in the provinces.

4. ACHIEVEMENT OF CONGRESS MINISTRIES

During their tenure of office, the Congress ministries rendered a commendable service to the masses. They implemented the pledges they had made through the election manifesto. They successfully launched an ambitious programme of welfare work and passed a good number of laws to ameliorate the lot of the common man. Reforms in the fields of education, public health, rural uplift and local self-government were effected.

A large number of laws dealing with prohibition, education, agricultural indebtedness, cottage industries, rural development, tenant-landlord relations were passed. Maulana Azad writes, "The Congress Ministries were in office a little less than two years but during this short period several important issues were settled in principle. Special mention may be made of the legislation on Zamindari or proprietorship in land, of liquidating agricultural indebtedness and undertaking a vast programme of education both for children and adults".2

The Congress not only introduced some such important reforms but took some very courageous steps. In 1938, the Council of Ministers of Bombay supported by the Legislature restored to the original landowners' lands which were confiscated by the British Government on the plea that their proprietors had participated in the 'Civil Disobedience Movement'. Political prisoners

were gradually released in all the Congress provinces. Prof. Coupland pays a compliment to the Congress, though unconsciously, when he remarks, "The legislative programme of the non-Congress ministries has followed the same main lines as that of the Congress ministries". The main achievement of the Congress ministries lies in the fact that it put an end to the reign of terror and an era of suspicion and distrust. Pt. Nehru has very nicely portrayed the effect of the Congress ministries on the masses in these words "... But the psychological change was enormous and the electric current seemed to run through the countryside. The change was noticeable more in the rural areas than in the cities, though in the industrial centres, the industrial workers reacted in the same way. There was a sense of immense relief as of the lifting of a weight which had been oppressing the people: there was a release of long suppressed mass energy which was evident everywhere. The fear of the police and secret service again vanished for a while at least and even the poorest peasant added to his feeling of self-respect and self-reliance. For the first time, he felt that he counted and could not be ignored."*

5. CHARGES AGAINST THE CONGRESS MINISTRIES FALSE

Though the achievements of the Congress ministries were quite significant yet the Muslim League went to the extent of condemning the Congress rule as the tyrannical rule of Hindus. In fact the Congress had turned down Muslim League's offer of joining hands with the Congress in running the Provincial Governments. The Congress frankly informed the Muslim League that they were prepared to enter into coalition government with the Muslim League provided that the latter should cease functioning as a separate group in the Legislature and must come under the control and discipline of the Congress High Command. Negotiations between the U.P. Congress and the U.P. Muslim League were in fact started with the same idea of forming a coalition but ended on the similar grounds. The Provincial Congress required the Provincial League of U.P. to dissolve its Parliamentary Board and not set up any candidate against the Congress in any subsequent bye-elections. The League would have sealed its doom, if she had agreed to these terms. Hence, the coalitions could not be formed. The Congress was condemned in certain quarters for such a callous attitude towards the Muslim League. But in certain respects, the Congress was perfectly justified in refusing to join hands with the League, till certain conditions were fulfilled. The Congress had formed ministries to introduce progressive legislation in the country, The League might have impeded its work. Deliberate delay and unnecessary obstruction might have been caused by the vested interests of the League. Hence, why should have the Congress having the backing of majority in the legislature thought of coalition with fanatic reactionaries?*

Pt. Nehru, while justifying the Congress's stand on the matter says, "There might even be intrigues with the governments over the heads of the other ministries. A joint front against British authority was essential. There would have been no binding cement, no common loyalty, no united objective and individual ministers would have looked and pulled in different directions". In reality, the Congress did not like to form coalition with the League because the latter could not claim itself to be sole representative of the Muslims. As already said, it could capture only 51 out of 482 Muslim seats in the Provincial Legislatures.

Mr. Jinnah was out to exploit the opportunity. He condemned the Congress as 'drunk with power'. He pointed it out to his co-religionists that on the very threshold of what little power and responsibility is given, the majority community has already shown that Hindustan is "for Hindus". Soon after the Congress ministries' coming into power, Jinnah began to level false charges of atrocities and suppression of the Muslims at the hands of Hindu governments. In March, 1938, a committee was appointed by the Muslim League to inquire into and report on the so-called complaints of suppression and oppression of the Muslims. The committee submitted an absolutely false report which was widely publicised to condemn the Congress governments in the provinces. Dr. Rajendra Prasad the then President of the Congress, challenged Mr. Jinnah to place all these charges before the Chief Justice of the Federal Court of India and seek decision. Jinnah declined the offer. Maulana Azad remarks, "I can speak from personal knowledge that these allegations were absolutely unfounded. This was also the view which was held by the Viceroy and the Governors of different provinces. As such, the Report prepared by the League carried no conviction among sensible people".

Sir Henry Haig, the then Governor of U.P., enlightens us on the same issue when he says, "In dealing with communal issues, the ministers had normally acted with impartiality and a desire to do what was fair." Even Prof. Coupland observed, "They (the charges) were not very numerous considering the vast areas concerned. Many of them were relatively trivial in character, and similar incidents had been occurring from time to time for many years past." Despite Congress's efforts to rebut these false charges, Jinnah continued harping on the same tune of Hindu tyranny and hoodwinking the illiterate Muslim masses who ultimately started aspiring for separate land for Muslims to seek deliverance from the so-called tyrannical Hindu rule.

§ 6. CONGRESS MINISTRIES' RESIGNATION AND AFTER

Although the Congress ministries established a record of very commendable achievement in which, in the words of Prof. Coupland,

"the Congress could take pride" yet it decided to quit the office in 1939 as a protest against the British Government's dragging India into world conflagration without her consent and even without explaining to the Indians her war aims. On the resignation of the Congress ministries in eight provinces, the Governors were forced to proclaim emergencies and assume the entire authority in their own hands. The provincial legislatures were also suspended and the Governors carried on the administration of these provinces save Orissa and N.W.F.P. with the assistance of a few senior members of the I.C.S. The Proclamation of Emergency was extended till the expiration of one year at the end of war by the Amending Act passed in 1942. After the issuing of Proclamation, the Governor of Orissa and N.W.F.P. induced the non-Congress groups to form coalition ministries. Such ministries were actually brought into existence and continued functioning with the help of the Civil Service and their respective Governors.

This undesirable way of administering the provinces through the ministries lacking the confidence of the majority, was tantamount to the violation of Instrument of Instructions issued to the Governors. It was in 1946 that Congress ministries were again formed in these provinces.

§ 7. WORKING OF PROVINCIAL AUTONOMY IN NON-CONGRESS PROVINCES

Though in the Congress ridden provinces, the Governors generally acted as constitutional heads, in the non-Congress provinces run by non-Congress ministries, the Governors continued exercising their extraordinary powers. Their undue interference in the day to day functioning of these ministries is obvious from the fact that the Governor of Sind dismissed Nawab Allah Bux, the Chief Minister, on October 10, 1942, despite the fact that the latter enjoyed the confidence of the majority in the legislature. The Chief Minister was dismissed because he had renounced the title of 'Khan Bahadur' and condemned the British government on many occasions. Similarly, Mr. A.K. Fazalul Haq, the Chief Minister of Bengal, was made to resign in March 1943. The outspoken Chief Minister generally complained of arbitrary exercise of power by the Governor. Dr. Shyama Prasad, a prominent member of the Bengal cabinet, also quoted many instances of gubernatorial interference. He, in fact, was forced to resign under similar adverse circumstances.

The same story was to tell in the Punjab where Unionist ministry was otherwise functioning smoothly. The Chief Minister of the Punjab remained absent from the province on some private business for more than six months, but the void was not filled up even temporarily since his absence did not make much of difference to the Governor who was assertive and who exercised the authority himself. Another interesting episode reflects how the Chief Minister of the Punjab was ignored or not cared for by the Governor. The
Punjab Governor had informed the Governor-General of his reluctance about releasing the political prisoners on the plea of peace and tranquility of the province without the advice of the Chief Minister. When the information regarding such a stand of the Governor was made public, Sir Sikandar Hyat Khan the Chief Minister was severely condemned on the floor of the Assembly and was asked to explain how would the release of political prisoners have resulted in disturbing the peace and tranquility of the province! He made it clear that he was never consulted by the Governor on the matter. The Governor had obviously, on his own accord, advised the Governor-General in the matter without seeking the advice of the Chief Minister. Such instances of exercise of special powers by the Governors in the non-Congress provinces can be multiplied. Pt. Nehru has very aptly compared the working of Provincial Autonomy in the Congress and the non-Congress provinces. He says, "The difference between the Congress provinces and Bengal and Punjab was immediately apparent in regard to civil liberties and political prisoners. In both Bengal and Punjab, there was no relaxation of the police and secret service Raj and political prisoners were not released. In Bengal where the ministry often depended on European votes, there were in addition thousands of detenus, that is men and women kept indefinitely for years and years in prison without charge or trial. In the Congress provinces, however, the very first step taken was the release of political prisoners...." 

§ 8. WHY CONGRESS GOVERNMENTS MORE SUCCESSFUL?

The question arises why responsible governments functioned more efficiently in the Congress provinces than in the non-Congress provinces, particularly Sind and Bengal? The reasons are not far to seek. Firstly, the Congress parties in the provincial legislatures were highly disciplined and were to work under the constant guidance of the Central Parliamentary Board which consisted of very efficient leaders. The Governor in these provinces was apt to summon the leader on their advice. Secondly, as already said, the Congress did not form coalition ministry in any of its provinces, hence those Congress ministries constituted homogeneous bodies which rigidly stuck to the cardinal feature of parliamentary government—the Collective Responsibility. Thirdly, the ministries continued holding office so long as they enjoyed the confidence of the legislature. They did not hold office during the pleasure of the Governor. Fourthly, we may say to the credit of the Governor in the Congress provinces that generally they functioned with restraint. The following statement of Sir Roger Lumely throws light on the role played by the Governors in the Congress Provinces. He said, "The Governors must preserve the spirit in which the constitution was conceived, which was the spirit of self-government. He must be equipped to discharge the special functions laid on him but without as far as he can make it possible, disturbing that spirit. He has his own contributions to make if he can, to the success of the

government and he must remain impartial, a neutral in politics, not a protagonist”. As already said even Gandhiji appreciated their role when he said, “The Governors on the whole played their part.”

§ 9. THE ROLE OF CIVIL SERVICES

Before we evaluate provincial autonomy, it is essential to discuss the role of Civil Services during this new era of self-government since "governments lay down policy, legislatures pass laws; but the actual working out of this policy and the application of these laws depends ultimately on the services and the administrative personnel". These services were brought up under authoritarian regimes and autocratic traditions, hence they were apt to dislike the new democratic atmosphere which was bound to lessen their importance and subjugate them to the persons whom they had been arresting and sending to jails. Hence when the Act of 1935 was on the anvil, the superior services insisted on ‘Special Safeguards’ for the protection of their interests under the new regime. Their demand was conceded. Hence their appointment and other conditions of service were kept under the control of the Secretary of State in Council. Many of them who had been anti-Congress to the extreme resigned. Some of them extended full co-operation to the new governments. The third category of these services was of those who had determined to bring discredit to the Congress ministries. Pt. Nehru has made a very apt portrayal of these services. He writes, "It was impossible to change suddenly the old reactionary and autocratic mentality of the services as a whole. A few individuals might change, some might make an effort to adapt themselves to the new conditions, but the vast majority of them thought differently and had always functioned differently; how could they undergo a sea change and emerge as crusaders of a new order? At the most, they could give a passive and heavy moving loyalty; there could not in the very nature of things be a flaming enthusiasm for the new kind of work to be done, in which they did not believe and which undermined their vested interests. Unfortunately even this passive loyalty was often lacking."

These services in fact suffered from superiority complex. In the United Provinces, for instance, on the assumption of power by the popular ministry, the Chief Secretary of the Province issued a circular that the administrative officers in the various departments should not execute any order until and unless it was countersigned by one of the Secretaries. Mr. G.B. Pant—the Chief Minister of U.P. called for the explanation of the Chief Secretary for issuing such a circular without his permission. Since the explanation of the Chief Secretary was not convincing, the Chief Minister ordered for the withdrawal of the circular which in his opinion was an act of insubordination or incompetency. Thereafter the services realized

2. Ibid., p. 381.
their actual position in the Congress-ridden provinces and acquitted themselves quite satisfactorily.

It is, however, contended that the ministers in some of the provinces interfered too much in the working of the Departments. Even the M.L.As poked their nose too often in the administration. In fact, when the services found that “the edifice of prestige and racial superiority which had been built with so much of labour and which had almost become a religion to them was cracking” they started blaming the popular representatives as intruders. The ministers could discern slackness and spirit of evasion of duty in these services which had a “reputation, chiefl y, self-propagated, for efficiency.” Hence they had to pull them up and make them adapt themselves to the fast moving schemes of social progress. The ministers were actuated with selfless devotion to the masses. In the words of Pt. Nehru, “There was vitality then a bubbling life, a sense of tension, a desire to get things done all of which contrasted strongly with the apathy and conservation of the British ruling class and their supporters.” The grumbling against the ministers was thus inevitable when they proved hard taskmasters. Resignation of the Congress ministries in November, 1939 made the civil services heave a sigh of relief. “Life went back to its old routine and slow tempo and the afternoon and evenings were free for polo and tennis and bridge and the amenities of club life. A bad dream had faded and business and play could now be carried on as in the old days.”

§ 10. EVALUATION OF PROVINCIAL AUTONOMY

A critical appraisal of the working of provincial autonomy in the Congress and non-Congress provinces makes it crystal clear that whereas in the former it worked quite satisfactorily, in the latter it was nothing short of a mockery. The ‘Special Responsibilities’ and the vast ‘Discretionary Powers’ entrusted to the Governors enabled them to interfere in the affairs of the Provincial non-Congress Ministries to such an extent that the so-called autonomy of the ministers was reduced to a mere farce. The so-called ‘Instrument of Instructions’ was flagrantly flouted by the Governors. They frequently intervened and often vetoed the measures passed by the provincial legislature. Solidarity in the Congress ranks, however, deterred them from playing similar mischief in the Congress dominated provinces. A few clashes between them and the ministers established it beyond any doubt that the Congress ministers were not going to be cowed down. It may also be said to the credit of the Congress ministers that they restrained from pastering Governors unnecessarily. However, after the resignations of the Congress ministries in 1939, autocratic rule of the Governors was installed in.

1. Nehru I.L.: Discovery of India, p. 381.
2. Ibid., p. 382.
3. Ibid.
4. Ibid., p. 385.
Thus the object of establishing self-government in the provinces remained unfulfilled to a great extent.

Secondly, 'Provincial Autonomy' as explained by the authors of the Act meant relaxation of central control over the provinces. The appointment of the Governors by His Majesty the King instead of the Governor-General, was thought to be a substantial step in this direction. It was expected that the Governor-General would not interfere in the provincial affairs. But, in actual fact, central control over the provinces was in no way relaxed. The Governor-General was equipped with 'Special Responsibilities' which could enable him to dominate the provinces. Vague terms like 'grave menace to peace and tranquility of India' and 'the legitimate interests of minorities' could easily be exploited by the Governor-General and easily stretched to include all conceivable cases. The directives of the Governor-General to the Governors of U.P. and Orissa over the release of political prisoners stand witness to this fact. Pt. Nehru rightly observed, "...the position of a popular government was extraordinary. There were all the checks of viceregal powers and an irresponsible central authority". Moreover, even in the domain of provincial legislation, the Governor-General could afford to be assertive as certain kinds of Bills could not be initiated in the provincial legislatures without his previous sanction, and certain Bills duly passed by the provincial legislatures could be reserved for his consideration. He was fully authorised to withhold his assent or reserve it for His Majesty's pleasure or return it for reconsideration of the provincial legislature. Reservation of 'Orissa Amending Bill' by the Governor for the consideration of the Governor-General which entailed controversy between the Governor and the Chief Minister of Orissa bears an ample testimony to the fact. In fact, the 1935 Act had clearly specified that the Governor while withholding his assent to the legislation, issuing ordinances in his discretion, enacting Governor's Acts, restoring grants and exercising special responsibilities etc. etc., was to act under the direction and control of the Governor-General. Such a sweeping power of the Governor-General could easily place the whole of the financial, administrative and legislative machinery of the province at his disposal. Keeping in view these facts Principal Sri Ram remarks, "Provincial Autonomy had already been throttled by its authorities before its corpse was presented to the eleven provinces on April 1, 1937."

The civil services who constitute the backbone of administration of a country also played their role effectively to give a staggering blow to the Provincial Autonomy in its very infancy. In the non-Congress Provinces, in particular, they did not care at all for the ministers whom they considered novices. In the Congress provinces so long as the Congress ministries remained on the heim of affairs, they could not play much of mischief as the ministers

3. Nehru I.L.; Discovery of India, p. 370
had a strong and disciplined party to back them up. Moreover, Shri Pant, the Chief Minister of U.P., set a precedent by pulling up a Chief Secretary who had attempted to bypass him. After the resignation of the Congress ministries, they once again appeared in their true garb.

Thus we can afford to conclude that there existed a world of difference between the real significance of the word 'Autonomy' and the so-called 'Autonomy' bestowed upon Indians by the benign masters. However, it was another important milestone on the highway leading to the goal of complete independence.
War and Constitutional Deadlock

1. WORLD WAR II AND CONGRESS ATTITUDE

As already discussed in the preceding pages, the Act of 1935 could not satisfy the political aspirations of Indian leaders. The framework of 'All-India Federation' as contemplated by the authors of the Act was dubbed as retrograde and obnoxious by the Indians. Hence it could never be implemented. The second part of the Act was being successfully experimented, without any serious hitch when the clouds of war began hovering over Europe in the early days of 1939. The Congress apprehended that India might also be dragged into the ensuing conflagration and her material and human resources might be exploited by the British Imperialists. Hence they sounded a note of warning to the British masters well in advance of the actual outbreak of war that they would oppose strongly all attempts to impose a war on India and exploit her resources for waging it without the consent of the Indian people. But the warning went unheeded. The Indian troops were sent to Egypt, Singapore and Aden, in August 1939. The Congress strongly protested against such a move.

On September 1, 1939, Germany sounded the war bugle against Poland. England also proclaimed war against Germany on September 3, 1939 'to make the world safe for democracy' and to 'fight for the preservation of democratic ideals and for protection of right of self determination of all nations' and 'safeguarding of human civilization against the onslaught of Nazis and Fascists'. India was also declared a belligerent country by the Viceroy and was called upon to fight for the Allies. On September 3, 1939 Lord Linlithgow broadcast a message to the Indians, "I am confident that India will make her contribution on the side of human freedom as against the rule of force and will play a part worthy of her place among the great nations and the historic civilizations of the world".\(^1\) Gandhiji when invited to Simla by the Viceroy on September 4, 1939, assured him of his full sympathies with England in this hour of sorest trial but made it clear to the Viceroy that he could not

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speak on behalf of the Congress since he had no instructions from the Congress Working Committee. The Working Committee of the Congress met on September 14, 1939, to consider the explosive situation and issued a statement on September 15, condemning Nazi aggression in Poland but reiterating the Congress declaration that the issue of war and peace should be decided by the Indian people. They emphasised that if Great Britain fought for the maintenance of democracy, then it must end imperialism and establish full democracy in India and allow Indians to frame their own constitution through a Constituent Assembly. They stated, "In the struggle for that new World Order" the Committee was "eager and desirous to help in every way" but they were not prepared to associate themselves or offer cooperation in a war conducted on imperialist lines. They therefore exhorted the British Government to declare in unequivocal terms their war aims in regard to democracy and to state how were they to apply to India and be given effect to immediately.

From the above resolution of the Congress Working Committee, it is easy to conclude that the Congress was prepared to extend unconditional support to the war — both morally and materially. India could help Britain only as an independent nation. Maulana Azad represents dominant Congress view when he writes, "Europe was divided into two camps — one camp represented the forces of Nazism and Fascism, while the other represented the democratic forces. In a struggle, between these two camps, I had no doubt in my mind that India should side with the democracies provided she was free. If, however, the British did not recognize Indian freedom, it was too much to expect that India should fight for the freedom of other nations while she was denied her own freedom."1

14. REACTION OF THE MUSLIM LEAGUE TO WAR

The Working Committee of All-India Muslim League also in its resolution of September 18, 1939, condemned unprovoked aggression of Nazis and expressed sympathy with Poland and Allies. But they assured cooperation to the British Government on the condition that justice and fair play was secured to them in the Congress-governed provinces where their "liberty, person, property and honour, was in danger" and where their legitimate rights were "most callously trampled upon". Thus the support of Muslim League was also not to be unconditional.

15. REACTION OF THE GOVERNMENT TO THE DEMANDS OF CONGRESS

Unfortunately, the British Government's attitude to the demands of the Congress was most disappointing. Lord Zetland while highly appreciating the services of the princes and the puppet premiers of non-Congress Provinces, in the House of Lords, regretted that the

Congress had chosen most inopportune time to reassert its claims towards a fuller form of self-government. About this time Lord Linlithgow the Viceroy had interviewed more than fifty leaders representing all shades of opinion in India. On October 17, 1939, he issued a statement which fell far short of Congress demand. In his statement, he elaborated war aims and Britain’s policy in India. As regards war aims, he said “........we are seeking no material advantage for ourselves. We are not aiming only at victory, but looking beyond it, to the laying of a foundation of a better international system which will mean that war is not to be inevitable lot of each succeeding generation.” As regards India’s future status, the Viceroy re-emphasised that at the end of hostilities, His Majesty’s Government would be willingly undertaking modification of the Act of 1935, after consultation with “representatives of the several communities, parties and interests in India and with the Indian Princes”. He however reiterated the old declaration that the Dominion Status was the goal of India. As regards the immediate transfer of control to Indians, the Viceroy suggested that he was prepared to establish an Advisory Council of representative Indians immediately to be associated with him for the purpose of the conduct of war. The Advisory Council would however be fully representative in character and its personnel would be drawn by the Governor General from panels prepared by the various major political parties.

A critical appraisal of the Viceroy’s statement reveals that the demand of the Muslim League that no concession would be acceptable to it unless made with its consent and approval, was sought to be met. The Princes and other royal interests were also not ignored. But the Congress was utterly disappointed and shocked. The Government’s old policy of ‘Divide and Rule’ was once again exposed. The Congress had demanded immediate transfer of control to Indians but instead they were assured a place in the Advisory Council whose views could easily be ignored by the Viceroy. They had asked for independence after the war but they were promised ‘Dominion Status’ as a distant goal. In the words of Gandhiji, “The Congress had asked for bread and it has got stone.”

14. RESIGNATION OF CONGRESS MINISTRIES

Thus the Viceroy’s statement raised a storm of resentment in the Congress ranks. The Congress was driven to action. The Working Committee of the Congress met on October 22, 1939, and condemned Viceroy’s announcement of 17th October as most unsatisfactory and called upon the Congress ministries to resign after adopting resolutions in the provincial legislatures condemning the way in which the British Government was treating the sentiments of the Indians. The following resolution was proposed by the Chief Ministers and carried in the Assemblies of the Congress Provinces. “This Assembly regrets that the British Government have made India a participant in the war between Great Britain and Germany without the consent of the people of India...it is essential in order to secure the co-
operation of the Indian people, that the principle of democracy with effective safeguards for the Muslims and other minorities be applied to India and her policy be guided by her people; and that India should be regarded as an independent nation entitled to frame her own constitution......and, in view of the failure of the British Government to meet India’s demand, this Assembly is of the opinion that the Government cannot associate itself with British policy." After passing the above resolution, the ministries in eight Congress provinces tendered their resignation. In all these provinces, the Governors took over the administration in their hands under section 93 of the Act and dissolved the provincial legislatures. Thus ended the era of self-governments and ushered in the era of autocratic rule of the Governors.

§ 5. VICEROY’S INVITATION TO INDIAN LEADERS (NOV. 1, 1939)

On the resignation of the Congress ministries, the Viceroy invited Gandhi, Dr. Rajendra Prasad and Mr. Jinnah to see him on November 1, 1939. In the meeting, the Viceroy explained the Government’s intentions for immediate expansion of the Executive Council and its failure to do so due to lack of harmony between the major communities. In fact, the Viceroy hinted at the formation of coalition ministries in the provinces so that the ‘Executive Council’ could also be constituted, duly expanded, on that pattern. The proposal of the coalition Governments in the provinces was not new. In reality, the Viceroy’s suggestion was inspired by the Muslim League Council’s resolution of 28th of August, 1939, in which they had declared safeguards for the minorities utterly useless in the presence of hostile majority in the provincial legislatures.

Jinnah’s letter to the Viceroy. On 4th November, 1939, Jinnah wrote a letter to the Viceroy pointing out that on meeting the Congress leaders, he had concluded that the Congress leaders were not prepared to discuss any question regarding the Provincial or Central Governments, unless the British Government conceded their demand embodied in the resolutions of A.I.C.C.

Viceroy’s Announcement, Nov. 6, 1939. On November 6, 1939, the Viceroy announced that his talks with the Indian leaders had failed and that the communal bickerings and discord impeded the constitutional development of India. He, however, promised to strive again to bring about communal concord. It was a clever statement exhibiting evasive attitude of the Government towards the Indian demand and also an attempt to exploit communal disharmony.

§ 6. DELIVERANCE DAY, DECEMBER 22, 1939

As usual, Mr. Jinnah played a nasty role. He exhorted the Muslims of India to observe Friday, the 22nd of December as the ‘Day of Deliverance’, as a mark of relief that the Congress regime had at least ceased to function. On the scheduled day, the Muslim
League all over India arranged public meetings and passed venomous resolutions—an extract of which throws enough light on the charges levelled against the Congress. "The Congress Government constantly interfered with the legitimate and routine duties of district officers even in petty matters to the serious detriment of the Mussalmans, and thereby created an atmosphere which spread the belief amongst the Hindu public that there was established a Hindu Raj.... This meeting, therefore, expresses its deep sense of relief at the termination of the Congress regime in various provinces and rejoices in observing this day as the Day of Deliverance from tyranny, oppression and injustice...." Thus Mr. Jinnah strengthened Government’s hands in shifting the emphasis from the purely political to the purely communal level. The observance of the Deliverance Day by the Muslim League clearly reflected that the League had decided to choose altogether different path. On March 24, 1940, it appeared in true colours when it expounded the two-nation theory and demanded Pakistan in its famous Lahore Resolution.

17. DID CONGRESS COMMIT WRONG?

Prof. Coupland attributes failure of the constitutional machinery to the Congress when he says, "It was the unavoidable result of the Congress leaders’ decision to bring the operation of the existing system to an end." Of course, the Congress had the backing of the majority in the legislature and its decision to tender resignation despite that majority supporting it, gives us also an impression that the Congress failed in its duty. But if we go deep into the matter, we find that the Congress had acted strictly in accordance with its election manifesto which laid down that the Congressmen were to enter the legislature "not to cooperate in any way with the Act (of 1935) but to combat it and to end it." Hence by resigning, the Congress fulfilled its pledge and exhibited its true democratic spirit.

8. CONGRESS GETS SYMPATHETIC AGAIN

By the middle of 1940, the war situation took a bad turn for Britain. With the collapse of war forces at Dunkirk and devastating air attacks on her soil, Britain was passing through a period of crisis. Churchill had replaced Chamberlain—the weak and timid Prime Minister, whose policy of appeasement of Germany was disliked and condemned throughout England. The Congress once again liked to stand by the Britishers in their blackest hour, but such a cooperation was to be extended on some honourable basis. On the 1st of June, 1940, Gandhiji declared, "We do not seek our independence out of Britain's ruin." Pt. Jawahar Lal remarked, "England's difficulty is not India's opportunity". The Congress Working Committee in its Poona Resolution passed on July 7, 1940, undertook to "throw its

2. Coupland: Indian Politics, p. 234.
3. Indian Annual Register, p. 189.
full weight into the efforts for the effective organization of the defence of the country and whole-hearted cooperation in men and money". The Congress, however, offered to cooperate on two conditions; (i) the acknowledgement of India's right to complete independence, (ii) and as an immediate measure, the establishment of a provisional National Government at the Centre which should contain representatives of the main political parties in the country. The second condition involved the formation of a 'coalition cabinet' responsible to the elected members of the Popular House. But the British Government under diehard Conservative Prime Minister, was not at all responsive to the Indian demand of transfer of some power to Indians during war. Instead, Churchill bluntly said that the 'Atlantic Charter' which undertook to secure right of self-determination to each nation, did not apply to India and Burma and that it was meant only for the European nations. In an emotional outburst, he revealed his mind to the Indians very clearly. He said, "He had not become His Majesty's first Minister to preside over the liquidation of the British Empire."

§ 9. THE AUGUST OFFER (1940)

Thus it is obvious that the British Government failed to appreciate Indian National Congress's friendly gesture of assistance in war which was in clear contradiction with Gandhi's cherished creed of non-violence. They could not agree with the demand of formation of National Government responsible to the Central Legislature, when the war was on its climax. Instead, the Viceroy made a declaration, popularly known as 'August offer' on August 8, 1940, on behalf of the Government. The following were its main provisions:—(i) The promise of Dominion Status was renewed with a highly significant addition that H.M.G. "most readily assent to the setting up after the conclusion of the war with the least possible delay of a body of representatives of the principal elements in national life in order to devise the framework of a new constitution and they will lead every aid in their power to hasten decisions on all relevant matters to the utmost degree". It was thus conceded that the framing of the new Constitution of India should primarily be the responsibility of the Indians themselves. (ii) A certain number of representative Indians were to be invited to join the Governor-General's Executive Council. Moreover, a 'War Advisory Council' consisting of 20 or more members to be established representing the Indian States and the other interests in the national life of India as a whole. (iii) It was made crystal clear that "His Majesty's Government could not contemplate the transfer of their present responsibilities for the peace and welfare of India to any system of government whose authority is directly denied by large and powerful elements in India's national life. Nor could they be parties to the coercion of such elements into submission to such a government."
§ 10. REACTION OF THE CONGRESS TO THE OFFER

The August offer fell far short of the Congress demand. Dr. Sitaramayya remarks that there was much that was avoidable repetition. The offer "fell too painfully short of any transfer of power". The Congress asked for National Government, they were offered instead, an expanded Executive Council, which was not even Dyarchy. Hence the Congress could hardly relish the idea of a few seats in the so-called Executive Council. Moreover, the offer was obtrusive. The Government's clever move of parading its concern for the minorities was a deliberate mischief to put an "insuperable barrier to India's progress". The minorities like Muslim League were, in fact, being armed with veto power over India's political advancement. The Congress emphasised that the minority problem was one for Indians to solve and British Government's insistence to safeguard the interests of the minorities was tantamount to coercion of the majority and putting the majority at the mercy of the minority. The Congress was so much annoyed over these deliberate attempts of the Government to bolster up the minorities that its President, Maulana Azad, declined the invitation of the Viceroy when the latter called him to discuss these proposals. Why Azad did not meet the Viceroy, is clear from his following statement: "Even without consulting my colleagues, I declined the offer. It appeared to me that there was no common ground between the Congress demand for independence and the Viceroy's offer of an enlarged Executive Council". The resolution passed by the Congress Working Committee at Wardha between August 18 to 22, 1940, was the embodiment of the impending storm in the political horizon of India.

§ 11. REJECTION BY MUSLIM LEAGUE

Even the Muslim League rejected the offer though on different grounds. It stood against the idea of a united India as implied in the Viceroy's statement. It asserted that the partition of India was the only solution acceptable to the League. It demanded parity of representation with the Congress if and when the Executive Council of the Viceroy is reconstituted. It further insisted that no future constitution interim or final should be drawn up without its consent. The Muslim League was, however, glad that the August offer had given clear assurance that no future constitution would be framed without its consent. In fact, what is one man's meat is poison for another. The provision which caused great jubilation in the Leaguers' ranks, was dubbed by the Congress as an incitement to the minorities to adopt an intransigent attitude against the national organisation.

The Congress was convinced that behind the smokescreen of 'Dominion Status' after the war, was the fixed determination of the

2. Indian Annual Register, 1940, p. 198.
Britishers to have a firm grasp over the Indian affairs by adhering to the imperialists policy of 'Divide and Rule'.

12. INDIVIDUAL CIVIL DISOBEDIENCE

The August Offer was a great rebuff to leaders like Jawahar Lal and Rajgopalacharya who had advocated active association with the defence of India much against the wishes of Gandhiji, who firmly believed in undiluted pacifism and non-cooperation with the war effort and who had gone to the extent of advising the Britishers through the Viceroy to give up arms and oppose Hitler with spiritual force. When the British refused the Congress offer of cooperation by not conceding their demands, Gandhiji thought of a limited Civil Disobedience Movement to avoid upheaval or disorder in the country. "He proposed that men and women should protest individually against dragging India into the war. They would dissociate themselves from the war effort publicly and court arrest." Vinoba Bhave was selected as the first individual 'satyagrahi'. Pandit Nehru followed him. Soon there was a nationwide movement of individual satyagraha. About 25,000 Indians courted imprisonment. Almost all top ranking leaders of the Congress along with the members of the provincial legislatures were locked up. It may, however, be said that the movement was very rigidly controlled and not a single case of violence was reported. The movement was a simple protest against the way the war was being fought on behalf of India. It did vindicate the right to freedom of speech and expression even during war. Though the movement was non-violent, yet it caused great embarrassment to the Government. Sir Sikandar Hyat Khan, the Chief Minister of the Punjab stigmatized Gandhiji as "stabbing Britain in the back". It was however too callous a remark against the apostle of non-violence, who coined a novel method of dealing with the enemy in distress.

13. EXPANSION OF VICEROY'S COUNCIL

When the symbolic 'Civil Disobedience Movement' was on its climax, the Viceroy expanded the Executive Council by appointing five Indians to it. Thus out of thirteen, eight of its members were to be Indians. The departments of vital importance like Defence, Home and Finance were, however, kept with the British members. A War Advisory Council was also set up. But neither the Congress nor the Muslim League agreed to send their representatives to either of these bodies. The Government did however include its yesmen in those Councils, probably to impress upon the world powers Britishers good intentions of ruling over India through an Executive Council representing majority of Indians. But the real character of these puppet councillors was not hidden from anybody. They were the nominees of the Governor-General and in fact were in his pocket.

They were not responsible to the legislative assembly, hence they were not amenable to the popular control. Moreover, no Department of real importance was entrusted to them.

§ 14. RELEASE OF SATYAGRAHIS

When German attack on Soviet Russia and Japan’s onslaught on the U.S.A. made the war truly global, and the astonishing success of Japan brought the war right on India’s doors, the British Government on the request of President Roosevelt to conciliate the Indian leaders, started releasing the satyagrahis. In December, 1941, Jawahar Lal and Maulana Azad were released. Gandhiji was not, however, very happy over these releases. He was in favour of continuing the satyagraha but he left the matter to the A.I.C.C. to decide. The entry of Japan in the war, on December 7, 1941, and its initial successes induced the A.I.C.C. at its Bardoli session held in the last week of December, 1941 to suspend the movement and defend the country against the imminent danger. The Congressmen were exhorted to remain at their posts, allay panic among the people and thus render all possible assistance in the hour of distress.

§ 15. CRIPPS MISSION (MARCH 22, 1942)

Before we discuss the ‘Cripps Proposals’ it is essential to enumerate briefly the causes leading to the softening of the British attitude towards the Indians and sending of their distinguished politician whose efforts had dragged Soviet Russia in the war on the side of Allies, to India for negotiating with the Indian leaders to resolve Indian political deadlock.

Causes leading to the proposals. (a) Japan’s dramatic entry in the war on December 7, 1941, and sweeping over the Asiatic countries like Philippines, Indonesia, Indo-China, Malaya and Singapore like gushing tides of an ocean embarrassed the British Government. By the end of February, 1942, collapse of Burma also seemed inevitable. India was next to have been invaded. The British Government was hardly in a position to save India from the Japanese onslaught. Churchill, the then Prime Minister of England, had also confessed in the House of Commons that the Britishers had ‘no assured means’ of defending the Indians against any such eventuality. The Indian National Congress had, on the other hand, resolved not to render any help to the British Government, till the latter promised them self-government. Churchill’s recent outburst that Atlantic Charter was not applicable to India, had further shaken the faith of the Indian nationalists in the British leadership. War was practically on India’s doors and the deadlock was still unresolved. Activists like Pt. Nehru were, however, enthusiastic to organise the country for defence provided that the British Government was prepared to respond to their long over-due demand of ‘Swaraj’. The British Government under these most adverse circumstances had no other alternative but to pacify the Indians somehow
or the other and seek their active co-operation.

(b) Chiang Kai-shek's visit to India, in February 1942 and his fervent appeal to the British Government to fulfil the aspirations of the Indians at this critical juncture when Japan was to be confronted within the Eastern Zone, also had a great effect on the British mind.

(c) President Roosevelt also was pasturing the Britishers to do something immediately to secure the willing co-operation of India. In February, 1942, he had categorically stated that the terms of Atlantic Charter applied to all nations of the world. This was in clear contradiction to the views expressed by Churchill sometimes back. Hence, it was difficult for Britain to ignore the advice of an ally.

(d) Even in Australia, Indians cause was being espoused in the Australian Parliament. Mr. Evatt, the Foreign Secretary of Australia, had emphatically stated in the Parliament that self-government should be conceded to the Indians so that they should voluntarily assist Britain in impending danger.

Thus with the deepening of the war crisis and the pressure of world opinion, a stage was set for the next drama—the 'Cripps Mission'. On March 11, 1942, after the fall of Rangoon, Churchill announced in the Parliament that the War Cabinet realized the urgency of "rallying all the forces of Indian life to guard their land from the menace of the invader". Hence Sir Stafford Cripps, who was friendly to some topmost leaders of India and who had established his reputation as a very shrewd politician, was sent to India as a spokesman of the new policy. Cripps reached Delhi on March 23, 1942. Soon after, he met the Viceroy and his Executive Council. Thereafter he had a series of interviews with the top-ranking leaders of all parties. His proposals embodying the British Government's latest attitude to the Indian problems were published on March 30, 1942.

16. TERMS OF THE CRIPPS PROPOSALS

The proposals placed before the Indian leaders can be categorised as those "dealing with long range arrangements" and those "dealing with the present".

(a) Long range arrangements. These embodied the following points: (i) Setting up an elected body charged with the task of framing a new Constitution of India after the cessation of hostilities. (ii) The members of the Lower House of the provincial legislatures would constitute the Electoral College and choose representatives about 1/10 of the number of the Electoral College through proportional representation, as members of the constitution making body. Each community would get seats in the said body in proportion to its population. Indian States would also be authorised to appoint representatives in the same proportion to their total
population as in the case of representatives of British India as a whole and with the same powers as British Indian members. (iii) The British Government undertook to accept and forthwith implement the Constitution framed by this body subject to two conditions—(a) "the right of any province of British India that is not prepared to accept the new constitution to retain its present constitutional position provision being made for its subsequent accession if it so decides." With such non-acceding provinces His Majesty's Government was prepared to agree upon a new Constitution, according them the same full status as Indian Union. (b) The signing of a Treaty which shall be negotiated between His Majesty's Government and the Constitution making body to cover up all matters, arising out of transfer of this responsibility to the Indians and to protect the rights of racial and religious minorities in accordance with the past undertakings given to them by His Majesty's Government. (iv) Provision for the creation of a new Indian union, commanding full status of a dominion with the power to secede if it so chose from the British Commonwealth was also made.

(b) Regarding the present. As regards immediate present, it was stated that "During the war period, the British Government must inevitably have the responsibility for and retain the control and direction of Defence of India as a part of their world war efforts, but the task of organising to the full the military, moral and material resources of India must be the responsibility of the Government of India with the cooperation of the people of India". Moreover, it was emphasised that the leaders of major Indian parties would be invited in the counsels of their country of the Commonwealth and of the United Nations.

From the above proposals, it is quite evident that India after the war, was to enjoy Dominion Status with the right to secede from the British Commonwealth and also to enter independently into treaties with any other nation in the world. The new constitution of India was to be framed by a Constituent Assembly composed of representatives of the British Provinces and the Indian States. The representatives of the Provinces were to be elected whereas those of the States were to be nominated by the Rulers. The provinces had to frame a common constitution but if their differences were too wide to be abridged, they could even keep out and have their self-government. Religious and racial minorities were to be protected. In the words of Chatterjee, "The main features of the draft declaration so far as the future was concerned were, therefore, provisions for Dominion Status with the right of secession, for the Constitution to be framed by a Constituent Assembly, for a possible partition of the country and for a treaty providing for the transfer of power and safeguards for minorities."

1. Chatterjee Amiya: The Constitutional Development of India, p. 82.
WAR AND CONSTITUTIONAL DEADLOCK

417. REACTION OF THE PARTIES TO THE PROPOSALS

After prolonged discussions between Cripps and the leaders of the Indian parties, the proposals were rejected by all sections of opinion in the country though on different ever conflicting grounds which are mentioned in the following lines.

Reaction of the Congress. In fact, the proposals were differently received by the top leaders of the Congress, in the initial stages. Gandhi was opposed to acceptance, Pt. Jawahar Lal Nehru favoured the proposals. Maulana Azad, the President of the Congress, differed from both. In reality “Gandhi ji was opposed to the proposals because of his opposition to war, Jawahar Lal was in favour because of his attachment to the democracies. The latter was also influenced by the appeal which Marshal Chiang Kai-shek had addressed to the Indian people. He was therefore in favour of acceptance of the proposals if this could be done without compromising the Congress position. For Azad, as he states in his “India Wins Freedom”, the only test for the acceptance or rejection of the said proposals was the issue of Indian freedom, i.e., whether the offer of the Government led to the freedom of India? Ultimately, the Congress Working Committee released its resolution on the said offer on April 11, 1942, to the Press which reflected the final and collective approach of the A.I.C.C. towards the said proposals. The main points of the Resolution on the basis of which the offer was rejected are given as below:

(a) National Unity Wrecked. It was realised that certain provisions of the Proposals gravely imperilled the development of a free and united nation and the establishment of a democratic state. The right of the provinces to keep out of the Indian Union and frame their own constitution minimised the chances of the success of the proposed Indian Union and wrecked the Indian unity. While the Committee accepted the principle of not compelling the people in any territorial unit to remain in an Indian Union against their established will, it also proposed that effort should be made to develop a common and cooperative national life. It was therefore stated that “the proposal now made on the part of the British war cabinet encourages and will lead to attempts at separation at the very inception of a union and thus create friction just when the utmost co-operation and goodwill are most needed. This proposal has been presumably made to meet a communal demand but it will have other consequences also and lead politically reactionary and obscurantist groups among different communities to create trouble and divert public attention from the vital issues before the country.” Pt. Nehru also reacts strongly against this mischievous proposal when he remarks, “Any proposal to cut up India into parts

was a painful one to contemplate. It went against all those deeply felt sentiments and convictions that move people so powerfully... Apart from sentiment, there were solid reasons against partition... To think of partitioning India at this stage went against the whole current of modern historical and economic development. It seemed to be fantastic in the extreme.”

(b) Importance to reactionary forces. The proposed constitution of the Constituent Assembly was most undemocratic so far as the representatives from the States were concerned. The Indian princes were to nominate the delegates to the Constituent Assembly. Provision of their election by the people of the States was conspicuous by its absence. The nominated bloc was apt to act as a reactionary force in the Constituent Assembly and like the new constitution to be shaped according to the directions of the British vested interests, thus reducing the real freedom of the citizen of the States to a mere farce. The resolution stated, “The complete ignoring of the ninety millions of the people of the Indian States and their treatment as commodities at the disposal of their rulers is a negation of both democracy and self-determination... such States may in many ways become barriers to the growth of Indian freedom... enclaves where foreign authority still prevails and where the possibility of maintaining foreign armed forces has been stated to be a likely contingency, and a perpetual menace to the freedom of the people of the state as well as of the rest of India”. Pt. Nehru also emphasises the same fact when he remarks “Our acceptance of this principle would have been a negation of our well-established and often repeated policy and a betrayal of the people of the States, who would have been condemned to autocratic rule for a much longer period.”

(c) Breakdown over transitional proposals. There is no denying the fact, that the above considerations were important and fairly vital, yet the Congress might have accepted the offer, had the negotiations on the proposals relating to immediate present not broken down. The draft declaration clearly laid down “During the critical period which now faces India and until the new constitution can be framed, His Majesty’s Government must inevitably bear the responsibility for and retain control and direction of the Defence of India as the part of the world war effort”. The Congress on the other hand had already emphasised through its early Resolution that “the real test of any declaration is its application to the present”. Thus obviously the British offer could not be acceptable to the Congress. Moreover, at an early stage in the negotiations, Cripps had fully assured Maulana Azad, the Congress President, that the provisional national government would be a sort of responsible government. Thus the Executive Council of the Viceroy acting as

the provisional national government would be a purely Indian body and the Viceroy would be simply a constitutional head acting on the advice of the Council. But latter on Cripps resiled from this position and persisted that such a significant constitutional change was impossible till the amendment in the Act of 1935 was effected. In other words, the Viceroy was expected to remain autocratic during the abnormal period. This was really a shocking development for some of the Indian leaders who were enamoured of Cripps' sincerity in the critical stages. In the words of Azad, "I felt, however, that unless *de facto* power and responsibility were given to the Council during the War, the change would not be significant. During my first interview with him, Cripps had given me an assurance on this point and said that the Council would act like a Cabinet. In the course of discussion, it became clear that this was a poetic exaggeration."\(^1\)

(d) *No control over defence.* Moreover, the Congress had demanded that in view of the aggression and invasion that overhangs us, India should have effective control over defence. The British Government on the other hand was evasive on this point. Cripps had told Azad clearly that the "Indian Member" associated with Defence would be mainly responsible for public relations, demobilization, post-war reconstruction, and amenities for the members of the defence forces. The Congress regarded these functions as totally inadequate and advanced a counter-proposal that the Defence member should be in charge of all functions except those to be exercised by the Commander-in-Chief for the conduct of war. Cripps did not agree to these suggestions. Instead, he made certain counter suggestions which were equally unsatisfactory. The following extract of the Resolution reflects the dissatisfaction of the A.I.C.C. over Defence Proposal, "...it has been made clear that the Defence of India will in any event remain under British control. At any time defence is a vital subject; during war time it is all important and covers almost every sphere of life and administration. To take away defence from the sphere of responsibility at this stage is to reduce that responsibility to a farce and nullity and to make it perfectly clear that India is not going to be free in any way and her government is not going to function as a free and independent government during the pendency of war." The Congress, in fact demanded control over Defence on the plea that the war could be fought and won on popular basis. The British Government did not like to repose trust in the subject people in the hour of dire necessity. Thus the talks with the Congress failed. In the words of Pt. Nehru "So far as the present was concerned, the British war cabinet's proposals were vague and incomplete except that they made it clear that the Defence of India must remain the sole charge of the British Government."\(^2\)

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Reaction of Muslim League, Hindu Mahasabha, Liberals and Sikhs and Scheduled Castes. The Hindu Mahasabha condemned very strongly the clever attempt of the British Government at introducing Pakistan through the backdoor. Hence they rejected the proposals outright. The Sikhs were also opposed to the proposals on similar ground. They emphasised that the constitution of Pakistan resulted in the betrayal of the cause of the Sikh community. The Sikh all-Parties Committee in a resolution sent to Cripps on March 31, 1942, stated “Why should not the population of any area, opposed to separation be given the right to accord its verdict and to form an autonomous unit”?

The leaders of the Scheduled Castes apprehended that the proposals, if accepted, would place them under an unmitigated system of ‘Caste Hindu Rule’.

The Liberals like Sir Tej Bahadur Sapru and Dr. M.R. Jaykar presented a Memorandum to Cripps on April 4, 1942.

In the Memorandum, they pressed for the following demands—
(i) Inclusion of an Indian Defence Member in the Governor-General’s Executive Council. (ii) By 75% majority of the Indians present in the Provincial Legislature, question of accession of a province should be decided. (iii) Popular governments in the provinces should be restored. They also remarked, “The creation of more than one union howsoever consistent in theory with the principle of self-determination, will be disastrous to the lasting interests of the country and its integrity and security.”

How Muslim League reacted to it ? The Muslim League also turned down the proposals after their rejection by the Congress. They did, however, express full satisfaction at the recognition of the Muslim claim for separation but insisted that only Muslims should have been allowed to exercise vote in any plebiscite resorted to for determining whether a Province should adhere to or leave the Indian Union. They objected to machinery for the creation of the constitution making body, as well.

§ 18. CONCLUSION

Thus the plan which attempted to please everybody ended in pleasing none. The proposals were withdrawn suddenly on April 11, 1942. The way in which the negotiations failed, was ample proof of Britishers’ evasive intentions. They were never serious about parting with the power. Only the circumstances had compelled them to exhibit sincerity which they could not display well despite their efforts. In the words of Dr. Pattabhi Sitaramayya, the Cripps proposals “embodied different items palatable to different tastes. To the Congress there was the Preamble which spoke of Dominion Status.....and above all the Constituent Assembly and its right of secession even at the outset. To the Muslim League there was the highly comforting provision of any province having the right to secede from the Indian Union. The Princes were not
only left free to join or not to join but were given the sole right to send representatives to the Constituent Assembly... There was no intention to part with power in them."1

Pt. Jawahar Lal Nehru's critical analysis of these proposals is also worth quoting. He remarks, "The more one thought of these proposals, the more fantastic they grew. India became a chequer-board containing scores of nominally independent or semi-independent states, many of them relying on Britain for military protection of autocratic rule. There was to be neither political nor economic unity, and Britain might well continue to exercise dominating power both physically and economically, through the many petty States she controlled."2

A maturer politician like Gandhiji condemned these proposals as "a post-dated cheque" and opposed them right from the very beginning. He is stated to have told Cripps frankly: "Why did you come if this is what you have to offer? If this is your entire proposal to India, I would advise you to take the next plane home." Thus it is obvious, the Government failed to hoodwink Indians. Hence the abrupt termination of the Cripps' negotiations and withdrawal of these proposals was hardly surprising. The proposals had already set the Indians of all shades of opinion thinking whether such a feeble offer which turned out to be a mere repetition of what had already been oft repeated, was made as a propaganda stunt to humour President Roosevelt or respond to Chiang's appeal. Sir Stafford Cripps' sudden departure from India further confirmed the non-seriousness involved in the proposals. Laski correctly said, "... It was psychologically disastrous for Sir Stafford to go to India in 'take it or leave it' mood and on his return practically announce that we washed our hands of the offer. That was bound to make it look as though our real thought was less the achievement of Indian freedom than of a coup de main, in the propagandists' art among our allies who contrasted American relations with the Phillipines against British relations with India."3

In fact, unfair, self-seeking and uncompromising attitude of the British authorities caused the failure of Cripps Mission. Both the British Government and the Government of India were reluctant to transfer power to Indians. With Churchill as the Prime Minister of Great Britain, nothing better could be expected. Cripps was dancing to the tune of 'Whitehall', hence he could not consistently hold to one opinion. The Viceroy and the services were also hostile to any such settlement which would minimise their importance. The 'Statesman' from Calcutta rightly commented, "So long as the India Office and the Government of India draft the proposals, no emissary can succeed; and no effort will be made to cope with hourly increas-

ing danger to this country. The blame lies with India Office and the official section of the Government of India."

Moreover, Cripps' Mission landed on the soil of India under very unfavourable circumstances. Churchill's untimely outbursts that Atlantic Charter applied only to the European nations and Empire had made the Indians suspicious of the British intentions. In such an atmosphere of distrust and suspicion, "a gradualist, constitutional" approach was apt to be a miserable failure. Frank Moraes correctly holds that "Britain was negotiating from a position of weakness and this made her bona fides and generosity suspect in Indian eyes."

The firm and very judicious stand taken by the Congress also resulted in the failure of the Cripps Mission. They could no longer be hoodwinked by the jugglery of words or high sounding jargons. Cripps' diplomacy failed to convince nationalist leaders. Maulana Azad while conversing with J.L. Nehru said, "If we accepted his offer, we might have cause to rue in the future. In case the British went back on their word, we should not even have the justification for launching a fresh struggle. War had given India an opportunity for achieving freedom. We must not lose it by depending upon a mere promise."

Hence the Congress President exposed the hollow proposals, devoid of sincerity when he emphasised the transfer of Defence to the Indian hands as a prerequisite for the assumption of responsibility in war and Cripps showed reluctance to part with the Defence in the darkest hour of their destiny. The myth of sincerity of Britishers was further exploded when the British emissary contradicted himself over the veto power of the Viceroy and showed reluctance to commit that the Viceroy would act as a constitutional head, like the king in Great Britain.

Lord Halifax, the British Ambassador to U.S.A. and an ex-Governor-General of India, in his speech delivered on April 7, 1942 predicted the failure of the Mission and threatened Indians to be deprived of right to self-government for all times to come in case of breakdown of negotiations with Cripps. This most inopportune and unwise speech not only irritated Indians and turned Cripps into stiff-necked envoy, but also drove last nail into the coffin of the Cripps proposals.

Thus all these factors led to the failure of Cripps Mission and sudden departure of Cripps from India. A big void was created. The goal so passionately desired by the nationalists remained distant. Frustration overtook the Indians. The hopes of settlement with the Imperialists ended in smoke.

Quit India Movement to Attlee’s Statement (July, 1942—March, 1946)

1. FAILURE OF CRIPPS PROPOSALS AND ALL ROUND FRUSTRATION

The withdrawal of Cripps Proposals and his sudden departure from India led to widespread disappointment and utter frustration in the country. The Indians felt that the British Government had sent Cripps mission to India because of American and Chinese pressure. Otherwise, Churchill’s cabinet could not be generous enough to listen to Indian point of view. Azad writes, “The long drawn-out negotiations with many parties were intended merely to prove to the world outside that Congress was not the true representative of India and that the disunity of Indians was the real reason why the British could not hand over power to Indian hands.” Evidently, the British Government was in no mood to part with the power.

The country was plunged into a mood of ‘dull passivity’ as no chance was given to the people of India, even to defend their motherland against the imminent danger of Japanese invasion. Hence it was thought essential “to convert the sullen passivity of the people into a spirit of non-submission and resistance. Though that non-submission would be, to begin with, to arbitrary orders of the British authorities, it could be turned into resistance to an invader. Submissiveness and servility to one would lead to the same attitude towards the other and thus to humiliation and degradation.” In utter anguish, Gandhi started building in his mind the idea of “British withdrawal from India”. He wrote in his article “Leave India to God and if that be too much, leave her to anarchy”. In another article in Harijan he said, “Whatever the consequences.....to India, her real safety and Britain’s too lie in an orderly and timely British withdrawal from India”.

In his opinion, complete and immediate withdrawal of the British from India, would put the Allies cause on purely moral basis. He stood for a bloodless end of an unnatural domination and for the ushering in of a new era. By ‘British withdrawal’, he further explained he meant.

withdrawal of British domination only. After the withdrawal of British domination, a treaty between India and Britain will be entered into fixing the conditions on the basis of which British and Allied troops might continue in India during war. In an interview with Louis Fischer on June 9, 1942, Gandhiji said, "There is no half way house between withdrawal and non-withdrawal."

Resolution by the Congress Working Committee, July 14, 1942. On July 14, 1942, the Congress Working Committee met at Warliha and passed resolution demanding the withdrawal of the British from India. Mr. M.A. Jinnah however reacted very strongly against this patriotic resolution. He said that this decision of the Working Committee is "the culminating point in the policy and programme of Mr. Gandhi and his Hindu Congress of blackmailing the British and coercing them to concede which would establish a Hindu Raj immediately under the aegis of the British bayonet thereby throwing the Muslims and other minorities and other interests at the mercy of the Congress Raj".1

A.I.C.C.'s endorsement of Resolution August 8, 1942. The A.I.C.C. endorsed the Resolution of the Working Committee at its Bombay session on 8th of August, 1942. The Committee resolved "to sanction for the vindication of India's inalienable right to freedom and independence the starting of a mass struggle on non-violent lines on the widest possible scale, so that the country might utilize all non-violent strength it has gathered during the last 22 years of peaceful struggle. Such a struggle was inevitably to be under the leadership of Gandhiji and the Committee requests him to take the lead and guide the nation, in the steps to be taken". The Committee, however, made it clear to all concerned that by embarking on a mass struggle, it had "no intention of gaining power for the Congress". The power when transferred to the Indians would belong to the people of India and not to the Congress alone. The resolution suggested the constitution of a Provisional Government whose primary function must be to defend India and resist aggression with all the armed as well as the non-violent forces at its command together with its Allied Powers. The Provisional Government was to be assigned the task of evolving a scheme for the establishing of a Constituent Assembly which was to frame the Constitution acceptable to all shades of opinion in the country. The Constitution would, however, it was envisaged, be Federal in character, though maximum possible autonomy would be given to the individual units. Gandhiji also addressed the A.I.C.C. for about 70 minutes and said that the struggle would be a "do or die" fight. It was to be a sort of non-violent fight and underground or violent activities would be totally discarded. It is said 'he spoke like a prophet in a moment of inspiration, full of fire purifying by its flames and full of the spirit Divine'. His speech and the detailed resolution of the A.I.C.C. created an electric atmosphere in the country. People did

1. Indian Annual Register, pp. 12-13.
not pause to consider what were the implications but felt that at last Congress was launching a mass movement to make the British quit India. In fact, very soon, the resolution came to be described as the "Quit India resolution".1

§ 3. THE UPEHAVAL (1942)

It may be stated, that the A.I.C.C. did not launch the Movement forthwith. Instead, it wanted to wait for Government's reaction. If the Government was responsive to the demand or exhibited conciliatory attitude, further discussions would be resumed. If, however, Government rejected the demand, a struggle would commence under Gandhiji.

Already Miss Slade, Gandhiji's one of the staunchest disciples (popularly known as Mira Ben), was deputed to meet the Viceroy immediately after the passing of the Resolution by the Working Committee and explain to him the contents of the Resolution. She was refused interview on the plea that Viceroy was not prepared to meet the emissary of Gandhiji who had thought in terms of "rebellion" at such a critical juncture. The Private Secretary of the Viceroy, however communicated to her Viceroy's views that Government would not tolerate any rebellion during the war, whether it was violent or non-violent. The interview with the Private Secretary of the Viceroy was reported back to Gandhiji who was now clear about Government's intentions of not yielding at all, come what may. Even then, Gandhiji was planning to write to the Viceroy for exploring the possibilities of a peaceful settlement before launching the Movement and also informing the principal members of the United Nations of his intentions and seeking their intervention for the solution of the impasse.

Leaders' Arrest, Aug. 9, 1942. Unfortunately, the opportunity did not come. Before the daybreak, Gandhiji along with the other members of the Working Committee and forty leading citizens of Bombay were arrested and taken to their destinations scheduled for them. The Congress was declared an illegal organization. All meetings and processions were banned. Congress offices were seized and locked. Congress functions were interdicted.

Mass revolt and bureaucratic repression. The arrest and detention of the Congress leaders led to the outbreak of a mass revolt and a mass frenzy. Communications were dislocated. Railway and police stations were burnt. For about a week, life in Bombay, Ahmedabad, Delhi, Madras, Bangalore and Amritsar was completely paralysed. Students and workers, shopkeepers and house-wives marched through the streets, shouting "Gandhiji ki Jai", "Release Gandhi", "Release our leaders". The peaceful and spontaneous demonstrations were fired upon. Lathi charges were frequently resorted to. The masses, who were in the initial stages peaceful, could no longer

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tolerate coercive methods used to quell the agitation. They came in conflict with the police and even military. "These unarmed and leaderless mobs faced police and military firing according to official statements on 538 occasions and they were also machinegunned from low-flying aircraft. For a couple of months, these disturbances continued in various parts of the country and ultimately gave place to sporadic occurrences. According to the Secretary of State for India, the casualties from August 9 to November 30, 1942 were 1,028 killed and 3,215 seriously injured. The official figures are bound to be an underestimate. In fact, the number of casualties was far larger than recorded. About 100,000 nationalists were put behind the bars within few months. Men were tortured to death. Women were mercilessly dishonoured and molested. Property worth lakhs was confiscated. Heavy fines amounting to Rs. 90 lakhs were imposed upon the demonstrators. In the words of Michael Brecher, "In short, everywhere Government repression was very harsh and police state was established to deal with the danger which constituted the gravest threat to British rule since the Rebellion of 1857." Even Churchill very proudly said in the House of Commons that the disturbances were crushed with all the weight of the Government. Such inhuman repression succeeded in suppressing the 'open rebellion' but the Movement went underground and was constantly getting fillip from leaders like Aruna Asaf Ali, Ram Manohar Lohia and J.P. Narain. Referring to repression Pt. Nehru says, "All conventions and subterfuges that usually veil the activities of governments were torn aside and only naked force remained as the symbol of authority." 1

Blame on Congress. Immediately after the arrest of the Indian leaders, the Government of India passed a resolution; referring to the dangerous preparations by the Congress Party for unlawful and in some cases violent activities. Mr. Amery in his two broadcasts, held Congress responsible for the failure of Cripps Mission and creating civil commotion in the country. On September 10, 1942, Churchill also emphasised before the House of Commons that the Congress Party had given up the non-violence of Gandhi and had taken to revolutionary methods. He went to the extent of saying that the Congress was in league with the Japanese fifth columnists. On February 13, 1943, the Government of India published a booklet named "Congress Responsibility for the Disturbances 1942-43". The booklet threw entire blame for the widespread disturbances on Gandhiji and the Congress.

Gandhi's Reply. All the while, Gandhiji was facing terrible mental agony, in his prison house. The tales of mass frenzy and autocratic barbarism were piercing his heart. He could not, however, restrain himself, from replying to the baseless charges levied against him and his organization, by the British Prime Minister and his

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Government. In his letter to the Additional Secretary, Home Department, Government of India, dated July 15, 1943, he strongly refuted these charges and brought countercharges against the Government. He demanded an impartial enquiry through an impartial tribunal. The Government instead asked him to withdraw the “August Resolution” which he regretted he could not do, as only the A.I.C.C. was empowered to alter it or withdraw it. He, however, expressed a desire to discuss the matter with the Congress Working Committee and wanted the members to be released. But his request was not acceded to.

Mahatma Gandhi’s fast (Feb. 10, 1944) and his release (May 6, 1944). When the Government turned a deaf ear to Mahatma Gandhi’s request to institute an enquiry against the charges levelled against him and the Congress, the cup of Gandhi’s patience was full and he decided to resort to 21 days’ fast on February 10, 1944, against, ‘non-violence’ of the Government and for ‘self-purification’. After thirteen days, his condition deteriorated considerably and the doctors gave up all hopes of his survival. But Government’s attitude was most callous and indifferent even then. To undertake the fast was in their view to court certain death. The Government thought that this was Gandhi’s intention and he wanted the Government to be held responsible for his death. It is said that authorities had made all arrangements for his cremation in the Aga Khan Palace and deliverance of his ashes to his son. Such a barbaric attitude of the Government led to the resignation of these members of Viceroy’s Executive Council: Modi, Sarkar and Aney. “Gandhiji, however, upset all the calculations of the Government and his physicians. The extraordinary capacity for suffering he had shown on other occasions was displayed in an amazing degree. His stamina overcame the challenge of death and after twenty one days, he broke his fast.” But his health got shattered completely. The Civil Surgeon after examining him revealed that he was not likely to survive for long. When the Viceroy received the Doctor’s report, he thought it advisable to release Gandhi and save the Government from a big blame which might have been affixed upon them for his death. Otherwise too, the war crisis was almost over and victory was in sight. Hence Gandhi’s release was not considered detrimental to the interests of the Britshers. Rather his presence was expected to serve as a check on the violent activities of the Indian citizens. Thus on May 6, 1944, Gandhi was released. Since Gandhi was too weak, he did not take any effective step for some months.

Gandhi again in the field. But as soon as he improved a bit, he again jumped in political activities. He made a fresh attempt for reconciliation with the Muslim League. In the words of Azad, “Gandhi’s approach to Mr. Jinnah on the occasion was a great political blunder. It gave a new and added importance to Mr.

1. India Waist Freedom, p. 91.
Jinnah which he later exploited to the full.” Gandhi met Mr. Jinnah in September 1944 to discuss what is commonly termed as the “Rajai Formula”.

§ 3. RAJAI FORMULA

Rajai Formula, which is associated with C. Rajgopalachari who had resigned from the Congress on account of his open advocacy for the acceptance of Pakistan and who had been concentrating on working out the formula during 1942-44, in fact originated from M. Jinnah in September 1942, and was passed on to Rajgopalachari by an ex-General Secretary of Hindu Mahasabha. Following were the main provisions of the formula: (i) The Muslim League was to accept the Indian demand for independence and cooperate with the Congress in the formation of Provisional Interim Government, for the transitional period. (ii) After the termination of hostilities a Commission would be appointed for demarcating contiguous districts in the North-West and East of India where the Muslims were in absolute majority. In the areas, thus demarcated, a plebiscite of all the inhabitants held on the basis of adult suffrage or any other practical franchise would decide the issue of separation from Hindustan. If the majority decided in favour of forming a sovereign state separate from Hindustan, such a decision would be implemented without prejudice to the rights of the districts on the border to choose to join either State. (iii) All political parties would be at liberty to discuss their point of view before the plebiscite was held. (iv) In the event of separation, a mutual agreement for jointly safeguarding Defence, Commerce and Communications would be entered into. (v) Any transfer of population would be on voluntary basis. (vi) These terms would be binding only if power was transferred by Britain in toto. (vii) Gandhi and Jinnah agreed to these terms and would endeavour to get the approval of the Congress and Muslim League for these terms.

Rejection of the formula. The meetings between Gandhi and Jinnah lasted for the entire month of September but they did not prove fruitful. Jinnah in fact had assumed undue airs. Of course, the fault lay with Gandhi who gave him importance by addressing him as Qaid-i-Azam and Jinnah insisted that Pakistan must include all the six Muslim majority Provinces i.e., Sind, N.W.F.P., Panjab, Bengal, Assam and Baluchistan. He was opposed to non-Muslims’ participation in the proposed plebiscite. He expressed reluctance to accept joint control of important subjects like Defence, Commerce and Communications. He even insisted on having a corridor linking the Western and Eastern parts of Pakistan. He denounced the Rajai’s formula as making provision for ‘maimed, mutilated and moth-eaten Pakistan’. Thus ended the negotiations between Gandhi and Jinnah who “exploited the situation fully and built up his own position but did not say or do anything which could in any way help the cause of Indian freedom.”

1. Ibid., p. 93.
2. Ibid., p. 94.
§ 4 "THE WAVELL PLAN" AND "SIMLA CONFERENCE" (JUNE-JULY 1945)

In October, 1943, Lord Wavell stepped in the shoes of Lord Linlithgow as the Governor-General of India. He was already aware of the Indian problems, since he had played a very prominent part not only as Commander-in-Chief of India but also as a negotiator when Cripps Mission visited India. Soon after his appointment, he had declared that "he was bringing a number of things in his hand bag". He, however, did not open his bag before July 14, 1945. After his visit to England and consultation with His Majesty's Government, he placed a new solution before Indian leaders which is popularly known as "Wavell Plan". Before we discuss the plan, it is essential to explain briefly the factors leading to such a generous offer.

Factors leading to the offer. (i) By the beginning of 1945, the war situation in Europe eased considerably and the Allies Victory was well in sight. But the war in Asia showed no sign of an early termination. For the U.S.A. the defeat of Japan was more important than the defeat of Hitler. The Americans were conscious of the fact that Japanese defeat would be much easier if full support of India could be secured. So the Americans exerted pressure on U.K., still more vigorously, for solving the Indian political deadlock. (ii) Within India, discontent was aggravating as spectres of famine and starvation had started haunting the Indian soil. In Malabar, Bijapore, Orissa and even in rich province like Bengal, lakhs of Indians had been victims of famine. It was officially estimated that 1½ million persons perished and 4½ millions more suffered greatly during 1943-44. In the words of Pt. Nehru, "The famine unveiled the picture of India as it was below the veneer of the prosperity of a small number of people at the top—picture of poverty and ugliness of British rule. That was the culmination and fulfilment of British rule in India." Thus the economic deterioration had reached climax. The tragedy of Bengal and the famines of Orissa, Malabar and other places were inexcusable. Any more delay in postponing the negotiations on some 'Plan' would have further deteriorated the conditions. (iii) The military officials of the Allied Forces had unanimously opined that war with Japan might last for a year or two after the end of war in Europe. India, in such an eventuality could be a nice base for the Allied Forces to shatter the Japanese invaders. Lord Wavell, himself a veteran soldier, realized the strategic importance of India, hence he himself exerted pressure on the Government to find a way out of the political impasse. He personally went to U.K. and carried on negotiation with the British Government for ten weeks. (iv) In the meantime, war in Europe had terminated and the 'Caretaker Government' under Churchill had soon to come to an end as General Elections were to be held. The Conservative Prime Minister was

being publicly denounced in U.K. for his most unfavourable attitude towards Indian problem and the public was getting favourably inclined to the Labour Party. Hence a consummate political strategist as he was, Churchill was keen to wash off his guilts and steal the thunder from the Labour Party by mitigating the Indians’ grievances to some extent. (v) According to the latter critics, the underlying object of the “offer” was to make Muslims and Hindus’ differences prominent and make them appear as the real cause of the Indian stalemate.

In pursuance of the above objects simultaneous statements were issued by Lord Wavell, the Viceroy, and Amery—the Secretary of State for India on June 14, 1945.

§ 5. TERMS OF OFFER

Following were to be the terms of offer:—(i) With an idea to advance India towards her goal of full self-government, Viceroy’s Executive Council will be reconstituted in such a way that all its members except the Viceroy and the Commander-in-Chief would be Indian political leaders, (ii) The portfolio of External Affairs (except for Frontier and Tribal matters) would be placed under the charge of an Indian Member of the Council, (iii) The Council would have a balanced representation of main communities including equal proportions of Muslims and caste Hindus, (iv) The Executive Council would be a sort of an interim National Government and the Governor-General would use his veto power reasonably, (v) A British High Commissioner would be appointed in India as in other Dominions—to look after British commercial and other interests, (vi) The proposals would not “prejudice or preclude the essential form of the future permanent constitution or Constitution for India” which must be framed by the Indian themselves, (vii) The interference of the Secretary of State for India was to be reduced to the minimum and was to be exercised only in the interests of India, (viii) It was hoped that if the Indian leaders accepted the plan, section 93 would be scrapped in the Provinces and normal constitutional Governments would be re-established. That would make holding of General Elections in India easier.

§ 6. SIMLA CONFERENCE

To create a congenial atmosphere for the discussion of the plan, all the political leaders were released. Invitations were extended to the political leaders of all important shades of opinion to attend the conference at Simla on June 29, 1945. The negotiations were carried on for about two weeks with intermittent breaks. On July 14, Lord Wavell made an announcement of the negotiations and the whole episode foundered on the rock of Jinnah’s intransigence.

Why the Conference failed? There is no denying the fact that the Conference started in a very hopeful atmosphere. In a state banquet, Wavell, while talking about Congress said, “Whatever
their political opinion or their differences with the Government. Congress leaders were gentlemen." Naturally, these remarks of the Viceroy endeared him to the Congress at such a crucial hour. The Congress President strongly advocated Wavell Plan's acceptance before the Congress Working Committee, which met at Simla on the 24th afternoon. He said, "The war in Europe was now over and even Japan could not last very long. Once the war was over, the British would have no special reason to seek our cooperation. It was therefore not desirable for us to reject Lord Wavell's offer." Though Hindus who constituted 70% of the total population were bracketed with 30% of the Muslim population, even then the Congress which had majority of Hindus as its adherents swallowed the bitter pill, and, for attaining self-government for India, accepted the most undemocratic and unjust provision of parity between Hindus and Muslims. The Congress however wanted to nominate one Muslim, one Parsee, one Christian and two Hindus, out of the quota of 5 allotted to it but Jinnah stood in the way. He claimed Muslim League to be the sole representative of the Muslims. Hence he objected to the Congress's move of nominating a Muslim as the member of the Viceroy's Executive Council. The Congress was a national body, and could not agree to the most unreasonable approach of Mr. Jinnah. Lord Wavell also dubbed this attitude as unreasonable. But he did not assert. Instead he said, "that this was a matter which should be decided between the Congress and the Muslim League and it would not be proper for either the Government or for himself as an individual to enforce a decision on either party." This was a very evasive attitude and in contradiction to what Viceroy had told the Congress President on his meeting him before the Conference. The Viceroy had said to Azad, "there was no question of Government supporting the League. If the leaders of the Muslim League had any such ideas, they were completely in the wrong......the Government was and would remain neutral". Being a silent spectator to an unreasonable demand of the League, Viceroy indirectly helped the League to sabotage the so-called generous offer.

Even Khizar Hyat Khan, the Chief Minister of the Panjab, asserted the right of the Unionists of the Punjab to nominate one Muslim representative out of quota of five to the Viceroy's Executive Council. But Jinnah was obstinately sticking to his diehard position. He was emphasising time and again that the Plan was a snare to weaken the League's claim to Pakistan and aimed at wrecking their unity. He apprehended that all the minorities in the Executive Council would very likely vote with the Congress on Pakistan issue and thus League would suffer a defeat because of holding only 1/3rd of the seats in the Executive Council. He further

3. Ibid.
remarked that he would not like to depend upon Governor-General's veto for the protection of the Muslim interests. Thus it is obvious Jinnah's stubbornness impeded the success of the plan. It was for the first time that negotiations with the Britishers failed not because of the deadlock on political issue but because of communal differences. In the words of Azad, "The Simla Conference marks a breakdown in Indian political history. This was the first time that negotiations failed not on the basis political issue between India and Britain but on the communal issue dividing different Indian groups." But in his statement to the Press, Azad as the Congress President had made it crystal clear that though the attitude of the League had been responsible for the failure of the Conference, yet the British Government could not absolve themselves of responsibility of the communal problem causing failure of this progressive step. In fact, the elections in England were over, resulting in Churchill's defeat, hence Wavell could no longer show much of interest in the success or failure of the plan. The 'Plan' obviously an election stunt could not endear the Conservative Government to the British masses, hence it could hardly give it any more fillip. Dr. Sitaramrayya very nicely portrayed the failure of the Conference by comparing it with the failure of Cripps Mission. He writes, "Three years back in April, 1942, it was the Congress that broke the Cripps Mission, if it was not Cripps himself who broke his own. In Simla, it was the League that broke the Wavell Plan although Lord Wavell took blame upon himself."

7. THE PLAN NOT BARREN OF GOOD RESULTS

Though the Wavell Plan failed to bear any fruit, yet it was not absolutely barren of good results. It exposed Jinnah. It was quite evident that communalism running in his veins would not allow him to agree to anything short of Pakistan. The Conservative Government's imperialistic tendencies also were unmasked once again. Conservative Government's policy of 'Divide and Rule' was once again in the limelight.

Secondly, the release of political leaders infused new life in the leaderless masses who had faced barbaric atrocities of the British Government when their leaders were behind the bars. Three years of the Movement and its subsequent suppression had kept the country in the mood of despair and despondency. The Government had done its utmost to discredit their leaders like Gandhi, Azad and Nehru and certain people had started doubting the wisdom of the Congress in launching "Quit India Movement". Immediately after their release, Pt. Nehru and Sardar Patel dispelled the doubts and fears of the people by delivering inspiring speeches. They applauded the Movement and the heroic deeds of the people, even when their leaders were locked up. The frustrated people were once again on

2. Dr. Pattabhi Sitaramayya: History of the Indian National Congress.
their heels to make sacrifices for emancipating their motherland from the clutches of the rapacious imperialists. The Working Committee of the Congress passed a Resolution in December, 1945. The resolution stated "If many acts of heroism and sacrifice are to their credit there were acts done which could not be included in non-violence." People were consoled and were once again with the Congress.

§ 8. I.N.A. TRIALS AND MUTINY IN NAVY, ARMY AND AIR FORCE

I.N.A. trials created a history. The story of the "Azad Hind Fauj" under the leadership of patriotic son of our soil—Subhaah Chander Bose, and the trial of some of its captured commanders in the historic Red Fort of Delhi also had electric effect. The trials of Shah Nawaz, Dhillon and Sehgal commenced in November, 1945, and the Congress took up cudgels in its hands to defend these patriots imbibing true national spirit, Bhuilabhai Desai, leader of the Congress Party in the Central Legislature was the Chief Defence Counsel. Sir Toj Bahadar Sapru, despite his ailing health attended the trial on the opening day. Pt. Jawahar Lal Nehru also donned the robes of a barrister after a period of 30 years to defend the brave soldiers. The trials at the historic Fort of Mogul Emperor acquired a dramatic appearance. People in thousands used to await eagerly the decision of the Court Martial. 'Jai Hind' the slogan of the Indian National Army, became the most favourite slogan of the nation. Since the accused represented all the three important communities, the trial attracted huge spectators. All the three were awarded death punishment but the Government did not have the courage to execute the sentences. Under the pressure of public opinion, the Viceroy had to pardon them, in the exercise of his special powers. Michael Brecher opines that the I.N.A. episode weakened the prestige of British officers and undermined the dash of the army. Moreover these trials shook England's faith in the loyalty of the Indian soldiers who constituted the backbone of British Government in India. Undoubtedly, it was another feather in the Congress cap.

Naval Mutiny. During the winter of 1945-46, another event of far-reaching importance occurred which shook the citadel of British Imperialism. The R.A.F. revolted at 'Dum Dum' airport and other important stations in India and the Middle East. This was followed by hunger strikes in Royal Indian Air Force. A few cases of indiscipline had occurred in the Royal Indian Army as well. On February 18, 1946, mutiny occurred at Bombay at the leading base of R.I.N. and for five days, both the Naval Base and the city gave a look of battle-field. The officers resorted to Direct Action. They served notice to the Government that unless their demands were fulfilled they would resign in a body. Mass meetings were arranged. These disturbances in the Army, Navy and Air Force not only gave a staggering blow to the British prestige but also opened the eyes of the alien masters. It was now an established fact that Indians would no longer remain under the foreign yoke. In the words of
Azad, because of whose intervention the Naval Officers dispute was finally settled, ‘The revolt of the naval officers in Bombay was of special significance in the context of existing circumstances. This was the first time since 1837, that a section of Defence Forces had openly rebelled against the British on a political issue. The rebellion was not an isolated event, for earlier there had been formation of Indian National Army under Subhash Chander Bose out of Indian prisoners of war.....All these developments convinced the British that they could no longer rely on the Armed Forces unless the political problem of India was satisfactorily solved.’

9. AFTER SIMLA CONFERENCE

In order to review the situation in the country and restore normalcy Lord Wavell convened a Conference of the Provincial Governors, on the 1st of August, 1945. Question of restoration of provincial autonomy and end of Governors’ rule were discussed in the Conference. Soon after general elections to the Central and Provincial Legislatures were announced. The defeat of Conservative Party and victory of Labour Party in the General Elections, held in U.K., changed the situation considerably. In reply to the telegram of congratulations of Maulana Azad, Attlee, the Labour Prime Minister, said that the Labour Party would do its best to arrive at a right solution of the Indian problems. Thus the Indian leaders pinned hopes in the new British leaders like Attlee and Lord Pathick Lawrence who were to be the Prime Minister and Secretary of State for India, respectively. Lord Wavell was summoned by the Labour Government to explain the Indian problem and was tutored by the Government regarding the future line of action. On his return from London, Lord Wavell broadcast a message to Indians on September 19. He said, ‘His Majesty’s Government are determined to do their utmost to promote in conjunction with the leaders of Indian opinion the early realization of self-government in India. His Majesty’s Government earnestly hope that ministerial responsibility will be accepted by political leaders in all provinces. It is also the intention of His Majesty’s Government to convene as soon as possible a constitution making body.’ Prime Minister Attlee also broadcast a similar message from London on the same day.

The Congress Working Committee met at Poona in September and after a few days of heated discussion adjourned to meet at Bombay. Both in the A.I.C.C. and the Working Committee, divergence of opinions, as regards the future line of policy, were discernible. Ultimately under the influence of Maulana Azad, the Congress decided to contest the elections. The Working Committee was authorised by the A.I.C.C. to prepare an Election Manifesto, extract of which we are tempted to quote, in the following few lines.

QUIT INDIA MOVEMENT TO ATTLEE'S STATEMENT 285

§ 10, ELECTION MANIFESTO OF THE CONGRESS

"For 60 years the National Congress has laboured for the freedom of India. During this long span of years, its history has been the history of the Indian people. From these masses it has gained power and strength and developed into a mighty organisation, the living and vibrant symbol of India's will to freedom and independence. By service and sacrifice it has enshrined itself in the hearts of our people."

"The career of the Congress has been one of both constructive effort for the good of the people and of increasing struggle to gain freedom. "The Congress has stood for equal rights and opportunities for every citizen of India man or woman. It has stood for the unity of all communities and religious groups and for tolerance and goodwill between them..." "The Congress has envisaged a free democratic state with the Fundamental Rights and civil liberties of all its citizens guaranteed in the constitution. The constitution, in its view, should be a federal one with a great deal of autonomy for its constituent units and its legislative organs elected under universal adult franchise."

"A hundred and fifty years and more of foreign rule have arrested the growth of the country and produced numerous vital problems that demand immediate solution. The most vital and urgent of India’s problems is how to remove the cause of poverty and raise the standards of the masses. For this purpose, it will be necessary to plan and co-ordinate social advance, in all its many fields to prevent the concentration of wealth and power in the hands of individuals and groups."

"In international affairs, the Congress stands for the establishment of a World Federation of free nations. Till such time as such a Federation takes shape, India must develop friendly relations with all nations and particularly with her neighbours on the East and the West and the North."

"On 8th August, 1942, the All India Congress Committee passed a resolution, since then famous in India's history. By its demands and challenge the Congress stands today. It is on the basis of this resolution and with its battle cry that the Congress faces the elections for the Central and Provincial Assemblies. "The Central Legislative Assembly is a body with no power or authority and is practically an advisory body whose advice has been constantly flouted and ignored. Yet with all these and other handicaps and drawbacks the Congress has decided to contest the elections. Therefore, in this election, petty issues do not count, nor do individuals nor sectarian cries—only one thing counts, the freedom and independence of our motherland from which all other freedoms will flow to our people."

"So the Congress appeals to the voters for the Central Assembly
all over the country to support the Congress candidates in every way at the forthcoming Elections..."

Results of Elections. As was expected, the Congress swept the polls and captured almost all General and a few Muslim seats. A large number of Congress candidates were returned unopposed. In the Sikh constituencies in the Panjab, it could capture only 3rd of the seats. In all the Hindu majority Provinces save U.P., the Muslim candidates contesting elections on the Congress ticket suffered heavy defeats when pitted against Muslim League candidates. In Assam, also, the Congress Muslim candidates, to some extent, captured seats. In the Panjab, the Muslim League emerged out as the single largest party whereas the Unionist candidates could not win more than ten seats. In Bengal, the Muslim League secured signal success. In Sind also, the Muslim League captured majority of seats whereas the pro-Congress element constituted only a minority. The Muslim League however suffered defeat in N.W.F.P. where 'Budshah Khan' was acknowledged as the beloved leader of the Pathans. Though the Indian National Congress emerged out as the strongest party in the country, yet the importance and popularity of the Muslim League amongst the fanatic and orthodox Muslim community was also established beyond any doubt.

On the basis of the results of the Elections, Congress ministries were formed in all the Hindu majority Provinces. In N.W.F.P. "Khudai Khidmatgars" under the guidance of Khan brothers who were actively associated with the Indian National Congress formed the ministry. In Bengal and Sind, Muslim League ministries were installed in. In the Panjab, where the Muslim League had the largest majority, all other parties joined hands against the League and under the Unionist Chief Minister, a coalition of Congress, Unionist and Akalis came into existence. The credit for relegating the Muslim League to the background and setting up a Congress ministry in collaboration with other victorious elements in the Panjab Assembly to a great extent goes to Maulana Azad whose statesmanship and skill in negotiations made such a coalition possible.

§ 11. ATTLEE'S STATEMENT IN THE HOUSE OF COMMONS

Labour Government's earnestness to solve such a complicated Indian problem is obvious from another fact which we cannot help stating. During the winter of 1945-46, the Labour Government appointed a Delegation of some skilful Parliamentarians and sent them to India to make a close and critical study of General Elections in India and report whether Indians deserved an immediate transfer of power.

Probably on the basis of the Delegation's report and close study of Elections, Attlee issued a statement on March 15, 1946 in the House of Commons. The statement has a great historic value
since he clearly admitted the Indians' right of self-determination and also of framing constitution for free India.

He even said that India's membership of the Commonwealth would be on voluntary basis. Most important of all he made it clear that the minorities would not be allowed to veto the advance of the majority though the rights of minorities also would be safeguarded. Thus it was now made clear to the Muslim League that its undue obstinacy and persistence would not be allowed to impede the progressive constitutional development of the country. It was really very comforting, though temporarily, since the future events reflect that Attlee did not stick to his words and allowed Jinnah to obstruct the ushering in of an independent era, till his demand for Pakistan was conceded. The Prime Minister also made an announcement that a commission consisting of the high ranking Cabinet Members—Lord Pathick Lawrence, Sir Stafford Cripps and A.V. Alexandar would be visiting India shortly and discuss with the Indian Leaders the framing of an Indian Constitution and thus help India to attain her freedom as speedily as possible.
The Cabinet Mission Plan and After
(March 1946 - August 1947)

1. ARRIVAL OF THE MISSION IN INDIA

The Cabinet Mission landed at Karachi airport on March 23, 1946, and arrived at Delhi the next day. Lord Pathick Lawrence stated at Karachi: "We are convinced that India is on the threshold of a great future". The Commission set to work with immediate effect. In all, 472 leaders were interviewed. The representatives of all shades of opinion were heard. The Congress and the Muslim League were, however, given main consideration. After prolonged discussions in New Delhi, a tripartite conference was held at Simla. The Congress, the Muslim League, and the Commission including the Viceroy met at Simla on May 2, 1946 and a number of formal and informal conferences took place till May 12. After about two weeks, the Commission came back to Delhi. Since the Indian political parties could not come to an agreed settlement, the Cabinet Mission held discussions among themselves and framed their proposals. These proposals embodied in CabinetMission Plan were announced by Mr. Attlee in the House of Commons on May 16, 1946. Later, on June 16, 1946, procedure for the formation of Interim Government was also outlined.

2. CABINET MISSION PROPOSALS

The State Paper containing the proposals of the Cabinet Mission first of all stated why the conflicting demands of the Congress and the Muslim League were not accepted. Before coming to the proposals, we deem it essential to give a brief reference of League's and Congress's proposals which could not be acceded to.

Pakistan ruled out. The Mission stated that having been impressed by the very genuine anxiety of the Muslims to save themselves from the perpetual Majority rule, the League's demand for a separate and fully independent sovereign state of Pakistan was examined by it but rejected on the following grounds: (i) Pakistan would not solve the Minority problem as the number of Muslims in the remainder of British India and the number of non-Muslims in Pakistan would be considerable. (ii) There was no justification for including within
sovereign Pakistan those districts of the Punjab and of Bengal and of Assam in which non-Muslim population was predominant. Every argument that could be used in favour of Pakistan could with the same force be used for the exclusion of non-Muslim areas from Pakistan. (iii) The small sovereign state of Pakistan confined to the Muslim majority areas alone would not be an acceptable solution of the communal problem as it would lead to partition of the Punjab and Bengal which would be contrary to the wishes and detrimental to the interests of the inhabitants of these areas. (iv) The division of the Punjab would lead to the division of the Sikh community which mostly belonged to the Punjab. That would be most unjust and unfair to that community. (v) Even from administrative, economic and military point of view, Pakistan was hardly a feasible proposition. It would lead to disruption of the transportation, the Post and Telegraph system and the Defence Forces of the country which would result in inefficiency of administration and wreck the national unity. (vi) It would create problems for the Indian States to join a divided British India. (vii) Geographically speaking, the two halves of Pakistan would be separated by hundreds of miles of stretch of land under India which would make communication between these two arms of Pakistan during war and peace difficult. Rather, they would be at the mercy of India.

In view of the above considerations, the Mission found themselves unable “to advise the British Government that the power which at present resides in British hands should be handed over to the two entirely separate sovereign bodies”.

Congress Scheme also unsound. The Cabinet Mission carefully examined the Congress Scheme which made following suggestions: (i) Constitution of an Indian Union under which the provinces were to have full autonomy and only three subjects namely Defence, Foreign Affairs and Communications were to be entrusted to the Centre. (ii) In case the provinces desired to participate in administrative and economic planning on a large scale, they could cede more optional subjects to the Centre. (iii) Formation of a single Constituent Assembly to be elected by the Provincial Assemblies by single transferable vote. Representatives of the States were to be chosen by a method to be decided later on. (iv) Grouping of Provinces if so desired by the Provinces. (v) Provision for the revision of the Constitution at ten-yearly intervals. (vi) The passage of any matter regarding any communal issue to require the consent of a majority of members of the community or communities concerned present and voting separately. (vii) Referring of a dispute over constitution-making to arbitration. The Congress Plan was also set at naught on the plea that this scheme “would in our view present considerable constitutional disadvantages and anomalies”. Maulana Azad, however, while recommending the Cabinet Mission’s proposals to the Congress Working Committee, claimed that “the Cabinet Mission Plan was basically the same as the scheme Congress
had accepted.

Since an agreed formula could not be conceived by the conflicting parties of India, the Cabinet Mission published their own proposals in the State Paper on May 16, 1946. Following are some of its main recommendations.

**Its own proposals.** (a) *A union of India.* (i) There shall be a Union of India, including both the British India and the Indian States, which should deal with the following subjects: Foreign Affairs, Defence and Communications, and should have the power necessary to raise the finances required for the above subjects. (ii) The Union should have an Executive and a Legislature constituted from British India and States' representatives. Any question raising a major communal issue in the Legislature should require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all the members present and voting. (iii) All subjects other than the Union subjects and all residuary powers should vest in the Provinces. (iv) The States will retain all subjects and powers other than those ceded to the Union. (v) Provinces should be free to form groups with Executives and Legislatures and each group could determine the provincial subjects to be taken in common. (vi) The Constitutions of the Union and of the Groups should contain a provision whereby any provision could by a majority vote of its Legislative Assembly, call for a reconsideration of the terms of the Constitution after an initial period of ten years and a ten-yearly intervals thereafter.

(b) *Provisions regarding Constitution making Body.* (i) For setting up a constitution-making body, each province was to be assigned a total number of seats proportionate to its population, roughly in the ratio of one to a million. Seats allotted to each Province shall be divided between the various communities in proportion to their population in that Province. Only three classes of Electorates were recognised—General (all others than Muslims and Sikhs), Muslims and Sikhs (only in the Punjab).

According to this principle, the Constituent Assembly was to consist of 292 members from the British Indian Provinces and 4 from Chief Commissioners' Provinces. The Indian States were to be represented by 93 members in maximum. The representatives of British India were distributed among the various Provinces and communities as under:

<table>
<thead>
<tr>
<th>Province</th>
<th>General</th>
<th>Muslims</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Madras</td>
<td>45</td>
<td>4</td>
<td>49</td>
</tr>
<tr>
<td>Bombay</td>
<td>19</td>
<td>2</td>
<td>21</td>
</tr>
<tr>
<td>United Provinces</td>
<td>47</td>
<td>8</td>
<td>55</td>
</tr>
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</table>
THE CABINET MISSION PLAN AND AFTER

<table>
<thead>
<tr>
<th>Province</th>
<th>General</th>
<th>Muslims</th>
<th>Sikhs</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bihar</td>
<td>31</td>
<td>5</td>
<td></td>
<td>35</td>
</tr>
<tr>
<td>Central Provinces</td>
<td>16</td>
<td>1</td>
<td></td>
<td>17</td>
</tr>
<tr>
<td>Orissa</td>
<td>9</td>
<td>0</td>
<td></td>
<td>9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>167</strong></td>
<td><strong>20</strong></td>
<td></td>
<td><strong>187</strong></td>
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</table>

<table>
<thead>
<tr>
<th>Province</th>
<th>General</th>
<th>Muslims</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Punjab</td>
<td>8</td>
<td>16</td>
<td>28</td>
</tr>
<tr>
<td>N.W.F.P.</td>
<td>0</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Sind</td>
<td>1</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>9</td>
<td>22</td>
<td>35</td>
</tr>
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</table>

Section C

<table>
<thead>
<tr>
<th>Province</th>
<th>General</th>
<th>Muslims</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bengal</td>
<td>27</td>
<td>33</td>
<td>60</td>
</tr>
<tr>
<td>Assam</td>
<td>7</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>34</td>
<td>36</td>
<td>70</td>
</tr>
</tbody>
</table>

Thus the total strength of the Constituent Assembly was to be 187 + 35 + 70 = 292 members of British Provinces + 93 representatives of the States + 4 representatives of Chief Commissioners' Provinces—one each from Delhi, Ajmer-Marwara, Coorg and British Baluchistan = 389.

(ii) The representatives of British Indian Provinces were to be elected by each Provincial Legislative Assembly communitywise, through proportional representation by a single transferable vote. As regards the representatives of the States, the exact method of their selection was to be settled by consultation. At the preliminary stage, the States were to be represented by a Negotiating Committee. (iii) The Constituent Assembly, at its first meeting, was to elect the Chairman and other office bearers, the Advisory Committee on the Rights of Citizens, Minorities and the Tribal and Excluded Areas and divide the Provincial Representatives into three sections A,B,C as referred above. (iv) These sections were then to settle the Provincial constitutions for the provinces included in each section and also to decide whether a Group Constitution should be set up for those provinces and if so with what Provincial subjects the Group should deal, (v) As soon as the new constitutional arrangement came into operation, each Province was to be at liberty to come out of the Group, assigned to it. Such a decision was however to be taken by the new Legislature of the Province after the first General Elections under the new constitution. (vi) The Representatives of the Sections and the Indian States were then to re-assemble for framing the Union Constitution. In the Union Constituent Assembly, resolutions varying the distribution of subjects between the Cen-
tre and the Provinces or raising any major communal issue were to be passed by a majority of representatives present and voting, of each of the two major communities.

(c) Provisions regarding India's Joining Commonwealth. A treaty will be negotiated between the Union Constituent Assembly and United Kingdom to provide for certain matters arising out of the transfer of power. The Commission expected India to embrace and retain membership of the Commonwealth of Nations, though she was given an option to come out of it whenever it so desired.

(d) Provision regarding Interim Government. Pending the completion of the work of constitution making, the Cabinet Mission proposed to set up an Interim Government of 14 members representing major political parties in the ratio of 6 Congressmen, 5 Leaguers, 1 Indian Christian, 1 Sikh and 1 Parsae. The Interim Government was to hold all the portfolios including that of 'War.' The British Government was however to extend full cooperation to the Interim Government in administrative matters and to bring about transfer of power as speedily and as smoothly as possible.

(e) Provisions regarding Indian States. After the transfer of power to the British Indian Provinces, Great Britain would neither retain paramountcy over the Indian States itself nor transfer it to the new Government of British India. It was however hoped that the States would negotiate their way in the Union Government.

(f) General. (i) The British Government undertook to implement the Constitution, drawn by the Constituent Assembly. (ii) The Advisory Committee on the rights of citizens, minorities and Tribal and Excluded Areas was to give due representation to the interests affected and report to the Constituent Assembly the list of Fundamental Rights, the clauses for the protection of Minorities and a scheme for the administration of the Tribal and Excluded Areas. It was to advise whether those rights were to be incorporated in the Provincial Group or Union Constitution.

§ 3: CRITICAL APPRAISAL OF THE PLAN

The Cabinet Mission plan can be discussed from different angles. According to Gandhi, "It is the best document the British Government could have produced in the circumstances...The authors of the document have gathered......the minimum they thought would bring the parties together for framing India's Charter of Freedom." In the words of Maulana Azad, "The acceptance of the Cabinet Mission Plan by both Congress and Muslim League was a glorious event in the history of the freedom movement in India. It meant that the difficult question of Indian freedom had been settled by negotiation and agreement and not by methods of violence and conflict."

The above two statements of two topmost leaders of the Congress reflect that the Cabinet Mission Plan had its value. Hence before coming to its drawbacks, we will say a few words about the merits of the Plan.

Merits of the Plan. (a) An Honest Attempt. There is no denying the fact that the plan was a sincere and an honest attempt to solve the Indian political deadlock. It was really the best possible solution under the circumstances. The conflicting parties embracing conflicting ideologies and advocating divergent views could not otherwise be satisfied. Even Jinnah who was an embodiment of obstinacy admitted that there could be no fairer solution of the minority problem than that contained in the Cabinet Mission Plan.

(b) Pakistan declared unstable and unviable. In unequivocal terms, the Cabinet Mission stated that they were opposed to the idea of partition of India since it neither solved the minority problem nor catered to administrative efficiency. It wrecked the national unity and disintegrated the transport, the post and telegraph and the Defence Services. Such an approach was highly appreciated by the national forces of the country. Maulana Azad states, "Lord Pathick Lawrence and Sir Stafford Cripps said repeatedly that they could not see how a state like Pakistan envisaged by the Muslim League could be viable and stable."

The establishment of an individual Indian Union had been the cherished goal of the Congress. Hence they were jubilant over the scheme.

(c) League also humoured. Under the circumstances, it was difficult to ignore the wishes of the Muslim League which had established in fact its popularity amongst the Muslim masses, during General Election held very recently. Hence essence of Pakistan was conceded to them by 'Grouping Formula'. Sections B and C were comprised of those Provinces which had to constitute Pakistan of League's dreams. Autonomy of the Provinces to an extent envisaged by the Plan was apt to humour the League. Any major communal issue was to be decided in the Constituent Assembly in the way suggested by the League. Thus the scheme met the League's demand also. Jinnah admitted before the Muslim League Council that there could be no fairer solution of the minority problem than that prescribed in the Cabinet Mission Plan. Hence he advised the League to accept the plan.

(d) A democratic Plan. The proposed Constituent Assembly was to be constituted on the democratic principles of population and proportional representation. The principle of weightage to the minorities was abandoned. The communal representation was also curtailed. It was now to extend to only Sikhs and Muslims. All the members of the Constituent Assembly were to be Indians. The British Government and the non-official Europeans were deprived of a place in the Constituent Assembly. The Indian statesmen were not to be given representation any more than their population warranted. The Constituent Assembly was to be a sovereign body. The constitution framed by it was to be implemented by the British Government.

(e) Importance accorded to the people of States. The Cripps Plan had empowered the Princes to select their representatives for the proposed Constituent Assembly, the present Plan offered to the people of the States, the right to decide their political destinies. The reference to a Negotiating Committee which had to settle the method of choosing the states' representatives, clearly indicated that the right did not belong to the Princes. This was really a very commendable step and a graceful concession to the people of the states.

(f) Interim Government was to be autonomous. The Interim Government which was to be set up during interim period, was promised maximum possible autonomy in running the administration of the country. All the portfolios including that of the war were now to be assigned to the Indians and the Governor-General was to be almost a constitutional ruler. This was a clear advance over the previous proposals.

But the above mentioned merits of the Plan should not blind us to its drawbacks which were quite glaring and condemnable.

Demerits of the Plan. (i) Weak Centre. The Plan greatly restricted the powers of the Centre by allocating to it only three subjects. The Centre was deprived of control over such important subjects needing uniformity as Currency and Coinage, Customs and Tariffs, Weights and Measures, Planning and Development and Inter-State Commerce. Generally, these subjects are assigned to the Centre in Federations in the interest of integrated economic development of the country.

(b) Blow to Provincial Autonomy and National Unity. The proposed division of the Provinces into groups divided the Constituent Assembly into three sections—one of Hindus and two of Muslims. Such a division undermined the national unity. According to the Plan, the Groups were allowed to have their own Constitutions and were authorised to determine the Constitutions of the Provinces in their group as well. It dealt a staggering blow to the concept of Provincial Autonomy. The N.W.F.P. and Assam, despite being Congress Provinces, could not frame their own Constitutions in accordance with the desires of the residents of these provinces.

(c) Language of the Plan on Group Formula Vague. Whether grouping of provinces into sections A, B and C was optional or compulsory, was not clear. The language of the Plan was vague on this point. According to Article 15(5) "Provinces should be free to form Groups with Executives and Legislatures and each Group could determine the Provincial subjects to be taken in common". From the above article, it was obvious that it was optional for the Provinces whether or not to join the Groups. Article 19(5) on the other hand ran as follows:

"The sections shall proceed to settle the Provincial Constitutions for the Provinces included in each section and shall also decide

whether any Group Constitution shall be set up for those provinces and if so with what Provincial subjects the Group shall deal". Art. 19(8) further added: "As soon as the new constitutional arrangements have come into operation, it shall be open to any Province to elect to come out of any Group in which it has been placed. Such a decision shall be taken by the Legislature of the Province after the first General Election under the new constitution". These Articles contradicted each other. It led to a great controversy between the Congress and the League. The Congress held the view that it was optional for a province to join the group or not and that a Province was free to submit to the Group Constitution or not when it was framed.

The Muslim League on the other hand was of the view that it was compulsory for a Province to join the Group it was assigned and that the decisions in a section were to be taken by a simple majority vote of the Representatives in that section. In simple words, the Provinces were to submit to the constitution framed by the Groups. Only after the General Elections, the Province could choose to come out of the Group assigned to it. Thus the ambiguity of the language or probably the intentions of the Cabinet Mission, caused bitterness between the two parties on this very significant point. It was only on May 25, 1946, that the Cabinet Mission elucidated the point and said that Grouping was compulsory according to their intentions. The League was happy over such an elucidation but Congress persisted on its interpretation in its own way.

(d) No logical basis of the order of the Constitution. The order in which the union and sectional Assemblies were to draft their respective constitutions was most illogical. The constitution of the Union was to be framed after the formation of the constitution of the Groups and the Provinces. This amounted to putting the cart before the horse.

(e) Constituent Assembly was hardly democratic. Since the universal adult franchise was not as yet accepted, the Constituent Assembly could hardly be democratic and representative in character. Moreover, it was to be composed of democratic provinces and autocratic states. Hence it could not be acclaimed as a democratic institution in the true sense.

(f) Provisions regarding Indian States mischievous. The Plan envisaged the end of British paramountcy over the States when independence was to be conferred upon India but the States could keep out of the Indian Union if they liked. This was a mischievous move. That amounted to the formation of a disunited India, split into many component units, each asserting its own sovereignty. Such a concession to the States could have wrecked the national unity and presented a picture of disintegrated India of three centuries before.
(g) Step-motherly treatment of Sikhs. The Sikhs who constituted
the third important community in India were accorded a step-
motherly treatment. The compulsory grouping of the Provinces
was to be suicidal to their interests. No provision was made for
safeguarding their interests in Section B or in any other Group.
The Sikhs contended that the plan threw them entirely at the mercy
of the Muslims. They agreed to send their representatives to the
Constituent Assembly when the Congress Working Committee
assured them to protect their rights.

(h) Duration of Interim Government not laid down. The plan made
provisions for setting up an Interim Government without specifying
the duration of such an interim scheme. The critics opined that
it amounted to the postponement of transfer of power to an indefinite
period.

(i) Acceptance or rejection in toto. Another weakness of the plan
was that it was to be accepted as a whole or rejected in toto. Such
a rigidity was counted as a serious defect in the plan.

(j) Proposed composition of Interim Government unjust. Muslim
League was to be accorded five and the Congress six seats (five for
caste Hindus and one for Scheduled Castes) in the Interim Govern-
ment. It challenged the national character of the Congress and
showed height of injustice to the caste Hindus. The Muslim minority
was kept on par with the Hindu majority, as each community was
to send five representatives in the Interim Government. Moreover,
the Congress could not include a Muslim in its quota of representatives which apart from doing injustice to the nationalist Muslims,
strongly undermined the national character of the Congress. Hence
the Congress refused to join the Interim Government. The Resolution
of the Congress Working Committee, passed on June 26, 1946,
threw light on the reaction of the congress to this "short term plan".
The Resolution stated, "In the formation of a Provisional or other
Government, Congressmen can never give up the national character
of the Congress or accept an artificial and unjust parity......The
Committee are unable to accept the proposals for the formation of
an Interim Government as contained in the Statement of June 16...."

(k) Hindus of certain provinces at the mercy of Muslims. The
Working Committee of the Hindu Mahasabha also strongly
condemned the proposal on the plea that virtual concession of
Pakistan had been conceded to Muslim League. It was deadly
opposed to the "three-decker constitution...which will place the
Hindus of the Punjab, Bengal, Assam, Sind, the N.W.F.P. as well
as the entire Sikh community at the mercy of the Pakistanis...." It
demanded the withdrawal of the nasty system of Grouping and
strongly objected to the European participation in Section C of the
Constituent Assembly.
§ 4. FORMATION OF AN INTERIM GOVERNMENT

As already stated the “Cabinet Mission Proposals” had contemplated the setting up of an Interim Government. During the preliminary talks at Simla, the Viceroy had already given out his desire to constitute an Interim Government consisting of 12 members on the basis of 5 members of the Congress, 5 of the Muslim League and 2 of the minorities. The Congress was opposed to parity between the League and the Congress. The Viceroy and the Cabinet Mission strove to overcome this difficulty by adding a Scheduled Caste representative in the Congress quota. Thus the Congress had to send six representatives instead of five. Even this little concession was not very much appreciated by the Congress. The parity between caste Hindus and the Muslims was most unjust and highly undemocratic. Moreover, the Congress could not afford to agree to the reservation of all Muslim seats for the Muslim League. It was tantamount to challenging the national character of the Congress. Hence the negotiations failed and the Cabinet Mission and the Viceroy issued a statement on June 16, 1946, announcing the names of the members to be included in the Interim Government.

Statement of June, 1946. The following are the extracts of the statement which was issued by the Viceroy and the Cabinet Mission on June 16, 1946.

“His Excellency the Viceroy, in consultation with the members of the Cabinet Mission has for some time been exploring the possibilities of forming a coalition government drawn from the two major parties and certain of the minorities. The discussions have revealed the difficulties which exist for the two major parties in arriving at an agreed basis for the formation of any such Government......It is indeed urgently necessary that a strong and representative Interim Government should be set up......” “The Viceroy is therefore issuing invitations to the following to serve as members of the Interim Government on the basis that the Constitution making will proceed in accordance with the statement of May 16. Sardar Baldev Singh, Sir N.P. Engineer, Jagjiwan Ram, Pt. Jawahar Lal Nehru, Mr. M.A. Jinnah, Liaquat Ali Khan, Dr. C. Rajgopalachari, Dr. H.K. Mehtab, Dr. John Mathai, Nawab Mohammad Ismail Khan, Khoja Sir Nazimuddin, Sardar Abdur Rab Nishtar, Sardar Patel and Dr. Rajendra Prasad.” It was however made clear that if any of the members would not join, the Viceroy would invite some body else as a substitute. The portfolios would be distributed in consultation with the two major parties. In case the two major parties or any of them were reluctant to join in the Coalition Government on the above lines, the Viceroy would not hesitate in the formation of the Interim Government which would be considered as representative as possible, of those willing to accept the statement of May 16. The copies of the statement were sent to the Presidents of the Congress and the Muslim League and it was expected that the parties would participate in the Government. The Viceroy however appealed to them ‘to look to the
wider issue and to the urgent need of the country as a whole and to consider the proposal in a spirit of accommodation."

15. CONGRESS REJECTS THE JUNE 16 PLAN

The Congress Working Committee convened its meeting on June 25, 1946, at Delhi to discuss the plan. After prolonged discussion they decided to keep out of the Interim Government. They wrote a letter to the Viceroy explaining reasons for not accepting his invitation. In the letter, they insisted on including a nationalist Muslim in the Government since the Congress represented the nation and not Hindus alone.

The Viceroy and the Cabinet Mission could not agree to include a nationalist Muslim as Jinnah strongly objected to it. Thus the Congress decided to join the Constituent Assembly for framing the Constitution of free India but not opt for the Interim Cabinet. In fact, the Congress took it as an insult to have been kept on par with a communal organization like Muslim League. Moreover, in reply to a question to Mr. Jinnah, the Viceroy had said that in case of vacancy occurring in the office of a representative of a minority community (the Scheduled Caste, the Sikhs, the Indian Christian and the Parsee) the main parties would be taken into confidence before it was filled up. The Congress resented it also as the Scheduled Castes constituted the integral part of Hindu community. Moreover, the Scheduled Caste fell in the Congress quota. Why should the leader of another minority community interfere in the selection of their representative in case of a vacancy?

Again the Governor-General assured Jinnah that the proportion of members of the Interim Government communitywise will not be altered till the two major parties agreed to it. In other words, one communal Group (Muslim League) was empowered to exercise veto over changes in the other communal groups. The Congress was contemplating to get an Anglo-Indian included, hence they did not like Governor-General’s assurance to Jinnah. In the words of Amiya Chatterji, "The upshot of the whole matter was that the Congress was restricted to the representation of caste Hindus and was made politically equal to the League. It could not tolerate what appeared to it to be an unjust parity."1

Moreover, the Governor-General made it clear to Jinnah that decision on a major communal issue could be arrived at by the Interim Government, if the majority of both the main parties supported it. The Congress was prepared to accept the principle for long-term arrangement in the Union Legislature but it could not be acceptable within the short-term arrangement, till the Provisional Government was responsible to the Legislature and was composed of representatives elected on the basis of population of the major communities.

1. Chotteji Amiya: The Constitutional Development of India, pp. 156-57
The inclusion of the name of Sir N.P. Engineer, an official, was also objected by the Congress. The representative character of the Interim Government stood challenged if an official was included in it. It also resulted in the breach of both the letter and the spirit of May 16 statement. All these reasons led to the rejection of the Viceroy's offer of membership in the Interim Government by the Congress.

The Muslim League, on the other hand, sought some clarification from the Viceroy and ultimately accepted the June 16 statement and demanded the formation of Interim Government. But the Viceroy did not like to do without Congress.

6. JUNE 26, 1946 STATEMENT OF VICEROY AND CABINET MISSION

As the Congress refused to accept the mere membership of the proposed Interim Government, the Cabinet Mission and the Viceroy announced on June 26 that further negotiations stood adjourned for a short while, till the elections to the Constituent Assembly took place and a Caretaker Government of officials would be set up. The Viceroy wrote to Jinnah..."Since the Congress and the Muslim League had now both accepted the statement of 16th May, it was the intention (of the Cabinet Mission and the Viceroy) to form a Coalition Government including both these parties as soon as possible. In view however of the long negotiations which had already taken place and since we all had other work to do, we felt that it would be better to have a short interval before proceeding with further negotiations for the formation of an Interim Government." On June 29, 1946, the personnel of caretaker Government was announced and the Cabinet Mission left for U.K.

The Viceroy's letter to Jinnah infuriated the latter. He persisted that the elections to the Constituent Assembly too, should be postponed. He emphasised that the long term Plan and the 'short term arrangement' constituted the integral part of the whole Plan. Hence he thought it undesirable to proceed with one part (Elections to the Constituent Assembly) of the Plan and to postpone the other. Since the Viceroy did not agree to postponement, the Council of League withdrew its acceptance of the Plan by a resolution passed on July 29, 1946.

The Muslim League in its resolution of July 29, 1946 asserted that the Congress had agreed to enter into Constituent Assembly considering it a sovereign body vested with the power of taking such decisions as it might think proper and to nothing else. Speeches of prominent members of the Congress at the A.I.C.C. Session in Bombay on July 6, 1946, were quoted to justify its reading of the Congress mind. Maulana Azad also was of the opinion that Pt. Nehru's speech of July 10, 1946 at a Press Conference, added fuel to the fire. He (Pt. Nehru) had remarked "We have agreed to go into the Constituent Assembly and we have agreed to nothing else...what
we do there, we are entirely and absolutely free to determine. We have committed ourselves to no significant matter to anybody.”

§ 7. ELECTIONS TO THE CONSTITUENT ASSEMBLY JULY, 1946

Despite League’s protests, elections to the Constituent Assembly were not postponed. By the end of July, the elections were completed. Strangely enough, even Jinnah’s Muslim League participated in the elections, in spite of its grumbling and unnecessary wrangling. The Congress bagged 199 out of 210 General seats of eleven British Provinces. Out of the remaining eleven seats, two were captured by the Unionist Party of the Punjab, one by the Communist Party, two by Anti-Congress Scheduled Caste Federation and six by the independent candidates. Out of a total 296 seats allotted to British Provinces, the Congress won 205 seats. Of the 78 Muslim seats, 73 were secured by the Muslim League, three by the Congress, one by Krishak Praja Party of Bengal and one by a Punjab Unionist. The Sikhs who had boycotted elections, on getting assurance from the Congress Working Committee, elected four representatives for representation in the Constituent Assembly by the middle of August, 1946. As already said above, apprehending dominating majority of the Congress in the Constituent Assembly which could enable it to take any decision it might think proper and desirable, the League decided to withdraw its previous support to the Cabinet Mission Plan. In fact, it was feared by the League that the Congress dominated assembly might wreck even the provisions relating to grouping and enhance the powers of the Union Centre. Hence the Muslim League rejected the proposals of the Cabinet Mission on July 29, 1946 and resolved to resort to Direct Action on August 16, 1946 to achieve its cherished goal of Pakistan.

Direct Action Day. The “Direct Action Day” proved to be a “black day” in the history of India. Unprecedented mob violence plunged the great city of Calcutta into an orgy of bloodshed, murder and terror. Hundreds of lives were lost. Thousands were injured and property worth crores of rupees destroyed. The city was in the “grip of goondas”. Maulana Azad himself was at Calcutta when the drama of barbarism was played by the adherents of Muslim League in that important capital of Muslim League Government. In both Sind and Bengal, the day was celebrated as a public holiday. Processions were taken out. Meetings were held.

§ 8. NEGOTIATIONS FOR INTERIM GOVERNMENT

In the meantime on July 22, 1946, the Viceroy reopened talks for the formation of an Interim Government. Both Pt. Nehru, the President of the Congress and M.A. Jinnah, the Muslim League President, were invited. Following were the Viceroy’s new pro-

posals:—(i) The Interim Government was to consist of fourteen members, 6 of whom (including Scheduled Caste representatives) were to be nominated by the Congress and 5 by the Muslim League. Three representatives of the minorities were to be nominated by the Viceroy, one of them was to be a Sikh. Names submitted by either of the parties were not to be objected to by the other party, provided they were approved by the Viceroy. (ii) Distribution of the portfolios was to be decided after the parties had agreed to enter the Interim Government and had submitted the names of their nominees. The Congress and the League had to share equally the most important portfolios. (iii) As regards the status of the Interim Government, the Viceroy emphasised that His Majesty's Government would treat it with the same close consultation and consideration as a Dominion Government.

**Why Jinnah objected.** Mr. Jinnah objected to the above suggestions of the Viceroy on the following grounds and rejected the offer of joining the Interim Government. (i) There would not be parity between the Congress and the Muslim League. Moreover, the Congress might nominate a "quisling Muslim". (ii) In the distribution of portfolios, equal division of the most important portfolios between the Congress and the Muslim League was not possible. (iii) The representatives of the other minorities were to be appointed by the Viceroy without any reference or consultation with the Muslim League. (iv) As regards the assurance of safeguards, the Viceroy banked upon a new convention and that too if it was freely offered by the Congress.

**Acceptance by the Congress.** On August 8, 1946, the Congress Working Committee accepted the Viceroy's proposals. The Viceroy sent an invitation to Pt. Nehru to form the Government. The latter accepted the invitation and despite Jinnah's obstinate attitude sought the cooperation of Jinnah emphasising that a "Coalition Provisional Government" would solve the Hindu-Muslim problem. He personally met Jinnah on August 15, 1946; but the two could not mutually agree. In fact, Jinnah feared that the Interim Government would be manned by Pt. Nehru who would be supported by a thumping majority of the Legislative Assembly and thus the League's demand of Pakistan would be shelved.

On August 24, 1946, the personnel of the Interim Government was announced. Following were to constitute the new Interim Government—Pt. Jawahar Lal, Sardar Patel, Dr. Rajendra Prasad, Mr. Asaf Ali, Mr. C. Rajagopalachari, Mr. Sarat Chandra Bose, Dr. John Matthai, Sardar Baldev Singh, Sir Shafique Ahmed Khan, Mr. Jagiwan Ram, Syed Ali Zahur, Mr. C.H. Bhambha. Two more Muslims were to be appointed later. On September 2, 1946, the Interim Government was installed. The Viceroy resumed negotiations again with Jinnah who decided to enter the Interim Government after great persuasions on October 13, 1946. Two seats were already lying vacant. Three members of the Interim Government
nearly Syed Ali Zahir, Sir Shafaat Ahmed and Sarat Chandra Bose tendered resignations to make room for League representatives.

League enters Interim Government. The Muslim League nominated Mr. Liaquat Ali Khan, Raja Gurnam Ali Khan, Abdur Rab Nishtar, I.I. Chundrigar and Jogindra Nath Mandal—a Hindu Scheduled Caste. In the words of Chatterjee, "It was indeed a bold assertion of its claim not only to have a voice in the selection of representatives of minorities but also itself to represent minorities. Further, the League wanted to demonstrate that if the Congress could claim to represent all the people of India including the Muslims, the Muslim League also could claim to represent all the minorities including a section of Hindus."1 After League's decision to join the Interim Government Lord Wavell wrote to Pt. Nehru, the Vice-President of the Interim Government, "As I told you Mr. Jinnah has assured me that the Muslim League will come into Interim Government and the Constituent Assembly with the intention of cooperating."2 On October 26, 1946 the Muslim League nominees took office. The League deliberately abhorred the idea of Collective Responsibility. Jinnah himself said to foreign press representatives that he did not consider the new Central Government either as a Cabinet or as a Coalition Government. Hence the question of joint responsibility did not arise at all. Thus the Interim Government proved to be a house divided against itself. Jinnah was not at all in favour of League's cooperation with the Congress. Lord Wavell had missed the situation and overshot the mark.

Muslim League and Riots. The lawlessness let loose on the Direct Action Day could not be completely curbed. Hence in the middle of October 1946, Muslim majority districts of Bengal namely Noakhali and Tipperah experienced communal riots. The Muslim League and the Muslim officials actively supported Muslim goondas who committed very heinous crimes against the Hindus. Hindus in Bihar retaliated. Gandhiji’s threat of fast unto death and Pt. Nehru’s warning of aerial bombardment and hectic activities of the Congress leaders in Bihar quelled the disturbances. Thus the atmosphere was replete with communalism when the invitation for attending the meetings of the Constituent Assembly were extended by the Viceroy on November 20, 1946, to the elected members.

2. *Indian Annual Register*, p. 281.
and is appeasing them in complete disregard of the Muslim League and other organisations and elements in the national life of the country. In these circumstances, it is obvious that no representative of the Muslim League will participate in the Constituent Assembly.

**Attlee’s last minute bid.** Prime Minister Attlee made a last minute bid to save the situation by inviting two representatives each of the Congress and the Muslim League and also a Sikh member of the Interim Government to London for solving the deadlock over proposed move of non-attendance of the meetings of the Constituent Assembly. At the conclusion of the Conference, Attlee’s government issued a statement on December 6, 1946, appeasing the League by interpreting the Grouping Formula as desired by it. Even then the Muslim League boycotted the Constituent Assembly.

**Congress reaction to December 6 statement.** The Congress Working Committee and the A.I.C.C. were not happy over such an interpretation of the British Government which was in their opinion contrary to the original plan yet they resolved “...With a view to removing the difficulties that have arisen owing to varying interpretations they agree to advise action in accordance with the interpretation of the British Government in regard to the procedure to be followed in the sections. It must be clearly understood however that this must not involve any compulsion of a province and the rights of the Sikhs in the Punjab should not be jeopardised.”

§ 10. **CONSTITUTENT ASSEMBLY MEETS ON DECEMBER 9, 1946**

The Constituent Assembly met on December 9, 1946. League members abstained. Only Congress Muslims attended the meeting. On the first day, 207 members out of a total of 296 attended the Session. Dr. Sachchidanand Sinha—the veteran leader of Bihar was elected temporary chairman to conduct the meetings till the election of permanent President. Dr. Rajendra Prasad was elected as the first permanent President of the Assembly. In his inaugural address Dr. Prasad emphasised that the Constituent Assembly was to be “a self-governing and self-determining independent body in whose proceedings no outside authority can interfere and whose decision no one outside can upset, alter or modify.” Four days after, Pt. Jawahar Lal Nehru moved objective resolution in the Assembly after delivering an eloquent speech. He remarked, “The Resolution states that it is our firm and solemn resolve to have a sovereign Indian Republic.” On January 22, 1947, the Assembly passed this resolution sponsored by Pt. Nehru. Despite Pt. Nehru’s fervent appeal and emotional approach to the absenting members of the Assembly, the Working Committee of the Muslim League, met at Karachi on January 31, 1947 and resolved not to join the Constituent Assembly. We are tempted to quote a few lines of Pt. Nehru which reflect his sincerity and ardent desire to work with the League. He said, “...We do hope that those who have abstained will soon join us in our deliberations since this constitution can only
go as far as the strength behind it can push it. It has ever been and
shall always be our ardent desire to see the people of India united
together so that we may frame a Constitution which will be acceptable
to the masses of Indian people.

The extract from the resolution of Working Committee of the Muslim League quoted below presents a contrasting picture. The Resolution said, “the elections to and thereafter the summoning of the Constituent Assembly...was ab initio void, invalid and illegal as not only the major parties had not accepted the statement but even the Sikhs and Scheduled Castes had not done so and that the continuation of the Constituent Assembly and its proceedings and decisions are ultra vires, invalid and illegal and it should be forthwith dissolved.” Thus the situation was difficult and
delicate. On the one hand the masses were impatient for the attainment of independence, on the other hand, the communal problem was unsolved. Solution was before the Indians but they were not in a position to avail it.

10. PRELUDE TO ATTLEE’S STATEMENT (FEBRUARY 20, 1947)

The Labour Government itself was in a fix “Should they allow the
present state to continue or should they take a forward step on their
own initiative. Mr. Attlee was of the view that a stage had been
reached when suspense was most undesirable. It was necessary to
take a clear cut decision.” Hence Attlee took decision. The
next day, Wavell left Delhi for good.

11. ATTLEE’S STATEMENT

On February 20, 1947, Attlee announced in a statement before the
Parliament that British would leave India by June, 1948. He
expressed regrets on the mutual bickerings amongst the Indian
political parties which had impeded the smooth functioning of the
Constituent Assembly and said, “The present state of uncertainty
is fraught with danger and cannot be indefinitely prolonged. His
Majesty’s Government wish to make it clear that it is their definite
intention to take the necessary steps to effect the transference of
power into responsible Indian hands by a date not later than June
1948...”. In his statement, he gave a link of partition of India as
well if the Muslim League did not budge an inch from the position
adopted by it so far. He said, “....But, if it should appear that
such a Constitution will not have been worked out by a fully
representative Assembly before the time mentioned in paragraph
7(i.e., June, 1948) His Majesty’s Government will have to consider
to whom the powers of the Central Government in British India
should be handed over on the 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

2. Indian Annual Register 1947.
secure most reasonable and in the best interests of the Indian people."

§ 12. REACTIONS

League’s Reaction to Attlee’s statement. The preceding lines of Attlee’s statement emboldened the League. It became more intransigent than before. Fearing that power might not be transferred to the Congress in the N.W.F.P. and Non-League-Coalition Government in the Punjab, it started making vigorous efforts to oust the Non-League ministries. League’s attempts failed miserably in N.W.F.P. because Khan Brothers were highly influential and extremely popular among Pathans. In the Punjab, Khiyar Hayat Khan, the Unionist Chief Minister, could not face the abnormal situation created by the Muslim League and its hired goondas who were indulging in all types of nefarious and subversive activities to undermine law and order in the state. Hence he resigned on March 2, 1947. On March 5, 1947, Governor took over the administration in his hands under section 93. The province thus remained under Governor’s rule, till the transfer of power.

In Assam also, the League strove its utmost to dethrone the Congress ministry but could not succeed in its mission.

Congress Reaction. The Congress extended invitation to the Muslim League in view of the British Prime Minister’s statement. But the invitation could not effect an agreement between the two parties. A division of India looked inevitable. Hence the Congress seemed to adopt a different line of action. It was no longer inclined to compel reluctant parts of the country to remain united. Rather it started insisting on the application of the same principle to the unwilling provinces as well as to the part of the provinces. The Muslim League was now opposed to the partition of the provinces and the non-inclusion of the unwilling provinces of Assam and the N.W.F.P. in the proposed Pakistan.

Gandhiji’s reaction. Mahatma Gandhi highly appreciated the generosity of the British Government and strongly commended Attlee’s statement of February 20, 1947. He, however, shuddered at the very idea of a possible division of the country and declared “Even if the whole of India is in flames, it will not bring Pakistan.” He went to the extent of saying, “Pakistan would be made on my dead body”. He told Maulana Azad “...So long as I am alive, I will never agree to the partition of India nor will I, if I can help it, allow Congress to accept it.” Later on, after his meeting with Lord Mountbatten and Sardar Patel, Gandhiji’s opposition to division of the country softened down. Azad who was opposed to division, met Gandhiji, after his meetings with Mountbatten and Sardar Patel and knowing his changed outlook said, “If even you have now adopted these views I see no hope of saving India from catastrophe.” In fact Gandhiji’s keenness to liberate India from the yoke of foreign

bureaucrats prompted him to change his views. Moreover, in his views, the perpetuation of British rule was an incentive to the mischievous elements in the country.

§ 13. MOUNTBATTEN PLAN, JUNE 3, 1947

Fully briefed by the British Labour Government, Mountbatten landed on the soil of India on March 22, 1947. Mr. Attlee had instructed him to see that power was transferred before June 30, 1947. Immediately after the swearing-in ceremony on March 24, 1947, Mountbatten set to the task assigned to him. He had a series of interviews with topmost leaders of the major parties and made them agree to the principle of partition of India to some extent. Thereafter he proceeded to England in May, 1947 to seek the approval of His Majesty’s Government of his proposed plan of resolving Indian political deadlock. On June 3, 1947, immediately after his return to India, Lord Mountbatten announced his plan for solving the present impasse. Before the plan was publicised, Lord Mountbatten had obtained the consent of the Congress and Sikh leaders and also of Mr. M.A. Jinnah. Maulana Azad was, however, vehemently opposed to the plan. In his words, “The publication of this statement meant the end of all hopes for preserving the unity of India. This was the first time that the Cabinet Mission Plan was discarded and partition accepted officially.” It will interest the reader if we make a casual reference of Lady Mountbatten’s significant role in bringing round the leaders of the Congress to agree to her husband’s plan. In the words of Dr. Ishwari Prasad, “By remarkable adaptability of character and pleasing manners, she won the hearts of all the greatest adversaries of the land...”

Main features of the plan. The statement of June 3, 1947 was an announcement of great political importance. Before referring to its main features, it was stated in the plan that His Majesty’s Government hoped for the co-operation of two major political parties in working out the Cabinet Mission Plan of May 16, 1946, but the hopes remained unfulfilled. It was further stated that the Muslim League members elected from the Punjab, Bengal and Sind boycotted the Constituent Assembly, hence there was no justification of applying the Constitution, framed by the Constituent Assembly, to those parts of the country which were reluctant to accept it. In the later lines, the procedure for ascertaining the wishes of such areas on the issue as to how their Constitution was to be framed was laid down. The procedure, as summarised in the following lines ran in paragraphs 5 to 13 of the statement.

The Legislative Assemblies of Bengal and the Punjab (excluding the European members) were to meet each in two parts one representing the Muslim majority districts and the other the rest of

2. Dr. Ishwari Prasad: *History of Modern India*, p. 470.
the provinces. The Muslim majority districts were specified in the statement. Each part was to decide by a simple majority whether the province was to be partitioned or not. If either part favoured partition, partition was to be effected accordingly.

If partition of the province was opted for, each part of the Assembly had to determine if it would like to join the Constituent Assembly already established or a new Constituent Assembly separately established composed of representatives of those areas which decided not to participate in the existing Assembly.

The Legislative Assembly of Sind had to decide at a special meeting whether Sind as a whole should join the Constituent Assembly at Delhi or a new Constituent Assembly of areas which did not join it.

The Muslim majority area of Sylhet in Assam had to decide by referendum whether the district in question would like to remain a part of Assam or join East Bengal which would constitute a part of Pakistan.

A referendum was to be held in the N.W.F. province to decide whether that province would like to join Pakistan or India. The referendum was to be conducted under the aegis of the Governor-General and in consultation with the provincial government.

Baluchistan was also given the right to decide whether or not to remain in the Indian Union. A joint meeting of the representative institutions was to be held to decide the issue.

In case Bengal, Punjab and Assam opted for partition, independent Boundary Commission was to be appointed to fix the dividing lines between the two parts of the provinces.

An agreement was also to be entered into for dividing the assets and liabilities between the two Dominions of India and Pakistan.

Both the states were to be accorded dominion status in the beginning entitled to leave the British Commonwealth at a later date if they so desired.

In the end Lord Mountbatten declared, "The whole plan may not be perfect but like all plans, its success will depend on the spirit of goodwill with which it is carried out. I have always felt that once it was decided in what way to transfer power, the transfer should take place at the earliest possible moment but the dilemma was that if we waited until a constitutional set up for All-India was agreed, we should have to wait a long time particularly if partition was decided on. Whereas if we handed over power before the Constituent Assemblies had finished their work, we should leave the country without a Constitution. The solution to this dilemma which I put forward is that His Majesty's Government should transfer power now to one or two Governments of British India each having dominion
status as soon as the necessary arrangements can be made. This I hope will be within the next few months."

§ 14. IMPLEMENTATION OF THE PLAN

Since the plan was accepted by the Congress and the Muslim League, Lord Mountbatten unhesitatingly proceeded to implement it without any delay. The Hindu members of the Bengal Assembly voted for the partition of Bengal on June 20, 1947 and those of the Punjab Assembly did the same three days later. The Legislative Assembly of Sind voted for Pakistan on June 26, 1947. The residents of Sylhet decided to join the new province of East Bengal. Referendum was held in N.W.F.P. between July 6 and July 17. The Congress boycotted it. The electors decided to opt for Pakistan. British Baluchistan also decided to join Pakistan on June 29, 1947.

Why Congress boycotted Referendum in N.W.F.P.? Khan Brothers, who led the Congress in N.W.F.P, boycotted referendum despite the fact that Dr. Khan Sahib who was then Chief Minister of N.W.F.P, had agreed to plebiscite in N.W.F.P. The question arises why Dr. Khan Sahib agreed to referendum and then evaded it? Dr. Khan Sahib could not afford to differ from Lord Mountbatten’s proposal of referendum, because he claimed the support of majority in N.W.F.P. In fact, Khan Brothers were not as strong as the Congress had thought. The agitation for partition had given a staggering blow to their influence in N.W.F.P. When creation of Pakistan was inevitable and the Muslim majority provinces had been promised the opportunity of forming an independent state, an emotional upheaval swept through Frontier. It will not be out of place to point out that the British officers in N.W.F.P. also openly supported Pakistan and went to the extent of persuading the majority of the tribal chiefs to assist the Muslim League. Moreover, Dr. Khan Sahib’s leadership was likely to suffer a great eclipse in case the Frontier Congress had participated in referendum and suffered a defeat on the issue. Hence Dr. Khan Sahib invented a new issue which could enable him to exploit the sentiments of Pathans. If there was to be referendum in N.W.F.P., he emphasised, the Pathans of Frontier, too should be allowed to opt for ‘Pakhtoonistan’—their own state. Since Lord Mountbatten was not prepared to complicate the matter still more, and was keen to push through his scheme as promptly as possible, he did not discuss the Pakhtoonistan in details. Hence Khan Brothers decided to boycott the referendum.

All India Congress Committee meets at Delhi on June 14 and 15. The All-India Congress Committee met at Delhi on June 14 and 15 to discuss the Mountbatten Plan. Despite the fact that the Congress had striven hard for the realisation of a free and united India, it agreed to the proposals embodied in the statement of June 3, 1947. Rather it welcomed the decision of the British Government to transfer power completely to the Indians
without delay.

**Sikh Conference, 1st week of June 1947.** A conference of Sikhs was convened at Lahore in the first week of June to discuss the plan. They accepted the plan though with reservation. It was resolved in the Conference that “no partition of the Punjab which does not preserve the solidarity and integrity of the Sikh community will be acceptable to the Sikhs”.

**Muslim League’s acceptance on June 9, 1947.** The Muslim League accepted the Plan on June 9, 1947. The Plan gave Jinnah no better Pakistan than the one which he had described as “mutilated, moth-eaten and truncated”.

**Partition Committee June 7, 1947.** A Partition Committee was set up on June 7, 1947 for dealing with different questions involved in partition. It was composed of two Congress and two Muslim League members of the Interim Government with the Viceroy as the Chairman. It was a sort of fact-finding body which was assigned the duty of making proposals regarding the division of assets and liabilities between India and Pakistan.

§ 15. **PARTITION COUNCIL JUNE 27, 1947**

When Bengal and the Punjab decided in favour of partition, Partition Committee was replaced by a Partition Council, on June 27, 1947. It also consisted of two leaders of the Congress and two of the Muslim League. Viceroy acted as its chairman. By July 1, 1947 it was in a position to reach an agreement on the general principles governing the reconstitution of the Armed Forces. It decided that India and Pakistan should have their own Armed Forces, predominantly non-Muslims and Muslims respectively, which from the date of the transfer of power were to be under its own operative control. Until the division of forces was completed, and the Dominion Governments could administer them, the existing forces were to remain under the control of the then Commander-in-Chief who was to function under the Joint Defence Council consisting of the Governor-General or Governors-General, the two Defence Ministers and the Commander-in-Chief himself. It was mutually agreed that Lord Mountbatten was to be the chairman of this Council. The Commander-in-Chief was not to be responsible for law and order or have operative control of any units except during transit from one Dominion to another.

As regards the British forces, it had already been decided by the Partition Committee that they would be withdrawn from India. The credit for their withdrawal from India goes to Field Marshal Montgomery.

§ 16. BOUNDARY COMMISSION

Under the Chairmanship of Sir Cyril Redcliff, two Boundary Commissions were appointed for demarcating the boundaries of new parts of the Punjab and Bengal on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims and in so doing, they had to take account of some other factors also.

§ 17. THE INDIAN INDEPENDENCE ACT, 1947

On July 4, 1947, the Indian Independence Bill was introduced in the House of Commons and was passed by both the Houses of the Parliament, within a fortnight. The Act provided for the end of the British rule in India, on August 15, 1947, and the establishment of the Dominions of India and Pakistan which were allowed to secede from the British Commonwealth. In the words of Attlee, the Act did not "lay down a new Constitution for India, providing for every detail. It was far more, in the nature of an enabling bill, a bill to enable the representatives of India and Pakistan to draft their own constitutions."

Main provisions of the Act. Before we enumerate main provisions of the Act, we may state that it was an exceedingly simple and brief Act, containing only twenty clauses and three schedules. Its important provisions are summarised below:

(a) The Act provided for the establishment of two Dominions—India and Pakistan on August 15, 1947. The powers previously exercised by the British Parliament and the Government in the British provinces were transferred to the Governments of India and Pakistan on the due date.

(b) The territories of the Dominions were demarcated. The division of the Punjab and Bengal was to be effected according to the recommendations of the Boundary Commission set up under the chairmanship of Redcliff. Since the Commission could not come to unanimous conclusion, the division was made in accordance with the award given by the chairman.

(c) The Act abolished the office of the Secretary of State for India and his Advisers and provided a Governor-General for each Dominion. It was, however, expressly laid down that one Governor-General might be asked to serve in dual capacity. The Governor-General was to be appointed by His Majesty King on the advice of the Dominion and not on that of the British Cabinet. The Governor-General was no longer to be called the Viceroy. He was divested of his special powers and responsibilities and also power of acting in his 'individual judgment' and in his 'discretion'. In other words, he was to be a mere Constitutional Ruler. It may, however, be stated that in case of India and Pakistan dominions, the Governor-General consulted the leaders of the Congress and the Muslim League on the matter of appointment of their res-
pective Governors-General, since the usual method of appointment of the Governors-General of Dominions could not be resorted to in the absence of popular Governments in these newly sprung Dominions.

(d) Each Dominion was to have a sovereign Legislature which was to be vested with full powers of making laws for the Dominions concerned. No Act passed by the British Parliament, after August 15, 1947, was to apply to either Dominion, unless it was extended thereto by its own Legislature. His Majesty could no longer disallow any Bill passed by the Legislature of either Dominion. The Governor-General was fully empowered to assent in His Majesty's name to any Bill passed by it. The Constituent Assemblies of the two Dominions were to serve as their respective Legislatures. Until the Constitution framed by each of the Constituent Assembly was enforced, each Dominion was to be governed as nearly as possible according to the provisions of the Government of India Act, 1935 as adapted to the new circumstances by the Governor-General.

(e) The Governors of the Provinces were to be nominated by the Dominion Cabinets. They were to follow the advice given by their ministers under all circumstances. In other words, the Governors were to be mere constitutional heads of their respective provinces.

(f) With the creation of the Dominions, appointment to Civil Services and reservation of posts by the Secretary of State were to be discontinued. Moreover, compensation was to be given to those of then existing services who might like to resign their services after the transfer of power. The Act made a provision for the maintenance of the then existing conditions of service as well as pensionary rights, as regards those services who had to continue service under the Government of either of the new Dominions or of any province. The government was, however, empowered to revise the conditions as the circumstances demanded.

(g) According to the Act, the paramountcy of the British Crown over the Indian native States and also its connection with Tribal Areas came to an end with effect from August 15, 1947. The States were henceforth to be independent. The British Government, in fact, did not intend to hand over powers and obligations under paramountcy to the Government of the Dominions. Hence the States were declared free to accede to India or Pakistan or remain independent. All treaties and agreements entered into between the British Crown and the States and all the obligations of His Majesty's Government towards the Rulers of the States ended with lapse of paramountcy.

(h) It was further provided in the Act that the relations of the British Government with the new Dominions were to be conducted through the Commonwealth Relations office.
(i) The title of ‘Emperor of India’ was to be dropped from the royal style and titles of the king of England.

1.48. SIGNIFICANCE OF THE ACT

The Indian Independence Act, 1947 was the swan song of the British power over India. It closed the chapter of British rule and opened a new one of free India. During the second reading of the ‘Independence Bill’ in the House of Commons, Attlee said, “It is the culminating point in a long course of events......The Act of 1935, the Declaration at the time of the Cripps Mission, the visit of my right honourable friends to India last year, are all steps in the road that led up eventually to the proposals that I announced to the House on 3rd June last. This Bill is designed to implement those proposals.” Really, the Act was the last milestone on the highway leading to the ultimate destination of a subject nation. It was the noblest and greatest law ever enacted by the British Parliament. It was indeed a gracious and dignified farewell. In the words of Lord Samuel, “It was an event unique in history—a treaty of peace without war.” A liberal-minded politician like Attlee described the Act as the fulfilment of the British Mission. Dr. Rajendra Prasad said, “The period of domination of British over India ends today and our own relationship with Britain is henceforth going to rest on a basis of equality, of mutual goodwill and mutual profit.”

There is no denying the fact, that era of sufferings and misery ended and a new era of freedom and prosperity ushered in. But the Act left one blot on the British escutcheon for all times to come. It left a sad trail of memory behind by vivisecting India. The partition of India was fraught with dangers and pregnant with problems complex and complicated. A country which had enjoyed political unity for centuries was dismembered. Hence all hearts were heavy at the idea of partition.

One shudders at the very memory of the aftermath of partition. The drama of barbarism and carnage played on the soils of vivisected India is ineffaceable. The stains of blood which flowed profusely after the announcement of partition of India, are not yet obliterated from both sides of the new frontier. In the words of Azad, “The 14th of August was for the Muslims of Pakistan a day of rejoicing. For the Hindus and Sikhs it was a day of mourning. This was the feeling not only of most people but of most important leaders.”

Moreover, the independence of the Rulers of States was also a mischievous move which could pose a great problem for the Indians. If these States had not acceded to India and decided to remain independent, India would have been turned into a hydra-headed

1. Dr. Rajendra Prasad: India Divided.
monstrosity. It would have remained a house divided against itself and its hard won-freedom would have been jeopardised by any clever invader any time. In fact, it was a vicious parting kick to a country which had been exploited and misruled by the British imperialists for over two centuries. Many die-hard Conservatives like Churchill fondled a hope that Indian independence would be a mere illusion and the British would be once again requested to rule over India torn with strife and animosities, ravaged with civil war and anarchy. But to the utter surprise of the Conservative politicians, the Indian leaders were equal to the occasion. They could face the baffling eventualities with great courage and undaunted boldness and thus frustrate the hopes of wishful imperialists.
Independence and Partition

1. WHY THE BRITISH QUIT INDIA?

The abdication of the British was indeed a great landmark in the history of India. The British exit was graceful. Attlee's role was no doubt commendable. The Labour Government had pledged during its election campaign to support the cause of India's independence, hence the victorious Labour Party had to fulfill its pledge. Does it mean that the British voluntarily relinquished the power which they had so dearly cherished? It might be the "noblest act of the British nation" as emphasised by Gandhi but it was certainly not a voluntary withdrawal. The stirring circumstances and significant events compelled the British to withdraw from India. They could no more delay emancipation of a great nation like that of Indians. In the words of William Philips, an American diplomat, "When the Labour Government came in power on July 1, 1945, it saw the writing on the wall." The factors which in our opinion compelled the British to liquidate their Empire in India are enumerated below.

Strength of the Indian National Movement. National consciousness had reached its climax in the forties of the present century. Whether Hindus or Sikhs, Muslims or Christians, politicians or services all keenly cherished to cast aside the foreign yoke. The '42 Rebellion was a 'quit notice' to the British in very clear terms. The I.N.A. trials, the revolts in Army, Navy and Air Force had dealt a death blow to the imperialists. The rebels were hailed as the saviour of the motherland. The deserters were acclaimed as the heroes of the nation. Gandhi's 'Quit India Movement' taught the people 'do or die'. Thus the national upsurge had swept over the country. The Britishers who are known for their practical sagacity and political acumen, felt the pulse of the Indian nation and decided to quit gracefully. According to Azad, "There was no longer any thing secret about the upsurge of freedom, Men and officers of Defence Forces declared openly that they had poured out their blood in the war on the assurance that India would be free after the
cessation of hostilities. The assurance must now be honoured."1

World War and Britain. The World War II had reduced Great Britain to a mere third rate power. Her economy was shattered and her manpower had considerably dwindled. Her factories and industries which were the source of her wealth had been demolished. Thus Great Britain was no longer in a position to bear the enormous strain which perpetuation of rule over India would have entailed after World War II. In the words of Francis Tucker, "Ultimately we found that the garrison committing was more than the industrial needs of our impoverished country could stand. This was one very strong reason for our leaving India and leaving India quickly." Strengthening of British hold over India by the employment of more I.C.S. men and British forces would have been at the cost of already shattered Britain which had to rebuild her economy and reconstruct the demolished industries. Hence the British could no longer afford to continue their hold on an enslaved India.

Asia awakened. Asia as a whole had arisen from her long slumber. The Asians realized that they were being hoodwinked and exploited by the western nations. They aspired to be free. Progressive movements in Far and Middle East countries had been launched very vigorously for sounding death knell of colonialism. India being the most progressive among them was apt to be in the forefront. Hence the withdrawal of the British in fact was tantamount to yielding before the spirit of resurrection pervading through the Asiatic countries.

International Pressure. As already explained in the preceding chapter, President Roosevelt and Chiang Kai-shek and other statesmen of the Allied countries played very commendable role in inducing the British to grant right of self-determination to the Indians. The British had been assuring the Allies during the war that, with the end of hostilities, India will be granted freedom. As the war was over, the powerful allies of Great Britain expected her to transfer power to the Indians. Sir Stafford Cripps had openly stated in the Parliament that the growing pressure of international forces as U.S.A. and U.S.S.R. had made the retention of power increasingly untenable.

Advent of Labour Government. The defeat of Conservative Party and installation of Labour Party gave a great fillip to the British withdrawal from India. Before the assumption of office, the Labour leaders had promised to solve the Indian deadlock and earn gratitude of teeming millions. In reply to Azad's telegram of congratulations, Attlee had said that "the Labour Party would do its best to arrive at a right solution of the Indian problem." Cripps had also cabled that "it was his hope that India would not be disappointed." Hence it was expected that the liberal British statesman would do his best to accomplish the task, he had undertaken.

According to Azad, "Attlee’s intentions were very pure. His decision was governed by his determination to help India to attain independence. The situation in India was such that in spite of Indians' opposition, the British could have governed this country for another decade. Hence credit must be given to the motives of Labour Government which carried through the withdrawal speedily and gracefully.

Disloyalty of Indian Army. The disloyalty of the Indian Army shook the citadel of British Imperialism. The formation of I.N.A., the I.N.A. trials, the Naval revolt, followed by strike by Indian Air Force at Ambala extremely alarmed the British Government and shook their faith in the loyalty of Indian soldiers who used to be pride of the British Government. Future agitations against the British Government in case of their retaining the power could not have been effectively quelled. They were not in a position to suppress possible popular upheavals through the British soldiers whose strength had considerably been shattered during war.

Enslavement of India no longer profitable. After the end of hostilities, imports from U.K. to India had been considerably reduced. India had advanced industrially. The Britishers realized that a friendly India could be more responsive to the exchange of goods than a sore and sullen India. The British had usurped India’s independence for economic gains, they decided to quit India also for similar advantages.

Contribution of British Raj and Indian National Congress. Though it seems paradoxical when we talk of contribution of the British Raj towards the attainment of freedom, yet unconsciously, through administrative integration, the development of transport and means of communication and the English as the medium of instruction, the British rule fostered amongst Indians a sense of unity. The Indian National Congress under the leadership of inspiring personality like Gandhiji, further consolidated the national ranks by launching mass movements like Civil Disobedience, Non-Violent Non-Co-operation, by observing ‘Hartals'; and ‘Quit India’. National Anthem devised by the Congress instilled patriotism and national fervour even in the slumberous souls. It was pretty difficult to curb the national spirit and keep the Indians under bondage when the national upsurge had swept over the entire country. In the words of Michael Brecher, "In short, the independence of India was the natural and inevitable outcome of the process of creating national consciousness and common purpose accomplished by British 'Raj' unconsciously and by the Congress consciously over an extended period of time. In this sense, the British Raj contained within itself the seeds of its own destruction."

Danger of Communism. In the forties of the present century, the British started fearing the spread of communism in India as well. The Labour leaders in particular apprehended that Communist influ-

INDEPENDENCE AND PARTITION

ence might fill up the void likely to be caused by the disintegration of the Congress. Further delay of transfer of power might, they feared, result in the emergence of communism in India. Hence Attlee briefed Lord Mountbatten in December, 1946 that "the Government was most unfavourably impressed with the political trends affecting both the Congress and the Muslim League. If we were not very careful, we might well find ourselves handing India over not simply to civil war but to political movements of definitely totalitarian character. Urgent action was needed to break the deadlock". Later developments reveal what Attlee meant by an urgent action.

Acceptance of Mount-batten Plan. Acceptance of the 'Mount-batten Plan' ensured the inevitability of Britishers withdrawal from India. The Congress had always been adamant over the unity of India whereas the Muslim League under the guidance of Jinnah stood for the division of India. The Britishers were so far in a position to exploit the differences between the two main parties and perpetuate their domination over India. Both the Congress and the Muslim League had come to a mutual agreement through efforts of the new Governor-General and his shrewd wife. The Indian National Congress had deviated from its main goal of United India and the League also had accepted the "mutilated, moth-eaten and truncated Pakistan". Such an unexpected compromise over a vital issue was apt to lead to nothing short of complete independence.

Dr. Pattabhi Sitaramayya has very aptly summed up the chief operating factors, resulting in the dawn of India's independence as "the inexorable march of time and the force of circumstances".

§ 2. PARTITION OF INDIA

Before we come to the close of the era of subjugation and discuss the constitutional developments in the independent era, we think it advisable to enlighten our students on a moot question—why India was partitioned?

The isolationist policy of Muslims. Right from the times of Sir Syed Ahmed Khan, the Muslims in India started thinking and dreaming separately from Hindus. Gradually they began to contend that their interests were antagonistic to those of Hindus. Hence, they apprehended that if India was emancipated, the Hindus who were in dominant majority would suppress the Muslims who were intellectually backward and not in a position to compete with the Hindus. The Muslim League ideology added fuel to the fire. Dr. Muhammed Iqbal played a notable role in estranging the Muslims from Hindus.

Touch-me-not Policy of Hindus. The 'touch-me-not' customs of the Hindus which amounted to a social boycott of the Muslims by the orthodox and fanatic amongst Hindus induced the Muslims to

feel that their religion, culture and language could not be safe in 'Hindu dominated India'. Moreover, hatred of Muslims by the Hindus was apt to breed hatred for Hindus by the Muslims. The vicious circle was thus bound to be completed.

Irresponsible speeches of Hindu Mahasabha Leaders. Speeches of certain Hindu Mahasabha leaders were so irresponsible and fraught with so great dangers that the Muslims could not afford to think themselves as part and parcel of the Hindu nation. In 1937, Mr. V.D. Savarkar was openly preaching the gospel of a 'Hindu Rashtra'. He exhorted Hindus to capture power from the Congress and establish Hindu Raj. He emphasised that India was inhabited by two nations—the Hindus and the Muslims who constituted majority and minority respectively. Other fanatic leaders of the Hindu Mahasabha also preached the gospel of hatred, as a retaliation to the vicious communal propaganda of the Muslim League.

Jinnah's bellicosity and stubbornness. The national leaders were keen to cast aside the foreign yoke, come what may. Hence they were out to bring round Jinnah—the leader of the Muslim communal forces which impeded the national movement. Jinnah, on the other hand, was adopting an evasive attitude, from the very beginning. At a later stage, his bellicosity and stubbornness reached climax. He would neither agree to co-operate with the nationalist leaders, nor accept any settlement which did not assure him 'Pakistan' of his dreams. Jinnah's intransigence was one of the main causes of the failure of the Wavell Plan and the Cabinet Mission Proposals. He claimed Muslim League to be the sole representative body of the Muslims. His proclamation of 'Direct Action' was nothing short of an invitation to hooliganism in the party politics. He fretted and fumed over the Congress joining the Interim Government without the Muslim League. Thus a big void between the Congress and the Muslim League was yawning too wide to be bridged. Peaceful settlement or a mutual compromise on the basis of a united India was an impossibility. Hence, under the circumstances, there was no other alternative before the Congress but to accept the partition of India and part company with that section of the Indian nation which did not like to remain one with it and exhibited great keenness to constitute a separate nation. Jinnah had been openly saying, 'The Mussalmans are not a minority as is commonly known and understood. They are a nation according to any definition of a nation and they must have their homeland, their territory and their state.'

In his broadcast of June 3, 1947, Lord Mountbatten said that "a unified India would be by far the best solution of the Indian problem. But as there was no possibility of an agreement between the parties on any other basis than Pakistan, they had reluctantly agreed to divide India".

Divide and Rule Policy of the British. 'Divide and Rule' policy of the Britishers to perpetuate their rule in India, was apt to
accentuate animosities between the various communities of India. Minto-Morley Reforms Act 1909, was a deliberate attempt to sow the seeds of dissensions between Hindus and Muslims. The Acts of 1919 and 1935 further extended the 'Separate Electorates' for the other communities as well. Thus the Britishers had converted India into a hotbed of intrigues and factions which had torn asunder the unity of India. A disunited India was therefore bound to be partitioned.

Britishers desire to weaken India. The Indian National Congress stood for complete independence. Since 1929, it was striving hard for the achievement of its goal. The Britishers could never anticipate that the Congress would be agreeable to the acceptance of a 'Dominion Status' for India. Hence they wanted to weaken India before leaving it. Amputation of one of its limbs was therefore thought essential to leave India weak and make the two sub-continents fight against each other. It may be pointed out that the ever-mounting hostilities between India and Pakistan fulfils the Britishers cherished desire to play one sub-continent against the other, to some extent.

Failure of Interim Government. The reconstituted Interim Government of October 15, 1946, had five League nominees who could never pull on with the Congress nominees. It became a regular battle front. The Finance portfolio which was entrusted to the Muslim League with the hope of League's ultimate inability to handle it, proved a main pin-prick for the Congress. Liaquat Ali Khan, the Finance Minister, would not even sanction the post of a peon if recommended by a Congress minister. Thus conflicts in the Interim Cabinet were inevitable. The smooth functioning of the Cabinet was impossible.

In a speech delivered at the Convocation of the Banaras Hindu University, Sardar Patel, the then Home Minister, said, "I felt that if we did not accept partition, India would be split into many bits and would be completely ruined. My experience of office for one year convinced me that the way we have been proceeding would lead us to disaster. We would not have had one Pakistan but several. We would have Pakistan cells in every office."

Britishers threat of transfer of power. Attlee's fixation of date of transfer of power to India whether in peace or chaos embarrassed the nationalists. They feared that in the event of transfer of power, they might be faced with Civil War if they did not accept the division of India. Hence lesser evil was opted for. Moreover, the immediate transfer of power to a divided but independent India was more alluring than a united India ravaged with civil war and torn asunder with strifes and animosities. According to Michael Brecher, the Congress feared that in case of their non-acceptance of Mountbatten formula, the British Government might impose an award which might be much more disadvantageous to the Congress.
Union by compulsion undesirable. Intransigence of Mr. Jinnah and fanaticism of the Muslim Leaguers made it crystal clear to the nationalists that a thumping majority of Muslims were eager to secede from India and establish their own homeland. Hence, union achieved by compulsion would have been a transient phase. Moreover, presence of disgruntled elements would not have been in the ultimate interest of the united India. In the words of Pt. Nehru, "If they (the League) are forced to stay in India, no progress and planning will be possible." He further emphasised, "For generations, we have dreamt and struggled for a free and independent united India. The proposal to allow certain parts to secede, if they so will, is painful for any of us to contemplate." Sardar Patel also expressed similar views at A.I.C.C. Session held on June 15, 1947, when he said, "If one limb is poisoned, it must be removed quickly lest the entire organism suffer irreparably." Even Gandhi had agreed to the partition of India when his colleagues like Sardar Patel remonstrated with him that there was no better alternative under the circumstances. In fact, a united India would have been a very weak India. Constant troubles and frequent disintegrating pulls would have shattered the so-called forced unity into pieces and the consequences would have been far worse.

Partition considered a prelude to a united India. Some of the dismal prophets were foreseeing the ultimate end of Pakistan which in their opinion would not be a viable state from political, economic, geographical and military point of view. Hence they predicted a speedy end of Pakistan and the seceding areas compelled by the circumstances returning to the India's fold. Even Acharya Kripalani, a veteran Congress leader of the times, said, "A strong happy democratic India can win back the seceding children to its lap...for the freedom we have achieved cannot be complete without the unity of India". According to Maulana Azad, Sardar Patel also agreed to the Partition because he was convinced that the new state of Pakistan was not viable and could not last. He thought that the acceptance of Pakistan would teach the Muslim League a bitter lesson.

Mountbatten's Influence. Lord Mountbatten's sincere efforts to expedite the transfer of power to Indians at the earliest also contributed a great deal towards the partition of our country. Due to his marked practical sagacity, political acumen, administrative skill and highly courteous behaviour, Mountbatten succeeded in convincing leaders like Sardar Patel, Gandhi and Pt. Nehru who were very strongly opposed to the partition. In the words of Azad, "Within a month of Lord Mountbatten's arrival in India, Jawahar Lal, the former opponent of Partition, had become if not a supporter at least acquiescent towards the idea." He further emphasises, "It must be placed on record that the man in India who first fell for Lord Mountbatten's idea was Sardar Patel........The moment he found Patel amenable to his idea, he put out all the charm and power of his personality to win over the Sardar". It will not be

2. Ibid.
irrelevant to point out that Mrs. Mountbatten, also displayed very well her most friendly and attractive temperament in winning over the top Indian leaders, and making them agree to her husband’s point of view. She was extremely intelligent and perfect in interpreting her husband’s thoughts to those who did not see eye to eye with him in the initial stages.

Favouritism of the Britshers. It is an open secret that the Britishers were showing step-motherly treatment towards Hindus, since the mutiny. They were keen to have allies in the country. The Indian Muslims, under the leadership of Sir Syed Ahmed Khan, readily responded. Since then, they unduly favoured the Muslims and later on after the inception of Muslim League, always patronised it. Separate representation to the Muslims in 1909, weightage to them in the legislatures, reservation of seats for them in the India Council and the Governor-General’s Council—all these favours encouraged them to make unreasonable demands and counteract the nationalists’ activities. Active support of the Muslim League agitation in 1946 and 1947 by the British bureaucracy established the fact that the Britishers were backing the Muslim communals in their fell designs and nefarious activities. But for the direct and indirect support of the Britishers, the Muslim League would not have succeeded in achieving its goal of Pakistan without much of sacrifices and sufferings.

Appeasement of Muslims by the Congress. Some of the critics hold the Congress responsible for the partition of India. They opine that the initial mistake was committed by the Congress when it entered into Lucknow Pact in 1916. Conceding Separate Electorates to the Muslims and agreeing to fixed percentage of representatives of Muslims in the legislatures were other blunders committed by the Congress. Its attitude towards the communal award of 1932 gave fillip to the isolationist policy of the Muslims. Thus the policy of appeasement followed by the Congress encouraged the communal forces to entrench themselves firmly on the soil of India. In the words of Dr. Lal Bahadur, "It (Congress) adopted an attitude of appeasement towards the Mussalmans and thus encouraged them without wishing it to go on adding to their unreasonable claims. In its passion to woo the Mussalmans, it frequently made sacrifice of principles. The communal malady grew into unproportioned height and ultimately led to the division of India. The Congress unfortunately never tried to understand the Muslim character of isolation and aggression, and, to the end, continued to daily with the false hopes that, somehow or other, some turn of event would remove communal problem."

Interest of the Britishers involved. Despite the fact that the Labour Party had always sympathised with the Congress and had always dubbed the Muslim League a reactionary body, yet to safeguard the British interests, they agreed to the demands of the Muslim League. It was apprehended by the Britishers that if a
united India had become free according to the Cabinet Mission Plan, they would fail to retain their position in the economic and industrial life of India. "The Partition of India in which the Muslim majority provinces formed a separate and independent state, would on the other hand, give Britain a foothold in India. A state dominated by the Muslim League would offer a permanent sphere of influence to the British. This was also bound to influence the attitude of India. With a British base in Pakistan India would have to pay far greater attention to British interests than she might otherwise do."

Allurement of Power. The allurement of power also induced the Congress leaders who had already tasted its fruit to opt for freedom when it was being voluntarily expedited by the Britishers. In the words of Michael Brecher, "The prize of power was also a great temptation for the Congress leaders who had already tasted its fruit and were naturally reluctant to part with it at the moment of triumph."

Opportunity not to be missed. Moreover, they feared that the decline of the British offer might result in losing the golden opportunity of wresting authority from the Britishers who had been evading the emancipation of the Indians for the last three decades or so. Hence keenness to free themselves from the clutches of the rapacious Imperialists, the nationalists were prepared to stake their long cherished principle of united India. Sardar Patel aptly said,....."It was then that I was made fully conscious of the extent to which our interests were being prejudiced everywhere by the machination of the Political Department and came to the conclusion that the best course was to hasten the departure of those foreigners even at the cost of the partition of the country."

Thus all the above mentioned factors led to the partition of India—an event of great importance. The Congress leaders who had cherished and struggled hard for the idea of united India accepted the partition of India though with heavy hearts. In fact, there was no alternative to end British thraldom and save the country from barbarism and carnage at the hands of fanatic hooligans. It is, however, sad that barbaric atrocities of unprecedented nature could not be avoided despite the acceptance of partition of India by the Congress.

PART II

CONSTITUTION OF INDIA
With the passage of the Indian Independence Act 1947, India cast aside the foreign yoke and embarked upon a new era. The Constituent Assembly which was already in existence was declared sovereign in law as well as in fact. The establishment of Pakistan and subsequent withdrawal of Muslim League from the Indian scene freed the Constituent Assembly from a great handicap which had impeded its progress, since its inception in November, 1946. The Assembly could now fulfill its mission with missionary zeal without restraint from outside or disruption from within.

On August 29, 1947, the Constituent Assembly set up a Drafting Committee of seven members under the Chairmanship of Dr. Ambedkar. Sarvshri M. Gopalaswami Ayyanger, Alladi Krishnaswami Iyer, K.M. Munshi, T.T. Krishnamachari, Mohd. Sadullah, N. Madhav Rao and D.P. Kaithan were eminent personalities who constituted the Drafting Committee. Sri B.N. Rao, another illustrious son of India, assisted the Committee as Constitutional Adviser. Shri B.S. Mookerji was its principal draftsman. Pt. Jawahar Lal Nehru, our beloved Prime Minister, and Sardar Patel, iron man of India, were the sources of constant guidance and inspiration to the constitutional pandits. The Drafting Committee submitted the Draft Constitution to the President of Constituent Assembly on February 21, 1948 after putting in strenuous work for 141 days. Eight months' period was allowed for its hair-splitting all over the country. The consideration of the Draft Constitution commenced on November 4, 1948. The Assembly held altogether eleven sessions running up to 165 days, out of which 114 days were devoted to the consideration of the Draft Constitution. The total number of amendments tabled was approximately 7635, out of which 2473 amendments were actually moved.

After elaborate discussions, the draft was finalised with suitable amendments on November 26, 1949. Thus it took the Assembly two years, eleven months and twenty days to frame the Constitution of the Indian Republic. The twelfth session of the Assembly which was held on January 24, 1950 unanimously elected Dr. Rajendra Prasad, as the first President of the Indian Union. In a very
colourful and impressive ceremony, the members of the Assembly signed the official copies of the Indian Constitution, which came into force on January 26, 1950.

The constitution represents India's cherished desire to introduce an era of liberty, equality and justice. It stands for the pursuit of peace and tranquility as fraternity is one of the cardinal principles of its preamble. Because of its democratic ideals, it was hailed by the leading-most democracies of the world as a glorious chapter in the history of man's march on the highway of progress and prosperity.
Features of the Indian Constitution

1. A Detailed Constitution

Like the constitutions of the great states of the world, Great Britain being an exception, the Indian constitution is a written one. It is embodied in a comprehensive constitutional document consisting of 395 articles grouped in 22 parts and 9 schedules. Dr. Ivor Jennings remarks, "The Indian constitution is the longest and most detailed in the world."¹ In fact, the voluminous size of the Indian constitution is more than five times as long as that of the U.S.A.

Why the Constitution is bulky. The bulkiness of the constitution is mainly due to a number of causes:—(i) The constitution does not contain only the broad principles but also the details of administration. (ii) It provides not only for the administrative machinery at the centre, but also of the units. Since the units of the Indian Federation were of four distinct types i.e., Part A, Part B, Part C and Part D states of the first schedule, provision had to be made for each of them separately. This four-fold classification of the units was however abolished by the 7th amendment and States Reorganization Act, 1956. (iii) The federal character of the Indian constitution adds to the length of the constitution, in another way also. The relations between the Union and the State are dealt with in most elaborate and even complicated details. (iv) The incorporation of Fundamental Rights and detailed restrictions imposed upon them, further add to its bulk.² (v) A complete chapter is devoted to non-justiciable Directive Principles of State Policy.³ (vi) The constitutional pandits thought it necessary to make a special mention in the constitution of the

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2. Part III (24 articles and 9 schedules).
3. Part IV (16 articles).
safeguards for the minorities and special classes like the Anglo-Indians, Scheduled Castes and Scheduled Tribes.\(^4\) (vii) In order to cope with abnormal circumstances any tempestuous eventualities likely to occur in an infant democracy, nine articles were provided in the constitution dealing with Emergency provisions.\(^5\) (viii) Provisions regarding Citizenship, National Language and Regional Languages, Elections, the Services, Contracts and Suits, Trade and intercourse within the territory of India, are also made in the constitution.

Our constitution is a legacy of the past. The Government of India Act 1935, from which many of its provisions were copied almost textually, was itself the longest statute ever enacted by the British Parliament. It was mainly concerned with the purpose of transferring power, subject to a variety of safeguards, and had therefore been drawn up to include not only matters of constitutional order, but also those of mere administrative or judicial character. Our constitution followed the same pattern. In the words of Srinivasan, the Constitution of India is "not merely a constitution but also a detailed legal code dealing with all important aspects of the constitutional and administrative system of the country."\(^2\)

The complexity of the conditions in our country and the comparative political immaturity of the Indian people also induced the constitution makers, not to take risks and leave structural details to conventions or regulations by the Legislature. They incorporated them in the constitution.

Dr. Ambedkar, the chairman of the Drafting Committee of our constitution, has very nicely justified the above fact in these words, "The form of administration had a close connection with the form of the constitution. There was also the possibility of perverting the constitutional morality. That morality was not a natural sentiment but had to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top dressing on the Indian soil which is essentially undemocratic. In these circumstances, it is wiser not to trust the Legislatures to prescribe forms of administration. This is the justification for incorporating them in the constitution." Even the basic assumptions of the parliamentary system, e.g. that the President should act with the aid and advice of the ministry and the ministers shall be jointly responsible to the House of the People (Lok Sabha) have been expressly stated in the constitution, rather than left to the conventions.

1. Part XVI (13 articles)
2. Part XVIII (9 articles)
3. Srinivasan, N.: Democratic Govt. in India, p. 143.
Dr. M.P. Sharma while explaining this feature of the Indian constitution has very well said, "...Many of these matters relate to the details of the administration and, strictly speaking, should have no place in a constitution. The more of such details there are in a constitution, the less of room there is for flexibility in it."

§ 2. A SOVEREIGN DEMOCRATIC REPUBLIC

The Preamble to the Constitution declares India to be a sovereign democratic republic. 'Sovereignty' of India is reflected from the fact that India is not subject to external control in its domestic or foreign policy. She is the master of her own destiny. The sovereignty of an independent country does not debar it from embracing the membership of other states or 'association' of other states, for the promotion of mutual interests or furthering the cause of peace. Hence India sought the membership of the U.N.O. and Commonwealth of Nations.

India's membership of the Commonwealth is the victim of the perennial shafts of the critics. They maintain that India's membership of the Commonwealth and her acceptance of the King as the symbol of free association of its independent member-nations, and as such the Head of the Commonwealth, is incompatible with her sovereign Republican status. In the words of Professor D.N. Banerji, the Commonwealth Agreement of 1949 was "a kind of improvised political device intended to reconcile two apparently inconsistent factors namely, India's decision to adopt, as a sovereign independent state, a Republican form of constitution and her desire to continue her membership of the Commonwealth." Robert G. Menzies observed in April, 1949: "How a nation can become Republic by abolishing allegiance to the Crown and at the same time retain full membership of the United Commonwealth which is and must be basically a Crown Commonwealth is a complete mystery." General Smuts also once emphasised that there was no middle course between the Crown and the Commonwealth. There may be some logic in the above observations, but they seem to be rather exaggerations. The critics forget that the Agreement of 1949 has no value in the eyes of law and is an "extra-constitutional contractual arrangement entered into at will and terminable at will;"² We can any moment break away from the Commonwealth. Its membership is purely on voluntary basis. Our Prime Minister, Pt. Jawahar Lal Nehru, made this fact crystal clear in a broadcast from New Delhi, on 10th May, 1949. "We took pledge long ago to achieve 'Purna Swaraj'. We have achieved it. Does a nation lose its independence by an alliance with another country? Alliance normally means mutual commitments. The free association of sovereign commonwealth nations does not involve such commitments. Its very strength lies in its flexibility and its complete

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freedom. It is well known that it is open to any member-nation to go out of the Commonwealth, if it so chooses.

Moreover, unlike other dominions, India does not owe allegiance to the British Crown. The king is accepted as the symbol of the free association of the independent member-states, constituting the Commonwealth. The use of the word ‘British’ before the word ‘Commonwealth,’ suggested supremacy of Britain in the organization and the need of formal allegiance to the Crown meant that no member could be a Republic. Both these limitations were removed, by a common agreement, at a meeting of the Commonwealth Prime Ministers, held in London, in October, 1948. The name of this Association is no longer British Commonwealth of Nations. The member-states need recognize the British Monarch as the symbol of Commonwealth unity. The only obligation devolved on a member is to consult the other members of the Commonwealth about matters of common or international importance before adopting its own line of policy. In his broadcast on May 10, 1949, Pt. Nehru said, “We have agreed to consider the King as the symbolic head of the free association but the King has no functions attached to that status in the Commonwealth. So far as the constitution of India is concerned, the King has no place and we owe no allegiance to him.” The same point was emphasised by late Sardar Patel, on 20th April, 1949, in these words: “India’s status of a sovereign, independent Republic is by no means affected because there is no question of allegiance to His Majesty, the King, who will merely remain a symbol of our free association as he would be like all other members

From the above statements of two renowned leaders of India, holding very responsible position in the Central Cabinet, we can safely conclude that Commonwealth is not a super-state, imposing on the sovereignty of our state. No binding decision is taken at Commonwealth conferences. There is no provision for obligatory joint action by members of the Commonwealth in peace or in war. India’s policy of neutrality has not been obstructed so far by the Commonwealth, nor is it going to be hindered in the times to come. In fact, the freedom and flexibility of the Commonwealth provides the member-states a common forum where they meet to solve their common problems of varied nature, without impairing their independence of action.

The ‘Republican’ form of the Indian constitution implies that no monarch can be its head. Its head is an elected President.

The word ‘Democracy’ implies that the Governmental authority is derived from the people, and is exercised by a Government constituted on the basis of universal adult franchise.

§ 3. SINGLE CITIZENSHIP

Generally, a Federal form of polity caters to double citizenship—
(i) Citizenship of the Federation as a whole and (ii) Citizenship of each component state. The constitutions of the U.S.A. and Switzerland allow double citizenship. The American States discriminate in favour of their own citizens in political matters, as right to vote and right to hold appointments in the State Government. The constitution of India on the other hand unlike that of U.S.A. and like that of Canada and Burma introduces single citizenship. There is no such thing as the citizenship of a state. Every Indian is entitled to the same rights, wherever he may live in India. Dr. Ambedkar pointed out in the Constituent Assembly "There is only one citizenship for the whole of India. It is Indian citizenship. There is no state citizenship. Every Indian has the same right of citizenship, no matter in what state he resides. The State does not deny to any person equality before the law or equal protection of the laws within the territory of India."¹ The constitution provides that the state shall not discriminate against any citizen on the grounds of religion, race, caste, sex, place of birth or any of them.² Equality of opportunity for citizens in matters relating to employment or appointment to any office under the state is assured. Moreover, no citizen, on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them is ineligible or is discriminated against in respect of any employment or office under the state.³

Not only their rights, even their obligations are identical.

§ 4. PARLIAMENTARY DEMOCRACY

The constitution provides for parliamentary type of Government at the Centre and in the constituent states. There are three distinct characteristics of parliamentary form of Government, as construed in the English Constitution—(i) Responsibility of the Executive to the Popular House, (ii) Democratic basis of the Popular House. (iii) The ultimate control of the Lower House in matters, legislative and financial.

The President of India like the King of England is a mere constitutional head. He is not vested with discretionary powers or Special Responsibilities, which enabled the Governor-General of India prior to the attainment of independence to act in his individual judgment. The constitution provides that there shall be a Council of Ministers with the Prime Minister at the head, to aid and advise the President, in the exercise of his functions. The Prime Minister is to be appointed by the President and the other ministers are appointed by the President on the advice of the Prime Minister. It is also stated that the Council of Ministers shall be collectively responsible to the House of the People (Lok Sabha). The Council of Ministers, therefore, is a parliamentary executive. It can remain in office so long as it commands the confidence of the

1. Article XIV.
2. Article XV (i).
3. Article XVI.
Lower House. While all Executive action is taken in the name of the President, on the advice of the Council of Ministers, in actual fact the role of the President is very insignificant. The advice of the Prime Minister is not supposed to be flouted. The provisions of the constitution are rather vague and even contradictory on this point. On the one hand, the constitution provides that the Council of Ministers will be collectively responsible to the House of the People, it also lays down that the "Ministers shall hold office during the pleasure of the President." Can the President legally dismiss a Council of Ministers, even if it enjoys the confidence of the ‘Lok Sabha’—is a moot question. The constitution further says that "There shall be a Council of Ministers, with the Prime Minister at the head to aid and advise the President in the exercise of his functions." Does it mean that the President can act contrary to the advice of the Prime Minister! The constitution is silent about it. Nowhere it is written that the President "must" accept the advice of the Prime Minister. An ambitious President may flout the advice of the Prime Minister without abrogating the letter of the constitution. The constitution makers, in fact, left the working of the Parliamentary Government to the suitable conventions which is rather a hazardous step. Their keenness to establish a parliamentary form of Government, however, is obvious from the words of Dr. Ambedkar "Under the parliamentary system there is daily and periodic assessment of the responsibility of the Government." They did not opt for Presidential form of Government, as they apprehended, in a poor country like India inhabited by illiterate masses, the President may assume dictatorial powers. According to Dr. Ambedkar, they aimed at a combination of 'stability' and 'responsibility'. Despite all these assertions in the Constituent Assembly Debates, we still feel, the necessity of inclusion of one short provision 'The relations between the President and the Prime Minister and the other ministers are practically the same as those between the Monarch and the Cabinet in Britain.'

Coming to the second point, the popular House is decidedly constituted on democratic basis. The Union Parliament is a bicameral Legislature, consisting of Lok Sabha and Rajya Sabha. The Lok Sabha, a popular chamber, directly elected by the people on the basis of universal adult franchise. The Rajya Sabha, though popular in composition, is an indirectly elected house. Twelve of its members are nominated by the President to represent letters, art, science and social sciences and the remaining are elected by the M.L.A.s of the states, composing the Indian Union, in accordance with the system of proportional representation by means of single transferable vote.

Regarding ultimate legislative and financial control in the hands of the Lower House, a bill other than money bill normally requires

1. Article 75 (2).
2. Article 74 (1).
approval of both the Houses separately but in the case of deadlock, it is referred by the President to the Joint session of the Parliament. Since the membership of the Lower House is approximately double that of Rajya Sabha, the former usually scores the point. A 'Money Bill' can be initiated only in the Lower House. The Rajya Sabha may discuss it and even make recommendations for its amendments. If, however, the Lower House does not accept the recommendations, it shall be deemed to have been passed by the Parliament in the form in which it was passed by it. Thus the dominant role of the Lower House, both in the legislative and financial domains, is quite discernible.

§ 5. RIGIDITY-CUM-FLEXIBILITY

The Indian constitution is a unique combination of rigidity and flexibility. The framers of the constitution were judicious enough to avoid making the constitution so flexible as to become a tool in the hands of a ruling party or so rigid, as to be incapable of adapting itself to changing conditions. The Indian constitution, in fact, is less flexible than the British and less rigid than that of the United States.

A constitution is called flexible when it makes no distinction between the constitutional and the ordinary law of the land and is amendable by the Legislature, through the ordinary procedure. The British constitution is an example. The Indian constitution could not be made so flexible without jeopardising its federal character and placing the individual states composing the Indian Federation at the mercy of Union Legislature.

A rigid constitution, however, is amendable only either by the joint action of the Federal and the state legislature or by an independent third authority. Dr. Jennings considers Indian constitution rigid in character. "What makes the Indian constitution so rigid is that in addition to a somewhat complicated process of amendments, it is so detailed and covers so vast a field of law that the problem of constitutional validity must often arise." However, the Indian constitution is not so rigid, as it seems. Its method of amendment is not so complicated. It prescribes three different methods for amendment of its different provisions.

(a) A good many provisions of the constitution can be amended or repealed by Parliament, acting by simple majority of the members present and voting. Thus acting on the recommendations of the President, Parliament may by law (i) form a new state, (ii) increase the area of any state, (iii) alter the name of any state, (iv) alter the boundaries of any state, (v) establish or abolish the Legislative Council of any state provided the Legislative Assembly thereof recommends such action to the Parliament by a resolution passed by a majority of the total membership and a two-thirds majority of the

members present and voting, (vi) change the qualifications of Indian citizenship, (vii) alter the provisions for the administration of Scheduled Areas and Scheduled Tribes, (viii) make or amend any act dealing with salaries and allowances of members, rules of procedure, parliamentary privileges and quorum, etc. (ix) alter the number of maximum judges of the Supreme Court etc.

Though the above matters deal with some of the important provisions of the constitution, yet they will not be treated as amendments to the constitution.

(b) Article 368 is the main amending clause. Art. 368 lays down that if an amendment seeks to make a change in (i) any of the Legislative lists in the seventh schedule, (ii) the representation of states in Parliament, (iii) the provision relating to the amendment of the constitution, (iv) election and manner of the election of President, (v) extent of the Executive power of the Union and of state, (vi) constitution of High Courts in the states, (vii) legislative relations between the Union and the states, the bill embodying it is not only to be passed by each House of the Parliament by a majority of the total membership of that House and by majority of not less than two-thirds of the members present and voting, but it is to be ratified by the Legislatures of not less than one-half of the states.

(c) The remaining provisions of the constitution can be amended by (i) a majority of the total membership in each House of Parliament, and (ii) a majority of not less than two-thirds of the members present and voting in each House of Parliament.

The amending procedure is not confined to Article 368 only. In fact, it is scattered over many other parts of the constitution. Certain provisions of the constitution can be amended by the President or the Governor of a state. The President may nominate two members of the Anglo-Indian community, if he is of the opinion that the community is not adequately represented in the House of the People (Lok Sabha). The Governor of a state may take similar step in respect of state Legislative Assembly. Thus this action on the part of the President or Governor amounts to increasing of membership of Lok Sabha and state Legislative Assembly respectively. Thus the exercise of this power smels the effect of amending the constitution.

To take another example the Council of State (Rajya Sabha) can amend the distribution of Legislative powers laid down by the constitution. If by a resolution passed by a two-thirds majority of the members present and voting, the Council of State declares that it

1. Article 169 (1).
2. Article 11.
3. Schedule V, Part D.
4. Article 169.
5. Article 333.
is necessary or expedient in the national interest, that the Parliament should make laws as regards a state subject enumerated in the state list, it becomes lawful for Parliament to legislate on the said matter for the whole or any part of the territory of India. Such a resolution remains in force for a period not exceeding one year.1

The above two examples reflect the elements of flexibility in the Indian constitution. In the words of Dr. M.P. Sharma, “We call that constitution flexible, the provisions of which can be varied or twisted to suit special circumstances without resorting to formal amendment.” Bryce compares such a constitution to the supple twigs of a tree, which move away from their place temporarily to let a huge carriage pass from under them and then resume their place quietly.

Thus among the federal constitutions, the Indian constitution must be said to be the least rigid; it strikes a balance between extreme rigidity on the one hand and extreme flexibility on the other.

§ 6. A SECULAR STATE

Another distinctive feature of the new constitution is its secular character. In fact this is a remarkable departure from the primitive Indian polity, the theocratic state of the Muslim period and the communal polity fostered by British Imperialists particularly on the eve of their withdrawal from India. The framers of the Indian constitution were aware of the nasty role played by religious fanaticism and orthodoxy in their motherland. They did not like to shatter the national unity by allowing a particular religion to play a dominant role. They did not like to undermine the confidence of the religious minorities and thus shake the citadel of their infant democracy. Hence they opted for a ‘secular state’.

In the words of Venkataraman, the secular state is “neither religious, nor anti-religious, but is wholly detached from religious dogmas and activities and thus neutral in religious matters”. A secular state maintains complete religious neutrality and refuses to recognize man-made barriers such as those of race, colour, creed etc. It believes in freedom, toleration, equality and the oneness of all the individuals. It is concerned with the relation between man and man and not those between man and his creator. In the words of Shri Laxmi Kant Mahita, a member of the Indian Constituent Assembly, “by a secular state, as I understand it, is meant that the state is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith. This means in essence that no particular religion in the state will receive any patronage whatsoever.”

Shri H.V. Kamath, another member of the Constituent Assembly, emphasised the same fact more clearly. He said, “When I say that a state should not identify itself with any particular religion, I do

1. Article 249.
not mean to say that a state should be anti-religious or irreligious. We have certainly declared India to be a secular state. But to my mind, a secular state is neither a Godless state nor an irreligious nor an anti-religious state." While speaking on the Hindu Code Bill in Parliament in 1951, Dr. Ambedkar threw light on the concept of secularism as follows:

"It (secular state) does not mean that we shall not take into consideration the religious sentiments of the people. All that a secular state means is that this Parliament shall not be competent to impose any particular religion upon the rest of the people. That is the only limitation that the constitution recognizes." C. Rajagopalachari, an ex-Governor-General of free India, said in this connection, "It has been repeatedly affirmed that when the Indian constitution laid down that India shall be a secular state, it was intended that the state should not discourage or be hostile towards religion but that what was intended was impartiality towards all creeds and denominations. It was a refusal to accept the theory that different religions make different nations or that the state should belong to one religion more than another."

From the above observations of parliamentarians of repute, we can conclude that secular state is neither anti-religious nor indifferent to religion but is one which practices an attitude of complete impartiality towards all religions. The State guarantees to everyone the right to profess whatever religion one chooses to follow. It does not show any discrimination against any person on account of his religion or faith.

The constitution of India in its very preamble granted to every citizen liberty of belief, faith and worship. Article 15 (1) grants religious equality and assures the citizens of India of non-discrimination on religious grounds. It states, "the state shall not discriminate against any citizen on grounds only of religion, caste, sex, place of birth or any of them." Article 15 (2) states that no citizen of India shall be debarred from entering any shop, public restaurants, hotels, places of public entertainments, use of wells, tanks, bathing ghats, roads and places of public worship maintained totally or partly out of state funds or dedicated to the use of general public on grounds of religion, race, caste, sex or place of birth. Article 17 abolishes untouchability — relic of the past injustice to a section of Hindus, doing menial work. Article 25 grants complete religious freedom subject to public order, morality and health. Article 25 (1) states that "subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right, freely to profess, practice and propagate religion." In the words of Prof. Alexandrowies,

"India as a secular state guarantees constitutionally freedom of religion to all persons and does not assign a special position to any particular religion."\(^1\)

The cultural and educational rights guarantee to the minorities the right to maintain their own language and establish educational institutions of their choice. Thus culture of every minority is preserved.

The constitution protects collective freedom of religion as well by giving every religious denomination the right to establish and maintain institutions for religious and charitable purposes; to own and acquire movable and immovable property and to administer such property according to law.\(^2\)

In recruitment to public services, equal opportunities are accorded to all citizens. Of course, some special provisions for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes do exist.

The above quoted articles are generally termed as the constitutional framework of the secular state in India. If we make a critical appraisal of these articles, we will come to the conclusion that the concept of secular state which has been adopted in India, is not a negative concept of non-interference in religious affairs, but a positive concept of tolerance, impartiality and equal protection of the interests of all religions. Dr. Radhakrishnan, the then Vice-President of India, has dealt with the significance of secularism in India, in the following words:

"When India is said to be a secular state, it does not mean that we reject the reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that secularism itself becomes a positive religion or the State assumes divine prerogatives. Though faith in the supreme being is the basic principle of the Indian tradition, the Indian state will not identify itself with or be controlled by, any particular religion. We hold that no one religion should be given preferential status or unique distinction, that no one religion should be accorded special privileges in national life or international relations for that would be violation of the basic principles of democracy and contrary to the best interests of religion and Government. This view of religious impartiality, of comprehension and forbearance has a prophetic role to play within the national and international life. No group of citizens shall arrogate to itself rights and privileges which it denies to others. No person should suffer any form of disability or discrimination because of his religion but all alike should be free to share to the fullest degree in the common life ... secularism as here defined in accordance with the ancient religious traditions of India. It tries to build up a fellowship of believers not by subordinating individual qualities to

1. Alexandrowics C.M.: Constitutional Developments in India, p. 64.
the group mind but by bringing them into harmony with each other."

Opposition to Secularism. The secular character of the state has aroused a suspicion in the mind of orthodox Hindus, that, on the one hand, our state offers no guarantee to their religion against the encroachments of the state in the name of social welfare and reform; while, on the other, it does not patronise Hindu culture, so inextricably woven up with the Hindu religion. Measures like Hindu Code Bill are quoted as disquieting examples of state interference with the vital principles of their religion. The apologists of Hindu culture however forget that secularity or religious neutrality is an essential mark of a progressive state. In a vast country like India inhabited by diverse races, professing varied faiths and embracing different religious secularity is the only reasonable attitude of the state. Secularity may not be a cause of embarrassment for the majority. One of the main reasons why Pakistani propaganda has failed to disrupt India's friendly relations with other Muslim countries is the fact that religious minorities in India have felt perfectly secure and that they have not been subjected to any discrimination at the hand of the State. A theocratic state as an alternative to a secular state is a historical anachronism. It is out of date and out of place. It fosters conservatism and fanaticism and undermines national unity. Our past history is a witness to the fact.

§ 7. JUDICIAL REVIEW

The doctrine of Judicial Review is as a matter of fact implicit in our constitution. If the union or a state Government transgresses the limitations imposed upon it by the constitution through any law, the Supreme Court can declare such a law void.

For instance, Article 13 of our constitution declares that any law of the Legislature or act of the Executive, which contravenes any of the provisions of the Fundamental Rights, shall be void. "Legislation, impinging on the Fundamental Rights can be valid only if it imposes reasonable restrictions on the exercise of these rights and the question of reasonableness would in the last resort be a matter for determination by the courts. The determination by the Legislature of what constitutes a reasonable restriction is not final or conclusive; it is subject to the supervision by the court." Thus the judiciary reviews the acts of the Union and state Governments and safeguards and protects the rights and liberties of the people. As such, it serves as a guardian of the rights of the people, as well as a custodian of the constitution.

§ 8. INTEGRATION AND DEMOCRATISATION OF THE STATES

Another noteworthy feature of the Indian constitution is the integration of the Indian states with the rest of India and as a conse-

quence their democratization. During the British regime, India was composed of (I) British Indian Provinces wherein some sort of democratic form of Government existed and (II) the Indian States, wherein the autocratic form of Government was prevalent. With the passage of Independence Act 1947, paramountcy of the Britishers over the 'Rulers States' also lapsed. Hence they were free to join India or Pakistan or remain independent. The existence of independent, sovereign states would have been a constant threat to the integrity of India. Fortuitously Sardar Patel, the iron man, happened to be our Home Minister. His practical sagacity, political acumen and shrewd statesmanship, coupled with the patriotic attitude of some of the Indian princes enabled us to achieve political unity of India, by following a policy of merger and integration. Establishment of popular ministries in these states followed the integration. In fact, this is an achievement almost unparalleled in the history of the world.

§ 9. UNIVERSAL ADULT FRANCHISE

The boldest step, the constitution took was the introduction of universal adult franchise in the land of illiterate millions. The 'separate electorate system' which sowed the seeds of dissensions amongst Hindus and Muslims and ultimately resulted in the partition of the country, was abolished. Property qualifications which enabled only 14% of our people to cast votes during the Britishers' Rule, was substituted by universal suffrage. In the words of Prof. Srinivasan, "the introduction of adult suffrage without any qualification of any kind is the boldest step taken by the Constituent Assembly and is an Act of Faith".1 All adults of 21 years of age (unless otherwise disqualified) have been vested with the right to vote. Thus about 180 million people out of a population of 360 millions were enfranchised. In the General Elections held in 1957 and 1962, the number of electorates went up to 193 crores and 21 crores respectively.

§ 10. FUNDAMENTAL RIGHTS

The incorporation of a formal Bill of Rights in the constitution is deemed to be a distinguishing feature of a democratic state. One of the outstanding characteristics of the Indian constitution is the elaborate enumeration of the rights of the citizens in chapter III. They are justiciable. Judiciary is their guardian. Of course, they are not absolute and can be suspended during emergencies, in the larger interests of the state. These rights are embodied in Articles 12 to 35 of the constitution. They refer to right to equality; right to freedom; right against exploitation; right to freedom of religion; cultural and educational rights; right to property; and right to constitutional remedies.

1. Prof. Srinivasan: Democratic Govt. in India, p. 151.
The object of our constitution makers was to establish a welfare state by ensuring justice, freedom and equality and fraternity to their fellow citizens. By the abolition of untouchability, the dignity of the individual has been restored. The abolition of titles has removed a man-made inequality. All discriminations have ceased to exist. Exploitation has been made difficult. In *Motti Lal vs. Uttar Pradesh Government*, Justice Sapru rightly observed, “The object of these Fundamental Rights as far as I can gather from a reading of the constitution itself, was not merely to provide security, to and equality of citizenship of the people living in this land and thereby helping the process of nation-building, but also to provide certain standards of conduct, citizenship, justice and fair-play. In the background of the Indian constitution, they intended to make all citizens and persons appreciate that the paramount law of the land has swept away privileges and has laid down that there is to be perfect equality between one section of the community and another in the matter of all those rights which are essential for the material and moral perfection of man.”

§ 12. DIRECTIVE PRINCIPLES OF STATE POLICY

Following the patterns of the Spanish and Irish constitutions, the Indian constitution contains a chapter on ‘Directive Principles of State Policy’ in Part IV.1 Dr. B.R. Ambedkar aptly described them as a “novel feature” of the constitution of India. They are the ideals, which the Union and State Governments must keep in mind, while they formulate policy or pass a law. They lay down certain social, economic and administrative principles, suitable to peculiar conditions prevailing in India. In the words of G.N. Joshi, “They constitute a very comprehensive political, social and economic programme for a modern democratic state.”

They, in fact, inscribe the objectives of a welfare state. The Directives unlike the Fundamental Rights are not justiciable. Nevertheless, the constitution declares that they are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. “They include the right to work, education and public assistance in cases of unemployment, old age, sickness etc., just and humane conditions of work, maternity relief as well as living wage, leisure and social and cultural opportunities for all workers; the enforcement of a uniform civil code throughout the country; a provision of free and compulsory education for all children below 14 years of age; the organisation of agriculture and animal husbandry on modern scientific lines; improvement of public health; prohibition of intoxicating drinks and drugs and of the slaughter of cows; the preservation of ancient monuments of artistic or historic interest; the organisation and improvement of village panchayats; the separation of the judiciary

1. Articles 36—51.
from the Executive and the promotion of international peace and security.

In fact, the Directive Principles provide the key to the understanding of the constitution, whenever the latter is ambiguous or is silent. They constitute, in the words of K.C. Wheare, "manifesto of aims and aspirations."

§ 12. CENTRALISED FEDERATION

The constitution creates a Federal State even though the term federation has not been used anywhere in the document. In a vast country like India, inhabited by diverse races, speaking different languages and claiming varied cultures, federation was rather inevitable. All the normal features of a federal polity are therefore embodied in the constitution; viz., distribution of powers between the Centre and the constituent units; a written constitution and its supremacy, the existence of a Supreme Court to act as the interpreter and guardian of the constitution; and rigid character of the constitution etc. But at the same time, the centrifugal forces at work within our country indicated the need of a strong central government. A weak centre had even been the cause of our humiliation in the past and we did not like history to repeat itself. The Centre was therefore deliberately kept strong. The Centre was allowed to interfere with the administration of the state; the appointment of the Governors by the President; the appointment of I.A.S. and other all-India services by the U.P.S.C.; the provision of an Election Commission empowered to control central and state elections, a single unified judiciary; single citizenship (unlike that of U.S.A. where there is double citizenship), the authority of the Parliament to amend the constitution save in certain specified matters; reservation of certain bills by the state legislature for the final sanction of the President; provision of procuring President's prior sanction before their introduction in the state legislature; vesting of residuary powers with the Centre; permission to the Parliament to make laws regarding a subject originally provided in the State list if Council of the State passed a resolution by majority of total and two-thirds of the members present and voting that it is expedient in the national interests; vesting authority with the Government of India to issue necessary administrative directions to the states in certain matters; a common fundamental law civil and criminal for the whole country; empowering the Parliament to change the name, alter the boundaries and areas of the states—reflect that our's is a federal constitution with unitary bias. According to Dr. Wheare, "The Indian Constitution establishes a system of Government which is at most quasi-federal, almost devolutionary in character; a unitary state with subsidiary federal features rather than federal state with unitary features." Even Dr. Ambedkar, the chairman of the drafting committee, was of the view, "the constitution has not been set in a tight mould of federalism." In the words of D.D.
Basu “the constitution of India is neither purely federal nor unitary but is a combination of both. It is a union or composite of a novel type”. In fact, our constitution is a centralised federation. There was no alternative before the framers of the constitution, since they were conscious of the inherent weaknesses of a weak Centre.

§ 19. A WELFARE STATE

The preamble to the Indian constitution embodies the highest and the noblest ideals of justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; fraternity, assuring the dignity of the individual and the unity of the nation. These lofty ideals are the cornerstones of a welfare state. Indian constitution launches a campaign against artificial barriers and man-made inequalities. Abolition of untouchability and titles is a witness to this fact. The constitution does not only prohibit discrimination on grounds of birth, religion, caste or creed but also provides for the promotion of the interests of backward classes. It seeks to remove all inequalities by providing just and humane conditions of work, maternity relief, leisure and cultural opportunity to every individual, prevention of exploitation in labour and industry and free education for all.\(^1\) Equality of reward for equal work; the distribution of ownership and control of the material resources of the community, so as to subserve the common good; avoidance of concentration of wealth and means of production, to the common detriment\(^2\); usher in an era of economic justice. The provision of Fundamental Rights and liberties for the individual citizen is another significant step aiming at his welfare. Of course, these rights are not absolute. They are hedged with certain restrictions. But that does not mean that in the name of common interest, the state can curtail the individual's liberties to an extent of hampering his development.

A welfare state stands eclipsed if interests of minorities and weaker sections of the population remain at stake. Our constitutional pundits were fully alive to this danger. The principle of equality has in some matters been so modified as to permit protective discrimination in favour of backward classes. Article 46 specifies that the state “should promote with special care the educational and economic interests of the weaker sections of the people.” A new clause added to Article 15 (in 1951) authorises the state to make any special provision for the advancement of any socially and educationally backward class of citizens or for Scheduled Castes and the Scheduled Tribes. Article 29 was also amended to empower the state to reserve seats in state colleges for socially or educationally backward classes of citizens or for the Scheduled Tribes and the Scheduled Castes. Article 16 (clause 4) of the constitution empowers the state to make “any provision for the reservation of appointments

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1. Articles 52, 43 and 45.
2. Articles 39 (d), 39 (b) and 39 (d).
or posts in favour of any backward class of citizens which, in the opinion of the state, "is not adequately represented in the services under the state". Articles 29 and 30 confer upon the minorities the right to preserve their languages, scripts and cultures and to establish and administer educational institutions of their choice. Seats for the backward classes were reserved in the Parliament and the state legislatures. The President and the Governors of the states were authorized to nominate representatives of the Anglo-Indian community to the Lok Sabha and the state legislative assemblies respectively if, in their opinion, the community was not adequately represented.

Thus it is obvious that the minorities in our country cannot be suppressed by arrogant majorities. They are as secure as the majority community. Rather, they have been given more privileges than the majority. In the words of K.M. Munshi "the constitution was an instrument not only of ensuring material betterment and maintaining a democratic set-up but that it recognized that the personality of every individual is sacred." Keeping in view the above facts, it can safely be concluded that our’s is a welfare state.

§ 14 SOVEREIGNTY RESIDES IN THE PEOPLE

The preamble to the constitution proclaims that India is a land of our people and sovereignty resides in the people of India. The people are the authors of the constitutional law. It is they who have entrusted to the various organs of Government, their respective powers and functions. The Union Government cannot claim sovereignty because its authority is derived from the constitution which can by an amending process also deprive it of its powers. Same is the case with the governments of the individual states. The Supreme Court seems to be the organ of the highest power as it can challenge the acts of both, the legislative and executive branches of government. But the Supreme Court also like any other organ of government is ultimately controlled by the constitution. The constitution itself is not sovereign as its provisions can be amended by the constitutional process of amendments. In fact, sovereignty resides in the ‘People of India.’ The entire authority has emanated from the people. They have conferred powers on the organs of Government. They themselves have enacted the constitution. They themselves can unmake it. The preamble speaks of the ‘people of India’. India, according to the preamble, is the land of our people and sovereignty is vested in the people as a whole. Sovereignty resides in the united people of India and not in the people of individual states of India. The constitution was drafted and adopted by the people of India in their Constituent Assembly.

"The term ‘people’ is used not in the sense of total aggregate of individual citizens who form the nation, but the people as politically

organized in the determinate form under the constitution." While organized in the Constituent Assembly, they adopted the constitution. Organized in Parliament and State Legislatures, they have been empowered to amend the constitution. The supreme political power resides in the constitutionally qualified electorate but the legal authority to amend the constitution has been vested with the electorates as organized through their representatives, in the determinate form in Parliament and Legislatures.

It is correct to conclude that our’s is a constitution which is neither a socialistic constitution, nor a communist constitution. It is a people’s constitution and a constitution which gives free and ample scope to the people of India to make experiments in socialism or any other ‘ism’ which they believe would make this country prosperous.

§ 15. CONTINUITY WITH THE PAST

Though the independent status of country necessitated many changes yet in framing the new polity, the Constituent Assembly did not proceed on doctrinaire lines. It made no abrupt break with the past. Reflection of the past is discernible in the following facts. (i) The conception of constitutional Government was not a product of western influences but was well recognized in the political theories of the ancient Hindus. Vedic as well as Epic Literature, works on Niti as well as in ‘Smritis’ or Codes of law bear ample testimony to this fact. (ii) Though monarchy was the prevailing type of Government, it was not the only form. Republican states also existed. The existence of ‘ganas’ or self-governing communities in the Mahabharata; of notable clans like ‘Licchavis’, the ‘Sakyas’ and the ‘Mallavas’ transacting business of the state in public Assemblies as given in the sacred Jain and Buddhist literature; of non-regal states as discussed by Greek observers like G. W. M’erindile and Megasthenes throw enough light on the fact that Republican form of government is a relic of the past. (iii) The principle of Parliamentary Democracy is a product of British influences. The beginning of the Representative Government can be traced from the Council Act of 1892, passed by the British Parliament. Of the additional 16 members of the Council of Governor-General, 10 were to be non-officials, four of whom were to be appointed on the recommendation made by the four Provincial Legislative Councils and one on the recommendation of the Calcutta Chamber of Commerce. The Indian Councils Act 1909 enlarged those Councils and added to their deliberative functions. The electoral principle was also introduced. Thus according to Acts of 1892 and 1909, some popular representatives were associated with the administration of the country. The beginning of parliamentary institution, however, is found in the Government of India Act, 1919.

Dyarchy was introduced in the Governors’ provinces. The transferred departments were to be administered by the Governor with the advice of popular ministers appointed from among the elected members of the Legislature. The Legislative Councils for the first time were given some control over legislation and budget. Franchise was widened. Seventy per cent of the members of the Council were to be elected. Though Dyarchy was not introduced at the Centre, yet Central Legislature was given greater opportunity to influence the administration. The Act of 1935 further developed parliamentary democracy in the provinces, by abolishing Dyarchy and introducing ‘provincial autonomy’. (i) The principle of Federalism was also contained in the Government of India Act, 1935, though due to certain reasons explained in the chapter on 1935 Act, it could not come into existence. (ii) Article 296 of the new constitution which provides that “the Executive Power of every state shall be so exercised as to ensure compliance with the laws made by Parliament... and the Executive Power of the Union shall extend to the giving of such directions to the state as may appear to the Government of India to be necessary for that purpose” follows the language of section 126 of the Act of 1935. (iii) Articles 352 and 353 of the New constitution, empowering the President to proclaim emergency, bear close verbal correspondence to section 102 of the Act of 1935. (iv) Article 356 of the constitution dealing with the breakdown of the constitutional machinery in the states, resembles section 93 of the 1935 Act. (v) The three lists, the constitutional relations between the Union Government and the states also seem to be a mere copy of the 1935 Act.

Dr. M. P. Sharma has very well summed up the close resemblance between the Act of 1935 and the present constitution in these words “The whole of the existing administrative set up of the country has been accepted by the constitution expressly or by implication.”

The earliest statute relating to the constitution of India which made provision for a fundamental right was the Charter Act of 1833. Section 87 of that Act provided that no person by reason of his birth, creed or colour was to be disqualified from holding office under the East India Company. Section 298 of the Government of India Act 1935 laid down “No subject of His Majesty domiciled in India shall on the grounds only of religion, place of birth, descent, colour, or any of them be ineligible for office under the Crown in India or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India.” Section 299 of the Act introduced a new provision for safeguarding private property against expropriation without compensation.

These provisions of the Act of 1935 appear in the chapter on “Fundamental Rights” of the Indian constitution.

Hence there is an ample justification in the remark that our constitution is rooted in the past.
16. MIXTURE OF ABSOLUTISM, LIBERALISM AND SOCIALISM

The constitution is not wedded to any particular economic order or theory. It is a curious blend of 16th century Absolutism, 19th century Liberalism and a lukewarm policy of Socialism. Preventive Detention Act, the authority of the President to suspend even the right to freedom and right to move the Supreme Court for a short period without the consent of the Parliament and imposition of taxes by ordinance are the relics of the 16th century absolutism. Equality before law, equal protection of the law and emphasis on other rights and liberties provided in the chapter on Fundamental Rights constitute the legacy of the 19th century Liberalism advocated by Prof. Dicey. The authority of the Government to put restraints on the Fundamental Rights in the interest of general welfare and to regulate economic life; the Directive Principles of State Policy and the Constitution Amendment Act of 1955 empowering the State to acquire agricultural and industrial property and means of production at nominal market price, indicate the love of the framers of the constitution for a socialistic pattern of society. Thus, our constitution is a composite of all the three 'isms': Absolutism, Liberalism and Socialism.

17. PREAMBLE

The preamble to the constitution of India embodies the noblest ideals of Justice, Liberty, Equality and Fraternity. Like the preamble of the U.S. constitution, it runs in the name of the 'People'. It runs thus:

"We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and secure to all its citizens, Justice social, economic and political; Liberty of thought, expression belief, faith and worship; Equality of status and of opportunity and to promote among them all Fraternity assuring the dignity of the individual and the unity of the nation:

In our Constituent Assembly, this 26th day of November, 1949 do hereby adopt, enact and give to ourselves this constitution."

Though the preamble is not an integral part of the constitution, and does not have any legal force behind it, yet it is very significant. It contains lofty ideals which the framers of the constitution have set before the future Governments of India. It indicates the source, the sanction, the pattern, the objects and the contents of the constitution. It emphasises the sovereignty of the people like the preambles of the constitutions of the U.S.A., Australia, France, Italy and that of Western Germany.

18. A UNIQUE DOCUMENT

The critics sometimes allege that the constitution of India lacks originality. It is a "hodge-podge constitution". It is a "bag of borrowing". They emphasise that it is the deliberate and cool-headed product of a group of eminent men who prepared its draft after ransacking all the known constitutions of the world." Indeed
a compendium of constitutional precedents in three volumes was
distributed among all members of the Constituent Assembly, to
enable them to embody some of the important precedents in their
own constitution. Shridharani says that the only originality our
constitution can claim, consists in the freedom of choice exercised
by its authors in picking and choosing from every constitution in the
world.

Undoubtedly, we banked upon British constitutional practices a
great deal. The principle of representative responsible Government,
providing for two heads, a nominal and real is essentially British.
Rule of Law, privileges of Parliament and the establishment of
several conventions are on the British pattern. The ideological part,
dealing with Fundamental Rights, is inspired by the American
constitution. The role assigned to the judiciary is like that of
U.S.A. Indian Federal system is largely modelled on that of Canada
though some of its features are designed after Australian and South
African constitutions. The Directive Principles of State Policy are
borrowed from Irish constitution. The election of the Upper House
of Parliament and the procedure of amendment reflect the influence
of South African constitution. The President's authority to suspend
the right to freedom and constitutional remedy bears close resemblance
to section 48 of the Weimar constitution of Germany.

Seventy five per cent of our constitution is based on the Govern-
ment of India Act 1935 subject to certain modifications suiting our
circumstances. Dr. Jennings remarks "The constitution derives
directly from the Government of India Act of 1935, from which in
fact many of its provisions are copied almost textually." As already
discussed in the foregoing pages, Articles 256, 251, 352, 353, 358 are
mere copies of sections 126, 107, 102, 93 of 1935 Act. The forming of
some form of a Federation, the autonomy of the units in certain
spheres, the powers of the Head of the State, the three legislative
dists, the reservation of seats for backward classes, the constitutional
relations between the states and the union and the union judiciary,
are borrowed from the Act of 1935. According to Srinivasan, "both
in language and substance, it is a close copy of the Act of 1935".

It is indeed correct to say that the constitution of India has been
largely designed after the Government of India Act, 1935. The size,
contents, arrangements of the provisions bear the stamp of its
indebtedness to the Act of 1935. But the similarity between the
1935 Act passed by an alien Government and the constitution of free
India—a masterpiece of craftsmanship, should not blind us to the
essential differences between the two.

§ 29. WHEREIN LIES THE DIFFERENCE BETWEEN THE ACT OF 1935
AND PRESENT CONSTITUTION

(I) The Act of 1935 was the creation of a foreign Parliament and
was virtually imposed upon unwilling masses, clamouring for
"Purna Swaraj". The constitution of India on the other hand

represents the voice of the people's representatives and derives its authority from the will of the people of India. (ii) The Act of 1935 represented the grudging concession of limited self-government to a subject nation, by the foreign masters, the constitution of India is a fundamental law framed by a free nation to regulate its own affairs and shape its own destiny. (iii) The new constitution has swept away the nasty 'Separate Electorate system' which apart from hampering the growth of genuine democracy in India, sowed the seeds of dissensions amongst the various communities inhabiting our land. Instead 'Joint Electorates' with reservation of seats for the Scheduled Tribes and Scheduled Castes and special provisions for the Anglo-Indians, have been substituted. (iv) The Act of 1935 gave the right of franchise to only 14% of the population. The constitution of India introduces a system of universal adult franchise, thus enfranchising about 50% of the population. (v) The Act of 1935 did not contain any declaration of Fundamental Rights. Only sections 298 and 299 of the Act made a mention of a few rights. The constitution of India devotes one chapter to the enumeration of fundamental rights. (vi) The Act of 1935 did not make a mention of ideals to be followed by the then Government. The constitution of India has incorporated in the IV chapter "Directive Principles of State Policy" the ideals, which aim at the establishment of a welfare state in India. (vii) The Act of 1935 did not confer on the people of the "Indian India" i.e., former princely states, the right of self-government. They were groaning under the heels of the rulers of these states. The constitution pushed into the limbo of oblivion the distinction between the "British India" and the "Indian India," and brought the entire country under a single uniform polit. The five hundred former princely states ruled by autocratic rulers most of whom were boy-errands of the British Government, were reduced to a few units, by process of integration and merger and their people were granted right of self-government. (viii) The Act of 1935 envisaged the creation of a central ministry to aid and advise the Governor-General. But the Governor-General, who was the appointee of the British Crown, was equipped with discretionary powers in vital matters. The ministers had no right to advise him in these matters. He was vested with 'Special Responsibilities' in a large number of other matters. The Governor-General was to seek their advice in these matters but he was empowered to exercise his 'individual judgment' in these matters even i.e. he had to seek their advice, though it was not obligatory on him to act upon their advice. The constitution of India vests the Executive authority in the hands of President who is indirectly elected by both the Houses of the Parliament and the Legislative Assemblies of the states. Since the constitution aims at the establishment of a Parliamentary Government in India, hence the real powers are to be exercised by the Council of Ministers, headed by the Prime Minister. The President is to be more or less like the constitutional monarch of Great Britain. Only in exceptional circumstances, the President will have power to act independently of the advice of the Ministry. (ix) Under the Act,
the Governors of the provinces, as well, were vested with discretionary powers and special responsibilities. Under the new constitution, the Governors, like the President are mere nominal Heads of the states. They will have to act on the advice of the Council of Ministers, headed by the Chief Minister. The Legislatures in India, under the Act were not sovereign in character. The Governor-General at the Centre and the Governors in the provinces had discretionary powers to assent or withhold assent from bills passed by their respective Legislatures. Even the Crown possessed the power to disallow any Central or Provincial Act. The Act made a clear mention that the British Parliament had complete legislative sovereignty over British India. Under the constitution of India, the Parliament and the State legislatures cannot be obstructed by the President and the Governors respectively. Of course, the President and the Governors are vested with 'suspensive veto' power. Moreover, the Indian Parliament enjoys complete sovereignty in the sense that it is not dictated by any alien authority. (x) The Act of 1935 did not entrust to any of the legislatures, Central or Local, the power of amending the Act. This power was vested in the British Parliament. The constitution of India can, however, be amended by the Parliament. The legislatures of the states also share that ‘amending authority’ with the Parliament, regarding certain specific provisions. (The details already discussed in the foregoing pages.) (xi) The judiciary, under the constitution enjoys far greater powers than it did under the 1935 Act. Judicial Committee of the Privy Council was the final appellate authority, according to the Act.

Thus we cannot afford to agree with Dr. Panjab Rao Deshmukh that ‘the constitution is essentially the Government of India Act, with only adult franchise added.” The new constitution is certainly not “a glorified edition of the 1935 Act.” There is a remarkable difference of spirit between the two.

In fact, our constitution represents an attitude of *eclecticism par excellence*. The framers of the constitution were not labouring under any misconception, like the critics. They were judicious enough to learn by the experience of others. They could not ignore the hearty past either. Hence they had no hesitation in borrowing from certain other countries, institutions suitting their circumstances. They, however, modified some of these institutions to suit their needs and conditions prevailing in India. According to Dr. M.P. Sharma, "It was not the purpose of our constitution-makers to produce an original or unique constitution. What they wanted was a good and workable one". Our constitution is indeed a unique document drawn from many sources. It is a product of our Indian genius. Thus we have the supreme satisfaction that our constitution has been framed by our own great leaders taking into consideration the peculiar conditions and circumstances of India.

Citizenship

1. INDIA AND DEFINITION OF CITIZENSHIP

Citizenship is not easily definable. The framers of the Indian constitution faced a great difficulty in defining the term. The partition of the country and the consequent mass exodus from Pakistan to India and temporary migration of some of the Muslims to Pakistan made the problem rather embarrassing. Provision for different categories of refugees was to be made. Some of them had migrated to India from Pakistan for good. Some of them wanted to come, but could not get an opportunity of doing so, till the date of framing the citizenship provisions. Some of them had migrated to Pakistan, under forced circumstances but came back later. Some of the Indian nationals were living abroad, though they were keen to retain the citizenship of their motherland. All these categories of nationals were to be accommodated. Really, the drafting committee had to face a tough problem and the Constituent Assembly had to debate the problem quite often.

2. CLASSES OF CITIZENS

The law relating to Indian citizenship is to be found in Part II of the constitution. Articles 5 to 11 deal with this important question. The constitution confers the right of citizenship on five categories of people.

Citizenship at the commencement of the Constitution. Article 5 provides that at the commencement of the constitution on 26th January, 1950, every person who has his domicile in the territory of India and who was born in the territory of India or who has been ordinarily resident in the territory of India, for not less than five years immediately preceding such commencement, shall be a citizen of India. This class includes a majority of inhabitants and also those foreigners who had, at the commencement of the constitution, been living in India for the period specified above.

Rights of citizenship of persons who migrated to India from Pakistan. Secondly, according to Article 6, a person who has
migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India on 26th January, 1950, if he, or either of his parents or any of his grandparents was born in India, as defined in the Government of India Act, 1935 and in case where such person has so migrated before 19th July, 1948 (the date on which the permit system for such migration, was introduced) and has been ordinarily resident of India since the date of his migration.¹

Thirdly, according to Article 6, persons who migrated from Pakistan to India after the 19th July, 1948, provided they were registered as citizens of India by an officer, appointed by the Government of India for that purpose, before the commencement of the constitution are to be the citizens of India. No person was to be registered unless he had been resident in India for at least six months, immediately preceding the date of his application.²

Rights of Citizenship of certain migrants to Pakistan. Fourthly, Article 7 provides that a person who has after 1st March, 1947, migrated from India to the territory now called Pakistan, shall not be deemed to be a citizen of India. But a person who after having migrated to Pakistan has returned to India under a permit for resettlement or permanent return issued by or under the authority of any law, shall be deemed to have migrated to India after 19th July, 1948.³ This provision concerned those Muslims, who or whose families migrated to Pakistan, victimised by adverse circumstances following the division of the country but who never intended to quit India for good and were allowed by our Government to return. The nationalist Muslims and the families of the Muslim public employees sent to Pakistan, for safety, constituted this category. This class did not exceed two or three thousand in number. It may be pointed out that the expression "Migrated........Pakistan" was used in the sense of departure from one country to another with the intention of residence or settlement in the other country. A mere temporary visit to another country or business cannot amount to migration. Where two minor Muslim married girls, originally residents of India left for Pakistan in 1947 with their parents, it was held that they could not be said to have migrated to Pakistan with an idea to settle there as their husbands continued to reside in India. Till marriage subsisted, they could not change their domicile at will, and during their minority, such question could only be decided by their legal guardians—i.e., their husbands.⁴

Rights of Citizenship of persons of Indian origin residing outside India. Fifthly, Article 8 provides that any person or either of whose

1. Art. 6 (a) and (b) (i).
2. Art. 6 (b) (ii).
3. On 1st March 1947 disturbances started in India.
4. 19th July, 1948—Permit system started on this date. These two dates were accepted as crucial dates by the Constituent Assembly.
§ 3. PERSONS VOLUNTARILY ACQUIRING CITIZENSHIP OF A FOREIGN STATE NOT TO BE CITIZENS

No person shall be a citizen of India, by virtue of Articles 5, 6 or 8 if he has voluntarily acquired the citizenship of any foreign state.

It may be pointed out, that the provision of citizenship, as incorporated in our constitution, represents only a stop-gap arrangement. Article 11 expressly provides that the Union Parliament has the right to make any law regarding the acquisition and termination of citizenship and all other matters relating to citizenship. It is, therefore, quite obvious that the Indian Parliament has been vested with unlimited authority to legislate on citizenship as it thinks fit. In fact, the Articles on citizenship constitute one of the most flexible parts of the constitution. The Parliament can easily abrogate, modify or amplify them.

§ 4. CRITICISM OF THE ABOVE PROVISIONS

The above provisions of citizenship entailed a very bitter criticism at the hands of the members of the Constituent Assembly which debated these provisions as many as three times. In the opinion of Dr. Panjabrao Deshmukh, these provisions had made the Indian citizenship the cheapest in the world. A person born on the soil of India even during a casual trip of his parents could be granted citizenship of India by birth and his children or grand-children could also get the same privilege. It was emphasised that even the foreigners who had resided in India for a period of five years, could procure Indian citizenship, though residence in some of the foreign lands for 15 to 20 years even could not enable Indians to seek citizenship of those countries.

Prof. K.T. Shah apprehended that five years’ residence qualification would enable foreign capitalists to become Indian citizens to enjoy advantage of the citizenship rights for their enterprises. This would perpetuate foreign exploitation.

He emphatically exhorted the parliamentarians (members of the Constituent Assembly) to deny rights of citizenship to the nationals of those countries which denied similar right to Indian nationals who wanted to embrace citizenship of these countries.

Some of the members of the Constituent Assembly contended that Hindus and Sikhs should be declared citizens of India by right, as
they had no homeland other than India. They may not be asked to apply for registration.

Dr. Ambedkar, the chairman of the Drafting Committee, replied to most of these points raised by the critics. The criticism, in his opinion, was launched by those who misconstrued the scope and limits of the citizenship provisions or by those who were ignorant of the rules governing the law of citizenship in the foreign countries. In his opinion, the Indian citizenship was by no means cheap. Moreover, Parliament was empowered to modify these provisions, to suit the new circumstances.

Alladi Krishnaswamy replying to the criticism that the provisions of Article 5 rendered acquisition of citizenship easy by anyone born in India said that these provisions were stricter in many respects than the constitution of the U.S.A. where birth was sufficient ground for acquiring this right. In India, the person must have a permanent home in India qualification was also to be fulfilled.

Of all the provisions, the one conferring citizenship on the re-immigrants from Pakistan was vehemently opposed. It was contended that those who left this country "with their eyes open and with songs on their lips" to become citizens of Pakistan should in no case be allowed to become citizens of India. The opposition cooled down when the Prime Minister retorted that the provision existed for the benefit of only those who had fled away to Pakistan in tears and who were allowed to return to India, after a very careful scrutiny, under permanent permit. Dr. Alladi Krishnaswamy also argued that the Government of India had permitted certain number of people to come back and settle down in India, after having satisfied that they wanted to take permanent abode in this country. It would amount to gross breach on the part of Government of India to deny to them the benefits of citizenship. Replying to the criticism that it would affect the evacuee properties, Alladi remarked that citizenship had nothing to do with the law of property. "No principle of international law could recognize that the right of property of non-nationals could be forfeited."

Gopalaswami Ayyangar also argued with Alladi and maintained that that was a matter involving the honour and the word of the Government of India. He also did not agree with the opposition, regarding property-confiscation of re-immigrants to India. In his opinion...those who migrated from India to Pakistan even if they remained permanently in Pakistan retained their right to the property, they had left behind."

Dr. Ambedkar allayed the fears of critics as regards Article 6 (b) (h) of the constitution, when he said "I should like to state very categorically that this registration power is a plenary power. The mere fact that a man has made an application, the mere fact that he has resided for six months in Assam would not involve any duty or obligation upon the registering officer to register him. In other words, the officer would be entitled to examine, on such material
as he may have before him, the purpose for which he has come, whether he has come with a bonafide motive of becoming a permanent citizen of India or whether he has come with any other purpose."

§ 5. THE INDIAN CITIZENSHIP ACT, 1955

In December, 1955, Parliament passed a comprehensive Citizenship Act which deals with the acquisition, loss, abandonment and deprivation of citizenship. According to this Act, citizenship of India can be acquired in five ways.

(a) Acquisition by Birth. Every person born in India on or after 26th January, 1950, shall be a citizen of India by birth. However, the person shall not be a citizen, if, at the time of his birth, his father possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India or he (father) is an enemy alien and birth occurs in a place, then under the occupation of enemy.¹

(b) Citizenship by Descent. A person born outside India on or after 26th January, 1950, shall be a citizen of India by descent if his father is a citizen of India, at the time of his birth. If the father of such a person was a citizen of India by descent only, that person shall not be a citizen of India, unless his birth is registered at an Indian Consulate within one year of its occurrence or within one year from 30th December, 1955 whichever is later or his father is, at the time of his birth, in service under a Government in India. Any male person born outside undivided India who was or was deemed to be a citizen of India at the commencement of the constitution, shall be deemed a citizen of India by descent only.²

(c) Citizenship by Registration. Rules for registration are to be made by the Central Government. An authority appointed by the Central Government can on an application made to it, register as a citizen of India, any person who is of Indian origin and is ordinarily resident in India and has been resident for one year immediately before the making of the application. The same is applicable to persons of Indian origin who ordinarily reside in any country or place outside undivided India. This applies to several categories of persons, e.g. women married to Indian citizens, minor children of persons who are citizens of India, persons of Indian origin settled down in some foreign country.³ A person shall be deemed of Indian origin if he or either of his parents or any of his grand-parents was born in undivided India. No person being of full age shall be registered as a citizen of India until he has taken an oath of allegiance to the constitution of India and solemnly agreed to observe the laws of India and fulfil his obligations as a citizen of India. No person who has renounced or has been deprived of Indian citizenship

¹ Section 3, Indian Citizenship Act, 1955.
² Section 4, Ibid.
³ Section 5, Ibid.
or whose citizenship has been terminated, shall be registered as a citizen of India, except by the order of the Central Government.

(d) Citizenship by Naturalization. If an application is made for naturalization by a person who is not a citizen of the United Kingdom, Australia, Canada, Ceylon, New Zealand, Pakistan, Federation of South Rhodesia, Nyasaland and Republic of Ireland the Central Government may grant him a certificate of naturalization, provided that he is equipped with the following qualifications:—

(i) He is not subject or citizen of any country where citizens of India are prevented from becoming subjects or naturalized citizens of that country. (ii) If he has renounced the citizenship of his original country in accordance with the law of that country and notified that renunciation to the Central Government. (iii) If he has either resided in India or been in the service of the Government of India or partly the one and partly the other, throughout the period of the 12 months, immediately preceding the date of application. (iv) If he is of sound character. (v) If he is equipped with an adequate knowledge of an Indian language. (vi) If he intends to reside in India or intends to enter into or continue in service under a government in India or under an international organization of which India is a member or under a society, company or body of persons established in India, if he is granted a certificate of naturalization.1

It has, however, been provided in section 6 that if in the opinion of the Central Government, the applicant has rendered a distinguished service, in the domain of Science, Philosophy, Art, Literature, World Peace or Human Progress, generally it may waive all or any of the above mentioned conditions. The person concerned, however, is required to take an oath of allegiance to the constitution of India.

(c) Citizenship by incorporation of Territory. When any territory is incorporated in India, the Central Government may, by an order notified in the Gazette of India, specify the persons who on account of their connection with the territory concerned, shall be citizens of India from the date of notification.2

§ 6. CESSATION OF CITIZENSHIP

Cessation occurs under three circumstances. (i) If a citizen of India acquires foreign citizenship and makes a declaration of his abandonment of Indian citizenship and gets it registered with a prescribed authority.3 (ii) If an Indian citizen has accepted voluntarily the citizenship of some other country between January 26, 1950 and 30th December, 1955. However, this does not apply to a citizen who during war voluntarily acquires citizenship of another country. The dispute, if any, regards such citizenship is to be decided by the Central Government.4 (iii) The Central Govern-

2. Section 7, Ibid.
3. Section 8, Ibid.
4. Section 9, Ibid.
ment can by order, deprive a person of the Indian citizenship if he obtains registration or certificate of naturalization by fraud, false representation or concealment of any material; or if he, both by words and deeds has proved to be disloyal to the constitution of India; or if during war, he has unlawfully traded or engaged in business with the enemy amounting to assisting the latter in war; or if within five years of registration or naturalization was imprisoned in any country for not less than two years; or if he has been ordinarily resident out of India for seven years and during that period has never been a student of any educational institution in a country outside India, or in the service of a Government in India; or in the service of an international organization of which India is a member; or if he did not get his intention of retaining citizenship registered annually at the Indian Consulate.

It may not be out of place to point out that the Central Government has to furnish him with a notice in writing, specifying the grounds as well before depriving him of citizenship. The case is to be referred to an 'Enquiry Committee' appointed for that purpose. The Central Government is to be guided by its report.

§ 7. COMMONWEALTH CITIZENSHIP

Section 11 of the Act provides for commonwealth citizenship. Every person who is a citizen of a Commonwealth country, shall by virtue of that citizenship, have the status of Commonwealth citizenship in India.

Section 12 empowers the Central Government to make provisions on a basis of reciprocity for the conferment of all or any of the rights of a citizen of India, on the citizens of the United Kingdom, Australia, Canada, Ceylon, New Zealand, Pakistan, Federation of South Rhodesia and Nyasaland.

The Central Government may certify that a person with respect to whose citizenship of India, a doubt exists, is a citizen of India. Such a certification will be a conclusive evidence of his being a citizen of India, unless the certificate is obtained by fraud or false representation.

Section 18 of the Act vests the Central Government with an authority to make rules under the Act.

The above sections of the Indian Citizenship Act, 1955, make it crystal clear that it is a very comprehensive legislation, covering up all possible details, regarding citizenship.

1. Section 19, Indian Citizenship Act, 1955
2. Section 13, Ibid.
Fundamental Rights

The famous Declaration of Rights of Man in 1789 by the Revolutionary Assembly of France, opened a new era in the history of constitutional practice. The American Constitution as well, effected the amendments to embody the Fundamental Rights of citizens, in the original constitution. Since then, the incorporation of a formal chapter on Rights has become a conspicuous feature of a Democratic State. Our infant democracy also did not like to lag behind. An unprecedentedly elaborate enumeration of the rights was done in Chapter III of our new constitution.

1. WHY FUNDAMENTAL RIGHTS WERE INCORPORATED IN THE INDIAN CONSTITUTION?

Despite the fact that to a great extent, we borrowed from the British constitutional practices, we did not leave the rights of the people to the mercy of mere conventions. Sir Ivor Jennings, who is an important spokesman of typical British attitude, opined that the inclusion of a Bill of Rights in the Indian Constitution has been a mistake. He made this statement probably because Great Britain has no written constitution and no formal chapter on Rights. But that does not mean that British people do not possess rights, or are not assured of certain fundamental liberties, without which the personality of the individual remains dwarfed. In the words of Lord Wright “In the Constitution of this country (Great Britain) there are no guaranteed or absolute rights. The safeguard of British Liberty is in a good sense of the people and in the system of representative and responsible Government.”

It is often contended by the apologists of ‘non-inclusion of rights in the constitution’ theory that their actual availability to the citizens at any given time depends upon the state of prevailing laws which are to be framed according to the exigencies of the times.

In order to enable those laws to keep pace with the changing circumstances, the statement of those rights has to be subjected to reservations which amounts to their infringement in an indirect way. Why to arouse hopes, therefore, in the minds of citizens if they have to remain unfulfilled?
The advocates of inclusion of these rights in the constitution emphasise that their incorporation in the constitution vests them with a sanctity which the legislators dare not violate so easily. It serves as a constant reminder to the Government in power, that certain liberties assured to the people, in writing, are to be respected. "The statement of Fundamental Rights thus limits the range of state activity in appropriate directions in the interest of the liberty of the citizens." In a country like India, embarking upon a democratic era after centuries of subjugation under a foreign rule, such a statement is indispensable as its very sheet-anchor.

Apart from the fact, that, the incorporation of Bill of Rights is a step in accordance with the recenttmost trend of modern constitutional theory and practice, it is a relic of the past. The demand of rights was first expressed in the Nehru Committee Report, in 1928. The Indian leaders in particular and masses in general were conscious of the denial of these liberties to the Indian people, by the alien rulers. Moreover, certain safeguards were deemed essential to establish a sense of security among those who looked upon each other with suspicion. The Report emphasised that "we could not better secure the full enjoyment of religious and cultural rights to all communities than by including them among the basic principles of the constitution."

The Simon Commission also realised the significance of the demand but rejected it on practical grounds. They were of the opinion "The abstract declarations of rights are useless unless there exists the will and the means to make them effective." The Round Table Conferences also considered the proposal, but the Joint Parliamentary Committee on Indian Constitutional Reforms, (1933-34) vehemently opposed the inclusion of rights in any future act. It was probably because of this opposition that the Act of 1935 was silent about these rights. The more vehemently, the Britishers opposed this move of inclusion of rights, the more vigorously it was dinned into the ears of white imperialists. The nationalist sentiment is very well portrayed in the Sajmun Committee Report on Constitutional Proposals (1945), in these words, "howsoever inappropriate the formulation of Fundamental Rights may be in England and howsoever inconsistent it may be with the fundamental dogma of the British Constitution that fundamental rights are incompatible with the sovereignty of Parliament in the peculiar circumstances of India, we are distinctly of the opinion that the framing of Fundamental Rights is necessary, not only for giving assurances and guarantees to the minorities, but also for prescribing a standard of conduct for the Legislature, the Government and the Courts."

With the dawn of independence, and consequent establishment of a Democratic Republic, inclusion of rights in the Indian constitution became a necessity. Apart from the fulfilment of national

1. Dr. Sharma M.P.: The Republic of India, p. 41.
aspirations, eradication of age-old evils like untouchability, begar (forced labour) and traffic in human beings and protection of minorities, was thought indispensable. A chapter on Fundamental Rights was therefore the crying need of the hour.

In the words of Principal C.L. Anand "In a democratic state such rights are also guaranteed in the interest of minorities who may otherwise be denied their liberties by a tyrannical majority desirous of furthering its selfish interest and to perpetuate its power............The danger of encroachment on citizens' liberties is particularly great in parliamentary system in which those who form the Government are leaders of the majority party in the legislature and can get laws made according to their wishes." 1

1 a. NATURE OF THE FUNDAMENTAL RIGHTS

(a) Most Elaborate. One of the conspicuous features of the Indian Bill of Rights is that it is the most elaborate in the world. An entire chapter containing twenty four articles is devoted to it. The voluminous size of the chapter is due to the enumeration of seven rights in minutest details along with an elaborate set of limitations imposed upon them.

(b) Negative and Positive Rights. Rights incorporated in the Indian constitution are of two types—Negative and Positive. Negative rights constitute constitutional restrictions on the state. Article 18 forbids the state to confer any title, other than a military or academic distinction, on any individual. It hardly confers any right. It imposes a restriction on the Legislative and Executive branches of the government. Article 17 abolishing untouchability, removes a social evil. It hardly bestows a special privilege on untouchables.

Right to freedom, right to property and religion and cultural and educational rights fall in the category of positive rights. In fact, it is difficult to draw a very clear line of distinction between the two, yet the hair-splitters of the constitution point out one difference. Negative Rights are absolute, but positive rights are hedged with restrictions.

(c) Special Provision for their enforcement. These rights, both negative and positive, do not exist merely on the paper. They are guaranteed to the people as they are legally enforceable. A special right "Right to Constitutional Remedies" has been introduced in the constitution to safeguard the rest of the rights. The Supreme Court is the guarantor and the saviour of our Fundamental Rights. Even the High Courts, according to Article 226, are empowered to issue writs for the enforcement of these rights, within the limits of their respective jurisdictions.

(d) They are not absolute. Unlike that of American Bill of Rights, Indian Fundamental Rights chapter contains a provision of elaborate

reservations and restrictions on the rights. In other words, our fundamental rights are not absolute in character. Not only constitution has hedged these rights with restrictions, even Parliament has been authorised to impose restrictions, if it deems fit. In the words of Dr. Ambedkar “What the Draft Constitution has done is that instead of formulating Fundamental Rights in absolute terms and depending upon the Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the state directly to impose restrictions on the Fundamental Rights. There is thus no difference in the result.” Fundamental Rights are not merely restricted by the constitution. They can be further restricted, even abrogated, by an amendment of the constitution. According to Article 33, the Fundamental Rights may be restricted or abrogated in their application to the members of Armed Forces or the forces charged with the maintenance of public order. These provisions of Article 33 are applicable to ordinary police, responsible for the maintenance of public order as well. Article 34 empowers Parliament to pass an Indemnity Law legalising acts done during the enforcement of martial law. Articles 358 and 359 empower the President of India to suspend the enforcement of certain Fundamental Rights. In fact, right to freedom is automatically suspended when the President proclaims an emergency. Right to constitutional remedies for the enforcement of these rights, may also be similarly suspended.

§ 3. WHY THESE RIGHTS ARE CALLED FUNDAMENTAL

If these rights can be easily abrogated by an amendment or suspended by a proclamation of emergency, the question crops up, in what sense are they fundamental? They are so regarded because they are most essential for the attainment by the individual of his full moral and spiritual stature. The negation of these rights, will keep his moral and spiritual life stunted and his potentialities undeveloped. In a truly democratic state, fundamental rights are assured to all citizens irrespective of their strength in the country.

These rights are considered fundamental, because they have been incorporated in the fundamental law of the land and cannot normally be infringed, except by the procedure laid down for Constitutional Amendment.

They are deemed fundamental because they are justiciable and are assured to all citizens. They are so mentioned, as they are binding on all public authorities in India.

§ 4. SPECIFIC FUNDAMENTAL RIGHTS

The Fundamental Rights as incorporated in the Indian constitution can be classified as follows:—(i) Right to equality. (ii) The right to freedom. (iii) The right against exploitation. (iv) The right to freedom of religion. (v) Cultural and Educational rights. (vi) The right to property. (vii) The right to constitutional remedies.
5. RIGHT TO EQUALITY (Articles 14, 15, 16, 17 and 18.)

Article 14. The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

(a) Equality before Law. It is obvious from the above lines in the Article that it guarantees equality before the law to all persons and not to citizens alone. No law can discriminate unfairly between one group of citizens and another in relation to the same matter or between citizens and foreigners.

In the U.S.A., the Supreme Court clearly laid down that the principle of equal protection of the laws, does not debar the Government, from classifying citizens into different groups for the purpose of taxation or other similar purpose. The Supreme Court of India, also upheld the same view. In the words of Dixit, J., "Equality before law does not mean an absolute equality of men but postulates that there shall not be any special privilege by reason of birth or creed or the like in favour of an individual. Equal protection must mean that there will not be arbitrary discrimination made by the laws themselves in their administration". An interesting case of Charanjit Lal Chowdhery v. The Union of India can be quoted to further illustrate the above point. In this case, it was argued by the counsel of the proprietor that the Sholapur Spinning and Weaving Company Act, 1950 empowering the Government of India to take over the control and management of the company contravened Article 14 of the constitution. It was emphasised that the Act selected only this company for the taking over of the management and control and did not mete out similar treatment to other companies similarly situated. The Supreme Court by a majority vote decided that the Act did not violate the provisions of Article 14 of the constitution. The petitioner, in the opinion of the judges, did not produce any substantial material to prove that the selection of the particular company by the legislature involved unreasonable discrimination.

In the case of Kedar Nath v. State of West Bengal, the Supreme Court of India observed "Now it is well settled that the equal protection of the laws guaranteed by Article 14 of the constitution does not mean that all laws must be general in character and universal in application and that the state is no longer to have the power of distinguishing and classifying persons or things for the purpose of legislation........".

(b) Social Equality. Article 15.—(i) The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (ii) No citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or
(b) the use of wells, tanks, bathing-ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.

Exceptions.—Nothing in this Article shall prevent the state from making any special provision for women and children.

Nothing in this article or in clause (2) of Article 29, shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Mahatma Gandhi's teachings are reflected through this Article. Discrimination on the basis of race, religion, caste, sex or place of birth is prohibited. Exception is made in the case of women, children and backward classes of citizens. A hotel manager refusing to admit a citizen, on the ground that he is dark complexioned or belongs to a low caste, will be guilty of offending Article 15. Similarly, citizens are guaranteed equal rights, so far as use of tanks, bathing-ghats, roads and places of public resort (like burial grounds and burning-ghats) are concerned. If we critically analyse the Article, we find that privately owned tanks, bathing-ghats or roads are not open to the public. The owner of a tank will be fully justified legally, to refuse a member of the public, to use his tank. Moreover, discrimination is prohibited only on the grounds of religion, race, caste, sex, place of birth or any of them. If lepers are prohibited by a law to use a ghat, maintained by the State, it will not amount to contravention of Article 15 (clause 1).

Amendment Act, 1951. In order to remove a lacuna in the constitution, "Clause 4" was added to the Article (15), by an Amendment Act, 1951. An order of the Madras Government sought to regulate admission to Government Colleges on a communal basis. It was declared unconstitutional by the Madras High Court on the plea that religion, race or caste cannot be the basis of admission to colleges maintained or aided by the state. The above quoted case disclosed a flaw in the constitution, as originally framed. Under the original clauses of the constitution, special provisions could not be made by the state for educationally or socially backward classes, save in certain matters specifically mentioned in the constitution. Hence an addition of clause 4 was essential to fill up the void left in the constitution.

(c) Economic Equality. Article 16.—(i) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office, under the state. (ii) No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against, in respect of any employment or office under a state.

Exception.—(iii) Residence qualifications may be fixed up. Nothing in this Article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment, to an office under any state specified in the First
Schedule or any local or other authority within its territory, any requirement as to residence within that state prior to such employment or appointment.  (iv) Reservation for backward classes. Nothing in this Article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the state is not adequately represented in the service under the state.  (v) A law specifying qualifications for religious office not contrary to it. Nothing in this Article shall affect the operations of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Explanation. Establishment of Social Order. Article 16 guarantees equality of opportunity to all citizens in matters of appointments under the state and prohibits discrimination on the basis of religion, race, caste, sex, descent, place of birth, residence or any of them. The constitution in reality aims at the establishment of social order free from disparities between the ‘haves’ and ‘have nots’. A few exceptions, however, were made by laying down clauses 3 to 5.

Residential qualification—an attempt to effect efficiency. According to clause (3), Parliament was empowered to prescribe residential qualifications in respect of any particular classes of employment in a particular state. It was probably for the efficient discharge of responsibilities, that special knowledge and experience of men and affairs of the state concerned, were thought indispensable. Keeping in view provincialism which is rampant all over India, it was considered risky to vest this power of laying down residential qualifications with the State Legislature. This power, it was apprehended, might be abused by the state to exclude residents of the other states from the state services.

Backward classes uplifted but not at the cost of efficiency. Clause (4) empowers the State to reserve some posts for the backward classes. Article 320 lays down that the Government concerned will not be under obligation to consult any Public Service Commission in respect of the manner in which provision referred to in this clause may be made. Appointment to posts for backward classes, will not however be made in a manner inconsistent with the efficiency of administration. Article 335 clearly states “the claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration consistently with maintenance of efficiency of administration, in the making of appointments to service and posts in connection with the affairs of the Union or of a state”.

Clause (5) was necessitated by the guarantee given by the constitution regarding the right to freedom of religion.

Clause 5-a. Saviour of right to Religion. Such freedom is impossible, if people belonging to one religion can lawfully claim
to be employed to any post connected with any religious or denominational institution.

Article 17. Abolition of Untouchability. "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

It may be pointed out that the word "Untouchability" is not defined according to the constitution. K. M. Munshi in the course of debate on Fundamental Rights in the Constituent Assembly stated that the word is purposely mentioned in inverted commas in order to clarify that it is used in the sense in which it is normally construed. Parliament was allowed under Article 35 to prescribe punishment for violating the above provision but was not permitted to define untouchability. The Article enabled the Indian constitution makers to fulfill the long cherished dream of Father of the Nation and usher in a new era for the down-trodden untouchables.

Untouchability Offence Act. Section 3 of the Untouchability Offence Act, passed by the Parliament provides that whoever prevents an untouchable from entering into a place of public worship, which is open to his co-religionists or from worshipping or offering prayers or performing any religious service or bathing in the waters of any sacred tank, well, spring or water course can be imprisoned for six months or fined upto Rs. 500 or both, the punishments, even can be inflicted upon him.

Section 4 of the above Act provides that whoever on ground of untouchability forbids any person to have an access to any shop, public restaurant, hotel or place for public entertainment or the use of any utensils or other articles kept in any public restaurant, Dharamsala, Sarai, Musafirkhana etc. or the use of any river, spring, stream, well, tank, bathing ghat, cremation ground open to his other co-religionists or prevents the use or access to any public conveyance or occupation of any residential premises in any locality, shall be punishable with six months imprisonment or fine extending to Rs. 500. Section 5 inflicts similar punishment on a person who refuses admission to any untouchable to any hospital, dispensary, educational institution or hostel.

A few more sections of this Act make it clear that the Parliament of India took a bold and long-neglected step to ameliorate the lot of the untouchables. Thus the constitution, through Article 17, abolished untouchability and Parliament by passing of the Untouchability Offence Act, enumerated, elaborately offences on grounds of untouchability and suggested punishment. But till a psychological revolution is not brought about in the mentality of the fanatic Hindus, legislation of any nature is apt to remain a failure.

Article 18. Abolition of Titles. (i) No title, not being a military or academic distinction shall be conferred by the state, (ii) No citizen of India shall accept any title from any foreign State,
(iii) No person who is not a citizen of India, shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State. (iv) No person holding any office of profit or trust under the State shall, without the consent of the President accept any present, emoluments or office of any kind from or under any foreign state.

Thus titles, a relic of the past, which created artificial barriers among the people, have been abolished.

Military or Academic titles still persist. Military or academic distinctions, however, are to persist. Bharat Ratna, Padma Vibhushan, Padam Bhushan, etc. are still awarded. The Indian citizens can, under no circumstances, accept titles from foreign Government while non-citizens employed in India are allowed to accept such titles, though with the consent of the President. Moreover, no person whether a citizen or not, in the service of the State is entitled to accept any present or emolument or office from or under any foreign state without the President’s consent.

Distinction between citizen of India and those holding office of profit made. Clauses (3) and (4) however make a distinction between a citizen of India and person holding any office of profit or trust under the state. Citizens of India are not allowed to accept any title from a foreign state, while persons holding office of profit, or trust in India are permitted to accept any present, emolument or office from a foreign state, with the consent of the President. The object of clause (4), probably was to accommodate diplomats and others to accept token of appreciation from the alien Governments.

President’s order of January 26, 1950. It may, however, not be irrelevant to point out that according to an order of President of India issued on 26th of January, 1950, every country within the Commonwealth was declared not to be a foreign state, subject, of course, to the provisions of any law made by Parliament. This order, thus permits the Indian citizens to accept any title from any of the states in the Commonwealth, without violating clause (2) of Article 18.

Dr. Jennings’ View on the Right. The abolition of untouchability and titles are egalitarian and were, in fact, the fulfilment of long standing commitments of the Congress. According to Dr. Jennings, these two Articles (17 and 18) do not constitute rights. Article 17 removes a social disability and Article 18 creates restrictions on public officers, which might have been imposed by administrative regulations. It seems to be no breach of this right to equality if Sri John Brown becomes Dr. John Brown or General John Brown or Pandit John Brown or Mr. John Brown or Rotarian John Brown or even Sir John Brown; M.B.E. or if he rolls round in a gold-plated car or loads his wife with jewellery and silk sarees, but if like the present lecturer, he becomes an impeccable knight, the right to equality is broken...”

§ 6. RIGHT TO FREEDOM (Articles 19, 20, 21 and 22)

Article 19. Article 19 is the palladium of traditional individual liberties—a conspicuous feature of political democracy. Following seven liberties are enumerated in this Article:

Clause (1)—(i) Right to freedom of speech and expression; (ii) right to assemble peaceably and without arms; (iii) right to form associations and unions; (iv) right to move freely throughout the territory of India; (v) right to reside and settle in any part of the territory of India; (vi) right to acquire, hold and dispose of property; and (vii) right to practice any profession or to carry on any occupation, trade or business.

Rights granted by clause (1) are subject to exceptions, enumerated in clauses 2 to 6.

(a) Freedom of Expression. Freedom of speech and expression is a freedom of vital importance in a democracy. Without it, democracy is a mere mockery. It is therefore imperative to examine the restrictions imposed upon it by the constitution and first Amendment Act of 1951 which widened the scope of restrictions still more.

Restrictions—not wide to begin with. Clause (2) of Article 19, authorised the State to make laws restricting the freedom of speech and expression in relation to (i) libel (ii) contempt of court (iii) decency and morality (iv) security of the state. The actual working of the new constitution revealed, that the scope of the above right was rather narrow and needed further restrictions. It was realised that even incitement to murder or other crimes of violence were not covered under clause (2). In Ramesh Thapar v. The State of Madras, the Supreme Court opined that nothing less than endangering the foundation of the State or threatening its overthrow could justify the curtailment of the freedom of speech and expression.

First Amendment Act 1951, more restrictions added. It was felt that this interpretation by the Supreme Court of clause (2) would prevent the State from imposing restrictions on freedom of speech, even if it were used for incitement to crimes including murder. Hence the Constitution (First Amendment) Act, 1951 was passed to widen the scope of permissible restriction on the freedom of speech and expression. Three more restrictions on this freedom were imposed. The amended clause (2) authorises the State to restrict the freedom of speech and expression in the interest of friendly relations with foreign States; public order and incitement to an offence.

Restrictions to be reasonable. With the inclusion of these additional reservations, right to freedom of speech has been further curtailed. It may however be pointed out that these restrictions, according to the Constitution are to be “reasonable”. Reasonable—
ness of a restriction is to be judged by the courts. If in the opinion of the appropriate court, any law or any executive order puts unreasonable restrictions on the citizens' rights of free speech and expression, the court will have power to declare the law void or abrogate the order. In Chintaman Rao v. State of Madhya Pradesh it was observed that the determination by legislature of what is a reasonable restriction is not final and conclusive. It is the subject of supervision by this court.

Our right wider in scope than the corresponding right in U.S.A. The right to freedom of speech and expression guaranteed in the Constitution of India is wider than the corresponding right incorporated in the U.S. constitution. The latter does not allow the Congress to abridge the freedom of speech and press as it is presumed. Rights of speech and press existed at the time of adoption of the constitution. The first amendment to the U.S. constitution was interpreted by the courts as having permitted the Congress to pass acts to meet emergencies and empowered it to penalise utterances defaming individuals or endangering public peace and order or advocating breaches of laws. Article 19 of our constitution, on the other hand, conferred the right in general and abstract terms and also provided exceptions in clause (2) of the Article.

Justification of Omission of Freedom of Press. Omission of freedom of press raised quite a stormy controversy in the Constituent Assembly. In fact, it is a grave issue. Even in the Western Democracies, the greatest and the most bitter constitutional struggles have been waged on the issue of freedom of press. Our constitution-makers, however, justified the omission on two grounds: (i) It was argued the "freedom of expression" also includes "freedom of press"; (ii) It was emphasised that the press is merely another way of stating an individual or a citizen. The press does not possess special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity.

Dr. Ambedkar argued, "The Editor of Press or the Manager are all citizens and therefore when they choose to write in the newspapers, they are merely expressing their right of expression and in my judgment, therefore, no special mention is necessary of the freedom of press at all." According to the logic of Dr. Ambedkar, the press is subject to the same restriction, as the ordinary citizen is viz. libel, slander, defamation, contempt of court, decency, morality and security of the state. Thus press can be censored both in times of war and peace. Since our very existence, as a democratic society, is at stake, during the war, censorship of the press can be tolerated. In time of peace, such censorship amounts to subverting of democracy. One cannot commit suicide in order to live. In Brij Bhushan v. The State of Delhi (1950) the Supreme Court held that censorship was not justifiable under Article 19(2) until the restriction

was imposed in the interest of ‘security of the state.’ It could not be justified merely on the ground that it assisted the government in maintaining ‘Public Order’.

First Amending Bill and addition of word ‘Reasonable and Public Order.’ In order to cope with this baffling situation, the Constitution (First) Amendment Bill was passed and the phrase ‘Public Order’ was added to Article 19(2). The said amendment added the word ‘reasonable’ along with ‘restriction’, thus opening the door for judiciary to interpret the term ‘reasonable’. The standard of reasonableness of restriction is thus left to the judiciary. In determining the reasonableness of restrictions, the courts must be guided by the sobering reflection that the constitution is meant not only for people, of their way of thinking but for all and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable.1

(b) Right to assemble peaceably and without arms. The second important freedom guaranteed is the right to hold meeting peaceably and without arms. The primary object of the provision is that interference in political meetings is to be disallowed. Protection, however, is accorded only to orderly assemblies. Tumultuous assemblages are forbidden.

Right not absolute. Moreover assembly is protected only if it is without arms. Thus the right is not absolute. According to clause 3 of the Article, the State is empowered to impose restrictions on the exercise of this right “in the interests of public order”. The test of the validity of the law in the latter case is, whether it exceeds the bounds of reasonable necessity, in protecting the public order.

(c) Right to form associations or unions. Limitation of the right. The above right covers the right to form companies, partnerships, societies, trade unions and political parties. Like the other freedoms under the present article, this right is also subject to certain restrictions. An association or union cannot be formed for a purpose prohibited by law, in the interest of public morality and order. Law can lay down conditions like registration, licensing etc. An association which interferes with the administration of law or of law and order or constitutes a danger to public peace, can be declared unlawful. The courts are not allowed to interfere till the restrictions are unreasonable. In American constitution, there is no specific guarantee of the right of association, hence there is no restriction on associations as such. In England it is not illegal to associate for lawful purposes.

Interpretation of the right by the Court. The right to form an association or a union has been interpreted by the courts as including the positive right of continuing it and the negative right of not being compelled to join any association.

(d) Freedom of Movement. The right to move freely throughout the territory of India is guaranteed by sub-clause (d) of clause (1). This right can be hedged by such reasonable restrictions as the state may impose in the interest of the general public or for the protection of any Scheduled Tribe. If any unreasonable restriction is imposed on this right, the courts possess the authority to declare it unconstitutional. This right is the essence of personal liberty. The words “throughout the territory of India” indicate that free movement from one state to another within the Union is protected. It is a protection against provincialism.”

(e) Freedom of Residence. The right to settle or reside in any part of the territory of India has been granted by sub-clause (e) of clause (1) of the Article.

Restriction. This right can be limited by such reasonable restrictions as the state may impose in the interest of general public or for the protection of any Scheduled Tribe.

In fact residence and movement go hand in hand, the former refers to static existence and the latter to mobility. None of these rights i.e., of movement and residence have been incorporated in the American constitution. They are however secured to the Americans due to provision of double citizenship. The Swiss constitution also permits its citizens to settle in any part of Switzerland.

(f) Right to acquire, hold and dispose of property. This right supplements the right of residence. It is limited only by the exigencies of public interest or by the interests of Scheduled Tribes.

It is clear from the restriction imposed upon this right by sub-clause (5) of clause (1) that objectionable property like gambling houses, unlicensed arms, plants for manufacturing illicit liquor may be forfeited, in general public interest. This right, in reality, is subject to the constitutional power of the State to take away property under Article 31. If a person loses his property under Article 31 clause (e) (1) or (2), no question of acquiring, holding or disposing it of, can crop up under Article 19.

(g) Freedom of Profession and Occupation. The seventh freedom guaranteed by the Article is to practice any profession or to carry on any occupation, trade or business.

Reasonable Restriction. Clause (6) of the Article empowers the State to impose reasonable restrictions on exercise of the right in the interest of the general public and particularly it does not forbid the State from making any law relating to professional or technical qualifications necessary for practising any profession or carrying on occupation, trade or business. The latter restriction was indispensible because certain vocations affect not only the person following these but also the public generally can prohibit a profession altogether if it is essential to do so, to further public interests.

Rashid Ahmed v. Union of India Case. The phrase “reasonable restrictions” occurs here too. It implies that restriction imposed upon a person should not go beyond the public interest. The legislation imposing such restrictions is to maintain balance between the freedom guaranteed and the social control. The case of Rashid Ahmed v. The Union of India and others is worth quoting. Rashid Ahmad who used to run wholesale business in fruits at Kariana (U.P.) was served with a notice by the Municipal Board not to do so, on the plea that he had not taken any permission from the Board, to carry on his business. Since Rashid Ahmed did not comply with the notice, an action was brought against him by the Municipal Board. Mr. Ahmed approached the Supreme Court, under Article 32. The Court, in its verdict said that though the bye-laws of the Board authorized the Board to prohibit persons from establishing wholesale business within its jurisdiction without its permission, the bye-laws did not provide for the issuing of any licence. Rashid Ahmed, when applied for licence, could not be granted one, because the provision for issuing licence, under bye-laws, did not exist. The Court, therefore, opined that petitioner’s Fundamental Right under Article 19 (1) (g) had been infringed because the power of issuing licence was not vested with the Board. Hence the Board’s notice to Mr. Ahmed not to carry on wholesale business of fruit amounted to an “unreasonable restriction” on the freedom of citizen to carry on any business. The Court, therefore, ordered that the prosecution pending against the petitioner be withdrawn.

On similar grounds, the Supreme Court declared void the provisions of the Madhya Pradesh Bidis Act, prohibiting the manufacture of bidis in certain villages. The Court was of the view that the Act did not impose “reasonable restriction” on the freedom of profession guaranteed by Article 19.

In the words of Principal C.I. Anand, “the expressions ‘reasonable’ and ‘in the interest of general public’ are elastic terms. Numerous problems are involved for consideration such as social, political and economic problems of the day; the needs of the community at the time; geographical conditions. It is primarily the function of the legislature to decide what type of control is required but the court has to see that under guise of imposing ‘reasonable restrictions’ the freedom guaranteed is not taken away”.

The Supreme Court, on the other hand, upheld the ‘reasonable restrictions’ on activities, encouraging reckless propensity. Giving judgement on ‘Prize Competitions’, the Chief Justice said, “We find it difficult to accept the contention that those activities which encourage a spirit of reckless propensity for making easy gain by lot or chance, which lead to the loss of hard-earned money of the unobservant and improvident common man and thereby lower his standard of living and drive him into a chronic state of indebtedness

and eventually disrupt the peace and happiness of his humble home, could possibly have been intended by our constitution-makers to be raised to the status of trade, commerce and intercourse and to be made the subject matter of Fundamental Rights guaranteed by Article 19 (1) (g).....

§ 7. PERSONAL LIBERTY (Articles 20 to 22)

Article 20. (1) No person shall be convicted of any offence for violation of law in force at the time of the commission of the act charged as an offence, nor be subjected to penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

Explanation—Clause (1). A necessary concomitant of individual liberty is the concept of protection in respect of conviction for offences. Clause (1) upholds a famous principle of jurisprudence in conviction of a person or his subjection to a penalty under ex-post facto laws is prohibited. Ex-post facto laws can be defined as laws which have a retrospective effect for the purpose of punishing an action which was lawful, at the time it was committed. Clause (1) covers a guarantee against ex-post facto laws of the categories: (i) those which make the penalty for the offence greater than that which might have been inflicted under the law in force at the time, the act was done, (ii) those which make criminal, an act which was innocent when committed.

Clause (2) refers to constitutional guarantee against “double jeopardy”—a term mentioned in a clause of the 5th amendment to the American constitution. It is an established principle of the British Common Law also that where a person has been convicted of an offence by a court of competent jurisdiction, the conviction is a bar to all further criminal proceedings for the same offence. In fact the British theory of “Antrefoo Convict” i.e., formal acquittal or conviction and the U.S. doctrine of “Double Jeopardy” have been circumscribed in India by the provision that there should be not only a prosecution but also a punishment in the first instance if second time prosecution and punishment for the same offence is to be avoided. Thus the contents of the right in India are much narrower than those of the common laws in England or the doctrine of Double Jeopardy in the U.S. constitution.

Clause (3) Protection extends to both Civil and Criminal cases. This clause provides protection against self-incrimination. 5th amendment of American constitution contains a corresponding clause though it extends to criminal cases only. In case of India, the privilege of not being compelled to be a witness against itself extends to both civil and criminal cases and to every sort of tribunal. This right in the first place is a protection against compulsion to be
a "witness" and in the second place, a safeguard against such compulsion resulting in his giving evidence against himself. Moreover, the privilege is purely personal. It cannot be pleaded by another and for another. A Corporation cannot plead it, as it cannot be proceeded against criminally. Nor can it plead the incrimination of one of its officers, as the defence is available to the officer alone.

Clause (3) deals with only Judicial Proceedings. The clause deals with proceedings of judicial character only. It will not be involved as a safeguard against the coercive methods of police adopted against an accused to elicit information or force confession.

The clause is in fact a corollary from the principle of English common law that an accused person is supposed to be innocent, until guilt is proved against him. This rule is not, however, prevalent in France or other continental countries.

Article 21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

Liberty against arbitrary action of Government. The above Article assures personal liberty against arbitrary action on the part of Government. The 'liberty' mentioned in this Article means freedom of person from physical restraint, detention, or imprisonment. The words 'except according to procedure established by law' have been very authoritatively interpreted by the Supreme Court in *A.K. Gopalan v. State of Madras*. In the view of the Supreme Court, these words imply that once the legislature lays down a law, relating to deprivation of life or personal liberty, the courts cannot challenge it. The Chief Justice of Supreme Court delivering his judgment in the case said, "By adopting the phrase 'procedure established by law' the constitution gave the legislature the final word to determine the law."

Legislature final authority to determine the law. It is, thus, quite evident that even if the law relating to arrest, imprisonment or detention is drastic and oppressive, the courts in India cannot question it. Court can only examine whether a person's life or personal liberty is being taken away under some law, but they cannot examine whether law is good or bad. It is, however, anomalous that while the courts are empowered to nullify laws, curtailing freedom of speech and expression in an unreasonable manner, they have no such power when personal liberty of the individual is jeopardised by a tyrannical legislation. In fact, all rights and freedoms are meaningless, if personal liberty is hampered. This is in sharp contrast to the constitutional position of 'Personal Liberty' clause in the U.S. constitution. In America, instead of 'procedure established by law' due process clause is incorporated. 'Due process' clause acts as a check on the legislature and the executive and empowers the judiciary to become a master of the situation in matters of 'personal liberty'.

Article 22. Clause (1). No person who is arrested shall be detained, in custody without being informed, as soon as may be of the
grounds for such arrest nor shall he be denied the right to consult and to be defended, by a legal practitioner of his choice. Clause (ii). Every person who is arrested and detained in custody, shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate. Clause (iii). Nothing in clauses (i) and (ii) shall apply to any person who, for the time being, is an enemy alien, to any person who is arrested or detained under any law providing for preventive detention.

Explanations. Article 22 confers certain constitutional rights upon arrested persons. In the words of Dr. Ambedkar, the Drafting Committee had brought in Article 22, in order to make ‘compensation’ for what was done in Article 21. Clauses (i) and (ii) deal with detention under the ordinary law, commonly described as “Preventive Detention.”

Detention under the ‘ordinary law’ enables the detainee to claim the following constitutional rights: (i) He shall be informed, as soon as may be, of the grounds of arrest. (ii) He shall not be denied the right to consult and to be defended by a legal practitioner of his choice. (iii) He shall be produced before magistrate within 24 hours of his arrest. (iv) He shall not be detained in custody beyond that period without the authority of the magistrate.

Constitutional guarantees feeble. The above constitutional guarantees are not very laudable. They are rather feeble as: (i) No time-limit is prescribed within which information must be furnished to the accused. (ii) There is no provision that counsel shall be provided to the accused, if poor, at the cost of the state. (iii) The magistrate before whom he is to be produced may be stipendiary or honorary and may be of any class. (iv) Whether the accused when produced before the magistrate will have the right to be informed by the magistrate the reasons of his detention, the constitution is silent about it.

If we compare clauses (i) and (ii) of our Article 22 with the similar provisions in the constitution of U.S.A., Japan and even Wiemer Constitution of Germany, we find our clauses dealing with safeguards against arbitrary arrest and detention pale into insignificance. Even elementary safeguards of justice, as trial, should be public and speedy and the accused shall possess a right of appeal, are conspicuous by their absence.

According to clause (iii), these rights are not available to persons arrested under any law providing for “preventive detention” and to enemy aliens.

7: PREVENTIVE DETENTION

No authoritative definition of Preventive Detention. Clauses (iv) to (vii) relate to preventive detention and constitute one of the most
peculiar and controversial features of the Indian constitution. An authoritative definition of 'Preventive Detention' is lacking in Indian law. The word 'Preventive' is used in contra-distinction to the 'punitive.' The object of 'Preventive Detention' is not to punish a man having done something but to prevent him from involving in a crime. In a way, it is a precautionary measure.

Applicable both in Emergencies and Peace Time. The most significant point to notice about Prevention Detention is that according to constitution, it is applicable both in emergencies and in normal times. The provision is unparalleled in the history of democratic world. The British Parliament, during World War II and Great War I, passed laws authorising detention without trial of persons by the Secretary of State in the interest of public safety and defence of the realm. The constitution of India, on the other hand, authorised preventive detention in times of peace even. On August 12, 1950, the Deputy Prime Minister of India, revealed that 6340 persons were detained under the Act till that time. In the words of G.N. Joshi, "Preventive detention in India is a crisis provision but it is not confined to a crisis." In view of the above fact, it is usually contended by the critics that the concept of Preventive Detention is thoroughly undemocratic and renders the freedom a sham, nay a mockery. Freedom, they emphasise, lies not merely in the enjoyment of Fundamental Rights but lies in a conviction that as long as one does not commit a breach of law, the arms of law shall protect. The alternative is the sword of Damocles always hanging on the head.

Safeguards for Persons Held under Preventive Detention. Keeping in view the fact that the Act can be a very grave restriction on personal liberty, the constitution makes some provisions to safeguard persons subjected to such a form of detention. Clause (iv) of the Act specifically lays down that

(a) Ordinarily, persons cannot be kept in preventive detention for more than three months without seeking the opinion of the Advisory Board, consisting of persons who are or have been or are qualified to be appointed as judges of a High Court. If the Board is of the opinion that there is no sufficient ground for such detention, the detainee is released immediately. This provision was hailed by many as unique as the Executive in such a vital matter was placed under the control of an independent Board.

(b) According to clause (v) of the Article, a person held under detention of this type, has the right to be informed, as soon as may be of the grounds of detention. In Shibban Lal v. State of U.P., the Supreme Court interpreted this clause in the words that no grounds may subsequently be added to, or withdrawn from, those given in the order of detention. Clause (v) entitles the detainee to get the earliest opportunity of making representation against his detention. The Supreme Court in the case quoted above explained this right very clearly. According to Supreme Court, this implied that the detainee must be supplied not with the 're
his detention but also 'particulars' relating to his detention, sufficient to enable him to make a representation (Particulars means those facts and details on which the grounds of detention have been based.) In fact, unless specific charges are communicated to which the detainee is to reply, the right to make a representation will remain illusory. The Court is empowered to look into the grounds in order to determine whether the detention is proper or not. It can look into the grounds, to find out, whether they are precise and definite. Thus the vagueness or irrelevance of the 'grounds of detention' and the 'adequacy or otherwise of the particulars' are justiciable issues.

**Grounds of detention concealable.** Clause (vi) lays down that the facts on which detention is to be based are to be disclosed by the detaining authority except in so far as the said authority considers the divulging of certain facts to be against public interest. But the purpose of clause (v) stands defeated, if the detaining authority is out to abuse clause (vi).

Clause (vii) provides that Parliament can, by law, authorise preventive detention for more than three months without obtaining the opinion of an Advisory Board. It is sometimes supposed, that this is a very minor exception to the general rule mentioned in clause (vi). But who knows, Parliament may make the exception the rule. Nothing can prevent Parliament from passing a law which dispenses with the requirements of the Board for most cases of preventive detention.

**Preventive Detention Acts (Original).** The Preventive Detention Act, (1950) exactly did what was anticipated. Under the Act, the Central and State Governments were empowered to detain persons if they were satisfied that it was necessary to prevent the people from doing acts prejudicial to (i) the defence of India, the relations of India with foreign powers or the security of India or (ii) the security of the State or maintenance of public order or (iii) the maintenance of supplies and services essential to the community.

The Act provided for scrutiny by an Advisory Board only for detenus falling in category (iii). Detenus in categories (i) and (ii) were debarred from the privileges though most of them fell in these categories. Moreover, the Act authorized any District, Magistrate or even a Sub-Divisional Magistrate to detain a person. Section 14 of the Act forbidding the disclosure of the grounds of detention before court was declared ultra vires and void by the Supreme Court, as it contravened Article 22 (v) and Article 32.

The Act caused a widespread resentment and entailed a great discussion. Hence three successive Amending Acts, (Amendment Act 1951, 1952 and Second Amendment Act 1952) were passed to liberalise the provisions of the original Act. Now, all cases of preventive detention, without any exception, are to be referred to an Advisory Board consisting of three persons who are, have been, or are appointed as judges of a High Court, within
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thirty days from the date of detention. The law now permits the detenu to appear before the Board to make his submission in person. If the Board is of the opinion, that sufficient cause for the detention of the person concerned does not exist, the Government must release the person. No person can be detained for more than a year, from the date of detention. After the expiry of detention order, no fresh detention can be made against him except on the basis of fresh acts.

Sub-Divisional Magistrates now possess no power of issuing detention orders. The detenu can be released on parole. It is indeed funny that the detenu is allowed to appear before the Board in person, but not through a legal practitioner.

§ 3. CRITICISM OF PREVENTIVE DETENTION

(a) Dangerous weapon. Dr. Ambedkar admitted that no part of the draft constitution entailed such a vehement criticism at the hands of the public as the Articles dealing with personal liberty. The members of the Constituent Assembly, as well, denounced these Articles with all the emphasis at their command. Pandit Thakur Dass Bhargava described these Articles as the “crown of all our failures.” Bakhshish Tek Chand dubbed them “as a charter of oppression and denial of liberty.” Preventive detention was the main target of scathing criticism. The members of the opposition parties apprehended that it is a very dangerous weapon in the hands of a ruling majority to crush the opposition, by throwing people into the prison without trial. A.K. Gopalan, the communist leader, emphasised that, “the Preventive Detention Act is designed to crush the political rivals of Congress.”

Period of three months too long. A few urged that the initial period of three months to allow the police to prepare their case for detention was rather too long and should be curtailed to a fortnight or a month.

Torture of detenus possible. It was feared that the detenus might be tortured or subjected to inhuman treatment, during detention. There was no provision to safeguard them from such eventuality.

Even Boards may be packed. Even the scheme of referring the cases to the ‘Board’ was not very much appreciated. It was feared that the Government might create ‘Packed Boards’ to say ditto to their point of view.

Maintenance to families of detenus not provided. Some of the critics opined that provision for the maintenance of the families of the detenus, also should have been made.

(b) Justification of the Preventive Detention. (i) A check upon disruptionists. Dr. Ambedkar, while justifying the critics said, “.... If all of us follow purely constitutional methods to achieve our objectives, I think, the situation would have been different and probably the necessity of having preventive detention might not be there at all.”
Since the constitution-makers had apprehensions, they could not afford to exclude these provisions. They were quite aware of nefarious activities of disruptionists who wanted to barter away hard-won freedom in the hands of new alien masters. While introducing a bill for the renewal of the Preventive Detention Act, in the Lok Sabha, in November 1954, the Union Home Minister made it perfectly clear that the Government treats preventive detention as an effective measure of psychological importance against subversive activities all over the country. In fact, while resorting to preventive detention in normal times, the Government followed a policy "which in the long run may better secure liberty within the Indian community than the risk of tolerating a situation which might prove out of control."1

(ii) Crying need of the hour. It is correct beyond doubt, that in the present era, our personal liberties are not so much threatened by the State as by the individuals and groups who are always out to impose their will on the masses by secretive and coercive methods. In the modern age of gross egoism, all freedom loving states are constrained to equip themselves with arbitrary powers of this type to counteract menace to their freedom. India is as yet an infant democracy. People of India have yet to imbibe true national spirit. Separatist tendencies still persist. Hence such a provision is the crying need of the hour.

Conclusion. Safeguards against Preventive Detention to be provided. But "it is the duty of the citizens to see that opposition parties wedded to constitutional methods should have the same degree of liberty as the Government supporters themselves. Public opinion should press the legislature to stop the loopholes in the provisions regarding detention without trial".2 In fact, preventive detention can be safely compared with a loaded gun which can protect the people and also kill them. Hence the gun must be used with extreme caution. The comments of Justice Shastri in Gopal v. State of Madras are worth quoting "This sinister-looking feature so strangely out of place in a democratic constitution which invests personal liberty with the suorosanctity of a Fundamental Right and so incompatible with the promises of the Preamble is doubtless designed to prevent an abuse of freedom by anti-social and subversive elements which might endanger the national welfare of the infant republic."

19. RIGHT AGAINST EXPLOITATION

"Begar" and traffic in human beings stopped. Articles 23 and 24: Another Fundamental Right guaranteed by the constitution is the "Right against exploitation". It is contained in Articles 23 and 24.

Article 23: (i) Traffic in human beings and 'begar' and other similar forms of forced labour are prohibited and any contravention

1. Alexandrowicz: Constitutional Development in India, p. 34.
of this provision shall be an offence punishable in accordance with law.

Exception: (ii) Nothing in this Article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

More a duty than a right. According to Dr. Jennings, this Article is more in the nature of imposing duties on private persons than laying down a right. Aristocratic people, in the past used to impose various kinds of forced labour on others. The practice was prevalent even to this day. Hence such a practice of forced work without any remuneration which in reality was a disguised form of slavery, was declared to be an offence. Trafficking in human beings, particularly in women for immoral purposes was prohibited by the law. It is, however, most distressing that the crime still persists in a subtle and disguised form in certain parts of our country.

Compulsory Service may be imposed for public purpose. Clause (ii) as quoted above, however, permits the State to impose compulsory service for public purposes. For instance, compulsory military training and military and ‘Industrial conscription’ can be imposed, though without any discrimination on the basis of religion, race, caste or class or any of them. Thirteenth Amendment of the American constitution also prohibits slavery or involuntary servitude. Americans had to fight a civil war to eradicate this evil of slavery from their land.

Article 24. Child below 14 years not to be allowed to work in hazardous jobs. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Labour laws already prohibited the employment of children in factories or mines. This Article, however, provides a more effective safeguard against such practice, as it is not an easy affair to change the constitution. On paper, our constitution goes ahead of the American constitution, as the latter does not make any express provision of prohibition against the employment of children in hazardous factories or mines. But so long as we do not make a provision for ‘Poor Houses’ or ‘Work Houses’, as is the case in England, we are forbidding the children hailing from humble cottages the ‘right to live’.

10. RIGHT TO FREEDOM OF RELIGION (Articles 25, 28, 27, and 28)

Article 26. Freedom of Conscience. (i) Subject to public order, morality and health and to other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. (ii) Nothing in this Article
shall affect the operation of any existing law or prevent the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice or providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

**Explanation:** Article 25 establishes secular character of India polity. No special favours or patronage is conferred upon religion. Everybody is at liberty to practice his faith.

**Restrictions on the Article:** (a) Its use subject to public order morality and health. The right is not however absolute. It is also hedged with certain restrictions. Religious liberty guaranteed is not an overriding principle. It is subordinate to the interests of 'public order', 'morality' and 'health'. The people, for instance, can take out procession in public street provided they do not interfere with the use of such street by the public and do not disobey the orders of magistrate exhorting them to maintain public peace. In *Mohd. Saiddqui v. State of U.P.*, the Commissioner of Police refused permission to the use of loud speakers five times a day for calling "Azan" as most of the residents of locality complained against the practice. The Court upheld the action of the Commissioner, as it did not contravene the Article 25 which provided such an action if a religious practice runs counter to public order, morality or health.

(b) Social reform can be effected. The State can also effect a social reform according to clause (ii), (b) of the Article. Marriage, for instance, is a social institution. The State is fully empowered to legislate for effecting a reform in the institution of marriage. How can a State permit human sacrifices even though permitted by some religions? How can a State permit indecent exposure of one’s person, debasing public moral, though a particular religion honours some of these ‘Nanga’ Sadhus? Religion must yield, when social reform comes in conflict with it.

The State can throw open Hindu religious institutions of a public character to all classes and sections of ‘Hindus’. The term ‘Hindus’ includes Sikhs, Jains and Buddhists. Moreover, the wearing and carrying of *Kirpans* is to be deemed to be included in the Sikh religion.

**Article 26. Establishment of religious institutions allowed.** Subject to public order, morality and health every religious denomination or any section thereof shall have the right (i) to establish and maintain institutions for religious and charitable purposes; (ii) to manage its own affairs in matters of religion; (iii) to own and acquire movable and immovable property; (iv) to administer such property in accordance with law.

Article 26 is a mere corollary to Article 25. In fact, freedom to religion or religious propaganda becomes a mere mockery if freedom to establish and maintain religious institutions or to own and
manage property of such institutions is negated. Referring to clause (ii) of the Article, Principal C.L. Anand remarks, "What is obviously contemplated is that when a religious denomination is dealing with things like dogmas, ceremonies and matters concerning day to day affairs the state should not interfere with those matters." The legislature has got no right to interfere, in matters of religion of a religious denomination unless the latter is managing its affairs in a way, detrimental to public order, morality or health.

Clause (iv), however, is subject to restrictions which can be imposed by legislation. The restriction, if unreasonable, will be unconstitutional.

**Article 27. No compulsion for payment of taxes of religious denominations.** No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. Article 27 further emphasises the secular character of the state. It is the only one which provides for separation of Church from the State. It guarantees the right of freedom as to payment of taxes, the proceeds of which are to be utilised for the promotion or maintenance of any particular religion. If money is to be spent for the care of poor patients in a hospital, independent of all religions, there is no breach of the above Article.

**Article 28. Religious instructions not permissible in Government institutions.** (i) No religious instruction shall be provided in any educational institution wholly maintained out of state funds. (ii) Nothing in clause (i) shall apply to an educational institution which is administered by the state but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. (iii) No person attending any educational institution recognized by the State or receiving aid out of state funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto, unless such person, or if such person is a minor and his guardian has given consent thereto."

**The Object of the Article.** The object of the Article was partly to avoid the exploitation of society in the name of religion and partly to confer freedom of religion on the citizens in true sense. The youth is therefore not to be compelled or misled in religious matters. This will automatically eliminate fanaticism.

The above Article is silent about private institutions. It makes a mention of four types of educational institutions.

(a) Institutions wholly maintained by the State.

(b) Institutions recognized by the State.

(c) Institutions that are receiving aid out of the State funds.

(d) Institutions that are administered by the State but are established under any trust or endowment.

In the institutions of (a) type, no religious instruction can be imparted. In the cases of (b) and (c) attendance at such institutions is left to the discretion of the individual concerned. In the case of (d) type institutions, there is no restriction on such instructions.

The provisions relating to the religious freedom clearly reflect that our's is a secular state. Though the State observes complete neutrality in religious matters, it is not debarred from adopting measures of social reforms and imposing restraints on the abuse of religious freedom endangering public order, health or morality.

§ 11. CULTURAL AND EDUCATIONAL RIGHTS (Articles 29-30)

Article 29. (i) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (ii) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them.

Cultural freedom of Minorities. Thus according to clause (i) of the Article the minorities are guaranteed cultural freedom. If a section of citizens have a distinct language and culture of their own and are eager to preserve the same, they are constitutionally entitled to do so.

Clause (ii) applies to Majority as well. Clause (ii) is wide and unqualified and covers up all citizens whether they belong to majority community or minority group. Discrimination in the matters of admission to educational institutions maintained wholly or partly by the State on the basis of race, caste, language or any of them is prohibited. In Madras v. Srinivasan, the applicant was refused admission in an Engineering School on the ground that he belonged to Brahmin community and under Government rule, the Brahmin quota had been exhausted. The Court held that it was unconstitutional under Article 29 (ii). It was also held by the judges, that even if the basis on which the admission is refused is not described as a religion, but that is so in effect, clause (ii) will be applicable. A full Bench of Madras High Court in a similar case involving interpretation of clause (ii) declared (in July, 1950) that in the matter of admission to colleges in the state “grounds of religion, race, or caste cannot be the basis”.

Article 30. (i) All minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice. (ii) The State shall not in granting aid to educational institutions discriminate against any educational institutions on the ground that it is under the management of a minority, whether based on religion or language.

No discriminations while granting aids. According to this Article, religious or linguistic minorities are guaranteed the right to establish and administer educational institutions of their choice and the State is prohibited from discriminating against such institutions, in extending aid to such institutions. In other words, minority is not only given the right to establish and administer educational institutions, but the educational institutions must be of their choice.

The State is not allowed to dictate to the minority the nature of educational institutions, it shall have. It is for the minority to decide what the pattern of educational institution should be to enable it to conserve its culture. Moreover, the State is to adopt impartial attitude, while extending aid to these institutions run by the minorities.

§ 12. RIGHT TO PROPERTY [Article (i-vi) 31, 31A, 31B].

*Article 31*. (i) No person shall be deprived of his property save by authority of law. (ii) No property, movable or immovable, including any interest in or in any company owning any commercial or industrial undertaking shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation or specifies the principles on which and the manner in which, the compensation is to be determined and given.

**Explanation. Sanctity of Private property preserved.** The sanctity of private property—institution established since time immemorial, has been recognized in Article 31. Article 19 assures the citizen the right to acquire, hold or dispose of property, though subject to reasonable restrictions imposed by law in the interest of the general public.

**Exceptions.** Article 31 states that no person can be deprived of his property except by authority of law and on payment of compensation. Acquisition and requisition of property by the State is however made possible, only for the public purpose. Clause (iii) to (vi) and Articles 31A and 31B provide exceptions to the general provisions of acquisition and requisition of property by the State for public purposes and compensation to be paid there for.

**Comparison of Exceptions with other Countries.** In fact, such exceptions to right to property are provided in other constitutions also. The states are fully empowered to deprive a person of his property, in public interest under the principle of "eminent domain". In countries like U.S.A. and Australia such an authority under "eminent domain" is exercised by the State, but subject to payment of fair or just compensation. In these countries, courts are fully competent to decide whether compensation is just and fair or not. In case of India though "compensation" has been made a necessary condition of compulsory acquisition, the constitution does not
mention about its being fair and just. In the words of Dr. M.P. Sharma, "The omission is deliberate and its intention is to bar out the interference of the Courts from the matter and prevent litigation". The legislature was made the sole judge in the matter of compensation. Pandit Pant, the then Chief Minister of U.P. said, "We wish to pay equitable compensation to everybody, but we do not want to be involved in litigation in any case whatsoever." It was emphasised by most of the members of the Constituent Assembly that judiciary should not be authorised to challenge the Parliament which embodies the will of the nation. Pandit Nehru while emphasising this point said, "Within limits, no judge and no Supreme Court can make itself a third chamber." Thus the legislature was to fix the compensation or lay down principles for determining the same. Judiciary could not sit in judgment over the sovereign will of the Parliament, representing the will of the entire nation.

**Principles of compensation to be laid down save in a few cases.**

It was however stated in clauses (v) and (vi) of the Article 31, that the requirement relating to compensation i.e. any law authorising acquisition of property must lay down principles of compensation and will not apply to (i) laws providing for the imposition or levying of any tax or penalty; (ii) laws made for the promotion of public health or the prevention of danger to life or liberty; (iii) laws relating to eviction property; (iv) existing laws other than those passed not more than eighteen months before the commencement of the constitution. In the case of latter, they were to be submitted to the President for certification within three months from such commencement; and if so certified by the President, they were not to be called in question in any court, on the plea that they contravened clause (ii) of the Article.

Clause (iii) emphasised that if any Bill pending at the commencement of the constitution in the legislature of a state was passed by the legislature and having been reserved for the President's approval received his assent, the law so assented shall not be questioned on the ground that it contravened clause (ii) of the Article.

**Amendments to Article 31.** Despite the incorporation of clauses (iv) and (vi) to shield Zamindari Abolition (Without compensation) Acts of States of Bihar, U.P. and Madras, the interference of the courts in the Zamindari abolition could not be eliminated. The courts were judicious enough not to question such legislation on the basis of its contravention of clause (ii) of Article 31. They did so, on the ground of its conflict with other Fundamental Rights or other provisions of the constitution. The Patna High Court in *Kameshwari v. Province of Bihar*, declared Bihar Zamindari Abolition Act unconstitutional. Thus the 'cast-iron' provisions of the

1. Dr. Sharma, M.P.; *The Government of the Indian Republic* p. 49.
constitution did not succeed in keeping Land Reforms Legislation outside the purview of the courts. It was thought to be a great impediment in the way of agrarian reforms which were to play a vital role in the attainment of socialistic pattern of society. Hence the constitution was amended by the constitution (First Amendment) Act of 1951. Two new Articles 31A and 31B and a new schedule (9th) were added to the constitution.

Addition of new Articles. (a) Article 31A. According to Article 31A, no law providing for the acquisition by the State of an estate or of any rights therein or for the extinguishment or modification of any such rights or the taking over of the management of any property by the State for limited period either in public interest or in order to secure the proper management of the property shall be held void on the ground that it was in conflict with Fundamental Rights as provided by Articles 14, 19 or 31.

(b) Article 31B. Article 31B made an addition of a new (ninth) schedule to the constitution, giving a list of 13 Zaminjari Abolition laws whose validity could not be questioned by the courts, under the provisions of the previous article and which would remain valid "notwithstanding any judgment, decree or order of any court or tribunal to the contrary."

Article 31B was in fact inserted by the Constitution (First Amendment) Act, 1951 to save certain measures of land reforms from being declared unconstitutional by judicial interpretation.

Addition of new Articles not enough. Yet the ink on the statute was not dry, when it was discovered that the amendment of Article 31 did not solve the problem. It was realized that the trouble of compensation in acquisition by the state of property other than landed Estates was still there. In Sholapur Mills Case, it was decided inter alia that since the ordinance taking over the management of the Sholapur Mills did not make any provision for compensation, it amounted to infringement of Article 31 of the constitution. Sholapur Mills was one of the largest mills in Asia. 13,000 employees of the mills were on the road entailing a loss of Rs. 25 lakh yards of cloth and 1.5 million yards of yarn per month, the mill suddenly stopped working in August 1949. Hence 'Minority of helpless shareholders' petitioned the Government to intervene. The Government, passed an ordinance, removed the Board of Directors and took over the management of the mill, in order to ensure the supply of commodities and save thousand of workers from starvation. The Government was of the view that under Article 31(4), it exercised only police power. It was only 'deprivation' of property and not 'acquisition.' Since the State sought to derive no benefit, hence no compensation was provided in the ordinance. The Supreme Court when approached by the Company however took contrary view. In their opinion 'taking possession' amounted to 'acquisition' and therefore 'compensation' must have been paid. Hence the ordi-
nance (1950) was held void. This attitude of the Supreme Court induced the legislators to effect another amendment.

**Constitution (Fourth Amendment) Act, 1955.** The Constitution (Fourth Amendment) Act, 1955 was passed, to surmount such difficulties on April, 12, 1955 by an overwhelming majority of votes. Pt. Nehru explained the objects of the bill, before its final passage, in the Parliament "We are not suggesting any arbitrary confiscatory or expropriatory action. In fact, the law provides that acquisition of property be by law, and compensation should be paid. But the quantum of compensation will be determined by the legislature...". He also emphasised that while interpreting the laws, the Supreme Court will fully take into consideration the 'new atmosphere' in the House and the country.

**Effects of this amendment.** The effect of this amendment is that the adequacy of compensation cannot be challenged in a Court. But more important than this is the provision "Where a law does not provide for the transfer of ownership of right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property notwithstanding that it deprives any person of his property." The above amendment amplifies the original principle of the Indian constitution that in matters of social, political and economic policy, it is the legislature and not the judiciary which is and will be the supreme judge. The amendment makes it clear that no question of compensation could be made the ground for invalidating a law provided for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State.

**Amendments under fire.** These amendments were vigorously criticised by the critics on the floor of Parliament. It was argued by the apologists of property that these amendments had made the right to property non-justiciable. The Communists and extreme Socialists, on the other hand violently opposed any compensation whatsoever. The extremes are to be avoided, in case the question is to be studied dispassionately. Each case of acquisition and compensation should be treated on its own merit. The nature and conception of property have undergone a change. Hence the law of property must keep pace with the times and reflect the prevailing attitude of masses towards it. Large properties in land or means of production are deemed to be inconsistent with general interest of the public. In a socialistic pattern of society, with the passage of time, capitalism is bound to be sealed down. Hence the concept of property was considered in the context of "the dynamics and tempo of the new social forces that had been set in operation to shape India's destiny."1

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1. Speech in Lok Sabha on April 11, 1955; extract from the *Tribune* dated 12th April, 1955.
Article 32. (i) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed. (ii) The Supreme Court shall have power to issue directions or orders or writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari whichever may be appropriate for the enforcement of any of the rights conferred by this part. (iii) Without prejudice to the powers conferred on the Supreme Court by clauses (i) and (ii), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (ii). (iv) The right guaranteed by this Article shall not be suspended except or otherwise provided for by the constitution.

Explanation. The constitution not only makes provision for Fundamental Rights on paper but also guarantees them by incorporation of 'Right to Constitutional Remedies'. This remedial right entitles the Indian citizen to move the Supreme Court or any other court so authorised by the Parliament by appropriate proceedings for the enforcement of Fundamental Right. The importance of this right was very well portrayed by Dr. Ambedkar when he said, "If I was asked to name any particular Article in this constitution, as the most important, an article without which this constitution could be a nullity, I could not refer to any other article except this one. It is the very soul of the constitution and the very heart of it."

How critics look at it? The critics argue that since this right can be suspended under Article 359, it has been robbed of its inherent and fundamental values and it takes away with one hand what is given by the other. But this argument is hardly valid, in the context of our circumstances. Our Fundamental Rights are not absolute and they, in fact, strike a balance, howsoever delicate, between the demands of the individual and the needs of the State. In abnormal circumstances the life of the State is itself in jeopardy, and if the State does not take drastic steps to protect itself, the individual will lose his very existence. Hence, during emergency proclamation, this right remains suspended.

The courts can order the authorities to produce before them any person who has been arrested and detained by them for determining the legality of his detention. If the court feels that the detention is illegal, it can order the immediate release of the detainee. Thus, this writ protects the "personal liberty" of the people. It may however be stated that the power of issuing this writ is derived from clear constitutional provisions and not from historical precedents as in U.K.

Mandamus. Mandamus which literally means 'we command' is an order which commands a person or body to do that which it is his or its duty to do. It is issued to secure the performance of public duties and enforce private rights withheld by public authorities. Suppose a firm fails to pay compensation to an injured person though, under labour laws, it was its duty to do so. The sufferer can get 'mandamus' writ issued by the appropriate High Court and thus get the firm commanded by the latter for payment of compensation to him. This writ is intended to correct the acts of omission on the part of authorities which otherwise amount to the jeopardization of citizen's fundamental rights.

Prohibition. The writ of prohibition is issued by a higher court to stop proceedings in a lower court on grounds of excess of jurisdiction or violation of the rules of natural justice. This writ is thus the opposite of mandamus as it prevents the wrong action by the authorities rather than ensure the right action. A High Court, for instance, issues such a writ to a lower court to restrain it from hearing a case which lies beyond its jurisdiction. This writ can also be issued to non-judicial public bodies in cases where such bodies take quasi-judicial decisions. For example, if a District Board has to take a quasi-judicial decision regarding the valuation of a plot of land after hearing all the parties concerned, and it does not hear all the parties, a writ of prohibition can be issued against it.

Certiiorari. The writ of certiorari is an order commonly issued to a lower court or quasi-judicial authority to transfer some case pending before it to the higher court for its scrutiny and decision. This writ is usually issued in a case where the court or authority concerned has a legal power to consider and decide it or in which there is a danger of miscarriage of justice.

Quo Warranto. The writ of quo warranto is issued to prevent illegal assumption of any public office or usurpation of any public office by anybody till the court has decided the matter. Literally quo warranto means "By what authority". Suppose a seventy years old person is appointed to fill a public office though the age of retirement of incumbents in that office is less than 70 years. An appropriate High Court can in such a case issue a writ of quo warranto against that person and declare that office vacant.
Directive Principles of State Policy

1. ASPIRATION FOR A WELFARE STATE

The constitution of India aims at the establishment of not merely a political democracy, but also a welfare or social service state. *Laissez faire* thought of the 19th century did not influence the framers of our constitution. In fact, they were wedded to the philosophy of socialism which was gradually sweeping over the world. "Political democracy without economic emancipation is a mere myth" was a slogan constantly ringing in their ears. Hence they had to make a provision for economic democracy in one way or the other. In the words of Dr. Ambedkar, "It was not the intention of the framers to prescribe any rigid programme for the attainment of the ideal of the economic democracy. Parties were to be completely free to advocate their own programmes and appeal to the electorate for a mandate for them. But the framers desired to prescribe that every government...shall try to bring about economic democracy." Thus the principles embodied in the directives are mostly those which the constitutional pundits thought as the fundamental principles of a new social and economic order for which they aspired since long.

1a. THEIR SOURCE

This novel feature of the constitution is borrowed from the constitution of Ireland which had copied it from the Spanish constitution. According to Dr. Jennings, the Directives having emerged in Spain followed by Ireland (and adopted by India) are predominantly Roman Catholic because the Roman Catholics "are provided by their church, not only with a faith but also with a philosophy".

At home the immediate source of this chapter is the Instruments of Instructions under the Government of India Act of 1935. The only difference is that the instrument of instructions was directed to the executive while the Directives convey instructions to the State legislature and the executive. The State includes the government and the parliament at the Centre, the government and the legislature
of each of the States in the Union and all local or other authorities functioning in the country. While formulating their policy, these objectives or ideals must be borne in mind by the Union and State governments, since they lay down the social and economic principles which if followed are bound to usher in an era of socialism. In the words of G.N. Joshi, "They constitute a very comprehensive political, social and economic programme for a modern democratic state." It may, however, be pointed out that they do not form the complete blue-print nor do they constitute a cut and dried rigid programme but they simply reflect the aspirations of founding fathers who wanted every government to make an effort to establish economic democracy in this country which had already achieved political democracy.

Such principles cannot operate otherwise than as mere directives to the government and the legislature. They are incorporated in the constitutions of Czechoslovakia, China and Yugoslavia as well. In the constitution of U.S.S.R., these principles are included in the chapter on Fundamental Rights. Weimer constitution of the German Reich also mentioned these principles in the chapter on rights.

§ 3. DISTINCTION BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

Before we enumerate Directive Principles of State Policy, it is essential to differentiate them from Fundamental Rights.

(a) Fundamental Rights are justiciable, Directives non-justiciable. The Fundamental Rights, incorporated in Chapter III, are justiciable while Directive Principles are not. If a Fundamental Right is encroached upon, the person concerned can approach the High Court or the Supreme Court to seek redress by getting the right enforced. However, if a Directive Principle as embodied in Chapter IV is violated, no court of justice can come to the rescue of the aggrieved party. For instance, if a person is illegally detained, a writ of 'habeas corpus' can be obtained by the detainee. If Government does not separate judiciary from the executive or introduce universal compulsory education, the courts cannot help the aggrieved. The Directive Principles are not mandatory principles. They confer no legal rights, hence they make no provision for legal remedies either. Article 38 lays down that the "state shall strive". In the words of Dr. Ambedkar, "the word 'strive' was purposely used because their intention was that however adverse the circumstances that stand in the way for a Government in giving effect to these principles and however unpriopitious the time may be, they should always strive for the fulfillment of the principles. Otherwise, it would be open to the Government to say that the circumstances were not good and the finances were so bad that they could not implement them." The above statement of Dr. Ambedkar makes it crystal clear that these principles are not binding upon the Government.
The Government is to strive. If it does not fulfil these principles despite its striving, nobody can challenge it in the court of law.

(b) Fundamental Rights prohibitive whereas Directive positive directions. Fundamental Rights lay down the negative obligations of the State. They are in the nature of the injunctions requiring the State not to do certain acts. In other words, they are prohibitive in character. For instance, no official of the State can arbitrarily debar the citizens from lawful enjoyment of such privileges as freedom of speech and expression, movement, assembly and worship. If he does so, the aggrieved person is vested with the right to approach the court to get the wrong rectified. The Directive Principles, on the other hand, are positive obligations of the State towards its citizens. They declare it as the duty of the State to promote certain social and economic objects. Gledhill remarks, “Fundamental Rights are injunctions to prohibit the Government from doing certain things; the Directive Principles are affirmative instructions to the Government to do certain things”.

(c) Directive Principles subsidiary to Fundamental Rights. Constitutionally, the Directive Principles are subsidiary to the Fundamental Rights. In the case of State of Madras v. Champakan Doraikan, the Supreme Court of India observed, “the Directive Principles of State Policy which are expressly made unenforceable by a court cannot override the provisions in Part III which are made enforceable by appropriate writs, orders or directions under Article 32.”

The chapter on Fundamental Rights is sacrosanct and not liable to be abridged by any legislative or Executive act or order except to the extent provided in the appropriate articles in Part III. The Directive Principles of State Policy have to conform to and run subsidiary to the chapter on Fundamental Rights. Howsoever so long as there is no infringement of any Fundamental Right to the extent conferred by the provisions in Part III, there can be no objection to the State acting in accordance with the Directive Principles.” In a number of such cases, Supreme Court expressed similar views. Decisions of Supreme Court establish the legal superiority of Fundamental Rights over Directive Principles, though the latter also are considered fundamental in the governance of the land.

§ 4. CLASSIFICATION OF THE DIRECTIVE PRINCIPLES

Since the Directive Principles have not been enumerated in the constitution in accordance with a logical plan, it is difficult to classify them. Dr. M.P. Sharma in his book ‘The Republic of India’ groups these principles under three classes—Socialistic, Gandhian and LiberalIntellectualistic. We may however make an addition of another group ‘General’ which is not covered under three classes mentioned by Dr. M.P. Sharma. This 'General' group may include all those directives which are not covered up by his classification.

(a) Socialistic Principles. The bulk of the Directive Principles however aim at the establishment of a welfare state based on socialistic
principles. Article 38 provides that the State shall strive to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political shall inform all the institutions of national life.

Article 39 calls upon the State to direct its policy towards securing (i) that the citizens, men and women, equally have the right to an adequate means of livelihood, (ii) that the ownership and control of the material resources of the community are so distributed as to subserve the common good, (iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment, (iv) that there is equal pay for equal work for both men and women, (v) that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced to enter vocations unsuitable to their age, (vi) that childhood and youth are protected against exploitation and moral and material abandonment.

Article 41 seeks to ensure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and other cases of undeserved want.

Article 42 states that the State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43 exhorts the State to secure all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

According to Article 46, the State is to promote with special care, the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitations.

Article 47 imposes a duty on the State to raise the level of nutrition and the standard of living of its people and the improvement of the public health.

These Directive Principles undoubtedly embody the main objectives of a socialistic pattern of society. In the words of Sir Ivor Jennings "the ghosts of Sidney and Beatrice Webb stalk through the text of Part IV of the constitution."

(b) Gandhian Principles. Gandhian ideology finds quite a prominent place in some of these principles, as the ruling party was wedded to Gandhian philosophy since the time Gandhi became undisputed leader of the Congress. Gandhian concept is discernible in the following principles:—

(i) The State shall organise village panchayats and endow them with such powers as may enable them to function as units of self-
(iii) The State shall promote with special care, the educational and economic interests of Harijans, Scheduled Tribes and weaker sections of the community. Mahatma Gandhi’s campaign to uplift down-trodden backward communities is an open secret. (iii) That the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas. (iv) The State shall take steps for preserving and improving the breeds of milk and draught cattle, including cows and calves and for prohibiting their slaughter. (v) The State shall endeavour to effect prohibition of the consumption, except for medicinal purposes, of intoxicating drugs and drinks which are injurious to health.

(c) Liberal Intellectualistic. This category includes those things on which the liberal intellectuals have been insisting for the last many years e.g. (i) The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. (ii) The State shall endeavour to provide within a period of ten years from the commencement of the constitution, for free and compulsory education for children below and upto 14 years of age. (iii) The State shall endeavour to organize agricultural and animal husbandry on modern and scientific lines. (iv) The State shall take steps to separate the judiciary from the executive in the public service of the State. (v) The State shall endeavour to promote international peace and security; maintain just and honourable relations between nations; foster respect for international law and treaty obligations; encourage settlement of international disputes by arbitration.

(d) Miscellaneous or General. Certain Articles of ‘Directive Principles’ chapter can be kept in this category. Articles 36 and 37 are merely concerned with the definition and application of the Directive Principles. Article 36 provides that in this (part) unless the context otherwise provides, the State has the same meaning.

Article 37 provides that these principles shall not be enforceable by any court of law and at the same time declares that they are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Article 49, which makes it an obligation of the State to protect every monument or place or object of artistic or historic interest which Parliament of India has declared of national importance also refers to general matters. We cannot afford to include this article in any of the preceding groups of principles.

5. CRITICISM OF THE DIRECTIVE PRINCIPLES

The Directive Principles as incorporated in Chapter IV of our constitution have been very vehemently criticised since the day they were placed before the Constituent Assembly. Following are the points of criticism advanced against the Directive Principles.

(c) Lack of legal force. Lack of legal force behind them is the main ground of criticism. Since they impose no legal obligations
on the State, the critics dub them as mere pious superfluities or political manifesto devoid of any constitutional importance. Nassiruddin, a member of the Constituent Assembly, characterised them as a set of New Year resolutions. Prof. K. T. Shah described them as a cheque payable by the bank concerned at its convenience. Prof. K. C. Wheare describes them as a "manifesto of aims and aspirations". Sir B. N. Rau opines, "The Directive Principles of State Policy are in the nature of moral precepts for the State authorities and are open to the facile criticism that the constitution is not the place for moral precepts". A constitution, in fact, is not a place for moral precepts. In that case, the Ten Commandments of Bible could as well have been provided in this chapter. An inclusion of provisions, which are legally not enforceable is, according to the critics, meaningless.

(b) Vague and illogically arranged. According to Dr. Jennings, Directive Principles like Fundamental Rights are not based upon consistent philosophy. They are vague. They are neither properly arranged nor logically classified. Unimportant issues like protection of monuments have been mixed up with comparatively very important economic and social questions. In the words of Prof. Srinivasan, "It combines rather incongruously the modern with the old and provisions suggested by reason and science with provisions based purely on sentiment and prejudice". Ambiguity of some of these principles gets obvious when we critically analyse them. It is rather beyond comprehension of a student of political science. How can India maintain just and honourable relations among nations most of which are still suffering from inferiority complex.

(c) Unnatural in a sovereign state like India. It is rather unnatural for a sovereign state to adopt these principles. A superior Government may lay down such instructions for an inferior government but hardly there is any necessity of such instructions or directions for a sovereign nation. Why should a nation give directions to itself? Moreover, how can these principles be followed and accepted in all times and climes? These principles constitute merely a political philosophy. They have rightly been described as a "parade of high-sounding sentiments couched in vainglorious verbiage". In an age of grim realities, such directives are hardly appreciated by a constitutional critic, living in an independent sovereign country.

(d) They are unsound. Their practicability and soundness also has been challenged by some critics. Directive principle concerning 'prohibition', for instance, is very strongly criticised by the advocates of the sound economy of the country. The so-called laudable reform causes a great loss to the national exchequer. Money collected through 'excise duty' on liquor or other intoxicants could easily be utilised for the benefit of masses. Moreover, it is

contended that prohibition can hardly turn drunkards into moralists. Morality cannot be enforced. Rather it has given incentive to crimes of illicit distillation and illegal gratification of officers who are instrumental in the continuance of this illegal trade.

(c) They may lead to conflicts. Mr. Santhanam expressed this apprehension in the Constituent Assembly that these directive principles may lead to a conflict between the President of India and the Prime Minister and between the Governor and the Provincial Ministers, "What happens if the Prime Minister of India ignores these instructions?"—he asked on the floor of the Assembly. The President of India, as the guardian of the Constitution, may like to impose a penal dissolution on a ministry which under the headship of a Prime Minister got a law passed in contravention of the Directive Principles, by withholding his assent to such a law. He may like to justify his position on the ground that since they are 'fundamental in the governance of the country' the Ministry has got no right to ignore them. Thus such occurrences, if frequently repeated, may lead to an open rupture and thus cause a severe blow to parliamentary democracy.

(f) Means to achieve end ignored. In the words of Dr. Jennings, the ghosts of Sydney and Beatrice Webb stalk through the pages of the text. In his view, "Part IV of the constitution expresses Fabian Socialism without Socialism for the nationalisation of the means of production, distribution and exchange is missing. Nationalisation for the Fabians was simply a means to an end and not the end in itself. This chapter does talk of the end but ignores the means".1

(g) Brake on the wheels of National Progress. Dr. Jennings apprehends that the ideas and ideals embodied in the chapter "may not simply become outmoded and antiquated in the next century. They might act as citadels of reaction as well and thus clog national progress".

(h) Based on British Experience of 19th century. Dr. Jennings flies to an extreme when he opines, 'Directive Principles are nothing but collection of political principles derived from English political experiences of 19th century. They are deemed to be unsuited for India, in the middle of 20th century.'2

Keeping in view scathing criticism, launched against the Directive Principles, a critic remarked that the chapter is an ingenious blend of pious wishes, noble aspirations, economic maxims and moral precepts which ultimately degenerate into sublime nonsense.

§ 6. THEIR VALUE

(a) Sanction behind the principles. Despite such vehement criticism (as stated in the preceding paragraph) these principles are

2. Ibid., p. 33.
not as meaningless and useless as they are deemed to be. It is wrong to say that there is no force behind them. In this age of democracy ‘vigilant public opinion’ is the real force behind an institution which stands for the benefit of the individuals. The government in a parliamentary system of government is under a constant fire of criticism. The actions of the government are subject to scrutiny by the masses and the distinguished leaders of the party. If the government pursues a policy in accordance with the principles of the constitution, people tolerate it, otherwise they oust it in the next elections. Since the Directive Principles have been embodied in the constitution, the governments are apt to implement them. There may not be the legal force behind them but the highest tribunal—the public opinion—stands behind them. No government can afford to ignore these Directives, if it is not keen to doom its future for all times to come.

(b) Their constitutional sanctity unchallengeable. It is obvious from the above fact that though the Directive Principles are not enforceable, their constitutional sanctity is an undisputed fact. Their violation is as contrary to the constitution as violation of a constitutional principle legally enforceable. In the words of Gledhill, “If the Indian constitution becomes vested with the cope of sanctity essential to its durability, it will be difficult for any public figure to propose any legislative measures without making an appeal to Fundamental Rights or Directive Principles. Measures will be attacked by the opposition as unconstitutional in so far as they conflict with the Directive Principles.”

In Gopalan v. State of Madras C J. Kanis opined that being a part of the constitution, the Directive Principles do not “represent a temporary will of the majority, but the deliberate wisdom of the nation expressed through the Constituent Assembly...By declaring them to be fundamental in the governance of the country, the constitution has invested them with a certain sanctity...”

(c) An insurance against extremes. The framers of our constitution were judicious enough to realise that in a democratic system of government, the swing of public opinion may put different parties in power at different times. At one time, the party on the helm of affairs may be conservative in outlook while at another time, the reins of government may fall in the hands of a party radical in leanings. These principles will induce the conservatives to introduce reforms necessitated by the exigencies of the time and also exercise restraint on the radicals if they would be keen to introduce reforms of sweeping nature. They would act as signposts to all succeeding governments. In the words of Dr. Ambedkar, “They have left enough room for people of different ways of thinking with regard to the reaching of the ideal of economic democracy.”

According to Raghavachariar...“Whoever may capture the government power, they will have to respect these instrument of

instructions...He may certainly have to answer for them before the electorate when the next election comes."

(d) Importance of moral precepts. Even if the Directive Principles are to be considered as mere moral precepts or pious resolutions, still their significance cannot be minimised. According to Gledhill, "The lives of the countless millions have been shaped and directed by moral precepts impinging on their minds and it is not difficult to find instances of similar precepts directing the course of history and nations." In spite of the fact that constitutional landmarks like Magna Carta, the French Declaration of Rights and the Preamble to the American Constitution do not have any legal sanction behind them, yet their impact on the histories of countries concerned cannot be considered less vital. Just as the provisions of these landmarks cannot be declared ineffectual, the principles contained in Chapter IV also are apt to shape the destiny of our nation and guide the policies of our future government. Hence they shall not be dismissed as ineffectual moral precepts.

(e) Fundamental principles of social and economic order. The principles embodied in the Directives are conceived as the fundamental principles of a new social and economic order which was the ultimate goal of the fathers of Indian constitution. It is definitely stated in the constitution that these principles though legally not enforceable are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Article 38 prescribes 'The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order, in which justice, social, economic and political shall inform all the institutions of national life". Article 39 goes further in enumerating principles of socialism. The framers of the constitution were conscious of the fact that political democracy alone is not enough, hence they were endeavouring to promote the conception of welfare state by laying down these fundamental principles of social and economic order which fearing the wrath of public, the legislators and the executives could not easily ignore. Dr. Ambedkar's statement in the Constituent Assembly makes this point perfectly clear. "Their intention was that however adverse circumstances that stand in the way for government in giving effect to these principles and howsoever improvidous the time might be, they should always strive for the fulfilment of these principles."

(f) Ambiguities of the Constitution removable through Directives. If we make an analytical appraisal of the decisions of the Supreme Court regarding certain ambiguities of the Fundamental Rights provisions, we find that Directive Principles have rendered a great assistance to the judges. Since the Directive Principles constitute a part of the constitution whenever a question regarding the interpretation of a vague provision in the constitution crops

up, a reference to the Directive Principles can be made to come out of the thicket of constitutional ambiguities. Article 19, for example, permits the imposition of reasonable restrictions on the Fundamental Rights. If a conflict on the interpretation of "reasonable restrictions" ensues, a reference to the Directive Principles can easily be made. A restriction promoting any objective embodied in the Directive Principles is usually considered reasonable by court of law. If a question as to whether a certain matter is in the interest of the public or not arises reference to the Directive Principles is helpful. In Gopalan v. State of Madras Chief Justice Kania remarked, ... "It has no doubt been repeatedly made clear that the courts cannot uphold a Directive Principle when it comes in conflict with a specific provision of the constitution, relating to Fundamental Rights. However in the interpretation of these provisions, the Directive Principles can serve a very useful purpose. Most of the Fundamental Rights are subject to reasonable restrictions which may be imposed for public purpose or in public interest. The courts can be and have been guided by the Directive Principles in determining whether the actual restrictions placed by law on the exercise of Fundamental Rights are reasonable or in public interest or whether they subserve a public purpose." Prof. Alexandrowics is of the view that the courts "should give the greatest possible weight to the Directive Principles for the purpose of their interpretations of the provisions relating to Fundamental Rights." In the State of Bombay v. F. M. Balsara, the Supreme Court gave weight to Article 47—aiming at Prohibition, to support its decision that the restrictions imposed by the Bombay Prohibition Act was a reasonable restriction on the right to acquire any profession or carry on any trade. In Bijoy Cotton Mills v. State of Ajmer, the Supreme Court upheld the constitutional validity of the Minimum Wages Act (1948) by taking into consideration Article 43. In the opinion of the Court, the fixation of wages for labourers did not violate freedom of trade under Article 19 (5). Mr. M. C. Setalwad, Attorney General of India, has beautifully summed up the utility of the Directives in this field "...These fundamental axioms of state policy though of no legal effect have served as a useful beacon light to courts...Restrictions imposed by law on the freedom of citizens may well be reasonable if they are imposed in furtherance of the Directive Principles...."

(g) Nominal Executive Heads cannot exploit these provisions. Mr. Bose, a well known commentator on the Indian constitution, apprehended that the President or the Governor might refuse to assent to Bill passed by their respective legislatures on the plea that such a bill

3. 1951 S. C. R. 68.
is inconsistent with the Directive Principles. It might therefore lead to deadlocks between the President and the Council of Ministers or the Governor and the Council of Ministers, since the latter are responsible for passing an important legislation. Though Basu's fears are genuine, yet we must not efface from our mind a naked reality that the President's or Governor's powers to veto a Bill passed by the Legislature is only limited. In the words of Dr. Ambedkar, "The Directive Principles cannot be pressed into service either by the President or the State Governor for the purposes of vetoing a law passed by the legislature". In a parliamentary form of government, the constitutional rulers cannot be assertive. If they are, they cannot be tolerated.

(h) Their influence on Planning Commission. In the words of Venkataraman, "The importance of the Directive Principles is increasingly realised by Planning Commission set up by the Government of India." The Planning Commission has realized that economic pattern to be achieved through National Planning is very well portrayed by the Directive Principles of State Policy. Hence, the formulators and executors of Five-Year Plans are bound to follow these principles. These principles usher in an era of economic democracy.

7. CONCLUSION

These Directives thus constitute the national objectives and the national conscience and whosoever is victorious at the polls, will not be free to violate them. According to Mr. Alladi Krishnaswamy Ayyar, "No ministry responsible to the people can afford light-heartedly to ignore the provisions in Part IV of the constitution."

If we make a critical estimate of the achievements of the present Government in implementing these policies, we feel encouraged. Panchayats are being established in the remotest villages of our country. They are being restored to their old pristine glory. Nationalization of certain industries, setting up of corporations, heavier taxation of bigger incomes, recovery of deliberately concealed taxes and courageous steps to bring Dalmias in the clutches of law reflect that the State is doing its best to avoid concentration of wealth. Establishment of the poor house at the capital to wipe out a great slur on the fair name of Indian democracy, i.e., begging, is a substantial step towards provision of adequate means of livelihood. The state-owned factories, industries, and Government Corporations are expanding, hence more and more people are getting employment. The Employees State Insurance Act and the Workmen’s Compensation Act are very significant steps to provide assistance to the workers during old age, disablement or undeserved want. Cottage industries are being encouraged. Minimum Wages Acts have been passed to ameliorate the lot of labourers of various categories. Efforts are being made to make available primary education to the children below the age of 14 years. Assistance to Scheduled Castes in the form of stipends and scholarships, remission

of school and college fees, concession in the age and fees limits for those applying for jobs through Public Service Commission are effective steps to uplift the down-trodden class of Hindus. Agriculture is being organised on scientific lines. Attempts to improve the breed of the cattle are being made. Slaughter of cows and calves in some of the States has been prohibited. The Ancient Monuments Acts are steps in the direction of the fulfilment of the Directives mentioned in Article 49. In some of the States as Andhra Pradesh, Gujarat, Kerala, Madras, Mysore and Maharashtra judiciary has been separated from the executive. In the fulfilment of principles pertaining to international peace and security, our Prime Minister’s efforts can hardly be minimised. “Panch Sheel” is a laudable step in this direction. Pt. Nehru is hailed as a cultural ambassador of spiritual east to the material west. He is raised to the pedestal of glory even by the pseudo-democrats of U.S.A. and Britain and orthodox and fanatic Muslims of the Arab world.

Still much is to be achieved. Political influences and economic and social disparities still persist. Standard of living of the people is yet to be raised. Unemployment is yet to be eradicated. Socialism is yet to be ushered in. But with all this, it can be safely concluded that government’s efforts in the implementation of these objectives are really very commendable and fairly substantial.
The Central Executive

§ 1. THE PRESIDENT OF THE UNION

The Head of the Indian Union is called the President. The Executive power of the Indian Union is vested in the President of India and is exercisable by him either direct or through officers subordinate to him in accordance with the provisions of the constitution.

Qualifications. A candidate for the Presidentship of the Indian Union should be equipped with following qualifications:—(i) He should be a citizen of India. (ii) He should have completed thirty-five years of age. (iii) He should possess the qualifications prescribed for a member of the Lok Sabha. (iv) He should not hold any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said governments. This is not applicable to a person who holds the office of the President, Vice-President of the Union or a Governor of a State.

Conditions of President’s Office. (i) According to the constitution, the President cannot be a member of either House of Parliament or of a House of the Legislature of any State. If, however, a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President. (ii) The President is not to hold any other office of profit. (iii) The President is entitled without payment of rent, to the use of his official residence and is to be entitled to such emoluments, allowances and privileges, as may be determined by Parliament by law. (iv) The emoluments and allowances of the President are not to be diminished during his term of office.

§ 2. ELECTION OF THE PRESIDENT

The President is elected by an Electoral College consisting of (a) the elected members of both Houses of Parliament, (b) the elected members of the legislative assemblies of the States, in accordance

1. Article 59 (clauses 1 to 4).
2. Article 54.
with the system of proportional representation by means of a single transferable vote system. The constitution provides that as far as practicable, uniformity in the scale of representation of the different states is to be secured. Parity between the State as a whole and the Union is also aimed at. For the purpose of securing such parity between the Union and the States and uniformity amongst the States themselves, the following formula is adopted.\(^1\)

Every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the state by the total number of the elected members of the Assembly. In simple words, the number of votes which each M.L.A. of a state has:

\[
\text{Population of the state} \div \frac{\text{Total number of elected Members of the State Legislative Assembly}}{1000}
\]

If by this division, the remainder is 500 or more, it will be counted as one.

The number of votes which each M.P. (Member of Parliament) gets:

\[
\frac{\text{Total number of votes to all M.L.As}\text{ of States}}{\text{Total number of elected members of Parliament}}
\]

Fraction exceeding one half will be counted as one.

An illustration as given in the Draft Constitution will make the above complex formula, very clear.

The population of Bombay was 2,08,49,840. Total number of M.L.As of Bombay State was taken as 208 (one member representing one lakh of population). The number of votes which each M.L.A. of Bombay would get:

\[
\frac{\text{Population of Bombay}}{\text{Total M.L.As of the State}} \div 1000
\]

\[\frac{20849840}{208} = \frac{100239}{1000} = 100\]

Thus each M.L.A. of Bombay would get 100 votes and total number of votes cast by Bombay M.L.As would be \(100 \times 208 = 20800\).

In this way total number of votes cast by M.L.As of all the states will be counted.

Each M.P. is to get total number of votes cast by the M.L.As of all the states divided by total M.Ps. Let us again take an illustration from the Draft Constitution. Total number of votes assigned to the members of the Legislative Assemblies of the states with the above calculation \(74,940\).

The total membership of Parliament is \(750\).

The number of votes, which each M.P. gets will be equal to

\[\frac{74940}{750} = 99 \frac{23}{25}\]

(since the fraction \(\frac{23}{25}\) exceeds one half, the number of votes each M.P. is assigned will be equal to 99 plus 1 = 100).

**How Single Transferable Vote system will be applied.** Though the constitution does not quote detailed rules of procedure, yet a possible method contemplated by them can be cited.

If, for instance, there are four candidates, each elector would indicate on his ballot paper the order of his preferences for these candidates. At the first count only first preferences will be counted. If any of the four candidates received a majority over the combined

\(^1\) Article 55 (2) (a), (b), (c).
votes of the other electors, he would be elected. If no single candidate were in this position, the candidate who had received the least votes would be eliminated. The second preference of the electors who had voted for the man eliminated, would then be allotted to the three remaining candidates. If even after this, no candidate had a majority over the other two, the candidate getting the least number of votes would be eliminated and the II choices of the electors who had shown a II preference for the candidate now being eliminated (or the III choice, if the II choice was in favour of the candidate first eliminated) would then be allocated to the two remaining candidates. The candidate now getting the greater number of votes would be elected. The candidate who receives the largest number of votes on the first count is not necessarily the final choice. The candidate chosen by this method is more representative of the wishes of the majority of the voters, than a candidate chosen otherwise, when more than two candidates are contesting election for this august office.

It may be pointed out, that the first President of India was unanimously elected under the transitional provisions of the constitution. In the Presidential Elections held in 1962 there were three candidates for the Presidency, namely, Dr. Radhakrishnan, Mr. Yamuna Prasad and Mr. Hari Ram.

Quota is determined by the following formula:—

\[
\frac{\text{Total number of votes cast} + 1}{\text{No. of seats to be elected} + 1} = \text{Quota}
\]

The votes secured by the candidates were as follows:—

Dr. Radhakrishnan ... 5,53,067
Mr. Hari Ram ... 6,341
Mr. Yamuna Prasad ... 3,537

Thus Dr. Radhakrishnan was elected by thumping majority and hence the necessity of transferring votes did not arise.

How election is conducted. The election is conducted by the Election Commission which issues a notification and appoints dates for nomination, scrutiny of nominations, withdrawal of nominations and the date on which the poll, if necessary, is to be taken. The Returning Officer is appointed by the Commission after consultation with the Central Government. In the States, provision for Assistant Returning Officers to assist the Returning Officer is made. The members of the Electoral College vote in their respective States.

Electors detained under Preventive Detention vote by postal ballot. A member of the Electoral College if visiting another State than his home State, can with the permission of the Election Commission cast his votes there. After the poll, counting is held in the care of Returning Officer who announces the name of the President.

elect. In case of doubt and disputes, the Supreme Court is fully empowered to enquire into and decide the matters, when the election is over.1

Complications in the method of Presidential Election. In the words of Dr. M.P. Sharma, two complications may arise in the application of procedure of Presidential Election.

(a) When it comes to elimination, it may be found that not one, but two candidates with an equal number of votes are at the bottom of poll. In such a situation, that candidate is eliminated who has the fewer number of first preference votes to his credit. If even the first preference votes of the two candidates are equal, then the matter has to be decided by lot.

(b) It may happen that some of the votes which are to be transferred may have no second or later preferences marked on them so that their transfer is impossible. Such ballot papers with no further preferences marked on them, are treated as ‘exhausted’ and put aside.”2

§ 3. CRITICISM OF THE METHOD OF ELECTION

The critics are of the opinion that the framers of the constitution have misconstrued the meaning of the term ‘Proportional Representation’ and ‘Single Transferable Vote’. In their opinion, the question of proportional representation can arise only when there are at least two things to compare. How can an idea of proportional representation be applicable where only one office has to be filled? Proportion between what and whom? If a number of seats are to be filled, the various groups and parties will secure seats in proportion to the number of the votes captured by them. Hence, if Presidential seat could be divided into fractions and assigned to the various parties according to the votes obtained by them, the use of the term could be justified, otherwise such a provision in the constitution seems rather ridiculous. Dr. M.P. Sharma has very beautifully depicted the flaw of wrong use of the system of proportional representation when he says, “To be sure on account of marking of the preferences and transfer of votes, there is a superficial resemblance between this system and the system of proportional representation by the single transferable vote, but the two are no more identical than a mule and a horse are.”3

This system should have been named as ‘Alternative Vote’ or the ‘Preferential Vote’. Its effect is not to secure proportional representation. It stands for securing that the President-elect should be elected by a clear majority.

1. Article 71 (1).
If the number of candidates for President's office is only two or if the voters only mark first preferences, the system won't work as a preferential system at all. It will be an ordinary method of electing one of the two candidates by majority vote.

Another potential danger ingrained in the system is that if the number of candidates, contesting for this office is more than two and the voters mark no preferences other than the first and if no candidate gets a clear majority, then what will happen? The marking of preferences equal to the number of candidates contesting elections should be made compulsory, if this defect is to be removed. Such a system is prevalent in Australian states where indication of preferences equal to the number of contestants for the election of senators is essential.

14. WHY ELECTION OF THE PRESIDENT IS BY AN INDIRECT METHOD?

As already discussed, the Indian President is not elected directly. The procedure of his election is a novel and fairly original feature of our constitution. The main reasons for not providing for the direct election are as follows — (i) The framers of the constitution were keen to establish a parliamentary form of government in India. The President under such a form is a mere nominal ruler. A directly elected President cannot reconcile himself to such a nominal position. He cannot be an ornamental instrument in the hands of the ministers. As popularly elected head, he commands respect and esteem of his countrymen and thus can succeed in acquiring real power, even if he is assigned a nominal position. (ii) India is a subcontinent with crores of enfranchised citizens. To make provision for a suitable electoral machinery for the smooth and successful Presidential Election would present a problem, especially when the process is to be repeated after every five years. It would entail a huge expenditure, cause wastage of time and result into a big commotion in the country. (iii) The present method of election through an electoral college consisting of both the Houses of Parliament and Legislative Assemblies of the States avoids a partisan choice and ensures an election of a non-partisan Head of the State who commands prestige at the hands of all parties. (iv) As real governmental power was vested by implication or by specific provisions in the constitution, with the ministry and the Parliament and as none of these agencies were expected to renounce their powers and authority, it was unnecessary, rather inadvisable to opt for direct election of the president.

15. OATH BY THE PRESIDENT

Every President and every person acting as President or discharging the functions of the President before entering upon his office, is to make and subscribe in the presence of the Chief Justice of India or in his absence, the senior most judge of the Supreme Court available, an oath or affirmation in the following form:—
"I A.B., do swear in the name of God/solemnly affirm that I will faithfully execute the office of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the constitution and the law and that I will devote myself to the service and well-being of the people."  

1.6. CASUAL VACANCIES

According to Article 62 (2), an election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal or otherwise, is to be held as soon as possible and in no case later than six months from the date of occurrence of the vacancy. It may be pointed out that till the vacancy is filled up, the Vice President shall act as the President. If the Vice-President is not available for the purpose, the Parliament provides by law for the contingency.

1.7. TENURE

The President is elected for a period of five years. A vacancy occurring by death, resignation or removal is filled up by election for the full term of five years and not for the residue of the predecessor’s term. The latter practice is prevalent in U.S.A. The President is re-eligible though, according to the constitution, there is no bar on his re-eligibility, yet it is hoped that he would not contest third time.

1.3. METHOD OF REMOVAL OF THE PRESIDENT

The President is removable from office by a process of impeachment for the violation of the constitution. The impeachment charge may be initiated by either House of Parliament. No such charge is to be preferred unless the proposal to prefer such a charge is contained in a resolution which has been moved after at least 14 days' notice in writing signed by not less than one-fourth of the total number of members of the House. Such a resolution must be passed by a majority of not less than two-thirds of the total membership of the House. If passed by the requisite majority in one House, it is sent to the other House for investigation and decision. The President possesses the right to appear and be represented at such investigation. If after such investigation, the House sustains the charge by a two-thirds majority, the President ceases to hold office from the day such a resolution is passed.

1.9. SALARY AND ALLOWANCES

The President gets a salary of Rs. 10,000 per month and an official residence free of rent. For his official residence, he is entitled

1. Article 60.
2. Article 65 (1).
3. Article 56 (1).
4. Article 62 (2).
to the use of Rashtrapati Bhawan at New Delhi; the Raj Bhawan at Simla and the President's Nilayam at Bolaram near Hyderabad. In addition to the salary, the President is entitled to get handsome allowances of various types. On retirement, the person having held the office of the President, is entitled to get a pension of Rs. 15,000 per annum.\(^1\) Dealing with the salary of President, Dr. Ambedkar remarked that obviously the President was a functionary who replaced the Governor-General, under the Government of India Act and in fixing the salary of Rs. 10,000 the House had to bear that in mind. The Drafting Committee, in fact, had two considerations while fixing up salary of the President. (i) It should be subject to income-tax. (ii) The President being the highest functionary, no other individual, in the country would draw more salary than the President.

As to allowances, Dr. Ambedkar said, that the Drafting Committee had left the matter undecided, with the provision that the President should continue to get the same allowances which the Governor-General received at the commencement of the constitution. The Parliament was however fully empowered to change both the salary and allowances of the President. This was subject to the condition that the President's salary will not be variable during his tenure as the President. The President can voluntarily surrender part of his salary. Under the Voluntary Surrender of Salaries Act, 1950, the surrendered amount is not included in the total income liable for taxation.

President's Pension Act passed in 1962 fixed up his pension as Rs. 15,000 plus Rs. 12,000 for personal secretariat (per annum) for life. He is entitled to free medical aid as well.

\section{Resignation of the President}

At any time, the President can resign his office. In that case, he has to address the Vice-President by writing under his own hand. The Vice-President communicates this fact of Presidential resignation to the Speaker of the Lok Sabha.

\section{Powers of the President (According to the Constitution)}

The powers of the President can be enumerated as follows:—

Like the British monarch, the Indian President forms a part of the Executive, Legislative and Judicial mechanism.

Executive Powers. The supreme Executive power of the Union is vested in the President who can exercise it directly or through his subordinates. The constitution makes a provision for a Council of Ministers with the Prime Minister at the head, to aid and advise the President in the exercise of his functions. Whether the President

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\(^1\) President's Pension Act (XXX of 1962).
will always act upon the advice of the Prime Minister, is a moot question which will be taken up in the end. We discuss in the following few lines the executive powers of the President: (i) The executive power of the Union extends to all those matters with respect to which Parliament is empowered to make laws. In fact the entire administration of Government of India is conducted in the name of the President of India. (ii) He is to make rules of business for the Government of India and allocate work to the ministers. (iii) He has the right to seek information. He must be kept informed by the Prime Minister of all the decisions of the Cabinet and supplied with such other information as he might call for. (iv) Article 78 empowers him to submit a decision of any individual minister for the consideration of the Council of Ministers. (v) He is vested with the powers of appointment and removal. He appoints the Prime Minister and on his advice the other ministers, the judges of the Supreme Court and the High Courts, the Governors of the States, the Attorney General, the Comptroller General and Auditor General, the Chairman and members of the Public Service Commission, the members of Election, Finance, and the Official Languages Commissions. Since ours is a parliamentary form of government, the President is apt to consult the Council of Ministers before making such appointments. Regards the choice of the Prime Minister, his hands are fettered by a convention. Leader of the majority party is bound to be called to act as the Prime Minister. The rest of the ministers are to be selected on the advice of the Prime Minister, since principle of collective responsibility is to be enforced. It may however be pointed out that the President may be in a position to exercise his discretion if no single party commands a majority in Lok Sabha and a Coalition Government is to be formed. But even in this case his choice is to be judicious. (vi) He is empowered to appoint special officer for Scheduled Castes and Scheduled Tribes and appoint a Commission to investigate into conditions of backward classes. (vii) The President is vested with the authority to remove his ministers, the governors, the Attorney General, Judges and Chief Justice of Supreme and High Courts, Chairman and members of Union Public Service Commissions of the States, though in certain contingencies according to prescribed procedure. (viii) He possesses the power of making rules or regulations governing matters like appointment of the officers and servants of the Supreme Court, the Joint session of the two Houses of Parliament, administrative powers of Comptroller and Auditor General, recruitment to Union Services, fixing the number of members of the U.P.S.C. and of certain other specified appointments. (ix) The approval of the President is essential for certain administrative acts and decisions of other authorities e.g., to rules made by the Supreme Court governing its procedure; determining of forms of accounts by Auditor General, the Union Public Service Commission serving the needs of any State. (x) The President has the power of directing, controlling and co-ordinating

1. Article 77 (3).
the state governments from time to time. He can establish an Inter-State Council to advise him upon co-ordination of policy and settlement of disputes between the States. He can entrust to the States any functions relating to Union matters, if they pay the additional costs involved. The administration of Union territories is directly under his control.

Diplomatic Powers. (i) As the Head of the State, the President sends and receives ambassadors and other diplomatic representatives. (ii) All treaties and international agreements are negotiated and concluded in the name of the President but subsequently they are ratified by the Parliament as otherwise they cannot be effective. Some critics opine that this power is not vested with the President according to the constitution and list I of the seventh schedule entrusts this power exclusively to the Union Parliament. But this appears to be an erroneous view. Even though the power of declaring war and making peace belongs to the Parliament, the executive, through its day to day handling of foreign relations may bring matters to such a pass as to leave no choice to the Parliament except to declare war or conclude peace.

Military Powers. The President has the supreme command of the defence forces of the country, though the exercise of these powers is “regulated by law”. Thus though war and peace are matters of legislation by Parliament which is to give directions to the President regarding the carrying on of military campaigns, it does not mean that the President has powers to act in anticipation of parliamentary sanction, to deal with an emergency like an actual invasion. In such an event, the President acting on the advice of his Council of Ministers shall have the power to employ the forces in advance to repel invasion, pending a formal declaration of war by the Parliament. In fact, he can declare national emergency in anticipation of parliamentary decision and get the proclamation subsequently ratified by both the Houses of Parliament under Articles 352 and 353.

Legislative Powers. The constitution provides that there shall be a Parliament for the Union which shall consist of the President and the two Houses. Though the President is not a member of the Parliament, yet he possesses numerous powers in the legislative domain. They are as follows: (i) He has the power to summon, and prorogue the Parliament and dissolve the Lok Sabha. Article 85(1) however imposes a condition. The President is bound to summon Parliament within six months of the previous session. In case a deadlock between the two Houses occurs on any non-money bill, he can convene a joint session of both the Houses. It may also be pointed out that power of dissolution of Lok Sabha is to be exercised by the President, on the advice of the Prime Minister, since ours is a parliamentary form of government. (ii) He may address either House of Parliament or both Houses assembled together and for that purpose require the attendance of members. Such an address is deli-

1. Article 79.
erved on the opening day of the session of Parliament and also at the first session each year. This is analogous to Speech from the Throne in England. (iii) He may send messages to either House of Parliament and the House to which any message is sent, shall with all convenient despatch consider any matter, required by the messages to be taken into consideration. The message may relate to any pending bill or to any other matter before the Parliament. Since ours is a parliamentary government, unlike that of U.S.A. where Presidential form of government prevails, the power of sending messages is neither very effective nor very desirable. A bill which is initiated by popular ministry could hardly be modified in the light of Presidential message. Rather that would amount to dragging the President in active politics, if he strives to exert his influence, when it is not needed. The ministers are to be considered advisers of President in the Parliament, to which they are accountable. If President is keen to express his views regarding a particular matter, likely to be taken up before the Parliament, he can do so by communicating to the ministers his views, prior to their placing the matter in the form of a bill, before the parliament. (iv) Every bill, passed by both Houses of Parliament, is to be presented to the President for his assent. He may give his assent to the bill or withhold his assent or in the case of a bill other than a money bill, return it to the House for reconsideration on the lines suggested by him. If the bill is again passed by both the Houses with or without amendment, he must give his assent to it when it is sent to him for the second time. The President may give his assent, or withhold it to Bills passed by the State Legislatures, but reserved for his consideration by a Governor. (v) No bill for the formation of new State and the alteration of areas, boundaries or names of the existing States can be introduced in either House of Parliament except on the recommendation of the President.1 (vi) His sanction or authorisation is essential for the introduction of certain kinds of bills in state legislatures, for instance, a bill imposing restrictions on freedom of trade, commerce or intercourse within the States need his prior sanction. Certain Bills dealing with subjects of the Concurrent Lists if in conflict with Union laws, or those providing for compulsory acquisition of property by the States or imposing certain specified taxes, are to be reserved by the Governors of the States concerned for the final sanction of the President. Can the President refuse such an assent? The constitution is silent. According to Dr. M.P. Sharma, "The President's power to refuse assent to the specified kinds of bills of the states is real and absolute one.2" (vii) He nominates twelve members of the Rajya Sabha from among persons having special knowledge or practical experience of literature, science, art and social services.3 He has been authorised by the constitution to nominate two Anglo-Indians to the Lok

1. Article 3.
2. Dr. Sharma M.P.: The Govt. of the Indian Republic, p. 113.
3. Article 80 (3).
Sabha, if no Anglo-Indians otherwise get themselves elected to that House. (viii) When Parliament is not in session and circumstances necessitate an immediate action, the President is empowered to promulgate ordinances which have the force of law. Such ordinances, however, must be laid before both Houses of Parliament and shall cease to operate, at the expiration of six weeks from the reassembly of Parliament. These ordinances have to cease to operate, if before the expiration of six weeks a resolution to the contrary effect is passed by both the Houses of the Parliament. The President may, if he likes, withdraw such an ordinance, at any time, he likes. The growing trend of issuing ordinances, has, however, been criticised by certain critics, quite vehemently. In the words of Mr. A.B. Lal "In no country with a written constitution and the parliamentary type of Government is the chief of the state the repository of such prodigious legislative powers".

Mr. H.P. Mody, President of Employees Federation, once commented on the ordinance issuing authority of the President in these words: "A particularly obnoxious feature of this mode of proceeding is that while the interests affected by a Bill which is circulated for opinion, have some opportunity of putting forward their objection and shaping the measure which is ultimately placed before Parliament there is little chance of a Bill which seeks to replace an ordinance undergoing any material changes. In other words, when a piece of legislation flows from an ordinance, it is just an embodiment of the viewpoint of the Government uninfluenced by the public criticism."

It is indeed strange that no maximum time limit has been prescribed for the duration of an ordinance. No doubt, a period of six weeks after the Parliament reassembles is mentioned as the maximum period, but the question arises, if the reassembling of Parliament itself is postponed, then how can the above approval of Parliament be expedited? According to the constitution, the convening of Parliament can be postponed maximum up to six months. An unscrupulous President backed by an ambitious and unpopular ministry may exploit the situation and thus abuse the ordinance issuing authority. Mr. Ananthasayanam Ayyangar, the then Speaker of Lok Sabha, presiding over a symposium on "Law and Democracy in India" opined that ordinance making power of the President is a negation of parliamentary democracy.12 Shri C.L. Anand commented on this article in the words, "It is a serious limitation on the democratic principle of government for which there is no parallel in other democratic constitutions such as those of Great Britain, the U.S.A. and the British Dominions. The provision is taken from the Anglo-Indian constitution which had been enacted with imperialistic aims and is out of place in a free and democratic state.....The President is the sole judge of the necessity for iss-

ing the ordinance. There is no restriction as regards the subject matter of the ordinance ......."

Financial Powers. The President possesses financial powers of far-reaching importance. (i) The constitution provides that the President shall cause to be laid before both Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for the year. (ii) No demand for grant is to be made except on the recommendation of the President. (iii) He is authorised to ask for supplementary, additional or exceptional grants. (iv) The Contingency Fund of India is at his disposal. He is authorised to make advances out of it to meet unforeseen expenditure, pending its authorisation by parliament.² (v) He is to determine the States' shares of the proceeds of the income tax and the yearly grants-in-aid to certain States in lieu of their share of the jute export duty. (vi) He is empowered, within two years from the commencement of the constitution and thereafter at the expiration of every fifth year or earlier if he so desires, to constitute a Finance Commission which is to consist of Chairman and four other members. The members of such Commission are appointed by him.³ (vii) He determines States' contributions towards the privy purses of the rulers, whose territories have been incorporated in those States.⁴ (viii) No Money Bill (particularly those imposing or varying any tax or duty in which the States are interested) can be introduced in the Parliament except on the President's recommendation.

Judicial Powers. As regards his judicial powers, the President can grant pardons, reprieves, respite or remissions of punishments. He can suspend, remit or commute the sentence of any person convicted of any offence, in all cases where the punishment or sentence is by a Court Martial and in other cases, where the sentence is one of death or where offence is committed against a law relating to a matter to which the executive power of the Union extends.

The power of pardon is to be exercised, on the advice of the Council of Ministers, since we have installed a parliamentary form of government in our country.

In the U.S.A. the President can grant pardons for offences against United States except in cases of impeachment. He can grant pardon before as well as after conviction. The Indian President, on the other hand, can exercise this power only after conviction.

§ 12. EMERGENCY POWERS

Part XVIII of the constitution deals with the Emergency Powers of the President which can be discussed under three distinct heads.

2. Article, 267 (1).
3. Article 280 (1).
4. Article 291 (2).
(a) Emergencies caused by war, external aggression or internal commotion or threat thereof.

(b) Emergencies arising from the failure of constitutional machinery in the States.

(c) Financial Emergency.

(a) Emergency due to external or internal aggression. Under Article 352, a proclamation of emergency is issued by the President when he is satisfied that the security of India or any part of it, is endangered by war, external aggression or civil commotion or threat thereof. Such a proclamation may be revoked by a subsequent proclamation. It must be placed before each House of the Parliament and unless approved by the two Houses, it ceases to operate at the expiration of two months. If such a proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months and if a resolution approving the proclamation has been passed by the Council of States but no resolution is passed by the House of the People, the proclamation shall cease to operate at the expiration of 30 days from the day on which the House of the People meets after its reconstitution.

Constitutional Consequences of the Proclamation. (i) Parliament will be vested with unlimited power to make laws for the whole or any part of India with regard to any of the matters enumerated in the State List. Laws so passed shall cease to have effect six months after the expiry of the proclamation of emergency. (ii) Any law made by the state legislature if inconsistent with such laws passed by Parliament, will be void to the extent of inconsistency. (iii) During the period of emergency, if Parliament is not in session, President is empowered to issue ordinances regarding matters included in the State List. (iv) Parliament can extend its own life for a period not exceeding one year at a time. Such an extension in its term is not to last beyond six months after the expiry of the proclamation. (v) Parliament, under its extended jurisdiction during this period, is empowered to make laws and confer powers and impose duties upon the Government of India and its officers, in order to carry out these laws. (vi) The Union Government may give any directions to any State as to how the executive power of the latter should be exercised. The Parliament may authorise the Union officers themselves to exercise any powers or duties which otherwise belong to State officers. (vii) The President during this abnormal period may by his order modify the provisions relating to distribution of revenues between the Union and the States in order to secure adequate revenues for the Government of India to meet the baffling situation created by emergency. Such orders are required to be laid before the two Houses of Parliament. They are not to be valid beyond the financial year, in which the proclamation of emergency ceases to operate. (viii) The right to various kinds of freedoms guaranteed by Article 19 of the constitution stands suspended. The laws and
executive actions in contravention of that right, during this period of emergency are authorised temporarily. (ix) He is authorised to suspend the “right to constitutional remedies” which is incorporated in the constitution to protect Fundamental Rights. In other words, the enforcement of any of the above Fundamental Rights of the citizens, by the courts may be suspended, when the emergency proclamation is in operation. It is required to be laid before each House of Parliament, ‘as soon as may be after it is made.’ Since the constitution does not fix any time limit for the order to be laid before Parliament, it depends upon the President to determine when the order is to be laid before Parliament.

Such a state of Emergency was declared by the President of India on October 26, 1962 in view of Chinese invasion on N.E.F.A. and Ladakh. While issuing the said proclamation President Radhakrishnan declared that “a state of Emergency exists because of external aggression.” Articles 21 and 22 relating to personal freedom were suspended on November 8, 1962. The right of any person to move any court for the enforcement of Fundamental Rights relating to personal freedom was also suspended on the same date. Article 14 was suspended on November 14, 1962.

(b) Emergency due to failure of constitutional machinery in a State. A proclamation of emergency of this nature may be issued by the President either on the report of the Governor of the State or on his own initiative when the Government of the State concerned cannot be carried on according to the provisions of the constitution or when it has failed to carry out a direction issued to it by the Union Government as regards administration of Union matters. As a matter of fact, Article 355 imposes on the Union Government the duty to protect every State against external aggression or internal disturbance and to ensure that the government of every State is carried on according to the provisions of the constitution. Article 356 empowers the President to issue a proclamation either on the report of the Governor or if he is so satisfied that the government of the State is not carried on in accordance with the constitution.

Every such proclamation is to be laid before each House of Parliament and is to cease to operate at the expiration of two months, unless it has sought the approval of both the Houses of Parliament before the expiration of that period. If, however, the proclamation is issued at a time when the House of the People is dissolved or dissolution takes place during two months period following it and if resolution approving the proclamation is passed by Rajya Sabha, the proclamation will cease to operate at the expiration of thirty days from the day on which the House of the People first sits after its reconstitution. Such a proclamation is

2. Ibid., November 9, 1962.
issued for a period of six months. The duration of proclamation can be extended for six months at a time. The maximum period for the operation of such a proclamation is three years.

Consequences of failure of constitutional machinery in the State: (i) The President may assume any of the Executive functions of any of the State authorities. (ii) He may also declare that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament. (iii) He is fully authorised to make such incidental and consequential provisions as appear to him to be necessary or desirable for implementing the objects of the constitution. It may however be pointed out that the President cannot assume to himself any of the powers vested in or exercisable by a High Court or suspend the operation of any provision of the constitution relating to High Courts. (iv) The legislative powers transferred from State legislature to the Parliament may be conferred by the latter on the President himself who may delegate it to any other authority, he deems fit. (v) He can authorise any expenditure from the Consolidated Fund of the State when the House of People is not in session.

Such a proclamation was issued on 20th June, 1961 with regard to the Punjab when the Congress ministry under the Chief Ministership of Gopi Chand Bhargava resigned and an alternative ministry could not come into existence. In Travancore-Cochin, Pepsu, Andhra, Kerala and Orissa Governor's Rule was installed in. The authority of the State remained suspended and they were brought completely under the authority of the Union, both in legislative and executive matters.

(c) Financial Emergency. A proclamation of financial emergency can be issued if the President is satisfied that a situation has arisen whereby the financial stability or the credit of India is endangered. Such a proclamation also will cease to operate at the end of two months unless before the end of this period, it has sought the approval of both the Houses of the Parliament. If the proclamation is made when the Lok Sabha is dissolved or its dissolution occurs within two months of proclamation, it must be approved by Rajya Sabha within two months (that eventuality of dissolution cannot arise in the case of Rajya Sabha as it is a permanent House) and by the newly elected Lok Sabha within thirty days of its first sitting. In case Lok Sabha does not approve it, the proclamation ceases to operate.

Constitutional Consequences. (i) When the proclamation is in operation, the Union Government may give such financial direction to the State authorities as it deems fit. (ii) Salaries of the Union officers as well as that of the State officers including judges of the Supreme and High Courts may be ordered to be reduced. (iii) All money bills after they are passed by the legislature of a State, may be required to be reserved for president's assent. (iv) The President
may adopt any other measures, for the restoration of the country's financial stability.

§ 13: COMMENTS ON THE EMERGENCY POWERS OF THE PRESIDENT

The emergency powers vested in the President under Articles 352–60 have entailed a very scathing criticism at the hands of the critics belonging to different shades of opinion. It was vehemently argued even on the floor of the Constituent Assembly, that these powers were incompatible with democracy. When the provisions regarding emergency powers were passed by the Constituent Assembly, one of the members declared, "It is a day of shame, God save the Indian People." Article 359 vesting the President with an authority to suspend right to constitutional remedies was described by a member of the Constituent Assembly as the "grand finale and crowning glory of the most reactionary chapter of the constitution." Emergency of the First type i.e. due to war, civil war or external aggression was denounced as an instrument to crush the liberties of the individuals. The very fact, that the proclamation of Emergency could be issued even before the occurrence of war or aggression, the critics dubbed Indian democracy as a disguised dictatorship. Suspension of "right to freedom" during emergency was deemed as a nasty step to deprive the people of their legitimate rights and impose a totalitarian regime in the country. It was pointed out that similar type of emergency powers were vested with the President, according to Article 48 of Weimer constitution of Germany. When Hitler came on the helm of affairs, he misused these powers, destroyed the liberties of the people and ultimately became a dictator. It was apprehended, that in no other country of the world, the executive was armed with such drastic and sweeping emergency powers as provided for in India. In U.S.A. the writ of habeas corpus can only be suspended under authorization by the Congress, when there is actual invasion of the country or an open rebellion in the country. In England, the emergency powers are given to the Executive both during war and in the exigencies of internal disorder under the authority of Parliament. In fact, almost in every country, the executive is equipped with emergency powers under legislative authority. Germany, according to Weimer constitution, was an exception.

Article 356 of our constitution dealing with Emergency arising due to constitutional breakdown in a State, was also subjected to a very severe criticism in the Constituent Assembly. It was attacked as the re-enactment of section 93 of the Act of 1935. The President need not wait for the report of the Governor and take action on his own initiative. As already stated, the failure on the part of a State to comply with any direction, given in the part of a State in the lawful exercise of the Executive power of the Union even, is regarded as the failure of the constitutional machinery in the State and entitles the President to supersede the State government. These powers also are very wide and fairly drastic.
Pandit Hidayat Nath Kunzru opposing this Article said, "the electors must be made to feel that the power to apply proper remedy, if any mismanagement occurred, rested with them. It depended upon them to choose their representatives who would be capable of working in accordance with their best interests. If the Central Government or Parliament were given power to interfere, there was a danger that whenever there was a dissatisfaction in a State, appeals would be made to the Central Government to come to their rescue. The State electors would throw their responsibility on the shoulders of the Central Government. It was not right to encourage this tendency."

The critics pointed out that the President would be made instrumental in the hands of ruling party to dismiss any ministry constituted by the opposition. The dismissal of Kerala's Communist Government headed by Namboodiripad by the President in 1959, was dubbed by the critics as an attempt to subvert the constitution, to bolster up petty transient party interests. The Namboodiripad Ministry, during its tenure of twenty-eight months, commanded a stable majority in the State legislature and thus its confidence. There was hardly any failure of the constitutional machinery in the State. Governor's report that a stage had reached, where orderly administration would have become impossible was erroneous. But the President, acted upon his report and took action under Article 356. It was the duty of the President to protect the lawfully constituted Communist ministry, since he is to protect and preserve the constitution according to the oath administered to him, before the assumption of this august office. The opposition parties after this instance expressed the fears that under this article, they cannot enjoy security at all if they are fortunate enough to win majorities in certain States. The Centre would be made to intervene, by the ruling party, which suffered a defeat in the State concerned. "Whispers were heard in case of the emergency proclamation in the Peppu and its reported use in case of Andhra and Travancore-Cochin, that the device was being used by the Government of the day for party purposes." It is rather distressing that the superstructure of our infant democracy is being built on mutual suspicions and party jealousies.

If a dispassionate and a bit rational approach is made to the whole problem, most of the fears, expressed by the critics, would seem to be mere exaggerations and reflect ignorance on the part of the parties on the opposition benches. It is true that the emergency powers vested with the President of India are unparalleled in the history of democratic world. It is true, our Federation is converted into a unitary form of Government during the period, the proclamation of emergency is in operation. It is also true that our fundamental freedoms are suspended. But why do we forget that the security of the State as a whole is of far greater importance than the individual liberty of a few citizens? The State is to safe-

guard the liberties of the people and if the State itself is destroyed, the liberties of the individual citizens stand annihilated. The threat to the security of the State is at present greater than in any other period of history. In fact, the constitution of India was framed at a time when after the ruination of the world due to big conflagration ending in 1945, the world was again darkened by the shadow of a third armageddon. Hence the fathers of Indian constitution were not oblivious of the grim realities. They were keen to maintain the integrity and the security of the State in grave national emergencies, at any cost. Incorporation of emergency provisions was therefore in the fitness of the circumstances. Anti-social and subversive elements are apt to play a treacherous role, if they are allowed to have full liberties, without such restraints, during abnormal period. They may like to barter away the freedom of their land which has been achieved after trials and tribulations and sacrifices made on the part of countless martyrs and patriots. We agree with Shri V.N. Shukla who said, "These provisions may appear to be harsh, particularly in a constitution which professes to be built upon an edifice of Fundamental Rights and democracy. But the provisions must be studied in the light of India's past history. India has had her inglorious days whenever the central power was weak. It is well that the constitution guards against the forces of disintegration. Events may take place threatening the very existence of the State and if there are no safeguards against such eventualities, the State, together with all that is desired to remain basic and immutable will be swept away." 1

It is obvious from the above-quoted lines that these emergency provisions were embodied in our constitution, keeping in view our hoary past which reminds us of disintegration and disunity, prevailing amongst the Indian rulers in particular and Indians in general. Our independence used to be a plaything in the hands of foreign invaders because our Centre was weak. It is said, "History repeats itself." We never wanted history to repeat itself, hence these provisions. Moreover, the constitution makes sufficient provision to impose checks on the misuse of powers by the Union President. The responsibility of the President to the Parliament is itself an adequate safeguard. The proclamation can remain effective so long as Parliament wills it. It is, however, apprehended by the critics that the President can exercise this authority of issuing proclamation for a couple of months without getting it ratified by the Parliament. The apologists of the constitution, however, do not expect any such possibility on the plea that impeachment procedure hangs like a sword of Damocles on the head of the President. In case, the President issues the proclamation of emergency when in fact no such emergency exists, he is liable to be impeached. No sensible man will like his name to be marred and go down in the history as a condemned individual. Whatever arguments may be put forth to justify emergency powers, we have to agree with Shri

Amar Nandi who remarks, 'It is clear, however, that the powers conferred on the Central Executive to meet national emergencies are, so to say, a loaded gun which can be used, both to protect and to destroy the liberty of citizens. The gun must be used, therefore, with extreme caution.'

As regards Article 356, it may be stated that the framers of the constitution were not out to abrogate the autonomy of the States. Rather they were keen to bring order out of chaos. They anticipated anarchic conditions to prevail in some of the States which were formerly groaning under the heels of the foreigners or autocratic maharajas and now, with the dawn of independence, were guaranteed democratic rights and somewhat autonomous authority. Peepsn is an example. A non-Congress ministry headed by Gian Singh Barewala was installed in Peepsn, though it was backed by a narrow majority. It had to bank upon the continued support of the Communists to keep itself in power. The position of the ministry went worse, when a large number of sitting members belonging to the ruling group were unseated as a result of the decisions of the election disputes. The administration of the State was gradually going to dogs. Under these adverse circumstances, proclamation was issued and it remained in force for a period of eight months. It is not an exaggeration to say that under an iron hand of Mr. Rau, the administrator sent to Peepsn as an agent of the President, normalcy was restored in a State infested with intrigues and conspiracies, which were undermining the efficiency of administration.

Punjab was the first State, where such proclamation was issued in June, 1951. The proclamation was made necessary due to the internal bickerings of the rival groups within the Congress Party, constituting the majority in the legislature. The complaints of inefficiency and corruption in the administration were piling up. Hence the Congress High Command issued a directive to Dr. Gopi Chand Bhargava, the then Chief Minister, to tender resignation. Non-Congress groups were in minority, hence they were not in a position to form a ministry. Thus the situation was ripe for such a proclamation. Governor’s rule was installed. The legislative powers were transferred to the Parliament which authorised their exercise by the President or an officer, whom he might like to delegate such powers. Governor’s rule proved undoubtedly a blessing in disguise. The deterioration in the administration was controlled and efficiency was restored.

In Kerala, however, the Centre was rather overshooting the mark. K.M. Munshi, and some other lawyers defended the dismissal of ministry in Kerala on the following grounds, ‘If the party having a majority in a State Legislature is wedded to a doctrine or in fact carries on administration persistently in a manner which denied all citizens of the State equality of status and opportunity and the

State administration is carried on in the aforesaid way with the majority vote of the legislature, and which evokes overwhelming resentment and situation, a situation must be regarded as having arisen in which the government of the State cannot be carried on in accordance with the provisions of the constitution...To say that such a government can still be carried on in accordance with the provisions of the constitution merely because the ruling party has the majority vote, is to ignore altogether the other provisions of the constitution. The above statement can hardly shield the unconstitutional action on the part of the Centre in proclaiming emergency on the basis of constitutional failure which occurs when the ministry loses the confidence of the State Assembly. A lawfully constituted government commanding a stable majority in the State Assembly and its confidence, is to be protected by the Centre against forces causing internal disturbance. In Kerala such forces were indirectly shielded when the lawfully constituted ministry was dissolved and Governor's rule was established. Instances of this type should not be repeated. It amounts to aggravation of suspicions and distrust against the Centre. "It would be unfortunate for the future of our democracy if occasion is given for such suspicions to grow up. A healthy and sound convention should be built up regarding the proper occasions for the use of this emergency power of the President."

In fact, the framers of the constitution contemplated that before the President took such a drastic step as to suspend the autonomy of the States, and take up administration of the State, he would issue a warning. If this warning went unheeded, the next step would be the ordering of a general election (in other words to give to the people an opportunity to improve matters through the exercise of their sovereign democratic right of voting at a general election). If even the election of the new Legislature fails to improve the situation, then alone the President would resort to issuing of proclamation of this nature. If the speculations of the framers of constitution had come out to be true, the critics would not have been voicing their grievances so vehemently against the misuse of this power.

1. TEMPORARY POWERS

The President was vested with three types of temporary powers. (i) To overcome the difficulties, likely to crop up in the course of the transition from the provisions of the Government of India Act, 1935 to those of the new constitution, the President was empowered to make alterations in the units of the Federation till the commencement of the constitution; to make adaptations in the laws of the country, to bring them in line with the constitution during the period of first two years to determine the population of India or any of its parts for purposes of election during the first two years;
and to adopt and modify the provisions of the constitution, to overcome the difficulties of the transitional period. The transitional period was to extend to the date when the first meeting of the Parliament after the General Elections was to be convened. Most of these powers are now absolute. (ii) In order to make arrangement for certain urgent matters till Parliament provides for them otherwise, the President is authorised to make orders in respect of persons under preventive detention under Article 22 (7); to make rules for the recruitment of the secretariat staff of the two Houses of the Parliament and for the custody of the Consolidated Fund of India; to determine the manner in which the decrees of the Supreme Court are to be enforced; to determine the shares of the States in the proceeds of the income tax; to determine the grants-in-aid out of the Union revenue to certain States for certain purposes. (iii) Though in the matter of the official language, English is retained for the first fifteen years, the President can authorise the use of Hindi for such official purposes as he deems fit and he may determine the pace of progressive use of Hindi, as the ultimate official language, in the light of recommendations of Official Language Commission. (iv) The President is vested with the authority to nominate two representatives of the Anglo-Indians to the Lok Sabha, if he finds that that minority is not adequately represented.

§ 15. POSITION OF THE PRESIDENT

A critical appraisal of the formidable list of powers vested in the President has created an impression in the minds of hair-splitters of the constitution that it bristles with enough flaws and loopholes which might be exploited by an inordinately ambitious and unscrupulous President and enable him to assume dictatorial powers. A purely literal and juristic interpretation of some of the Articles, in fact, conveys this impression that President, if he so desires, can become an autocrat.

Article 53 (1) declares: “The Executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him”. The critics opine if, keeping in view this Article, the President does not accept the position of a mere nominal head, he in no way violates the constitution. Article 74 (1) further states “There shall be a Council of Ministers with the Prime Minister at the head, to aid and advise the President in the exercise of his functions.” It is contended, by the constitutional pundits, that Council of Ministers is to render a piece of advice only to the President. How can we presume that their advice will always be binding upon the President? Gladhill remarks “On the basis of this Article, it is possible to con-

1. Article 391.
2. Article 259.
3. Article 270 (4).
5. Article 349.
tend that the constitution does not sufficiently guard against the
President becoming a dictator.” Dr. B.M. Sharma observes “The
Constitution of India has given very large powers to the President
and does not make any definite provisions in regard to the manner
in which he is to exercise his powers. It is all left to the arising of
conventions, how the President will carry out his duties whether he
will remain a constitutional head of the State or will be also head of
the executive.”

Dr. B.M. Sharma’s fears are not based on frivolous grounds.
Dr. Rajendra Prasad, President of the Constituent Assembly, also
expressed similar views when he reminded the members of the
Constituent Assembly “I have my doubts that these words will bind
the President. Article 74 (1) does not say that the President
shall be bound to accept that advice. Is there any difficulty in
making a specific provision that the President is bound to accept
that advice.” A comprehensive document, like the Indian
constitution, should have contained a specific provision that
President must act upon the advice of the Prime Minister. Such an
important thing should not have been left to a mere convention. The
critics emphasise that there is no justification in arguing that the
convention of the British Constitution according to which the King
acts as a mere constitutional head and exercises his powers accord-
ing to the advice of the cabinet, are applicable to India. In reality,
certain provisions in the constitution establish the fact that the
President is equipped with real authority. For instance, the
President is empowered to return to Parliament for reconsideration
non-Money Bills submitted to him for his assent. It is a hard fact,
that the Bill is passed through the Parliament only when ministerial
support stands by it. A President returning such a Bill can hardly
be supposed to be a mere constitutional head or a rubber-stamp in
the hands of his Ministry.

Gledhill, in his ‘The Republic of India’ has drawn a very
embarrassing picture of the position of the President of India when
he goes to the extreme in his flight of imagination. Suppose the evil
designs of the President get obvious and 1/4 of the members of a
House of Parliament give notice of a resolution to impeach the
President. According to the constitution, 14 days notice is necessi-
tated to move such a resolution. Before the expiry of 14 days, the
President can dissolve the House of the People. A new House, no
doubt, is to be elected but it need not meet for six months after such
election. He may dismiss his ministers because they hold office at
his pleasure. He may then appoint his own men as ministers who
may not become members of Parliament for six months. He may
then issue ordinances which can have life for six months and which
will be as valid as Acts of Parliament. He may then, by a procla-

2. Dr. Sharma B.M.: ‘The President of the Indian Republic’, in Indian Journal of
nation suspend the autonomy of the States and also the right to freedom and thus convert the federation into a unitary form of government. As a supreme commander of the forces, he may utilize the forces at his disposal to suppress his political opponents and the civil liberties. Thus he may ultimately become a dictator. To quote Allen Gledhill, "This may seem a nightmare, but it is not dissimilar to the way in which the Weimar constitution was destroyed."

In fact, there is no end to such assumptions. The wings of fancy do not support our flight in a thin air so far above the surface of this planet. A legal truth is not always a political truth. No sane President will like to be so ambitious as depicted by Gledhill. It is true that the constitution does not expressly forbid the President to ignore the advice of the Council of Ministers. But it is the ministry and not the President which is responsible to the Lok Sabha (House of the People). In the words of Dr. M.P. Sharma, "Power is bound to follow responsibility." A President who disregards the Cabinet's advice would precipitate constitutional crisis. The ministry which is to guard parliamentary practices jealously, would be compelled to resign and thereby confront the President with the necessity of finding an alternative ministry which will not be easily constituted as it will not be commanding the confidence of the majority in the Lok Sabha. Otherwise too, the President flouting the advice of the Council of Ministers is apt to incur the wrath of the Lok Sabha which will make it impossible for him to form an alternative ministry. He may dissolve the Lok Sabha. But in this case also, the party previously holding majority is bound to be victorious at the polls, since the public is conscious of the intentions of the framers of the constitution to establish a parliamentary form of government in India. Thus, the President will be left with no other choice. He will have to call the leader of the majority party to form the cabinet.

In fact, too legalistic and ultra-literal interpretation of a few articles, cannot turn the President into a dictator. None can dispute the fact that the government intended by the constitution is a parliamentary one. It is the essence of the parliamentary governments that the real executive powers should be exercised by the Council of Ministers responsible to the Lower House though in the name of the titular head of the State. Dr. Ambedkar remarked on the floor of the Constituent Assembly, "The President occupies the same position as the King under the English constitution. He is the head of the nation but not of the executive. He represents the nation but does not make the nation—he will generally be bound by the advice of the ministers. He can do nothing contrary to their advice nor can do anything without their advice." The views of Dr. Ambedkar are endorsed by many other members of the Constituent Assembly. Shri T.T. Krishnamachari said, "The position of the President in a responsible government is not the same as the

position of a President in a representative government like America and that is a mistake that a number of the people in the House have been making, when they said, that the President will be an autocrat and no one appears to realize that the President has to act on the advice of the Prime Minister..." In the course of speech just before he put the motion for the final adoption of the constitution of India to the vote of the Constituent Assembly, Dr. Rajendra Prasad, President of the Constituent Assembly, remarked on 26th November 1949, "We have had to reconcile the position of an elected President with an elected Legislature and in doing so, we have adopted more or less the position of the British Monarch for the President..." His position is that of a constitutional President....Although there are no specific provisions so far as we know, in the constitution itself making it binding on the President to accept the advice of his ministers, it is hoped that the convention under which in England, the King acts always on the advice of his ministers will be established in this country also and the President not so much on account of the written word in the constitution, but as the result of this very healthy convention, will become a constitutional President in all matters." Prime Minister Nehru, also spoke in the same strain on the floor of the Constituent Assembly. "We have not given our President any real power, but we have made his position one of great authority and dignity." The Prime Minister reiterated the same fact, in a press conference, on July 7, 1959 when he said, ".....our Constitution makes the President constitutionally rather like the King or Queen of England. If this were not so, you can see the whole question of responsibility of the cabinet and of Parliament would suffer......")

The above-quoted extracts from authoritative views reflect that whatever might be the language of the constitution, the President of India was not really intended by its authors to be either a dictator or an autocrat. Ever since the commencement of the constitution, the first incumbent, Dr. Rajendra Prasad, acted as a constitutional head of the parliamentary democracy. The expression 'aid' and 'advice' in Article 74 (i) is a constitutional euphemism. It has been used for the maintenance of outward dignity of this august office of the President and for avoiding constitutional complications which might have arisen if any statutory provisions compelling the President to accept the advice of the Council of Ministers in all circumstances had been made. Let us not forget that if any President deliberately flouts the traditional maxims of the parliamentary system of government which India has intentionally adopted, and abrogates the spirit of the constitution, he will have to undertake risk of impeachment which, as already said, hangs like a sword of Damocles on his head.

Though the President is not equipped with any real power, yet it will be an exaggeration if we say, "He is a mere figurehead" or "a

1. The Hindustan Times, July 8, 1959.
magnificent cipher.” His office is one of great dignity and considerable influence. He is a symbol of Indian national unity. “He has the triple right which Bagehot ascribed to the British King, namely, the right to be kept informed, the right to encourage and the right to warn and it can be said in the inimitable words of that very writer, that a wise President should need no others.”

Since the entire executive action of the Government is to be conducted in his name, he can demand elucidations and even suggest reconsideration. How far will he be in a position to exert his influence upon the decisions of the Government, depends upon his ability, his sterling character, magnetic personality and selfless devotion to the nation. It is a good augury for the Indian Presidency that its first incumbent had been a man of Dr. Rajendra Prasad’s eminence who commanded great respect and was held in high esteem by his friends and foes alike. The present incumbent, Dr. Radhakrishnan, also commands a towering personality and is a genius. In fact, President’s influence is bound to be very effective if on his election as President, he forgets all his past political affiliations, avoids meddlesome obstructiveness and acts with a complete constitutional rectitude and impartiality and plays the role of a ‘dignified emollient’ in the Indian constitutional mechanism.

**VICE-PRESIDENT**

**§ 26. ELECTION OF THE VICE PRESIDENT**

Article 63 of the constitution provides for a Vice-President of the Indian Union, in addition to the President.

The Vice-President is elected by the members of both Houses of Parliament at a joint session by secret ballot, in accordance with the principle of proportional representation by means of the single transferable vote. The system of his election differs from that in the case of President because the President is the head of the Union dealing with matters relating to the Centre as well as the States. Hence, in the case of the President’s election both the Parliament and the State Legislatures take part. The election is conducted by the Election Commission subject to the constitutional requirements and under the Presidential and Vice-Presidential Election Act, 1962.

**Qualifications.** The questions of disputes and doubts are referred to the Supreme Court which makes enquiries and decides them. The candidate for the office of the Vice-President (i) must be a citizen of India; (ii) must not be less than 35 years of age; (iii) must be qualified for election to the Rajya Sabha; (iv) must not hold any office of profit under any of the governments within the territory of India, whether federal or state or local; (v) must not be a member of either House of Parliament or of any House of the

State Legislature. But if he is already such a member, he tenders resignation before he assumes office of Vice-President.

§ 17. TENURE

The term of office of the Vice-President is five years. He may, however, resign his office before the expiry of the normal term. The letter of resignation is to be addressed to the President. He is re-eligible for election to the same office.

§ 18. REMOVAL

He can be removed from his office by a resolution of the Rajya Sabha passed by a majority of all the then members of the Rajya Sabha and agreed to by the Lok Sabha. It may, however, be pointed out that according to Article 67(b) no resolution for his removal can be moved unless 14 days notice has been served upon him. He continues to hold office, until his successor succeeds him.

§ 19. OATH OF OFFICE

Every Vice-President shall before entering upon his office make and subscribe before the President or some person appointed on his behalf, an oath or affirmation in the following form:

"I, A.B., swear in the name of God solemly affirm that I will bear true faith and allegiance to the Constitution of India, as by law established and that I will faithfully discharge the duty upon which I am about to enter."

§ 20. FUNCTIONS OF THE VICE-PRESIDENT

His office, in fact, is that of "His superfluous Highness." He does not exercise much of authority. He is equipped with two-fold functions: (i) He is the ex-officio Chairman of Rajya Sabha. In this capacity, he possesses the usual powers of a presiding officer, including a right to exercise a casting vote in case of a tie. He is not, however, a member of Rajya Sabha, hence he is not given right to vote in the House. (ii) The Vice-President steps in the shoes of the President, if the office of the latter falls vacant temporarily because of the President's ailment, resignation, removal or death. The election of the President must take place within six months of the date of occurrence of the vacancy. During the period, the President is unable to discharge his functions, the Vice-President acts as the President, and exercises all the functions of the President and enjoys all immunities and receives such emoluments, allowances etc. to which the President is entitled to. It may, however, be pointed out that the President himself is to decide whether he is "unable to discharge his functions," since the constitution is silent about it. In case of sudden and serious ailment, the Parliament may determine it. Article 70 is revealing the above fact "Parliament may make such provision, as it thinks fit for the discharge of functions of the President in any contingency not provided for in this chapter."
§ 21. COMPARISON WITH VICE-PRESIDENT OF U.S.A.

Indian Vice-Presidency is modelled on American institution of Vice-Presidency, though only to some extent. Like the American Vice-President, our Vice-President is the ex-officio chairman of Rajya Sabha. Similarity of the two offices ends here.

The Indian Vice-President acts as President, till the new incumbent is elected. He can remain as President maximum for six months. The Vice-President of U.S.A. on the other hand remains as the President till the end of the unexpired term of the office of the late President. For instance, if the President dies three months after the assumption of his office, the Vice-President is entitled to presidency for the remaining term of three years and nine months. Henry Truman succeeded Roosevelt, after his death.

The Vice-President of U.S.A. is supposed to possess the same qualifications as that of the President. His method of election also is the same as that of the President of U.S.A. The Indian Vice-President presents a contrasting picture. He is not elected by the same Electoral College which elects the President. His qualifications, too, differ from that of the President.

The Vice-President of U.S.A. like that of President is removable by a process of impeachment. The Indian Vice-President however can be ousted from office if Rajya Sabha passes a resolution and it is agreed to by the Lok Sabha, whereas process of impeachment is provided for the Presidentship of Indian Republic.

The office of the Vice-President of U.S.A. has been subjected to contemptuous remarks. It has been described as an office “unique in its lack of functions”. The Vice-President of U.S.A. has been portrayed by some critics as “His superfluous Highness”. John Adams, the first Vice-President of U.S.A., described it as “the most insignificant that ever the invention of man contrived.” Another Vice-President, depicted a more graphical picture of his position when he said: “The occupant of that office is like a man in a cataleptic fit. He is conscious of all that goes on but has no part in it.” These epithets very correctly portray the position of the Vice-President of the U.S.A. The position of India’s Vice-President is still worse, hence these epithets much more correctly describe the position of the Indian Vice-President.
The Council of Ministers

§ 1. ITS FORMATION

Article 53 of the new constitution lays down that the Executive power of the Union shall be exercised by the President of India, either directly or through officers subordinate to him. Those officers subordinate to him, are the ministers. According to Article 74, there is to be a Council of Ministers with the Prime Minister, at the head, to aid and advise the President, in the exercise of his functions. As already discussed, the advice of the ministers cannot ordinarily be flouted, as parliamentary form of government has been established in our country.

Article 75 explains the process of formation of the Council of Ministers. According to this Article, the Prime Minister is to be appointed by the President, and the Ministers are appointed on the advice of the Prime Minister. The Council of Ministers must be collectively responsible to the Lok Sabha. This reflects parliamentary character of our government. Ministers are normally to be members of one of the Houses of Parliament. A minister who for any period of six consecutive months is not a member of either House of Parliament, shall cease to be a minister at the expiration of that period. The ministers hold office during the pleasure of the President. "Collective responsibility to Parliament" and "holding office during President's pleasure" are in fact contradictory. Does this mean, that the President can legally dismiss a ministry even if it enjoys the confidence of the House of the People? The constitution makers in fact left the successful working of parliamentary government to the growth of suitable conventions. Dr. M. P. Sharma supports the above contention, when he says, "The fact is that the cabinet or parliamentary government is based on certain conventions which though generally accepted and understood, do not lend themselves to formal statement in the provisions of the constitution". As a matter of fact, pattern of British Parliamentary Government is to be followed in India. Hence the provisions

1. Article 75 (5).
2. Article 75 (2).
relating to the Council of Ministers should be interpreted in the light of British experience.

Thus, though according to Article 75, the President appoints the Prime Minister, yet he can hardly exercise his discretion. The limited choice of the President in the Prime Minister's appointment is to the leader of the party or group commanding a majority in the House of the People (Lok Sabha). If no single party commands a majority of Lok Sabha, two or more parties may form a coalition and select a common leader, who is apt to be appointed Prime Minister by the Head of the State. Only in very rare circumstances when two men command an equal amount of popularity and leadership in the Lok Sabha, the President may be in a position to exercise a bit of discretion and select one out of the two as Prime Minister. The Prime Minister so selected is to make choice of the rest of the ministers. Though the Prime Minister has some latitude in the selection of his colleagues, yet his hands are fettered to some extent. Some of the important members of the party are bound to be selected as ministers. The Prime Minister cannot afford to keep them out. He is to see that all important communities and geographical areas of the country, find representation in the Council of Ministers. Though the constitution does not impose such restraints on his choice of ministers, yet the practical requirements induce him to take these factors into consideration. The Cabinet is to be as broad based as possible. The ministers enter office after taking the oath of secrecy and service.

Distribution of Portfolios. After constituting the Council of Ministers, the Prime Minister is to distribute portfolios among them. It is he who is to decide to whom a particular department is to be assigned. If working of other parliamentary governments is to be taken into consideration, we find, that even in this domain, the hands of the Prime Minister are tied. Those ministers who were holding a particular portfolio in the previous cabinet, will like to have the same department or a better one, on the basis of experience and standing in the party. Certain ministers will express their likes and dislikes for certain departments. They will have to be accommodated, since they happen to be indispensable and trusted lieutenants of the party. When two equally important men cherish to have the same portfolio, the Prime Minister has some anxious moments to experience.

The creation of homogeneous ministry and distribution of portfolios among them, according to their satisfaction, is indeed a tough task. Personality of Prime Minister displays a very effective role in the performance of such arduous tasks.

The Cabinet and the Ministry. In India, as in England, a distinction between Cabinet and Ministry is quite obvious. In England, out of about hundred ministers, only twenty to twenty-two constitute the cabinet, which commands more prestige and
greater authority, than the rest of the ministers. About twenty out of seventy are the members of the Cabinet. They are in charge of important portfolios. They receive Rs. 2250 per month as salary and Rs. 500 per month as sumptuary allowance, a free official residence, free medical aid and a car.

Secondly, there are ministers of the Cabinet rank. Though they are of cabinet status, yet they are not members of the Cabinet. They are the heads of the various departments. They may attend the meetings of the Cabinet, when an invitation is accorded to them by the Prime Minister. They are accountable to the Parliament, like cabinet ministers. They receive the same salary as the Cabinet Ministers, i.e. Rs. 2250 p.m., but get no allowance.

Thirdly, there are Deputy Ministers who draw Rs. 1750 p.m. as salary. They assist the departmental ministers in the discharge of their duties.

Finally, there are Parliamentary Secretaries, lower in status than Deputy Ministers. The Parliamentary Secretaries and the Deputy Ministers do not hold headship of departments. They have to assist the ministers, both in administration and parliamentary work. Technically speaking, parliamentary secretaries do not fall in the category of ministers. It is the minister, who is to entrust powers to them. Mostly, they represent the Ministers on the floor of a House of which the latter are not the members. If both belong to the same House, the Parliamentary Secretary represents the minister during his absence.

§ a. COMPOSITION OF COUNCIL OF MINISTERS SINCE ITS INCEPTION

The first Council of Ministers consisted of fourteen cabinet ministers and five Ministers of State. After the first general elections held in 1952, fifteen were members of the cabinet (including the Prime Minister), four were ministers of cabinet rank and two were Deputy Ministers.

In September, 1956 there were sixteen Cabinet Ministers, four-teen Ministers of State, twelve Deputy Ministers, and seven Parliamentary Secretaries. On April, 1959 the Council of Ministers consisted of thirteen members of the cabinet, fourteen Ministers of State, twenty Deputy Ministers and eight Parliamentary Secretaries. On June 1962, the Council of Ministers consisted of 18 Cabinet Ministers, 12 Ministers of State, 22 Deputy Ministers and 7 Parliamentary Secretaries. It is quite evident that the size of the cabinet or Council of Ministers has been varying. In fact, the constitution does not fix the size of the Council. The Prime Minister determines its size. Under Kamraj Plan to revitalise the Congress some of the important ministers of the cabinet were relieved of their duties as ministers and entrusted work pertaining.

1. India 1952,
to eradication of evils in the party. The cut in the cabinet is likely to be restored in the near future.

13. FUNCTIONS OF THE CABINET

Though the cabinet is an extra-legal growth, yet it is the steering wheel of the ship of the State. It is the pivot round which the entire administration of our country revolves. It is indeed a key-stone of the constitutional arch. It is equipped with enormous powers and vested with vast responsibilities covering administrative, legislative and financial matters. In fact, the Indian Cabinet exercises all the power that its British prototype does. There are certain additional functions which are performed by the Indian Cabinet alone.

Supreme Control of the Executive. Though, legally, the Executive authority is vested with the President, yet in reality the Cabinet is the supreme National Executive of India. As already stated, according to the constitution, the Executive authority is exercisable by the President either directly or indirectly through his subordinates. But in parliamentary form of government, the Head of the State is to be a nominal Head. Hence, the real functionaries are the ministers. They preside over the departments of government and carry out the policy duly approved by the President. The individual members are to carry out the decisions of the cabinet faithfully. If they defy the cabinet, they violate rigid party discipline and thus incur the wrath of the party which may not tolerate them as ministers. The growth of delegated legislation has further strengthened the position of the Cabinet. Due to complexity of legislation and also its getting more voluminous, Parliament passes bills in skeleton form and the ministers are authorised to fill up the blanks and make rules and regulations, to give effect to such laws.

Formulation of Policy. All sorts of national and international problems confronting the country are tackled by the Cabinet. In accordance with the principle of collective responsibility, the Cabinet is to present to the Parliament and to the world a unified policy of action. If an individual minister fails to agree with the decision of Cabinet, the only alternative before him is to resign. Dr. Shyama Prasad Mukerji, K. C. Neogy, C. D. Deshmukh resigned as they could not agree with the Prime Minister and the cabinet on vital matters of policy. After the determination of policy by the cabinet, an appropriate department is to carry it out, either by administrative action or by submitting a new Bill to Parliament.

Legislative Functions. In fact, Cabinet is the hyphen that joins and the buckle that binds the Legislature with the Executive. The Cabinet directs Parliament for action and, so long as it commands a majority in Parliament, it gets the approval of its policy. The Cabinet not only prepares the legislative programme but also introduces and pilots through it the legislative measures. The bills introduced by members other than the ministers have little
or no chances to be passed. It is, therefore, generally held by the political thinkers, that the Cabinet legislates with the advice and consent of the Parliament. "Very often, it has shown a commendable disposition to accept the advice offered by members though in doing so, it has—to save its face—often tried to conceal the fact."

**Financial Powers.** The Cabinet possesses important financial powers as well. It prepares the budget. It determines what taxes are to be imposed and how the revenues are to be expended. The money bills are to be introduced by the ministers. The cabinet can insist on modification of budget even after its presentation to the Parliament.

**Control over appointments.** All major appointments, like that of ambassadors, high commissioners, Attorney-General, Auditor General and Governors of States are to be made by the President with the approval of the Cabinet. In fact, the appointments of important nature are always made by the cabinet though in the name of the President.

**Controls the foreign policy.** The Cabinet formulates the foreign policy of the Union and determines India’s relations with the foreign countries. Since the commencement of our constitution, rather attainment of independence, Foreign Affairs department is held by our Prime Minister.

**Cabinet as co-ordinator.** Since dividing of the departments in rigid compartments is impossible and undesirable, the Cabinet plays a vital role of co-ordinating the activities of various departments. If, at any stage, the differences between the departments are irreconcilable, the Prime Minister acts as arbitrator and co-ordinator.

**Miscellaneous functions.** These are those functions which the Indian cabinet performs but the British Cabinet dare not assume. Under the authority of the President, the Cabinet is empowered to make laws, during the recess of Legislature; it can suspend fundamental liberties by proclaiming emergency and alter the boundaries of the States. All powers are subject to the approval of the Parliament.

In short, the Cabinet occupies the dominating position both in the legislative and executive fields. Its control over finance is no less significant. It is undoubtedly a pivot, round which the entire administration of the country revolves.

1. **DIFFERENCES BETWEEN INDIAN AND BRITISH CABINETS**

Though Indian cabinet is based on British pattern and most of its functions resemble that of British cabinet, yet differences between the two cabinets are also equally striking. (i) In Britain, responsibility of the ministry to the House of Commons is based on con-
ventions; in India, it is clearly specified in Article 75. (ii) The British Prime Minister selects his colleagues and assigns portfolios to them; but in India, the President is empowered (according to Article 75) to make such appointments and make rules for the convenient transaction of business of the government and for allocation among the ministers of such business. 1 In reality, however, the President always acts upon the advice of the Prime Minister. (iii) Members of the British Cabinet are to be selected from Parliament and no member of the Cabinet is authorised to attend the House of which he is not the member. In case of India, however, the ministers are to appear before both the Houses of Parliament to reply to questions of the members of Parliament. Moreover, a minister may not necessarily belong to Parliament when he is so appointed. He may, however, become a member of Parliament within six months if he is keen to retain his seat in the cabinet. General Smuts in England was a member of the British Cabinet (War Cabinet) from 1916 until end of war without his being a member of Parliament. Sir A.G. Boscawen, Minister of Agriculture, is another similar example in 1922–23. Ramsay Macdonald and Malcolm Macdonald were both members of the British Cabinet though not of the British Parliament from November, 1935 until early in 1936. Though these are exceptional cases, yet they are often quoted to prove the fact that in England, a non-member of Parliament could become a member of the Cabinet. (iv) In the U.K., the Cabinet stands as a unit both before the Parliament and the Sovereign. Its views are placed before the Sovereign and the Parliament as if they were the views of one man. It renders its advice as a single whole, both in the royal closet and in the hereditary and representative chambers. In India, the President can ask the Prime Minister to place a matter before the Council of Ministers if it was previously decided by an individual minister and not by the entire Council of Ministers. 2 The Prime Minister is bound to communicate to the President the decision of any one particular minister and the President may not treat such a decision as the decision of the Council as a whole. He may ask for its reconsideration by the Cabinet as a whole. The President cannot, however, override the decision of the individual minister of the Cabinet as a whole. Thus, it is quite obvious that the Cabinet in India is not so solid a unit before the President as is the Cabinet in England before the Sovereign. (v) The constitution of India makes a specific provision for the office of the Prime Minister. In England, the office of the Prime Minister was unknown till 1905, when he was given precedence immediately after the Archbishop of York, by a Royal Proclamation in December, 1905.

PRIME MINISTER OF INDIA

The Prime Minister of India occupies a privileged position in the country. The constitution expressly provides for the office of the

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1. Article 77.
2. Article 78.
§ 5. THE APPOINTMENT OF THE PRIME MINISTER

According to the constitution, the Prime Minister is to be appointed by the President, but what is a legal truth may be political untruth. The President, in fact, does not have much discretion in the matter. In accordance with fundamental principle of Cabinet form of government, the President is bound to summon the leader of the majority party to form the ministry. In case of multiple party system, if none is in position to muster absolute majority, and a coalition government is to be formed, the President can exercise a little discretion and summons the leader of any party who, in his opinion, can constitute a stable ministry.

The constitution does not prescribe, whether the Prime Minister must belong to the Lok Sabha or may be a member of either House of Parliament. In fact, the constitution states that anybody can be appointed minister without his being a member of Parliament for a period of six months. Thus according to the letter of the law, even the Prime Minister may not necessarily be a member of the Parliament for six months. But the principle of collective responsibility has been provided in the constitution. Responsibility to the Lok Sabha cannot be effected if the Prime Minister and the rest of his colleagues selected by him do not belong to the Parliament. Visualizing the appointment of the Prime Minister, when he is not a member of Parliament is nothing of mere speculation.

§ 6. FUNCTIONS OF THE PRIME MINISTER

The duties of the Prime Minister are onerous and his authority enormous. He has been rightly termed as the key-stone of the Cabinet-arch. He is likened to Prime Minister of England whose powers resemble those of an autocrat. The under-mentioned powers of the Prime Minister portray the magnitude of his authority.

He makes the Government. The constitution specifically provides that the President shall appoint the ministers on the advice of the Prime Minister. This advice is almost binding. The President cannot thrust his own choice on an unwilling Prime Minister. It is the latter who is to constitute a team, which should work with him smoothly. He may include or exclude anybody from his Cabinet. Even a person not belonging to his party, but otherwise competent, may find favour with the Prime Minister. In his first Union Cabinet, Pandit Nehru included such individuals. Though there are no constitutional restriction on his choice, yet his hands are fettered to some extent, by party necessities, geographical considerations, and due representation to the various communities inhabiting our land.

Allocation of Portfolios: He allocates portfolios to the individual ministers according to his own choice. He is empowered to review
this allocation of offices among his colleagues, from time to time. Though the Prime Minister possesses discretionary authority to assign portfolios yet important party whips must get portfolios of substantial importance, otherwise they would not accept the offices of insignificant nature. But very rarely, the assignment is declined.

Shuffling of his Pack. The Prime Minister can shuffle his pack as he pleases. As a captain of the team and head of the administration, he can drop out any of his colleagues, if in his opinion the presence of such a colleague is detrimental to efficiency, integrity or policy of the Government. If difference of opinion between him and any minister crops up, it is the latter who quits. He can demand his resignation. If the minister is reluctant to resign, on his own accord, he can dismiss him or eliminate him by the formation of a new ministry and excluding his name from it. According to the letter of law, dismissal of the minister can take place by the order of the President, though on the advice of the Prime Minister. But this is a mere formality. Dr. Ambedkar maintained, "............. No person shall be retained as a member of the Cabinet, if the Prime Minister says that he shall be dismissed. It is only when members of the Cabinet both in the matter of their appointment as well as in the matter of their dismissal are placed under the Prime Minister that it would be possible to realize our ideal of collective responsibility........" 1 It may, however, be pointed out that dismissal is a very harsh step. Hence, generally, that may not be resorted to. Reconstituting the Cabinet and excluding the undesirable minister or elevating him to Governorship or ambassadorship are the methods which may be adopted by our Prime Minister. "A minister who becomes a round peg in a square hole may be kicked upstairs to easier atmosphere, a governorship or ambassadorship." 2 Mr. Shrammukham Chetty, John Mathai, D.P. Munkerji, K.C. Neogy, C.H. Bhabha, M.L. Saxena, V.V. Giri, Dr. Ambedkar and C.D. Deshmukh had to resign as they could not pull on with the Prime Minister. Dr. Ambedkar correctly observed "The Prime Minister is really the keystone of the arch of the Cabinet and unless and until we create that office and endow that office with statutory authority to nominate and dismiss ministers, there can be no collective responsibility." 3

Chairman of the Cabinet. As a chairman of the Cabinet, he presides over the meetings of the cabinet and determines what business is to be transacted in these meetings. In case of difference of opinion amongst the ministers in the meeting of the cabinet he can impose his decision. He controls the agenda of the cabinet meetings as well. He may accept or reject proposals for Cabinet discussions.

Co-ordinator. The Prime Minister is the chief co-ordinator of government business. He is to co-ordinate the activities of the several heads of departments and the various ministers. He is to see that the Governmental mechanism works harmoniously. Due to the rapid growth of the activities of the State, the functions of the Government have enhanced considerably. Hence, the Head of the Government is to share his burden with his trusted colleagues. The co-ordination is done through various committees of the Cabinet and not the Prime Minister alone. General supervision of the department is still done by him. The departmental heads consult him in all major and minor matters.

Leader of the Lok Sabha. The Prime Minister in India is a leader of the Lok Sabha, unlike that of England, where the Prime Minister designates another colleague as the leader in order to lessen his onerous burden of responsibilities. (Though in England even the ultimate responsibility still rests with the Prime Minister). Our Prime Minister makes all important policy announcements. All questions on critical and baffling issues are addressed to him. He initiates and leads in debates of general nature. He shields his colleagues on the floor of the House, for their errors of omission and commission.

Link between the President and the Cabinet. He is the chief link between the President and the Cabinet. He communicates to the President all decisions of the cabinet, relating to the administration of the affairs of the Union and proposals for legislation. He is to furnish such information to the President, as the latter asks for. The President may require him to submit for the consideration of the Council, any matter on which a decision was taken by an individual minister.

Makes major appointments. He exercises vast patronage in the matter of appointments. In reality, all major appointments are made by him, though in the name of the President of India. He may consult his colleagues if he so wills.

Spokesman of Government's Policy. He is the chief spokesman of the Government on all matters of domestic and foreign policy. His role in shaping general policy is decisive. He represents India in various international conferences. He represents India in the Commonwealth Conferences as well.

Leader of the Nation. The Prime Minister is not only leader of the majority party or head of the Government, he is the leader of the nation. He is to shape the destiny of the nation and steer it through tempestuous storms that may overtake it. The general election is in reality the election of Prime Minister. The slogan on the occasion of general election was "Vote for the Congress and strengthen the hands of Nehru." Shri K.B. Srinivasan Iyengar, writing on "Prime Minister", said "when he enters an Assembly, be it a Select Committee or a mass rally, the effect is invariably the same. All eyes converge towards him, all hands clap in eager
affectionate welcome as if to a preordained tune, and a hushed expectantancy watch his intrepid movements and strains to catch his words and whispers. The men are a little out of breath, the women are almost overwhelmed." He guides public opinion by speeches both in the party conferences and on the platforms. The nation listens to him with rapt attention. In fact, Nehru and the nation are personified.

§ 7. POSITION OF THE PRIME MINISTER

If we make a critical appraisal of a plenitude of powers entrusted to the Prime Minister of India, we are convinced of his dominating position both in the Cabinet, and the Parliament. Certain hair-splitters of our constitution compare him with the British Prime Minister and call him *primus inter pares* i.e., first among equals. But this is an underestimation of his authority. A potentate vested with the authority of shuffling his pack as he pleases and other powers of great magnitude can hardly be considered a mere first among equals. Like that of British Prime Minister, he may be described as "moon among lesser stars," or "a sun around which planets revolve."

Shri J.L. Nehru's assertion in the Lok Sabha on July 30, 1956, refuting the charges of Shri C.D. Deshmukh (ex-finance minister in the Central Cabinet) reflects the importance of Prime Minister in relation with the rest of the members of the Cabinet. "I am also something, after all. I am the Prime Minister of India and the Prime Minister is the Prime Minister. He can lay down the policy of government and that in the constitution, the Prime Minister is the linchpin of Government. To say that the Prime Minister cannot make a statement is a monstrous statement in itself." Though, the Prime Minister is the key man in the Cabinet, yet his predominance should not be taken to mean that he is the boss of his colleagues. He is a captain of the team. He cannot override them or ignore them. It cannot however be denied that the actual position of the Prime Minister depends upon his personality. In the words of Dr. Jennings, "The office of the Prime Minister is necessarily what the holder chooses to make it and what other ministers allow to make it." A person like Pt. Nehru is apt to dominate the scene. His dynamic personality is bound to be imposing. Nehru's supremacy over party and government is an established fact. Dr. Baulhakrishnan once observed, "Many of his Cabinet colleagues and/or party high-ups receive the shock of their lives when Nehru asks them to explain, obscure reports published in the papers with the relevant cuttings pasted faithfully on the note paper." In fact Nehru is an institution in himself. He is a national symbol and an international pivot. None of his colleagues can rival

2. Dr. Jennings: *Cabinet Government*, p. 183.
his towering genius. His pre-eminence can only be compared with that of Churchill at Westminster during the Second World War.¹ Whatever the Prime Minister is and whatever he can claim to be is due to the party that whole-heartedly supports him and raises him to the pedestal of glory. Once the party disowns him, his political future is doomed and he meets the fate of British Prime Ministers like Lloyd George, Asquith and Ramsay Macdonald.

Parliament of India

1. SPECIAL FEATURES

Parliament consists of the President, the Council of States (the Rajya Sabha) and the House of the people (the Lok Sabha). Like all other federal legislatures, the parliament of India is bicameral in structure. As a matter of fact, a bicameral legislature in a Federal state is an absolute necessity. It is an arch-stone in the Federal edifice. The upper chamber represents the units on equal basis irrespective of their size, population and importance, since it is the sheet-anchor of state interests. The lower House represents the people on the basis of population.

Apart from the bicameral structure, another conspicuous feature of the Union Parliament is that it is not completely a sovereign legislature like the British Parliament. Its legislative competence is limited during normal times to the subjects mentioned in the Union and the Concurrent Lists. Apart from this, its supremacy is limited by the Fundamental Rights guaranteed to the citizens. The State is not allowed to make any law which would infringe or abridge any of the Fundamental Rights. If it does so, the law will be nullified by the courts. Moreover, the courts are empowered to decide whether a particular law passed by the Parliament is constitutional or not.

Though the authority of the Parliament is limited, yet it is truly described as the pivot on which the entire governmental mechanism revolves. Emergencies make Parliament still more effective. Limitations on its legislative and financial authority during the period of emergency vanish. It is armed with vast powers and together with the President and the Council of Ministers, Parliament assumes the role of the sovereign of the Indian state.

2. COMPOSITION OF THE PARLIAMENT

As already stated above, the Union Parliament consists of the President and the two Houses—the Council of States and the House of People, now termed as Rajya Sabha and Lok Sabha respectively.
Though, the President is not a member of either House, yet he is an integral part of the Parliament and performs certain important functions connected with its proceedings.

The Council of the States. *Its composition.* The constitution lays down 250 as the maximum strength of the Rajya Sabha, out of which 12 are nominated by the President from among persons who have achieved distinction in literature, arts, science and social services. The remaining members are the representatives of the States. They are elected by the elected members of their Legislative Assemblies in accordance with the system of proportional representation by means of the Single Transferable vote. The members from the Union Territories are chosen in such a manner as Parliament may by law determine. Unlike that of other federations, the units of Indian Federation have not been given equal representation. Rather, it is constituted on the basis of population slightly weighted in favour of the smaller units. A component state is given representation on the basis of one member for each million for the first five millions of its population and thereafter only one seat for every additional two millions. This is an unusual feature of the Indian Rajya Sabha. Parity in representation persists practically in all typical federations. The American Senate consists of 100 members, two representatives taken from each state. The Australian Senate is composed of 60 members, 10 from each of the six federating units. The Swiss Council of States is constituted of 44 members on the basis of two representatives from each of the nineteen full cantons and one member from each of the half canton. Even the Canadian Senate keeps this principle in view. The federating units, no doubt do not get equal representation. The Dominion is split into four regions. Each regional area is represented by 24 members. Provision for additional six members from Newfoundland exists. Thus, the senate consists of 102 members. Equality of representation is accorded to the regional areas rather than component units.

According to the amended fourth schedule, seats are allocated to the States and Union Territories as follows:—Andhra Pradesh 18; Assam 7; Bihar 22; Kerala 9; Gujarat 11; Madhya Pradesh 16; Madras 17; Maharashtra 18; Mysore 12; Orissa 10; Punjab 1; Rajasthan 10; Uttar Pradesh 34; West Bengal 16; Jammu and Kashmir 4; Delhi 3; Himachal Pradesh 2; Manipur 1; Tripura 1. Thus the total is 222. Twelve are nominated. Thus the Council of States (Rajya Sabha) consists of 234 members at present.

The provision for nomination of 12 members is also vehemently criticised as a reactionary and undemocratic step in the age of democracy. It is apprehended that social, economic and national progress is likely to be hampered when a conservative element is
given a prominent place in the Rajya Sabha. But the fears of critics are baseless. It is rather illogical and almost incredible that twelve members out of a House of 250 members would impede the progress of our country. This partial nomination, on the contrary, will enable talented and election-shy people to be accommodated, and the country will thus be in a position to requisition their services.

Qualifications of its members. (i) A candidate for election to this House must be a citizen of India (ii) not less than 30 years of age (iii) and must possess such other qualifications as may be prescribed by Parliament. According to the Representation of the People Act of 1951, he must be a parliamentary elector in a State from which he seeks election.

A person is disqualified from being chosen as a member of Rajya Sabha if he holds any office of profit under the Government of India or the government of any State; or if he is of unsound mind; or if he is an undischarged insolvent; or if he has ceased to be a citizen of India; or has voluntarily acquired citizenship of a foreign state or acknowledged allegiance to a foreign state; or if he is so disqualified by or under any law made by Parliament.

§ 3. TENURE OF THE HOUSE

The Rajya Sabha is a permanent House. There can be no dissolution of the House. Its members are elected for a period of six years but as nearly as possible, one third of its members retire after every two years.

§ 4. HOW A MEMBER VACATES HIS SEAT

According to Article 101, following methods for the vacation of a seat in the House exist. (i) If a person is elected a member of both Houses of Parliament, he must vacate his seat in any of the two Houses. (ii) If he is elected to the Parliament and a State Legislature simultaneously, he must resign his seat in the State legislature. If he does not do so, his seat in the Parliament shall fall vacant at the expiry of the period specified in rules framed by the President. Apart from this, he must vacate his seat if he incurs any of the disqualifications referred to in the preceding Article 102.

If a member of either House of Parliament without the permission of the House is absent from all meetings, the House may declare his seat vacant.

§ 5. THE CHAIRMAN OF THE HOUSE

The Vice-President of India is the ex-officio chairman of the Rajya Sabha. A parallel to this is found in the U.S.A., where the vice-president is the President of the Senate. As the American Vice-

1. Article 102.
President is not a member of the Senate, so also the Indian Vice-President is not a member of Rajya Sabha. Both possess a casting vote only in case of a tie. The President of Senate is not vested with the function of recognizing the members, as he wishes; He must recognize them as they rise to speak. The chairman of our Rajya Sabha on the other hand can recognize the members, decide points of order, maintain order in the House, put questions and announce results. In the event of death of the President, the Vice-President of U.S.A. permanently relinquishes office of the chairman of the Senate (as he is to remain the President for the remaining period) whereas the Vice-President of India, reverts to his original office after maximum period of six months as the President must be elected within six months of the occurrence of the vacancy.

Deputy Chairman. Though the Rajya Sabha has no power to elect the chairman, it is vested with the power of electing its Deputy Chairman who is to preside over the meetings in the event of its chairman acting as the President of the country or in his absence owing to any other reason. In the absence of both the Chairman and the Deputy Chairman, such person as may be determined by the rules of procedure of the House acts as Chairman. If per chance, no such person is present, then the Rajya Sabha deputes from among its members any other member to act as the Chairman. The Deputy Chairman ceases to occupy his office when he ceases to be a member of the Rajya Sabha or resigns his office by writing in his hand to the Chairman of his intention to do so or when he is ousted from his office by force of a resolution passed by the Rajya Sabha after 14 days notice by the majority of all its members.

Method of Removal of the Vice-President. The Vice-President as the Chairman of Rajya Sabha, is removable from office by a resolution passed by a majority of its members and agreed to by the Lok Sabha. The Chairman (or the Deputy Chairman) is not to preside while a resolution for his removal from office is under consideration. He is not entitled to vote on such resolution though he is allowed to participate in discussion on the resolution.

Salaries and allowances of the Chairman and Deputy Chairman. The salaries and allowances of the Chairman and Deputy Chairman are determined by the Parliament and are charged on the Consolidated Fund.

§ 6. HOW QUESTIONS ARE DECIDED IN THE HOUSE

All questions are decided by an absolute majority of the members present and voting except the chairman or any other person acting as chairman who possesses the right of exercising casting vote only in case of a tie.

§ 7. QUORUM

The quorum for the meeting of the House is fixed at one-tenth of the total members i.e., 25. When there is no quorum, the Chairman
is authorized to adjourn the House or to suspend its meeting until the quorum is there.

§ 8. FUNCTIONS OF THE RAJYA SABHA

The functions of the Rajya Sabha can be classified as legislative, financial, administrative, constituent and miscellaneous.

(a) Legislative Powers. The Rajya Sabha is equipped with co-ordinate legislative powers with the Lok Sabha except with regard to financial legislation which can be introduced only in Lok Sabha. When a bill which has been passed by one House (say Lower) is either rejected by the other or is passed with such amendments as are not acceptable to the first House taking any action on the Bill, the President is empowered to convene a joint session of both the Houses. The fate of the Bill will be decided by an absolute majority of the total membership of both the Houses. Since the strength of the lower House is almost double the strength of Rajya Sabha, the will of the former is apt to prevail over the latter. The Lok Sabha can easily defeat the opposition of the Rajya Sabha. Thus in actual fact, the Rajya Sabha can only delay the passage of a Bill for a period not exceeding six months. It cannot kill the Bill.

(b) Financial Powers. In the financial domain, the position of the Rajya Sabha is rather weak. Money Bills cannot originate in the Rajya Sabha. When a Money Bill has been passed by the Lok Sabha, the same is forwarded to the Rajya Sabha for its recommendations within fourteen days. It is up to the Lok Sabha to accept the recommendations or reject them. If the recommendations of Rajya Sabha are rejected by the Lok Sabha, the Money Bill is passed in the same form as it was originally passed by the Lok Sabha. The right to vote supplies is the exclusive privilege of the Lok Sabha. Article 110 defines the money Bill. Whether a Bill is a Money Bill or not is decided by the speaker of the Lok Sabha. Thus financial powers of Rajya Sabha are most insignificant.

(c) Influence on the Executive. Since the Council of Ministers is collectively responsible to the Lok Sabha, the Rajya Sabha does not exercise control over the Executive to an extent Lok Sabha does. Rajya Sabha’s influence over the executive however is quite significant. The members of Rajya Sabha can criticise the acts of omission and commission of the government and thus bring it to disrepute. Through questions and supplementary questions, information can be sought from the Rajya Sabha. Adjournment motions can be moved to discuss vital affairs concerning the state. They can move resolutions also and thus impress upon the government to follow a particular policy. The ministers are permitted to defend themselves on the floor of Rajya Sabha even if they are not its members.

(d) Power of amendment of the constitution. Rajya Sabha participates in the amendment of the constitution. Double majorities in both the Houses is needed to pass an amending Bill. Majority of total
membership of the House and a 2/3rd majority of members present and voting will be required. A Bill to amend the constitution may originate in the Rajya Sabha and the same has to be passed by the Rajya Sabha even if Lok Sabha has already passed it. In case of a deadlock between the two Houses, on the question of constitutional amendment, the same can be resolved by a joint session of both the Houses.

(c) Miscellaneous functions. (i) The elected members of the Rajya Sabha participate in the election of the President of India. (ii) The Rajya Sabha possesses co-ordinate powers with the Lok Sabha in matters of impeachment. A resolution to impeach the President may be moved in either of the two Houses of the Parliament and approved by a 2/3rd majority of the total membership of the same House. The other House sits as a court of trial. If 2/3rd majority in this House also confirms the charges, the President is removed from the office. (iii) The Rajya Sabha may by a resolution passed by majority of total members and two-thirds of its members present and voting declare that a particular subject enumerated in the State List is of a national importance, then Parliament may take over the subject. Such a resolution of Rajya Sabha remains in force for a period not exceeding one year. (iv) The approval of Rajya Sabha is essential for the continuance of the proclamation of the emergency beyond a period of two months. (v) A judge of the Supreme Court or a High Court is removable for misbehaviour or incapacity on the address passed by both Houses of Parliament. Here too, majority of the total and a two-thirds majority of members present and voting in each House, is needed. (vi) As already stated, the Vice-President of India is elected by both the Houses of Parliament, assembled at a joint session. He is removable by a resolution of the Rajya Sabha and agreed to by the Lok Sabha.

1.5. CONCLUSION

On a critical analysis of the powers and functions of the Rajya Sabha, we can easily conclude that like House of Lords in England, Rajya Sabha is not only a second but a secondary chamber as well. It plays a second fiddle to the Lower House. Neither can oust the Council of Ministers from office nor can it veto the legislation. It can delay the non-money bills for a period of six months and money bills for fourteen days only. It does not represent the voice of the States since unlike that of typical federations, it does not accord equal representation to the States.

But with all this, its position is not as pitiable as that of the Canadian Senate, which is dubbed as the most impotent upper chamber in the world. The framers of our constitution were keen to have a revisory and delaying chamber. In the words of Gopalaswami Ayyangar, the second chamber was created, "to hold dignified debates on important issues and to delay legislation which might
be the outcome of the passions of the moment." Its services as revisory chamber have been really commendable. It had besides, the unique privilege of being presided over by Dr. S. Radhakrishnan, the philosopher-statesman of great international repute. Since it consists of comparatively more aged, more experienced and more judicious statesmen than the members of the Lower House, it is expected that the Rajya Sabha will establish itself as a reservoir of accumulated knowledge, ripe practical experience and worldly wisdom. Prof. Jatindra Ranjan remarks on the position of Rajya Sabha: "It is not at all too powerful a body like the U.S. Senate nor only a dilatory body like the British House of Lords and the French Council of Republic. Virtual veto power over legislation like that of the Japanese system has not been accepted in our constitution. It is given only substantial revisory power not equal powers over legislation. It does and should not require more than that because in democracy, popular will should ultimately prevail. The Rajya Sabha is not only the best constituted second chamber in the world, it is also the most well-balanced in its power to fit in modern democracy and to serve the constitutional purpose which a second chamber in democracy is required to perform in the best possible manner." In fact, second chamber can best fit in our democracy, if it guards against "inertia, obscurantism, reaction and superstition."

§ 10. LOK SABHA (The House of the People)

Composition. The Lower House of the Parliament is the House of the People, now termed as Lok Sabha. It is a popular chamber and corresponds in many respects to the British and Canadian House of Commons. In fact, Lok Sabha is the real centre of gravity. Article 81 of the constitution fixes its maximum strength at 520. Its members are directly elected by the people, on the basis of universal adult franchise from territorial constituencies earmarked in the units. As in England, the country is divided for the most part, into single member constituencies. Though double-member constituencies also exist. Triple-member constituency is a rarity. According to the first Delimitation orders out of 401 constituencies, 314 were single-member, 86 double-member and 1 triple-member constituencies. According to Article 81, the number of seats to each State is so allotted that the ratio between the members assigned to each territorial constituency and its population remains the same as far as practicable throughout the country. The Representation of the People Act 1950, as modified by the States Reorganization Act, 1956 distributes seats in the Lok Sabha as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>43</td>
</tr>
<tr>
<td>Assam</td>
<td>13</td>
</tr>
<tr>
<td>Bihar</td>
<td>53</td>
</tr>
<tr>
<td>Gujarat</td>
<td>22</td>
</tr>
<tr>
<td>Kerala</td>
<td>18</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>36</td>
</tr>
<tr>
<td>Madras</td>
<td>41</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>44</td>
</tr>
</tbody>
</table>

Mysore ... 26 Tripura ... 2
Orissa ... 20
Punjab ... 22 Jammu & Kashmir ... 6
Rajasthan ... 22 Delhi ... 5
Uttar Pradesh ... 86 Himachal Pradesh ... 4
West Bengal ... 36 Manipur ... 2

It may however be said that no State will have more than one member for every 500,000 of its population.

The representatives of the State of Jammu and Kashmir are appointed by the President on the recommendation of the State legislature. Not more than twenty members are to represent the union territories chosen in such a manner as Parliament by law provides. According to Article 331, the President can nominate two members to the Lok Sabha to represent the Anglo-Indians if, in his opinion, they are not adequately represented. Though originally, the nomination of the Anglo-Indians by the President was to extend to 1960, the eighth amendment Act, further extended it to another ten years.

At present, the Lok Sabha consists of 509 members out of which 500 members are directly elected from the states (including six from Jammu and Kashmir appointed by the President on the recommendation of the legislature of the state) and the four Union Territories of Delhi, Himachal Pradesh, Manipur and Tripura. Nine members are nominated by the President to represent Anglo-Indians the areas specified in Part B of the Sixth schedule; the Union Territories of the Andaman and Nicobar Islands; the Laccadive, Minicoy and Adenive Islands, Goa, Daman and Diu—formerly Portuguese enclave and Dadra and Nagar Haveli.

Qualifications for Membership of the House of the People (Lok Sabha). Candidates for the membership must be citizens of India and not less than 25 years of age and are required to possess such other qualifications as Parliament may by law, lay down. No person can be a member of both the Houses of the Parliament or of a House of the Parliament and a state legislature at the same time.

Prof. K.T. Shah, however proposed that fixing of certain minimum qualifications was essential. He said, “Unless the members themselves are capable of appreciating policies and making constructive suggestions and scrutinise the ordinances, they will not be able to discharge the responsibilities properly and the principle of ministerial responsibility to the House would only be a name.”

Disqualifications for membership. A person shall be disqualified to be chosen as or to be a member of either House (i) if he holds any office of profit under the Government of India or of the States except that of a minister of the Union or State governments, a Deputy Minister or a Parliamentary Secretary or a Parliamentary

1. India 1952.
2. Ibid.
3. Article 101 (1) and (2).
under-secretary. This immunity was extended in 1951 to members of Enquiry Committees, Boards, Corporations or Commissions receiving payments not exceeding those paid to them as members of Parliament. In 1954, the Vice-Chancellors of Universities, Deputy chief whips of Parliament, officers of National Cadet Corps and the Territorial Army also were granted this immunity, (ii) if he is declared by a competent court as of unsound mind, (iii) if he is an undischarged insolvent (iv) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under acknowledgement of allegiance or adherence to a foreign state, (v) if he is so disqualified by or under any law made by Parliament. According to Article 101 (4) a member who has been absent without permission for sixty days may be disqualified to hold membership of the House and his seat may be declared vacant.

Qualifications of a voter. The elections to the Lok Sabha are conducted on the basis of universal adult suffrage. Every citizen who is 21 years or more of age is entitled to be a voter provided that he has been a resident for not less than 180 days in the constituency. An alien, a person of unsound mind, a criminal or a person not fulfilling the prescribed residential qualifications within the constituency is not entitled to vote.

No person can be debarred from this right to vote merely on the ground of religion, race, caste, or sex.

Election. Detailed provisions were made by Parliament by law mainly by the Representation of the People Act (XLIII of 1951). All matters pertaining to superintendence, direction and control of elections were placed under an Election Commission appointed by the President. The Commission can requisition from the President, such staff as is deemed necessary for conducting elections. Disputes regarding elections to the Rajya Sabha are settled by tribunals appointed by the Election Commissioner. The decision of the tribunal is final. No appeal can lie against its decision except to the Supreme Court by its special permission.

An election can be challenged only by an election petition presented in the prescribed manner under the law and the rules either by the candidate in the said election or any voter at it. The petition must contain the material facts and state a list of corrupt and illegal practices alleged, and also the name of the parties alleged to have committed them. The petitioner is required to deposit a sum of Rs. 1000 in respect of the petition and the receipt or challan for it must be enclosed.

II. TENURE OF THE HOUSE

The term of the House is five years counting from the date of the commencement of its first session. The President may, however, dissolve it sooner. But while a proclamation of emergency is in operation, the life of the House may be extended by law of Parliament for one year at a time, but dissolution must come within six months of the expiry of the proclamation. The life of the House
was originally fixed at four years by the Union Constitution Committee but the Drafting Committee changed it to 5 years, because "it considers that under the parliamentary system of government, the first year of a minister's term of office would generally be taken up in gaining knowledge of the work of administration and the last year would be taken up in preparing for the next general election and there would thus be only two years left for effective work which would be too short a period for planned administration". According to Dr. V. K. Rao "This explanation is as unsatisfactory as it is unnecessary. There is no particular difference between four and five years but we certainly do not accept the implication of the committee that in a parliamentary system, every minister has to undergo a period of apprenticeship during which he picks up administrative experience."

§ 12. OFFICERS OF LOK SABHA

The Speaker. The institution of speaker is in fact a relic of the past. It dates from 1921. Sir Frederick Whyte was the first President of the Central Legislative Assembly. He was nominated by the then Governor-General for a period of four years. The foundations of procedure and conduct was laid during these years under the able guidance of Mr. Whyte who himself was an embodiment of parliamentary traditions being an important member of the House of Commons. Shri Vithalbhai Patel was the first Indian President of the Central Legislative Assembly. He held the office with distinction from 1925 to 1930 and surpassed all his successors (till 1946) in asserting and consolidating the independence of the chair. He claimed "As President elected by the Assembly, I am responsible to the Assembly and to no other authority." The succeeding Presidents during the 1930's and 1940's maintained the gains which Patel had made. "The period of consolidation gave way to a new period of development only in 1946 with the election of Mr. Mavalankar."

Speaker under the New Constitution. The House of the People is presided over by the Speaker who is elected by the House from among its own members. He vacates his office if he ceases to be a member of the House. He may resign if he so chooses or may be removed on a resolution passed by a majority of all the members of the House. However, fourteen days notice must be given for passing such a resolution. When the House is dissolved, the speaker is not to vacate his office, until immediately before the first meeting of the House.

The constitution provides that the speaker is to receive such salaries and allowances as are determined by the Parliament. The

1. Draft Constitution, p. 36.
4. Ibid., p. 266.
Speaker gets Rs. 3000 p.m. as salary. His salary, however, is charged on the Consolidated Fund.

**Position of the Speaker.** The office of the Speaker has been held in great esteem throughout the history of about thirteen years of the dawn of new era in India (i.e. since 1930). The esteem, which the office of the speaker commands, is reflected in the observation of our Prime Minister on the occasion of the unveiling of the portrait of the late V.J. Patel on March 8, 1948 in the Constituent Assembly of India. He said, "Now, sir, on behalf of the government, may I say that we would like the distinguished occupant of the chair now and always to guard the freedom and liberties of the House from every possible danger, even from the danger of executive intrusion. There is always a danger.........from a majority that it may choose to ride rough-shod over the opinions of a minority, and it is then, that the speaker comes in to protect each single member or each single group from any such unjust activity by a dominant group or a dominant government. The speaker represents the House. He represents the dignity of the House, the freedom of the House and because the House represents the nation in a particular way, the speaker becomes the symbol of the nation's freedom and liberty. Therefore it is right that that should be an honoured position, a free position and should be occupied always by men of outstanding ability and impartiality."

Within thirteen years of his existence, conventions of abiding nature have already been established. The detachment and objectivity exhibited by the speaker has enabled him to become a symbol of the dignity and independence of the House as well as the guardian of the rights and privileges of its members. Only once his impartiality was challenged when a motion of no confidence was moved against the speaker (Mr. Mavlankar) on December 18, 1954 by the opposition on the grounds that he has ceased to maintain an impartial attitude necessary to command the confidence of all the sections of the House. The motion was however rejected.

In fact, we were keen to follow British practice. The British tradition is that the speaker is returned uncontested at the general elections. Moreover, they respect the impartiality of the chair to such an extent as the speaker of a previous Parliament is continued in his high and responsible office by a succeeding Parliament even though another party comes in power. But the British speaker gets a sentence of exile when he occupies this august office. Both in the House as well as outside it, he severs his party affiliations. The position of Indian speaker is however a bit different. The speaker of Indian Lok Sabha is neutral in politics in the House but he does not cease to be a party man outside the House. India's first-speaker Shri G.V. Mavlankar's statement makes this point crystal clear. "Though it is conceded that the speaker in India should stand apart from party strife, it is maintained that he should not keep himself entirely aloof from politics as the British speaker does. Many of the
speakers have been active politicians and have participated in the struggle for independence. They represent an important section of the active members of that party. They are connected with a number of nation-building activities and it will not be possible for the speakers to withdraw themselves entirely from all political life especially in view of the necessity of personnel as also the consolidation of democracy. Though the speakers may continue to be members of their parties they should not attend party meetings... nor should they actively participate publicly in controversial matters that are likely to come up for discussion before the House. As far as possible, they should keep their minds open without being soaked with the view of the party or the important members thereof... It is necessary that while presiding in the House, his views should not come in for discussion as to force him either to sit silent and allow a misunderstanding grow or to enter into discussion and take sides. We feel, however, that in the course of time, we shall be able to evolve from this a sound convention on the line of the British speaker."

Keeping in view, the fact that the speaker will not lose his party colour on his getting elected as a speaker, he cannot get elected unopposed. Shri Mavalanker made this point also very clear when he maintained, "With the present state of political consciousness of public life in India, it is too much to expect that people with different ideologies will all respect the convention of not contesting the election of the speaker and it is this aspect which very seriously affects the adoption in toto of all British conventions in respect of the office of the speaker." Mr. Ananthasayanam Ayyangar, the former speaker of Lok Sabha, in his inaugural address at the conference of the presiding officers of legislative bodies held at Madras however exhorted the minorities to follow the British convention of electing the speaker unopposed. "I hope, that are long a convention may be established that the speaker's seat ought to be left contested. Sometimes or other, that convention has to be started. It may be a personal note but whether it is personal or otherwise in the interest of the opposition parties themselves I would urge upon the development of this convention. In practice, I have found that it is the opposition that suffers by throwing the speaker into the hand of the majority party."

From the above observations of two great dignitaries, it can safely be concluded that the Indian speaker may not be partisan but still remains a party man and is the choice of his party. As such, the chair in our country cannot attain that pristine glory which hovers round its prototype in England. Motion of no-confidence against the speaker on December 18, 1954 is a witness to this fact.

§ 13. POWERS OF THE SPEAKER

He possesses practically the same powers as the speaker of the

House of Commons of England. The details of the powers of the Speaker are furnished in the Rules of Procedure and Conduct of Business in Parliament (1950) under heads mentioned below. (i) He allocates, in consultation with the leader of the House, time for discussion of matters mentioned in the President’s address; prescribes the form in which amendments to the motion of thanks to the address may be moved; fixes a time limit for speeches on the address. (ii) He determines the order of business in the House in consultation with the leader of the House. (iii) He decides the admissibility of questions and can disallow questions not conforming to the rules. (iv) His consent to a motion of adjournment to discuss a matter of urgent public importance is essential. He allocates time for speeches on such a motion. (v) No motion to introduce a bill is necessary, if the Speaker orders its publication in the Gazette. (vi) He appoints the chairmen of Select Committees from among the members of the respective committees. (vii) His consent is necessary for a motion to adjourn the debate on a bill. (viii) He decides the admissibility of a resolution. (ix) He prescribes a time-limit for speeches on the budget and takes all the necessary steps for the timely compilation of all financial business. (x) He is the communicating channel between the President and the Parliament. (xi) He recognises the members and decides the order of speeches. (xii) Members address him. They ask questions from the other members, through the Speaker. (xiii) He decides points of order. His decision is to be final. (xiv) He preserves order and decorum in the House. (xv) He can order any member guilty of disorderly conduct to withdraw. He may name a member for suspension, if the latter disregards the authority of the chair or obstructs the business of the House. Such an eventuality arose on April 8, 1960 when Shri Arjun Singh, a socialist member of the Lok Sabha, shouted in the House: “You send for your marshal. I am not going to withdraw.” The services of the Marshal and two other members of the Watch and Ward Staff were requisitioned to lift bodily the honourable member. (xvi) He may adjourn or suspend business in case of grave disorder. (xvii) He puts questions to vote and announces the result. (xviii) He regulates admission of the strangers and press correspondents to the galleries and other precincts of the House. As a matter of fact, the visitors and the correspondents after their admission to the House are subject to his orders and discipline. In case they violate his orders, he can stop their admission for a definite or indefinite period. If they are guilty of contempt of House or its members or the committees, he cautions them or even commits them to prison. Summons to offenders are issued in his name. (xix) He may order the expunging of a word or words used in the debate from the proceedings of the House, if in his opinion they are defamatory, indecent, unparliamentary or undignified. (xx) When the Speaker rises, others must sit down and must not leave, when he addresses the House. Apart from these powers mentioned in the “Rules of Procedure and Conduct of Business in the Parliament”, the Speaker is
equipped with a few more powers of far-reaching importance. (xx) He is the guardian of the privileges of the House and the saviour of the interests of the minorities. (xxi) He shields the House against the encroachments of the government. If the ministers refuse to answer questions or circumvent the answers or do not furnish sufficient information, the members of the House turn to the Speaker to safeguard their rights against the ministry. (xxii) He is the ex-officio chairman of some of the committees of the House such as Rules Committee, the General Purposes Committee and the Business Advisory Committee. In the words of Shri S.L. Shahdher, "The Speaker is the supreme head of all Parliamentary Committees set up by him or by the House. He issues directions to the chairman in all matters relating to their working and the procedure to be followed. He guides them holding periodical consultations with the chairmen and members. The Speaker reads all reports of the committees and keeps in touch with their activities. All difficulties and matters of importance are referred to him for guidance and advice." In the words of Morris Jones, "The working of the whole range of Parliamentary Committees...is conducted under the guidance of the Speaker who in some cases has issued special directives and who is on every occasion the person to whom a worried committee chairman would go for advice." (xxiii) Like the Speaker of the House of Commons, he certifies whether a Bill is a Money Bill or not. (xxiv) While questions are decided in the House, he is not entitled to vote in the first instance, but he exercises a casting vote in case of tie. (xxv) He endorses or certifies a Bill before it is transmitted to the Rajya Sabha or presented to the President for his assent. (xxvi) He is empowered to allow any member to speak in his mother tongue if he cannot adequately express himself or herself either in Hindi or English. (xxvii) He is to receive all petitions, appeals, messages and documents addressed to the House. Moreover, the orders of the House are executed through him. (xxviii) If at any time, there is no quorum in the House (1/10th of the total membership of the House) it is the duty of the Speaker either to adjourn the House or to suspend the meeting until there is a quorum.

It is quite evident from the enormity of powers entrusted to the Speaker that his job is really of a very great responsibility. Hence, the Speaker must be endowed with remarkable power to know the collective mind of the House. Eternal vigilance is necessary on his part to maintain his position. He, in fact, is the symbol of the authority of the Lok Sabha, hence he is to see that the dignity and prestige of the House is not impaired in any way.

In the words of Mr. M.N. Kaul, Secretary Lok Sabha, "Such is the important position which the Speaker holds and although

normally he just presides, watches and controls the debates, in any crisis his powers which have a political significance come into being. The two powers which we think of every day are very vital: One is the power to admit notices of questions, amendments, actions etc., and the other is to enforce strictly the Rules of Procedure which are a guarantee for the minority. All these seem normal things, but it is in a crisis that the power of the Speaker and his influence on the parliament is really gathered up. 21

§ 14. THE DEPUTY SPEAKER

The Deputy Speaker is elected in the same manner as the Speaker is elected by the House. He is removable from the office in the same manner. When he sits in the seat of the Speaker, he is equipped with all the powers of the Speaker. When he is appointed as a member of a Parliamentary Committee, he automatically becomes its Chairman. As a Deputy Speaker, he enjoys the privilege of being present at any meeting of any committee if he so chooses and also can preside over its deliberations. His rulings regarding matters under discussion are generally final. In the interest of uniformity in practice, the Speaker may however guide him. In case of doubt, he may reserve any matter for the rulings of the Speaker.

It may however be pointed out that the Deputy Speaker is otherwise like any ordinary member when the Speaker is in the chair. He may participate in the debates, maintain his party loyalties and exercise his vote on propositions before the House as any ordinary member. In the words of Shri M.V. Pylee, "It seems desirable, however, that he keeps himself aloof from controversies and narrow partisan activities. This will enable him to cultivate a mental climate of impartiality and exercise it whenever he presides over the House." If Deputy Speaker severs his party affiliations, he may be elected unanimously by the House whenever the speakership falls vacant.

§ 15. PANEL OF CHAIRMEN

In the absence of the Speaker and the Deputy Speaker, one of the members of the House out of a panel of six chairmen nominated by the Speaker, presides. When the Chairman presides over the deliberations of the House, he is vested with all the powers of the Speaker. It is gratifying to note that a healthy convention has developed by which the Speaker nominates the members on the panel of chairmen irrespective of their party colour. In fact, some of the members of the Panel are nominated from the opposition benches.

§ 16. SECRETARY AND STAFF

Each House of Parliament is authorised to have its own Secretariat Staff and regulate its conditions of service. Provision for such a

secretariat independent of the executive and responsible to the
Speaker alone was made to maintain the independence of the House
and keep up the dignity of the Speaker. The Lok Sabha Secretariat
is headed by a secretary who discharges various administrative and
executive functions connected with the House. He, in fact, is an
adviser to the House, the Speaker, the Deputy Speaker, its com-
mittees and individual members. While discharging his duties, he
is not concerned with the party affiliations of the members of the
House or the political cross-currents within the House. The strength
of the Secretariat members is over 250 and is organized in various
branches.

§ 17. FUNCTIONS OF LOk SABHA

House of the People. The word "function" is a large word and
includes both powers and duties."

The powers and functions of the Lok Sabha can be broadly clas-
sified under the following heads:

Legislative. All laws require the consent of both the Houses of
Parliament and formal consent of the President of India. A non-
money Bill can be initiated in any of the two Houses. In case the
Houses cannot come to an agreement, the President may summon a
joint session of both the Houses of Parliament. If the Bill is passed
by the majority of the total members of the Houses concerned in a
joint session, it is deemed to have been passed by both the Houses
of Parliament. Since the membership of Lok Sabha is almost
double of that of Rajya Sabha, the will of the former is likely to
prevail. Thus supremacy of Lok Sabha over Rajya Sabha is quite
obvious.

Financial. Lok Sabha's control over purse is an undisputed fact.
A Money Bill must start its course from Lok Sabha. When passed
by the Lok Sabha, it is to be transmitted to the Rajya Sabha for
its recommendations. The constitution, however, requires the
Rajya Sabha to return it to the Lok Sabha with its recommendations
within a period of fourteen days from the date of receipt of the Bill.
If the Lok Sabha accepts those recommendations, the Bill is deemed
to have been passed by both the Houses of Parliament.8 If the
amendments made by the Rajya Sabha are not acceptable to the
Lok Sabha, the Bill is deemed to have been passed by both the
Houses of Parliament in the original form.4 If a Bill is passed by
the Lok Sabha and while transmitted to the Rajya Sabha is not
returned by the latter within a period of fourteen days, it is deemed
to have been passed by both the Houses of Parliament after the
expiry of the said period.5 It is quite evident that the Rajya

2. Article 109(2).
3. Article 109(3).
4. Article 109(4).
5. Article 109(5).
Sahba possesses power of delaying a Money Bill and that too for fourteen days only. In the financial field, Lok Sabha is in a way more powerful than the House of Commons, since a Money Bill passed by the House of Commons in England can be delayed by the House of Lords for a period of one month. Moreover, Lok Sabha has the exclusive privilege of authorising expenditure. The demands for grants are submitted to the Lok Sabha alone.

Control over the Executive. In a parliamentary form of government, the most important function of a Lower House, is "Control over the Executive". The Lower House of our Parliament is not an exception. According to Article 75(3), the Council of Ministers is collectively responsible to the Lok Sabha. This means, the ministry must tender resignation if a vote of no-confidence is passed against it by the Lok Sabha. There are other effective methods also adopted by our Lower House, like that of other Lower Houses in parliamentary forms of government, to control the Executive. The ministers in charge of various departments can be interrogated and censured by the members of the House. Bills introduced by the government may be rejected by the House. Adjournment motions may be moved to criticise the government or raise discussions on matters of vital importance for short duration. A resolution moving a token cut in the budget or the grant to a particular ministry may be passed, reflecting lack of confidence in the ministry by the majority in the House. Bills introduced by the ministry may be rejected by the House. The opposition in the Lok Sabha can haul up the government by asking questions and supplementary questions. Opposition to the government reaches climax after the address of the President to the Parliament is made. The President's address is the embodiment of governmental policy in the ensuing year, hence its various aspects are thrashed out by the opposition in the Lok Sabha.

Electoral functions. Article 54 of the constitution vests electoral functions with the Parliament. The elected members of both the Houses of Parliament constitute a part of the Electoral College for the election of the President. Article 63 provides for the election of the Vice-President by the members of both the Houses of Parliament at a joint session.

Redress of grievances and discussion of public questions. The Parliament possesses unlimited power of discussing and debating public questions. This is done usually on the occasion of the inaugural and annual address by the President. It is empowered to review and criticise the work of the different departments of state during the discussion on the estimates of expenditure, the appropriation and revenue bills. Through such criticism and review the members of the House can get their grievances redressed.

Miscellaneous Powers. (a) The Lok Sabha together with the Rajya Sabha possesses the power of amending the constitution.
(b) The Lok Sabha along with the Rajya Sabha, has the power to move for the removal of judges of the Supreme Court and the High Courts on the ground of proved misbehaviour and incapacity by an address supported by a 2/3rd majority in each House.

(c) The Lok Sabha participates in the impeachment of the President of India. Either of the two Houses of the Parliament frames the charges and the other House sits as a court of trial.

(d) The resolution passed by the Rajya Sabha for the removal of the Vice-President is subject to ratification by the Lok Sabha as well.

(e) Proclamation of emergency issued by the President needs approval of Lok Sabha along with Rajya Sabha for its continuance.

(f) Lok Sabha, in collaboration with the Rajya Sabha, must devise the system of effectively controlling the official bureaucracy by jealously maintaining its purity and the high standard of its ability and by making it more responsible to the people at large.

(g) The House serves as a public forum. "The potential virtue of a public forum is two-fold. First, it can benefit the spectators who may learn by watching. Second, it can improve the participants who may, at best, find reasons with which to clothe the interests they represent." The House, in fact, is the mirror and educator of popular feeling. The impact of Parliament is more than political. The habit of orderly discussion, once established, helps to set the tone of public life in general.

It is quite evident from the foregoing account of the functions of the Lok Sabha that it is dominant in the field of legislation and is the sole master of finances. It makes and unmakes the Cabinets. Its power of granting supplies enables it to control the entire administration of the Union. As the direct representative body of the teeming millions, it can act as their spokesman and serve as custodian of their interests. "If the Parliament is the supreme organ of the State, the Lok Sabha is the supreme organ of its Parliament. In fact, for all practical purposes, it is the Parliament."

§ 48. RELATION BETWEEN TWO HOUSES

There is no denying the fact that the participation and collaboration of both the Houses of the Parliament is indispensable for all legislative activities yet the constitution has recognised superiority of the House of the People (Lok Sabha) over the Council of the States (Rajya Sabha) in some specific aspects.

(i) Control over Executive establishes superiority of the House over the Council, beyond any doubt. As already discussed in the

preceding pages, the Council of Ministers is collectively and individually responsible for their actions to the House of the People. The Council of the States is, no doubt, empowered to seek all sorts of information regarding matters connected with the government’s activities and raised on its floor, but it cannot pass a motion of censure against the government of the day. “The confidence of the Parliament means the confidence of the House of the People (Lok Sabha) and the responsibility of the Executive means responsibility to the House of the People.”1 (ii) The power of the Council with regard to Money Bills is however most insignificant. Every money bill is to be initiated in the Lower House. The Upper House can detain the Money Bill only for a period of fourteen days. Though the Council is not altogether prevented from scrutinizing Money Bills, yet its power is only of an advisory type. The House in fact has the final say in the financial matters. (iii) As regards the Non-Money Bills, the powers of the two Houses are co-equal and co-ordinate. Even in legislation concerning constitutional amendments, the extent of the Council’s power is the same as that of the Lower House. The Council is fully authorised to amend or reject a Bill passed by the Lower House. If the House does not approve of the amendments effected, or rejection made by the Council, the contested measure is placed before a joint session of both the Houses and passed by a majority vote. Since the total membership of the House is more than double of that of the Council, the will of the former is likely to prevail. “Thus unlike its counterpart in the U.S.A., namely the Senate, the Council of States, has comparatively less powers.”2

A cursory perusal of the above-quoted facts, makes it crystal clear that the constitution clearly recognizes the supremacy of the House over the Council in certain matters but not in all. The co-equal power of the Council on the constitutional amendment is of great importance. It reflects that the constitution is not amendable unless the Council, as the custodian of the interests of the individual states composing Indian Union, agrees to such a change.

Besides, two other provisions confer upon the Council powers in its own right and to the exclusion of the House. Under Article 249, by majority of its total and 2/3rd of its members present and voting it is empowered to declare that a particular matter included in the State list is of national importance and hence Parliament should make laws regarding that subject. On the passing of such a resolution, Parliament is legally authorised to make laws with regard to that subject for the whole or any part of India for a period of one year.

Article 312 vests with the Council an exclusive power of setting up of all-India services by a resolution supported by not less than 2/3rd of its members present and voting when such a resolution is passed by the Council. Parliament by law may provide for the

2. Ibid., p. 378.
creation of one or more all-India services common to the Union and
the States and also regulate the recruitment and the conditions of
service of persons appointed to any such service.

Thus, in both these cases, the House comes into the picture only
after the Council has acted. In other words, the House does not
share the power of the Council under the above-mentioned two
contingencies. The Council is thus not merely an ornamental
structure or an unessential adjunct. It was not designed to play a
second fiddle to the House. Its small and compact size, its permanent
character, its having a number of seasoned elder statesmen and its
representative character would enable the Council to establish itself
not only as a respectable but also useful and influential body. But
it would not be in a position to claim parity with the House so far
as financial and executive powers are concerned.

§ 19. IS PARLIAMENT A SOVEREIGN BODY?

No doubt the Parliament in India is equipped with the same
powers and functions as its counterpart in England, yet the Indian
Parliament is not as sovereign as the British Parliament. In
England, the sovereignty of Parliament is an undoubted legal fact.
Dicey’s conception of sovereignty of Parliament is resolved into
three propositions: (a) There is no law which the Parliament cannot
make; (b) There is no law which the Parliament cannot repeal or
modify; (c) There is no distinction between laws which are funda-
mental or constitutional and laws which are not. If this is to be
taken for a criteria of sovereignty of Parliament, the Indian
Parliament is not a sovereign body. The laws it is empowered to
pass and repeal, are limited by the constitution. Its powers are
limited by the various administrative details—Part III of the
Constitution (i.e. Fundamental Rights) and the State list in Schedule
VII. This limitation is implemented by entrusting power of judicial
review to the Courts. In this respect, our Parliament is more akin
to the American Congress. Moreover, the Indian Parliament is not
fully a Constituent Assembly unlike that of British Parliament,
which is both a Constituent Assembly and a legislative body. There
is definitely a distinction between ordinary laws and constitutional
laws in our country. In some of important specified matters,
Parliament alone cannot effect an amendment. Majority of at least
half of the State legislatures must approve such an amendment.

Those who profess that Indian Parliament is a sovereign body
interpret sovereignty in a different way. They emphasise that the
Indian Parliament is free from all external control, possesses supreme
authority in the sphere allotted to the Union and is free to do any-
thing it deems fit. Of course, our Parliament is not tied down by
any other device of Referendum or Initiative. But realistically
speaking, our Parliament (like that of British Parliament) is bound
down by mandates.

Moreover, the Indian Parliament is a creature of the constitution
unlike that of British Parliament. Thus it is apt to be bound by its provisions. In England, the Parliament has a de facto control over the king—the de jure sovereign. Its powers are co-extensive with those of sovereign himself, whom it controls. The Indian Parliament, on the other hand, enjoys authority and possesses powers by virtue of the constitution and not because of its control over the President—the creation of the constitution. The Indian Parliament, therefore, has a vast but not unlimited authority. It is like a "Leviathan in Chains". It exercises its powers within the limits laid down by the constitution. Hence it is not sovereign in character, in the sense the British Parliament is.

§ 29. THE LEGISLATIVE PROCEDURE

Modern society is known for its complexity. Laws which govern it have necessarily to be complex. A law-maker is apt to be influenced by circumstances that environ our society. He has to look to the future, while being rooted in the past. All this adds to the complexity of not only laws, but also law-making process. The legislative process presented in our constitution is a witness to the above fact.

The constitution lays down that bills other than Money Bills may originate in either House. Money Bills must be introduced in the Lower House. The Council of States may make recommendations within a period of fourteen days. The House may reject them and the Bill may yet be considered passed. In the case of other than Money Bills, disagreement between the two Houses is resolved by a joint session of the Houses at which the Speaker of the House of the People normally presides. The procedures in both the Houses, however, are identical. A Bill is required to be read three times in each House, before it is deemed to have been passed by the said House. A Bill may be introduced by a minister or a private member. In the former case, it is termed as a government Bill whereas in the latter case, a Private Member's Bill. The procedures in both these types are identical. Majority of the Bills, particularly of important and controversial nature, are introduced in the Parliament by a minister.

How legislative proposal emerges? As soon as a legislative measure emanates, the ministry concerned sets at work. It studies its financial, administrative, political and other such implications and even consults experts, other concerned ministries and state governments. Legal and constitutional aspects of the proposed legislation are discussed with the Attorney General of India and the Ministry of Law. After careful scrutiny of the proposal, the Ministry concerned prepares a Memorandum for the entire cabinet. The Cabinet may discuss it further and accord its approval. It is fully authorised to refer it to a standing committee or an ad hoc committee, in order to give it a detailed consideration. When the cabinet finally ratifies the said proposal, the sponsoring ministry passes it on to an official draftsman who puts the proposal into the form of a Bill. The draft of the bill is further examined by the concerned ministry. When
the finishing touch is given to the draft, the bill is ready for introduction and first reading.

**Introduction and First Reading.** The first stage of a Bill in the House is introduction. A copy of the bill is presented to the Secretariat of the House, in which it is initiated. The Bill is included in the list of business on a date selected by the Speaker. The Speaker however is expected to fix up the date, after giving every consideration to the desire of the member in charge of the Bill, the urgency of the proposed legislation and the printed copies of the Bill available. On the date so fixed, the member in charge stands at his seat and says, "Sir, I beg to move for leave to introduce the Bill......" The Speaker thus puts the question "Motion moved; that leave be granted to introduce the Bill......" The House, generally expresses approval by voice. The Speaker rises again and says, "Sir, I introduce the Bill......" The motion for leave to introduce the Bill is, in fact, a formality. By convention, no debate takes place at this stage. On certain occasions, the convention may be flouted. The introduction of Preventive Detention Bill on 23rd of November 1954 was opposed on the ground that it was *ultra vires* of the constitution. Introduction of some Bills has been opposed because the proposed legislation was outside the competence of the House. If introduction of a Bill is opposed, the Speaker allows one brief explanatory statement by the sponsor of the Bill and one by the member opposing it. If the Bill is opposed on the constitutional grounds, the Speaker may allow a full discussion. The Attorney General may also participate in the discussion.

When a Bill has managed to seek introduction in the House, it is published in the Gazette of India. The Speaker may on request from a member authorise the publication of a Bill in the gazette before the motion for leave to introduce has been made. In such a case, the Bill may not have to pass through the Introductory stage.

**Second Reading.** Once the Bill is introduced, the subsequent stages can follow at any time. Normally, there is an interval of two days between the introduction and second reading of a Bill. The second reading can, however, take place immediately after the introduction if, according to the Speaker, it is of an urgent nature. The second reading of a Bill is generally divided into two stages.

During the first stage, the member in charge of the Bill makes one of the four motions: that it be taken into consideration; or that it be referred to a joint committee of the Houses with the concurrence of the Council; or that it be circulated for eliciting opinion on it. If the motion for consideration is moved by the sponsor, an amendment embodying one of the other alternatives may be moved by any other member. If the sponsor moves for reference to a committee, an amendment for circulation of Bill among the public may be moved. If the motion for the circulation of a Bill is carried, the State governments are directed by the secretariat of the House to publish the Bill in the State Gazettes
and entertain opinions on the bill from recognized associations, interested individuals and local bodies. The opinions must reach by
a date prescribed in the motion for circulation.

2nd Stage. After receipt of these opinions and their circulation in
synopsis to members of the House, the member in charge moves that
the Bill be referred to a Select or a Joint Committee. Of course, in
exceptional circumstances, with the permission of the Speaker, the
bill can be taken up for consideration without its reference being
made to a select or joint committee. The discussion at this stage is of
a general nature. The principles of the bill and its provisions may be
discussed generally but the details of the bill shall not be discussed
further than is necessary to explain its principles. Amendments to
the Bill cannot be moved at this stage.

Committee Stage. The practice in the Indian Parliament is that
only a few bills are referred to Select Committees and even fewer to
Joint Committees. This procedure is usually adopted only with
bills of exceptional importance or unusual complexity. The Select
Committee generally is composed of 20 to 30 members though the
Select Committee on the Estate Duty Bill, 1952 consisted of 35
members. The names of the members of the Committee are
included in the motion itself. Each committee is freshly chosen for
each occasion. According to the prevailing practice, the Minister
for Parliamentary Affairs, usually allocates 1/4 of the places
to the opposition and selects the rest of the members after
consultation with the Party's Conveners, from those of his own
party. The Chairman is appointed by the Speaker from the majority
party. If the Deputy Speaker is a member of Select Committee, he
automatically assumes Chairmanship of the Committee. The
conduct of the Committee is in the hands of the Chairman, who is to
work according to the detailed directions of the Speaker and the
rules of the House. The Committee concentrates its attention on
the details and any amendments that may be moved in the
Committees. Select committees are entitled to appoint sub-
committees to investigate particular points. They can call for the
attendance of persons and the production of requisite papers. The
proceedings are confidential. The press and the public are not
allowed to attend. The officials of the ministry concerned however
can participate in order to supply information and explanation. As
soon as the reports are presented to the House, they are published.
In certain cases, the evidence and the proceedings during the
examination of witnesses are also published. If the disclosure of a
particular document is detrimental to the interest of the State, the
government may decline to produce it before the Committee.

In fact, the Committee Stage is the most important stage in the
bill. Even the 'commas' and 'semicolons' are hammered out.
Amendments to the bill can be proposed at this stage provided that
they conform to the general principles of the bill. If the Committee

1. Rule 75(1).
wants to effect an amendment of substantial nature, it must get the bill re-circulated.

Report Stage. The report of the Committee duly signed by its chairman is presented to the House, by any member of the Committee or the Chairman himself. The report and the amended bill are then printed and the copies are made available to the members of the House. The member in charge of the bill may move, that the bill as reported by the Select Committee, may now be taken into consideration or that the bill as reported, may be recommitted to the Select Committee or to a different committee with or without instructions or that the Bill as reported, be circulated or re-circulated for eliciting public opinion. If the motion to consider the bill, as reported by the Committee, is carried, the bill is taken up for consideration clause by clause. Each clause is then discussed and amendments are proposed. The Speaker determines the admissibility of amendments and selects amendments to be discussed. Each amendment and each clause is put to the vote of the House. If the amendments are accepted by a majority vote, they constitute the part of the bill.

Third Reading. The final or third reading stage of any bill is reached only after the clauses, the schedules if any, the enacting formula, preamble if any and the title of the bill have all been put before the House and agreed to by it. The third reading in fact is the motion, that the bill be passed. At this stage, discussion is confined to the submission of arguments either in support of the bill or its rejection. A member is not to refer to the details of the bill further than is necessary to substantiate the arguments. It is, in fact, only rarely that there are speeches at this final stage. Only verbal amendments designed to improve the wording of the bill are permitted.

When the bill is passed by the House, it is transmitted to the Council of States for concurrence. It is to undergo the same process in the Council also. If the Council passes the bill in the same form as it came before it from the House, it is sent to the President for his assent. The President may give his assent or withhold it or return it for reconsideration of the Houses with or without amendments. If the bill is again passed by both the Houses of Parliament with or without amendments, the President cannot withhold his assent. A bill thus becomes a law.

If a bill is passed by the Lok Sabha (House of the People) and Rajya Sabha does not agree to it, or six months elapse from the date of the receipt of the bill by the latter without being passed by it, the President may summon both the Houses, in a joint sitting for delibera-ration and voting on the bill. In case of joint session, the Speaker or in his absence, the Deputy Speaker presides over the House. The decision is taken by a majority vote. Since the Lok Sabha commands numerical superiority, its will is likely to prevail.
PRIVATE MEMBERS' BILLS

The procedure to be followed, in the case of Private Members' bills is the same as for government bills save for some special features. The notice for leave to introduce a bill is to be accompanied with the statement of objects and reasons, the recommendation and sanction of the President required for the introduction or consideration of the bill, memoranda showing the financial effect of the bill, etc. The notice may be disallowed if it is incomplete or the bill is otherwise defective. The Speaker is fully authorised to disallow a notice of the bill if, in his opinion, the inclusion of such a bill in the list of Business is not proper. Private members' bills are referred to the "Committee on Private Bills" which came into existence in 1953. The Committee consists of a chairman and fourteen other members nominated by the Speaker. If the Deputy Speaker happens to be a member of the Committee, he automatically assumes the chairmanship of the Committee. After the submission of report by this Committee to the House and circulation of the copies of the bill as reported by the Committee, amongst the members of the House, the bill is said to have been formally introduced. Thereafter, it is to follow the same procedure as laid down for the enactment of Non-Money Bills. It may, however, be stated that a Private Member's bill opposed by the government has no chance of getting enacted.

FINANCIAL PROCEDURE

Articles 112–117 lay down the requisite features of the financial procedure followed in the Indian Parliament. In fact, the basic principles of financial procedure in the Indian Parliament are the same as those followed in Great Britain. In both the countries, the financial initiative is the exclusive right of the executive. Moreover, the Indian Lok Sabha, like that of British House of Commons, possesses the exclusive right of sanctioning the imposition of taxes and voting supplies. Finally, taxation, appropriation and expenditure from public funds in both these lands, requires authorization of the Parliament.

Money Bills. Provision for a special procedure in regard to money bills has been made in the Indian constitution. A money bill can be initiated only in the Lok Sabha. The constitution defines a money bill elaborately but if doubt crops up, whether a bill is or is not a Money Bill; the decision rests with the Speaker of the Lok Sabha. A money bill passed by the Lok Sabha is transmitted to the Rajya Sabha which is empowered to return the bill to Lok Sabha with recommendations within a period of fourteen days. It is up to the Lok Sabha to accept those recommendations or reject them. If the Lok Sabha is responsive and accepts those recommendations, the bill is deemed to have been passed by both the Houses, with those amendments. If the Lok Sabha expresses reluctance to accept the recommendations, the bill is deemed to have been passed by both the Houses in the form it was transmitted to the Rajya Sabha. If the Rajya Sabha does not return the bill
within fourteen days, it shall be deemed to have been passed by both
the Houses at the expiry of the stipulated period in the form in
which it was passed by the Lok Sabha. It is quite evident from the
above-mentioned fact that the constitution establishes the super-
primacy of the Lok Sabha in financial matters. It may, however, be
pointed out that a money bill cannot be introduced, except on the
recommendation of the President.

§ 23. THE BUDGET

Article 112 (1) specifies, "The President shall in respect of every
financial year cause to be laid before the House of Parliament, a
statement of the estimated receipts and expenditure of the govern-
ment of India for that year referred to as the annual financial
statement." The Budget in India is presented in two parts—the
General Budget and the Railway Budget. The General Budget
deals with the estimates of all the departments of the Government
of India excluding Railways and is presented by the Finance
Minister. The Railway Budget dealing exclusively with the receipt
and expenditure in respect of Railways is presented by the Minister
of Railways. The procedure adopted in the Parliament in case of
both the Railway and the Central Budget is the same. A peculiar
feature of the Indian Budget is obvious from the fact that it is not
considered in the "Committee of the Whole House" with a special
chairman other than the Speaker in the chair. A general debate on
the Budget is permitted in the Rajya Sabha also, though it is passed
actually by the Lok Sabha. Certain items of expenditure charged
on the Consolidated Fund of India are shown separately in the
Budget. The expenditure charged on the Consolidated Fund of
India comprises: (i) The emoluments and allowances of the
President and other expenditure relating to his office. (ii) The
salaries, allowances and pensions, payable to or in respect of the
judges of the Supreme Court. (iii) The pensions payable to or in
respect of the Federal Court. (iv) The pensions payable to or in
respect of judges of any High Court which exercises jurisdiction in
relation to any area included in the territory of India or which at
any time before the commencement of the present constitution ex-
ercised jurisdiction in relation to any area included in a province
corresponding to a State specified in Part A of the first schedule.
(v) The salary, allowances and pensions payable to or in respect of
the Comptroller and Auditor General of India. (vi) Any sums re-
quired to satisfy any judgment; decree or award of any court or
arbitral tribunal. (vii) Any other expenditure declared by the
constitution or by Parliament by law to be so charged.

The expenditure charged on the Consolidated Fund of India is not
votable, though either House of the Parliament can discuss it. The
other expenditure is submitted in the form of demand for grants to
the Lok Sabha, though on the recommendation of the President of
India.

Stages in Financial Legislation. The Budget has to pass through
five stages.
Introduction. The Budget session generally falls in the midst of February, when the Railway Minister initiates the Railway Budget. Subsequently, to an unusually crowded Lok Sabha, with overflowing galleries, the Finance Minister presents his budget and delivers his budget speech which sums up the general financial position of the country, outlines the fiscal policy of the Government of India in the ensuing year and furnishes the first hand intimation of the revision of existing taxes or proposed new taxes. The copies of the Budget thereafter are printed and circulated among members.

General Discussion in the Parliament. By a special rule, there can be no discussion of the Budget on the day it is presented to the Parliament. The members disperse to go through the statement and the speech whose contents have so far remained a closely guarded secret. A few days after, general discussion on the budget takes place. The Houses discuss the budget as a whole and any question of principle involved in it. No motion is moved at this stage. The members are discouraged from raising matters of detail on specific grievances. In the words of Morris Jones, “It is an occasion on which each House is able to express its mood and the government may learn, how particular proposals will be received during the subsequent stages.” Even non-votable expenditure charged on the Consolidated Fund of India is discussed. The opposition, as in England, is allowed major part of the time to review the work of the government for the year and ventilate grievances of the people during budget discussion in general. No vote is taken at this stage.

Voting of Demands by the Lok Sabha. “When the general discussion is completed, the way is clear for the business of voting the grants.” The voting of demands for grants is the exclusive privilege of Lok Sabha. These demands deal with the expenditure part of the Budget. They constitute the request made by the government to the Lok Sabha for grant of authority to spend money in order to run the administration of the country. The demand is made in a motion “that a sum not exceeding Rs. X be granted to the President to defy the charge which will come for payment during the year ending 31st March, 1955, in respect of the subject of demand”. Three kinds of amendments can be effected in this motion: (i) The refusal of supplies that the demand be reduced to Re. 1. This has not however been used since Independence. (ii) Economy cut i.e., the demand be reduced by a specific sum. This is also very rarely used. (iii) Token Cut. This is the only form of amending motion used. Through this ‘cut motion’, any grievance or request for information on suggested reforms may be brought to the attention of the minister concerned. The demands of each ministry are taken up in turn and in consultation with both sides of the House, the Speaker allots a definite period for each. As soon as the time limit for any demand is reached, the closure is applied.

2. Ibid., p. 239.
and the demand is put to vote. On the last day (at 5 P.M.) earmarked for the disposal of the expenditure part of the budget, all outstanding demands not so far disposed of, whether debated or not, are put to vote.

It is however important to note that demands for grants can be moved only on the initiative of the executive. The Lok Sabha is entitled to accept, reject, or reduce a demand for grant. It cannot enhance it.

*The Appropriation Bill.* The next stage in the voting of supplies is the passing of the Appropriation Bill. The demands voted by the Lok Sabha and the expenditure charged on the Consolidated Fund are incorporated in "Annual Appropriation Bill." The Bill is then presented to the Lok Sabha. The debate on the Appropriation Bill is restricted to matters of public importance or administrative policy which have not already been raised while the relevant demands for grants were under consideration. The Speaker at this stage may require members desirous of participating in the debate, to give advance intimation of the specific points they intend to raise. He is fully authorised to disallow raising of such of the points as are mere repetitions. The bill is to undergo the same procedure as is followed in the case of other bills. When passed through all the stages, the bill is voted upon and if passed by the Lok Sabha, it is certified by the Speaker as a money bill and is then transmitted to the Rajya Sabha. Rajya Sabha, as already discussed, can only return the Bill to the Lok Sabha within fourteen days along with its recommendations which the Lok Sabha may accept or reject as it pleases. The Bill, later on, is presented to the President for his formal assent which cannot be withheld. The President cannot return a money bill for reconsideration.

If the Government subsequently discovers that the money authorised under any head is insufficient for its needs, it comes to the House for a supplementary grant. The supplementary grants are also embodied in one or more Appropriation Bills which are apt to be passed by the House, before the end of the financial year.

*The Finance Bill.* The taxation proposals of the government for the ensuing year are embodied in a "Finance Bill." The Lok Sabha deals with the Finance Bill according to the procedure laid down for money bill. Discussion in the second reading are confined to general principles. It is only in the Select Committee that the bill is given detailed consideration and amendments are moved. Clause by clause consideration of the bill follows after the committee submits its report to the House. The scope of amendments is however limited to proposal for the reduction or abolition of a tax. The Finance Bill must be passed before the end of April. "The provisions of the Finance Bill, since they describe tax changes must come into operation not when the bill is finally passed but from the moment of its introduction." If, however, as a result of its passage through Parliament, the Finance Bill undergoes changes and the tax levels are reduced, the excess revenue collected in the meantime by the Government has to be refunded.
THE UNION JUDICIARY

THE SUPREME COURT

§ 1. WHY A SUPREME COURT?

The essence of a federal constitution is the division of governmental powers between Central and State governments as expressly provided in a written constitution. Since language of the constitution is not free from ambiguities and its meaning is likely to be differently construed by different authorities at different times, it is but natural that in any federation disputes between the Centre and the units about the terms of the division of powers and respective area of their authority would occur. All such disputes are to be settled with reference to the constitution which is the supreme law of the land. Justice, therefore, demands that all such disputes be settled by an independent and impartial arbiter—a judicial body independent both of the Union legislature and executive and of the governments of the States. A Supreme Court under a federal constitution is such an arbiter. Hence it is the most indispensable part of the federal form of government. "A Federal Court is an essential element in a federal constitution. It is at once the interpreter and guardian of the constitution and a tribunal for the determination of disputes between the constituent units of Federation." The Supreme Court of India too acts as the highest interpreter of the constitution and an independent tribunal for the final determination of disputes between the Centre and the States.

The Supreme Court is also the guardian of the Fundamental Rights of the people. Under Article 32, the Supreme Court of India is to act as the protector of all the Fundamental Rights, incorporated in the Indian constitution. It is to guard these rights jealously against all types of encroachments or infringements by the Union or State governments. Shri M.C. Setalvad, the first Attorney General of India, while delivering speech at the inauguration of the Supreme Court on January 28, 1950 rightly observed "...The detailed emu-

eration of Fundamental Rights in the constitution and the provisions which enable them to be reasonably restricted will need wise and discriminating decisions. On the Court will fall the delicate and difficult task of ensuring the citizens the enjoyment of his guaranteed rights consistently with the rights of the society and the safety of the state."

Without Supreme Court, it will be rather difficult to harmonise the Federal Executive and the Legislature and also the constituent units of the Federation. It is the Supreme Court which by administering the law of the land keeps both the Executive and the Legislature and also the units in their proper place.

The Supreme Court of India plays a unique role in advisory capacity. It has been rendering advice, from time to time to the President of India on questions of law or fact which have been of such a nature and of such public importance as the President refers them to the Court for its consideration.

The Supreme Court was necessitated as the Fathers of the Indian constitution were keen to have an "All India supreme appellate court; equipped with both criminal and civil jurisdictions. The constitution vests with the Supreme Court extensive powers of reviewing the decisions of the lower courts both in the civil and criminal cases. Thus the Court gets an opportunity to interpret not only the constitution and the laws passed by the Parliament but also of the State legislatures. The unique position that the Court occupies, under the constitution, was very well portrayed by Shri Alladi Krishna Iyer, a leading member of the Drafting Committee, in the following words, ".....The future evolution of the Indian constitution will thus depend to a large extent upon the work of the Supreme Court and the direction given to it by that Court. From time to time in the interpretation of the constitution, the Supreme Court will be confronted with apparently contradictory forces at work in the society for the time being. While its functions may be one of interpreting the constitution.....it cannot in the discharge of its duties afford to ignore the social, economic and political tendencies of the times which furnish the necessary background. It has to keep the poise between the seemingly contradictory forces. In the process of the interpretation of the constitution on certain occasions, it may appear to strengthen the Union at the expense of the units and at another time, it may appear to champion the cause of provincial autonomy and regionalism. On one occasion, it may appear to favour individual liberty as against social or state control and at another time, it may appear to favour social or state control. It is the great tribunal which has to draw the line between individual liberty and social control....."."

**COMPOSITION OF SUPREME COURT**

It had to consist of a Chief Justice and not more than seven other judges until Parliament by law increased this number. The Supreme
Court Act, 1956 raised the maximum to ten excluding the Chief Justice. The number was raised to fourteen including the Chief Justice, in order to cope with the increase of work. No minimum number of judges has been fixed up by the constitution.

 Provision has also been made for the appointment of ad hoc judges and the attendance of retired judges at the sittings of the Supreme Court, in case of need. Ad hoc judges may be appointed by the Chief Justice of India with the previous consent of the President, from among the duly qualified judges of any High Court for such period as may be essential. This is done when quorum of the judges of the Supreme Court itself is not available. According to Article 127, the Chief Justice of India must consult the Chief Justice of the High Court from which the appointment of an ad hoc judge is to be made. The appointment of ad hoc judges in India is analogous to the similar practice prevalent in Canada. According to Article 127, a retired judge of the Supreme Court or (the defunct) Federal court, may with the previous consent of the President and his own consent, be requested by the Chief Justice of India to act as a judge of the Supreme Court at any time.

Qualifications of Judges. To eliminate politics in the appointments of judges and enhance competence of these judicial luminaries certain minimum qualifications have been prescribed. The qualifications are: The person concerned must be a citizen of India and (i) has been a judge of a High Court at least for five years or (ii) has been for at least ten years an advocate of a High Court; or (iii) is in the opinion of the President a distinguished jurist. The last provision i.e. (iii) was, in fact, intended to open a wider field of choice. Under this provision, even a distinguished jurist holding a chair in a university will be qualified for appointment to the Supreme Court.

Appointment. Every judge of the Supreme Court is appointed by President of India after consultation with such of the judges of the Supreme Court and the High Courts of the States as the President may deem necessary. In the appointment of a judge, other than the Chief Justice, consultation of the Chief Justice of India by the President is obligatory.

It may, however, be pointed out that the 'President' here means "the President aided and advised by the Council of Ministers". Hence there was an apprehension that such a body may bring in politics in the appointment of judges. Necessary safeguards were thus to be provided. Dr. Ambedkar, in this context, said, "It seems to me that in the circumstances in which we live today, where the sense of responsibility has not grown to the same extent to which we find it in the United Kingdom, it would be dangerous to leave the appointments to be made by the President, without any kind of reservation or limitation. Similarly, it seems to me that to make every appointment which the executive wishes to make subject to the concurrence of the legislature, is also not a very suitable provision. Apart from its being cumbersome, it also involves the possi-
bility of the appointment being influenced by political pressure and political considerations. The draft article, therefore, steers a middle course. It does not make the President the supreme and absolute authority in the matter of making appointments. It does not also import the influence of the legislature. The provision in the Article is that there should be consultation of persons who are ex-hypothesis well qualified to give proper advice in matters of this sort."

§ 3. TENURE

Sixty-five years is the age of retirement of judges. Though the constitution of India does not provide for life tenure unlike that of U.S.A., the existing provision in effect amounts to nearly the same. Considering the average span of life in India and the average fitness of persons for work in old age, a retiring age of 65 is very high. Mental and physical incapacity overtake individuals, particularly in India, after they cross sixty. Moreover sixty or sixty-five may not always be a zero hour in man’s intellectual ability. Hence, there is a special provision in Article 128 of our constitution, for appointing a retired judge.

§ 4. THEIR TERMS OF SERVICE

The salary of the Chief Justice of India is Rs. 5000 a month and of other judges Rs. 4000 p.m. Besides, every judge of this Court is entitled to get a rent-free official residence; travelling allowances and facilities, when there is an occasion for him to travel on duty. He is however debarred from practising before any court in India, after retirement.

§ 5. REMOVAL

A judge of the Supreme Court is removable from his office, only on the grounds of proved misbehaviour or incapacity. Parliament is however empowered to regulate the procedure for the investigation and proof of such misbehaviour or incapacity. Whatever the procedure, each House will have to pass a resolution supported by two-thirds of the members present and voting and a majority of the total membership of the House and address it to the President. The President will then issue orders of removal of the judge.

§ 6. ESTABLISHMENT OF THE SUPREME COURT

The constitution authorised the Supreme Court to have its own establishment and to have complete control over it. The framers of the constitution were of the opinion that in the absence of such a provision, the court’s independence may be illusory. If the establishment had to look for preferment or for promotion to other quarters, it was likely to sap the independence of the judiciary. All the appointments of officers and servants of the Supreme Court are

made by the Chief Justice or any other judge or officer, so deputed by him for the purpose. The conditions of service of these officers are also determined by the Court. The expenses incurred on them as well as other maintenance charges of the Court’s establishment, are charged on the Consolidated Fund of India.

Immunities. All the actions and decisions of the judges in their official capacity are immune from criticism. A decision of the Court or an opinion of a judge may however be subjected to a critical academic analysis. Imputation of motives, on the part of the judges in arriving at decisions is not allowed. Parliament may not discuss the conduct of a judge save when his removal is being taken up. The Court is empowered to initiate contempt proceedings against any alleged offender, to maintain its dignity and protect it from malicious criticism. An editorial comment on one of its decisions in “Times of India” 1953 was made the subject of contempt proceedings against the Editor, Printer and the Publisher of the said paper. The Court held “No objection could have been taken to the article, had it merely preached to the Court of Law the sermon of divine detachment. But when it proceeded to attribute improper motives to the judges, it not only transgressed the limits of fair and bonafide criticism but had a clear tendency to affect the dignity and prestige of the Court. The article in question was thus a gross contempt of court...” 1 The contempt proceedings of the Court have not simply been confined to the safeguard of its dignity and prestige, but also to stop an act likely to be prejudicial to its impartial decision. In ‘Dixit v. State of U.P.’ the Court held, “... that the object of writing this paragraph and particularly of publishing it at the time, it was actually done, was quite clearly to affect the minds of the judges and to deflect them from the strict performance of their duties. The offending passage and the time and the place of its publication certainly tended to hinder or obstruct the due administration of justice and was contempt of court.” 2

1 7. JURISDICTION OF THE COURT

If we make a critical survey of the leading constitutions of the world, we find that Supreme Court of India has wider jurisdiction than any other superior court in any part of the world. The jurisdiction of the court can be divided into three categories, original, appellate and advisory.

Original Jurisdiction. The Supreme Court possesses original and exclusive jurisdiction in any dispute (a) between the Government of India, and one or more States or (b) between the Government of India and any State or States on one side and one or more other States on the other or (c) between two or more States. The dispute relating to the original jurisdiction of the Court must

1. In the matter of the Editor, Printer and Publisher Times of India, 1953, S.C.R. 215.
involve a question of fact or law on which the existence of a legal right depends. A legal right is defined "as any advantage or benefit which is in any manner conferred upon a person by a rule of law". The Supreme Court has no original jurisdiction in disputes between individuals, between associations or local bodies. It is not entitled to investigate a dispute arising out of any treaty, covenant, engagement or agreement which was entered into before the commencement of the constitution.

Parliament, may by law, exclude the jurisdiction of the Court in disputes between States regarding the use, distribution or control of waters of any inter-state river or river valley. The Supreme Court does not have any jurisdiction in matters referred to the Finance Commission or regarding adjustment of certain expenses between the Union and the States.

Referring about original jurisdiction of the Supreme Court D. D. Basu said, "Though our Federation is not in the nature of a treaty or compact between the component units, there is nevertheless a division of legislative as well as administrative powers between the Union and the States. Article 131 of our constitution therefore vests the Supreme Court with original and exclusive jurisdiction to determine justiciable disputes between the Union and the States or between the States, inter se." It may however be pointed out that during the first decade of the working of the constitution, original jurisdiction of the Court has not been invoked. Probably, such disputes have been resolved by the parties noted above by mutual agreement or negotiation, rather than by adjudication.

Appellate Jurisdiction. The Supreme Court, as the highest Court of Appeal, stands at the apex of the Indian judiciary. Shri M. C. Setalvad in his speech at the inauguration of the Supreme Court on January 28, 1950 said, "The writ of this court will run over territory extending to over two million square miles inhabited by a population of about 300 millions. It can truly be said that the jurisdiction and powers of this court in their nature and extent are wider than those exercised by the High Courts of any country in the Commonwealth or by the Supreme Court of the U.S.A."

The appellate jurisdiction of the Court can be divided into four main categories of cases: Constitutional, Civil, Criminal and Special.

Constitutional Cases. According to Article 132 (1) an appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceedings, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the constitution. If the High Court refuses to give such a certificate, the Supreme Court can grant special leave to appeal, if the Court is satisfied that the case involves a substan-
tin question of law as to the interpretation of the constitution. In the Election Commission v. Shri Venkata Rao (1953) a point was raised as to whether appeal lay to the Supreme Court in a constitutional matter under Article 132 from a decision of a single judge. The Supreme Court answered the question in the affirmative. This makes the Court the ultimate interpreter and guardian of the constitution.

Civil Cases. The Supreme Court's appellate jurisdiction in civil cases is rather of limited character. In civil matters, (where no constitutional question is involved) appeal shall lie to the Supreme Court, if the High Court certifies that any of the undermentioned three conditions are satisfied (i) That the amount or the value of the subject matter of the dispute is not less than Rs. 20,000 or (ii) that the judgment, decree or final order involves directly or indirectly some claim or question respecting the property of the value of Rs. 20,000 or (iii) that the case is a fit one for appeal to the Supreme Court irrespective of value.

The appellate jurisdiction of the Court in civil cases can be enlarged, if Parliament passes a law to that effect.

Criminal Cases. The Draft Constitution had made no provision for the appellate jurisdiction of the Court in the criminal cases. Many members considered it a serious omission of the constitution. In the words of Shri P. K. Sen, "We ought to provide in a handsome manner in the constitution itself for a right of appeal to the Supreme Court in all cases of the death sentence." K. M. Munshi opposed the above move on the basis of cost as well as the physical impossibility of the Supreme Court, dealing with so many cases. "It is only in cases of miscarriage of justice on matters relating to the nature of evidence or procedure that the Privy Council gives special leave." He emphasised that the same principle should guide the criminal appellate jurisdiction of the Supreme Court. The provisions incorporated in the constitution, substantially conform to the views of K. M. Munshi.

There are only two modes by which appeals in criminal matters lie from the decision of a High Court to the Supreme Court, i.e., (i) Without a certificate of High Court; (ii) With a certificate of the High Court.

(i) Without Certificate. An appeal lies to the Supreme Court without a certificate, if (i) the High Court has reversed an order of acquittal of an accused and sentenced him to death, (ii) if the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death.

(ii) With Certificate. An appeal lies to the Supreme Court from a decision of High Court in a criminal proceedings, if the High

2. Ibid., p. 607.
Court certifies that the case is a fit one for appeal to the Supreme Court.

Parliament, can by further passing an Act, extend the jurisdiction of the Supreme Court in criminal matters. But enhancement of its jurisdiction "ought to be made, having regard to the enlightened conscience of the modern world and of the Indian people."11

It may, however, be pointed out that the criminal appellate jurisdiction of the Court has been a prolific source of appeals. The interpretation of the scope of the constitutional provisions dealing with the appellate jurisdiction in the course of its decisions in many cases reflect that the Supreme Court does not adopt too narrow an approach in hearing criminal appeals. At the same time, the Court has always been anxious to avoid any undue expansion of this jurisdiction entrusted to it by Article 134. In Hate Singh v. State of M.B., the Court pointed out, "We have examined the evidence at length in this case, not because it is not decisive to depart from our usual practice of declining to reassess the evidence in an appeal here, but because there has been in this case a departure from the rule that when an accused person puts forward a reasonable defence which is likely to be true and in addition, is supported by two prosecution witnesses, then the burden on the other side becomes all the heavier."12

In fact, if we go through hundreds of cases decided by the Court, under appellate jurisdiction, we are enamoured of the Fathers of our constitution who incorporated these provisions in the constitution. "It stands as a living testimony to the increasing recognition that is accorded to the sanctity of human life in recent times in contrast to the incredible frequency with which capital punishment was awarded for the most petty and trifling offences in the past."

**Special Appeals.** Though Articles 132 to 134 of Indian constitution provide for regular appeals to the Supreme Court from decisions of the High Courts, yet some cases may still crop up, where justice may be at stake. Hence the interference of the Supreme Court with decisions not only of the High Courts outside purview of Articles 132-134 but also of other tribunals located within the territory of India may be indispensable. "Such residuary power outside the ordinary law relating to appeal is conferred upon the Supreme Court by Article 136."14 Article 136 says, "Notwithstanding anything in this chapter, the Supreme Court may in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any tribunal in the territory of India."

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The only exception to this all-embracing judicial review is the decisions of Courts constituted under any law relating to the Armed Forces. In the words of D. D. Basu, "It vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals by granting special leave against any kind of judgment or order made by any Court or Tribunal (except a Military Tribunal) in any proceeding and the exercise of this power is left entirely to the discretion of the Supreme Court unfettered by any restrictions and this power cannot be curtailed by any legislation short of amending the Article itself." It may however be pointed out that this special power vested with the Supreme Court is to be exercised only under exceptional circumstances. In civil cases, for instance, the special leave to appeal under Article 136 would not be granted unless some substantial question of law or general public interest is involved. In criminal cases, the Supreme Court will not grant such special leave to appeal, unless exceptional circumstances exist or it is established that grave injustice has been done and that the case in question is sufficiently important to warrant a review of the decisions by the Supreme Court.

Although the Court's intervention under this jurisdiction is often sought it has been reluctant to make frequent use of it. In Pritam Singh v. The State, A.I.R. 1950 the court observed "On a careful examination of Article 136 along with the preceding article it seems clear that the wide discretionary power with which the Supreme Court is invested under it, is to be exercised sparingly and in exceptional cases only, and as far as possible a more or less uniform standard should be adopted in granting special leave in the wide range of matters which can come up before it under this article". In Dhakeswari Cotton Mills v. Commissioner of Income Tax; West Bengal, A.I.R. 1955, the Court held, "It being an exceptional and overriding power, naturally, it has to be exercised sparingly and with caution and only in special and extraordinary situations. Beyond that, it is not possible to fetter the exercise of this power by set formula or rule...."

The "special appellate" power of the Court has been extending to the Election Tribunal as well. It has been a handy weapon in its hands to review the decisions of Labour and Industrial Tribunals too. In an election case, the Court held, "The jurisdiction with which Election Tribunal is endowed, is undoubtedly a special jurisdiction but once it is held that it is a judicial tribunal empowered and obliged to deal judiciously with disputes arising out of or in connection with elections, the overriding power of this Court to grant special leave, in proper cases, would certainly be attracted and this power cannot be excluded by parliamentary legislation." Special Appellate jurisdiction of the Court over the Industrial Tribunals

is obvious from Bharat Bank v. Employees of Bharat Bank and Muir Mills v. Suti Mills Mazdoor Union cases. In the former case, the Court held that the functions and the duties of the Industrial Tribunal resemble that of a judicial body although it is not a Court having all the attributes of a court of justice. In the latter case, the Court reiterated the same view and held that it possessed the overriding powers to interfere in a matter where a Court or Tribunal had dealt with a person arbitrarily or had not given a fair deal to the litigant.

Thus, it is quite evident that the reach of Article 136 is formidable. It has proved to be a very convenient instrument at the disposal of the Court to check arbitrary acts and unjust decisions of administrative tribunals sprouting like mushrooms both at the Centre and in the States, in order to cater to the socialistic pattern of society.

Advisory Jurisdiction. One salient feature of the Supreme Court in India is its consultative role. In fact, it is a legacy of the past. Similar role was assigned to the Federal Court, according to Section 213 of the Act of 1935. It is because of this that Article 143 providing for the advisory role of the Supreme Court, did not entail criticism in the Constituent Assembly. According to Article 143, (i) the President of India is empowered to refer to the Supreme Court any question of law or fact of public importance. There is no constitutional compulsion for the Court to give its advice. Moreover, it is left to the Court to decide as to what type of hearing it will adopt. In this respect, however, the Court has adopted the same procedure, as in the case of a regular dispute brought before it.

Under section (2) of Article 143, the President is empowered to refer to the Supreme Court for its opinion disputes arising out of any treaty, agreement etc. entered into or executed before the commencement of the constitution. In such cases, it is obligatory for the Court to give its opinion to the President. The treaties, agreement etc. referred to above, are those which the Government of India have executed with the former princely states and their rulers between 1947 and 1950.

Only on two occasions during the last twelve years the President referred questions to Supreme Court for its advice. (i) In 1951, the Court was asked to determine the validity or otherwise of certain provisions of three enactments—the Delhi Laws Act, 1912, the Ajmer Merwara (Extension of Laws) Act 1947, and the Part C States (Laws) Act, 1950. Though the Court failed to render a unanimous opinion, yet the different opinions expressed by the judges are hailed as momentous on the subject of delegation of Legislative Power. (ii) In 1957 on Kerala Education Bill, such a necessity of Court's advice arose. The said Bill contained provisions authorising the State Government to take over schools managed by private

1. 1950 S.C.R. 459
agencies. Hence, it involved the right to property, the acquisition of which through a bill needed the assent of the President. Since the Bill was controversial and representations were made to the President not to give his assent to such an unconstitutional piece of legislation, the President thought it advisable to seek the advice of the Supreme Court, before signing over the Bill.

Opinions of the Court in the above two cases are enough to prove the beneficent results of an advisory jurisdiction. "So long as the independence and integrity of the judiciary can be maintained intact, and at the same time it can materially contribute to the lessening of the evil of enormous litigation, advisory opinions are eminently worthwhile.....Advisory opinions are a help to preventing litigation or reducing it to a considerable extent." The American and Australian Courts however do not like to play advisory role. The Supreme Court of U.S.A. has always resisted any attempt by the Executive to turn it into an advisory body also. President Washington, once asked for such an advice, but the Court refused to oblige the President. The experience of Britain, Canada, Burma, India is, however, contrary to that of U.S.A. and Australia. They will like the Court to play this role, effectively.

A Court of Record. Article 129 makes the Supreme Court a Court of Record. The significance of such a Court is two-fold: (i) The records of such a Court are retained for perpetual memory and testimony. (ii) Once a Court is deemed to be a Court of Record, its power to punish for contempt follows from that position. The constitution has, however, specifically made provision for the power of the Supreme Court to punish for contempt of itself. In the words of Dr. Ambedkar, "......the Court of a Record is a Court, the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any Court.....As a matter of fact, the power to punish for contempt necessarily follows from that position......"

Guardian of Fundamental Rights. The Supreme Court is also the guardian of the liberties and Fundamental Rights of citizens. Article 32 (i) specifies the writ jurisdiction of the Supreme Court. The Article lays down that any person whose rights are incorporated in Chapter III of the Constitution, are abrogated or affected can move the Supreme Court by appropriate proceedings for their enforcement. The Supreme Court can issue orders or writs in the nature of Habeas Corpus, Certiorari, Mandamus, Prohibition or Quo Warranto whichever is appropriate for the enforcement of these rights. The Court is authorised to declare a law passed by the Legislature null and void, if it encroaches upon the Fundamental Rights. This happened when clause 14 of the Preventive Detention Act was nullified by the Supreme Court and the President had to issue an ordinance, deleting this clause. In the recent past, the Supreme

Court nullified a few laws conflicting with Articles 19 and 31 of the constitution.

Examples of Cases. In the case of Brij Bhushan v. Delhi State Government\(^1\), the Court held that the imposition of pre-censorship of a journal was a restriction on the liberty of the press which is guaranteed by Article 19 (1) (a).

Freedom of Speech. In another case Soren v. State, Justice Dass\(^2\) opined that it was necessary to protect the right of free speech. He said, "Speeches made must be considered as a whole and interpreted in a fair, free and liberal manner. Not too much of importance should be given to isolated passages or to strong expressions of opinion here and there." Hence the Court held that the alleged speech of the accused was not falling within the orbit of statutory prohibition, therefore the appeal was allowed.

Right to Religion. In a case, the Court held that section 56 of the Madras Hindu Religious and Charitable Acts, 1951 empowering the Commissioner to deprive the Mahant of his right to administer the trust property, was opposed to the provisions of Article 26 (1)\(^3\).

Cultural and Educational Rights. The Supreme Court has guarded cultural and educational rights of the minorities as well. In the State of Bombay v. The Bombay Education Society,\(^4\) it held that a minority like the 'Anglo-Indians' had the fundamental right to conserve its language by establishing the educational institutions of its choice.

Right to Property. The Court has maintained a balance between the legitimate rights of the propertied class and the needs of a welfare state. In State of Bihar v. Kameshwar Singh, it held that a law aiming at elevating the status of tenants by conferring on them "bhumi-dhari rights" fulfilled a public purpose. Thus, we can conclude that the Supreme Court of India is the palladium of our liberties.

Custodian of the Constitution. Whether the Court is entitled to act as the custodian of the constitution and adjudicate upon the constitutionality of laws depends upon the question whether the constitution is based on the theory of legislative supremacy or supremacy of the constitution. If the constitutional supremacy is to be asserted, the courts are apt to refuse to apply a statute that is repugnant to fundamental law—the Supreme Law of the Constitution. The Indian constitution does not make a specific mention of its supremacy in its provisions. In fact, such a declaration was deemed superfluous by the Fathers of the Constitution since the organs of the state derive power from the constitution and the

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2. A.I.R. 254.
constitution is not alterable, till the procedure of amendment, provided in the constitution, is followed. Of course, the courts have not been empowered to invalidate laws, by some express provision in the constitution, yet the constitution does impose some definite limitations upon each of the organs. Hence any transgression of those limitations would make the Act void. The Courts would not apply void laws. "The power of the courts to avoid laws made in excess of the legislative powers of the legislature is inherent in any constitution which provides government by defined or limited powers." Since we have established a federal polity and imposed constitutional limitations both on the Central and State organs of the Government, it is for the courts to determine whether any of the constitutional limitation has been bypassed or not.

The constitution of India, in this respect, is more akin to the American constitution than the British or any other constitution of the English speaking peoples. In Britain, supremacy of parliament prevails. The Courts in England cannot declare a parliamentary enactment unconstitutional. Rather they are constrained to enforce a provision of a law of Parliament. In India as discussed in the preceding paragraph, Parliament is not supreme. Its powers are limited in two ways. Firstly, powers are divided between the Union and the States. Parliament is authorised to make laws only with respect to those subjects which are included in the Union and the Concurrent Lists. It possesses no power of legislating on the matter in the State List in the normal circumstances. If the Parliament transgresses its jurisdiction and makes laws regarding the State subjects, it is the duty of the Court to declare such a law of the Parliament void. Secondly, rights are guaranteed to the citizens against every form of legislative encroachment. This is another restriction on the Parliament. It is the duty of the Supreme Court to see that the rights of the citizens are amply safeguarded and remain fundamental. If a law exceeds the limits in imposing restrictions on the Rights, the Court declares such a law unconstitutional. Thus the Supreme Court occupies a unique position wherefrom it is competent to exercise the power of reviewing legislative enactments. It makes the Court a powerful instrument of judicial review under our constitution. In the words of Justice B.K. Mukerjee, "......In India, it is the constitution that is supreme and Parliament as well as State legislature must not only act within the limits of their respective spheres, as demarcated in the three lists occurring in the Seventh Schedule to the constitution, but Part III of the constitution guarantees to the citizens certain Fundamental Rights which the legislative authority cannot ignore in their transgress. A statute law to be valid, must in all cases be in conformity with the constitutional requirements and it is for the judiciary to decide whether any enactment is unconstitutional or not."  

If we critically appraise Article 13, we find that the power of the Court to declare legislative enactments invalid is expressly provided in the constitution. Article 13 declares that every law in force or every future law inconsistent with or in derogation of the Fundamental Rights shall be void. Article 32 vests in the Supreme Court the power to enforce these Fundamental Rights. Articles 131 to 136 dealing with the jurisdiction of the Court, vest in the Supreme Court the power of reviewing legislative enactments of the Union and the States. Article 246, dealing with the nature of the division of legislative powers between the Centre and the States can also be referred in this context. Even if provision for Articles 13 and 32 had not been made, the Court would not have been deprived of the power of judicial review. Remarks of Chief Justice Kania justify this statement. "The inclusion of Article 13 (1) and (2) in the constitution appears to be a matter of abundant caution. Even in their absence, if any of the Fundamental Rights was infringed by any legislative enactment, the Court has always the power to declare the enactment, to the extent, it transgresses the limits, invalid."

§ 8. JUDICIAL REVIEW IN INDIA Vs. THAT OF U.S.A.

Though the power of judicial review of Indian Supreme Court is an undoubted and undisputed fact, yet the scope of Judicial Review in India is not as wide as is in the United States. Our Supreme Court has been consistently refusing to declare legislative enactments invalid on the basis of mere violation of natural, social or political rights of citizens. The scope of Judicial Review in India is comparatively limited because of the fact, that the constitution of India has divided the legislative power between the Union and the States elaborately. A Concurrent List also has been provided to cover all possible conflicts between the Union and the States. The will of the Union in matters provided in the Concurrent List ultimately prevails. Apprehensions of critics, regarding increase in scope of litigation due to detailed provisions, have been falsified. The number of cases has been rather small, in contrast to American or any other Federal System.

The enumeration of Fundamental Rights along with limitations in details has also contributed to the restricted scope of Judicial Review in India. The American Bill of Rights on the other hand, is couched in absolute terms. Human rights, by their very nature, cannot be absolute. They are subject to social control. The nature and extent of social control is to be determined by whom? Obviously, the Supreme Court. In fact, the American constitution entrusted this power to the Supreme Court. Thus, the Supreme Court, while interpreting the scope of these rights as opposed to social control, propounded new doctrines like "police power" and "general welfare". Equipped with such a power it assumed the role of a super-legislature which is incompatible with

the concept of democracy. The Supreme Court of U.S.A., in fact, impeded social reforms. Hence, it came into direct conflict with the legislature and the Executive of the country, so many times. The constitutional pandits of India, however, did not like to import American controversies in India. Thus they embodied in the constitution the limitations of each Fundamental Right. It led to the limitation of scope of Judicial Review of the Indian Supreme Court.

Though the scope of Judicial Review in India is not as wide as in U.S.A., yet it is more than enough to make the Supreme Court a powerful agency to control the activities of both the legislature and the executive. No doubt, the constitution made a specific provision for the regulation of Fundamental Rights by the legislature, it also insisted that such regulations must be reasonable. The reasonableness of a piece of legislation in the light of constitutional provisions is to be determined by the Supreme Court. This ultimate authority of the Supreme Court to decide what is reasonable, enhances its power in this field. In the words of Justice Mukerjee, "Where there is limitation on the legislative power, the Court must, on a complaint being made to it, scrutinize and ascertain whether such limitation has been transgressed and if there has been any transgression, the Court will courageously declare the law unconstitutional, for the Court is bound by its oath to uphold the constitution." Thus we can safely conclude that our constitution is imbued with judicial review.

§ 9. CONCLUSION

An enumeration of the various powers of the Supreme Court reflects how impressive and formidable they are. Under its original jurisdiction, it settles all disputes between the States and the Union or those between the States themselves. Its appellate jurisdiction embraces civil, criminal and constitutional matters. Its power to grant special leave to appeal, enables it to review any decision by any Court or Tribunal in the country. As the final interpretational authority of the constitution, its powers are of far-reaching significance. It is equipped with the power of superintendence and control over every High Court in India. It is the guardian of the constitution and sentinel of our Fundamental Rights. Thus, it is quite evident that the Supreme Court will occupy a position of unique importance. In the words of Chief Justice Kania, the first Chief Justice of India, ".....Within the limits prescribed, we are quite sure that the Supreme Court will be able to make a substantial contribution towards the formation of India into a great country, retaining its own civilization, traditions and customs....."

§ 10. HOW INDEPENDENCE OF JUDICIARY IS MAINTAINED IN INDIA?

Before we discuss how independence of judiciary is maintained in India, it is essential to explain what we mean by the term "independence of judiciary". In the words of Dr. V.K. Rao, "Independence
of judiciary has three meanings: (i) The judiciary must be free from encroachment from other organs in its sphere. In this respect, it is called separation of powers. Our constitution makes the judiciary absolutely independent except in certain matters where the Executive Heads are given some powers of remission etc. (ii) It means the freedom of the judgments and decrees from legislative interference. In this respect, our constitutional position is not very happy because the legislature can in some respects override the decisions of the judiciary by legislation. Income Tax Amendment Ordinance of 1954 is an example. (iii) The decisions of the judiciary should not be influenced by either the Executive or the Legislature—it means freedom from both fear and favour of the other two organs."

The constitution of India envisages an independent court. In fact, every member in the Constituent Assembly had been eager to see that the Court was made as independent as it possibly could be. In the words of a member, "This is the institution which will preserve those fundamental rights and secure to every citizen, the rights that have been given to him under the constitution. Hence, it must naturally be above all interference by the Executive. The Supreme Court is the watchdog of democracy."

The independence of judiciary is ensured through the following main provisions.

High salary not subject to vote of legislature. As already mentioned, every judge is paid a high salary to maintain his status and dignity. The Chief Justice gets Rs. 5000 p.m. and the other judges are paid Rs. 4000 p.m. each. In addition, they get free residential accommodation. During their term of office, their salaries and allowances cannot be altered to their disadvantage, save in grave financial emergency. The administrative expenses of the Court are charged on the Consolidated Fund. Their salaries and allowances compare favourably with those elsewhere.

Security of Tenure. The judges of the Supreme Court enjoy security of tenure. They are not removable from office except by an order of the President and that also only on the ground of proved misbehaviour or incapacity, supported by a resolution adopted by a majority of total membership of each House and also by a majority of not less than 2/3 of the members of that House present and voting.

Long Tenure. Although the constitution does not provide for life tenure, the existing provision of 65 years, in effect amounts to nearly the same. A retiring age of 65 is, by Indian standard, very high, considering the average span of life in India and also the average fitness of persons for work in old age. Moreover, a retired judge according to Article 128, may be reappointed a judge by the Chief Justice of India, with the consent of the President. Hence if a

judge is hale and hearty, sound in mind as well as in body, capable of rendering service, for a few years more, he can be easily accommodated.

Oath to work fearlessly. Before assumption of office, the judges have to take an oath to perform their duties fearlessly and to uphold the constitution.

Prohibition of practice after retirement. A retired judge of the Court is prohibited from practising law before any Court or authority within the territory of India. The constitution however permits the appointment of a retired judge for a specialized form of work by the Government, for instance for conducting enquiries and special investigations.

Powers to make rules to regulate their procedure. The Supreme Court is equipped with full powers to make rules for regulating its practice and procedure and to take effective steps for the enforcement of its decrees and orders.

Control over Establishment. The Court is fully authorised to have its own establishment and to have complete control over it. It was, however, thought that in the absence of such a provision, the Court’s independence becomes illusory. If for promotion, the establishment is to look to other quarters, it is likely to sap the independence of the judiciary. Hence all appointments of officers and servants of the Supreme Court are made by the Chief Justice and the judges of the Supreme Court whom he may direct for the purpose. Their conditions of service also are determined by the Supreme Court.

Immunities. The actions and decisions of the judges in their official capacity are immune from criticism. They may, however, be subjected to critical academic analysis. In order to maintain the dignity of the Court and to protect it from malicious criticism, the Court has been empowered to initiate contempt proceedings against any alleged offender and take appropriate action. The Court is, also, authorised to stop any act that might prejudicially affect its arriving at an impartial and independent decision. All this was done to endow judiciary with ample independence so that it could act without fear or favour of the Executive or anybody else.

Appointment by the executive. Independence of judiciary to quite a great extent, depends on its method of appointment. Election of the judiciary by the people or the legislature, would make it subservient to the whims of the masses or a tool in the hands of legislators. Hence judiciary should be appointed by the executive. Every judge of Indian Supreme Court is appointed by the President, after consultation with such of the judges of the Supreme Court, and the High Courts of the States as the President may deem necessary for the purpose. In the appointment of a judge other than the Chief Justice, the President must consult the Chief Justice.

High Qualifications. The elimination of politics in the appointment of judges is further attained by prescribing high minimum qualification.
tions in the constitution itself. An aspirant for such an important office must be a judge of a High Court, at least for five years or must be at least for ten years an advocate of a High Court or be a distinguished jurist.

Thus it can be safely concluded that the constitution has done every thing that is possible to make the Supreme Court thoroughly independent and impartial.

§ II. A BRIEF COMPARISON OF THE POSITION AND POWERS OF THE INDIAN AND THE AMERICAN SUPREME COURTS

Our Supreme Court possesses larger powers than the American Supreme Court in several respects, and is certainly inferior to the latter in some important matters.

The American Supreme Court’s appellate jurisdiction is only confined to cases arising out of the Federal relationship or those relating to constitutional validity of laws and treaties. But the Indian Supreme Court is vested with the power to hear appeals involving constitutional issues as well as civil and criminal appeals in certain specified cases. Its power to grant special leave for appeal (except appeals from Courts Martial) further establishes its supremacy. This power is further subject to extension by laws passed by the Parliament. The American Supreme Court does not possess appellate jurisdiction in civil and criminal cases.

"Our Supreme Court has an overriding power to entertain appeal, without any limitation upon its discretion, from the decision not only of any Court but also any tribunal within the territory of India. No such power belongs to the American Supreme Court."

The original jurisdiction of the Indian Supreme Court is confined to disputes between (a) the units and the union (b) the Union and one or more States on the one side and one or more States on the other and (c) two or more States against each or one another provided that a legal right is involved in dispute. Besides resolving disputes between Federation or its units or units themselves, the original jurisdiction of the Supreme Court of the U.S.A. extends to the cases affecting high federal functionaries such as ministers, consuls, ambassadors and cases relating to naval forces and maritime jurisdiction. Even the cases of conflict between citizens of different States or between a State and citizens of another State and even between citizens of the same State claiming lands under grants of different States and between a State or the citizens thereof and foreign states, citizens or subjects are brought before it. Thus, in this field, the American Supreme Court has wider jurisdiction.

The Indian Supreme Court possesses advisory jurisdiction, whereas the American Supreme Court has no such jurisdiction. Our Supreme Court is vested by the constitution itself with the power to deliver advisory opinions on any question of fact or law that may

be referred to it by the President. The American Supreme Court, on the other hand, has denied to itself any power to advise the government and has confined itself only to the determination of actual controversies between parties. In fact, orthodox judicial opinion does not favour the idea of the Courts being called upon to render legal advice to the government.

"In the matter of the guardianship of the constitution and deciding the constitutionality of legislation, federal or state, the powers of the American Supreme Court are more far reaching than of its Indian prototype." Of course, in both these countries, the constitutions have not expressly granted this power to the Supreme Court but the Federal System and the incorporation of Fundamental Rights has enabled the Supreme Court to exercise power in this domain also. The scope of the power of the Supreme Courts of both the countries in this domain however differs a great deal. The American Supreme Court while deciding the constitutionality or otherwise of a given piece of legislation keeps in view two facts (a) whether the legislation concerned is within the legislative competence of the Federal or State Legislature whichever has passed it. (b) Whether it satisfies the requirements of the "due process of law". Thus even if a law made by a legislature is perfectly intra vires, it is apt to be declared unconstitutional by the Supreme Court, if it offends against the due process of law i.e. certain well-accepted standards of natural justice. The Indian Supreme Court, however, is not governed by 'due process of law' clause. On the contrary, the Indian constitution refers to procedure established by law. The difference is quite substantial. The Indian Supreme Court cannot apply the standards of natural justice in determining whether a particular law is constitutional or not. If a law passed by our legislatures both Federal and State, is within their competence, the Indian Supreme Court has no business to challenge its constitutionality. In the words of Alexandrowics, "The Indian judiciary is not conceived as an additional constitution-maker but as a body to apply express law." The only exception to the above fact arises, as regards Fundamental Rights, where the Parliament has been empowered by the constitution to place on these rights 'reasonable restrictions'. The reasonableness of a restriction imposed upon Fundamental Rights is however to be judged by the Court, in the light of commonsense and natural justice. The American Supreme Court, on the other hand, because of its due process of law clause has become almost a third chamber or a super-legislature. Thus its power of Judicial Review is far more significant than that of our Court. In the words of Justice Hugues, "We are under a constitution but the constitution is what the judges say it is." Justice Hugues was correct. The American Supreme Court sits almost as a continuous 'Constitutional Convention' and can amend the basic law

without submitting its proposals for any ratification. In this ‘land of ours’ there is no judicial supremacy, in the sense that it prevails in the U.S.A.

In some other important matters, mentioned below, the position of the Indian judiciary is certainly inferior to that of the American judiciary. The constitution itself has placed many important matters beyond its jurisdiction for instance. (a) No law laying down procedure for the arrest and detention of individuals can be challenged by the Courts. But if any particular provision of these laws is contrary to any provision of the constitution itself, it can be declared *ultra vires* by the constitution itself. (b) Some important electoral matters also have been placed beyond the jurisdiction of the judiciary. Delimitation of the constituencies or allotment of seats to such constituencies for example cannot be challenged by the Court. (c) No law laying down any principle of compensation for the acquisition of property by the State can be challenged by the Courts, on the plea that the compensation is unjust or unreasonable or insufficient.

Keeping in view the facts mentioned above, we can hardly afford to argue in toto with Alladi Krishnaswami Aiyer who described the Indian Supreme Court as having “more powers than any other Supreme Court in any part of the world”. Comparison with the American Supreme Court, even establishes the exaggeration of the honourable member of the Constituent Assembly, Shri M.C. Setalvad, India’s Attorney General, also seems enamoured of uniqueness of the Indian Supreme Court as he says, “The jurisdiction and powers of the Supreme Court are wider than those exercised by the the highest Court of any country in the Commonwealth or by the Supreme Court of the United States.” But we cannot place our Supreme Court on such a high pedestal.
The State Executive

4.1. REORGANIZATION OF STATES

India is a union of States. Before the passage of the States Reorganization Act and the Constitution VII Amendment Act 1957, disparity in the constitutional position of different states persisted. These states were classified as Part A, Part B, Part C and Part D states.

These termed as Governors' provinces till the attainment of independence, were constituted into Part A states. They included Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Uttar Pradesh, West Bengal and Punjab. The Andhra state was created in 1953, out of Telugu-speaking areas of Madras and placed in this category.

Part B states comprised of Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union, Rajasthan, Saurashtra and Travancore-Cochin. These States and unions of States were formerly ruled by the Princes.

Small territories like Ajmer, Bhopal, Coorg, Himachal Pradesh, Kutch, Manipur, Tripura, Cooch-Bihar and Vindhyā Pradesh which had been either ex-princely States or formerly known as Chief Commissioners' provinces, were declared as 'Part C' States. Cooch-Bihar, however, was subsequently merged with West Bengal. Bilaspur too, though originally a separate unit in Part C States, was afterwards merged with Himachal Pradesh.

Andaman and Nicobar Islands were however termed as Part D States.

Part A and Part B States had a uniform pattern of government, but still following substantial differences in the governance of the two were quite discernible.

(a) The Head of a Part A State was styled as Governor. He was appointed by the President for five years. The Head of Part B States was designated Rajpramukh. The office of Rajpramukh was hereditary in the case of Hyderabad and Mysore. The Head of Jammu and Kashmir State however was designated as 'Sadr-i-
Riyasat, who was to be elected by the State legislature for a period of five years.

(b) The Head of Part A State received a regular salary while the Head of a Part B State received no salary as such. He was to get only an allowance.

(c) The main distinguishing feature, however, was contained in Article 371 which subjected the Part B States to the general direction and control of the Union President, during the first ten years from the commencement of the constitution or for such shorter or longer period as determined by the Parliament. Part A States were not subjected to such control. The State of Mysore was exempted from such a control.

In the words of Dr. M.P. Sharma "These differences arose from the historical and practical circumstances of Part B States. These States used to be governed by the princes who were called upon to surrender their ruling power to the people and who made that sacrifice in the interest of the nation. It was thought desirable as a gesture of goodwill towards the princely order, to retain some of the more important of its members as the constitutional heads of the States, they used to govern. The need for the Presidential control during the transitional period arose from the absence of the democratic tradition and organization in these states."

Part C states ranking lowest in the hierarchy were centrally administered States. They were to be administered by the President who might act through a Lieutenant-Governor, a Chief Commissioner, the government of a neighbouring State or other agents. Article 240 (i) (a) of our constitution empowered the Parliament to create by law or continue by law local legislature for these States and specify their functions. Article 240 (i) (b) further authorised the Parliament to create for each of such States a Council of Advisers or Ministers. Such Legislatures and Ministries were actually set up in Part C States, by the Government of Part C States Act, 1951. The scheme of the division of powers through the three lists, did not apply to these States. Their relation with the Union was that of subordinate sub-divisions of a Unitary State.

The constitution also made a provision for the administration of territories in Part D and other territories, including the acquired territories, but not specified therein. The only territory specified in Part D was the Andaman and Nicobar Islands. A territory did not constitute a unit of the Union of India. Hence, it did not enjoy the same representation in the Union Parliament as did the other states. A territory was not supposed to have any representation in the Rajya Sabha. Moreover, according to Article 81 (2) constitution guaranteed to the citizens of the "units" (states) representation in the Lok Sabha but no such representation was allowed to the "Territories". Such representation to a territory in the Lok Sabha was permissible by a law passed by the Parliament. The President

was vested with the authority to administer a territory under Part D through a Chief Commissioner or any other authority appointed by him.

The Governments of the Units after Reorganization. With the coming into force of the States Reorganization Act, with effect from November 1, 1956, this distinction between Part A, B and C States was swept away. Only two categories of units exist at present i.e., States and Union territories. In the new set-up, the States enjoy complete uniformity in the domains of administration, legislation and economic planning. The institution of Rajpramukh also was abolished. The Indian Union was now to comprise of 14 States and 6 Union territories. Following are the Indian States that constituted the Indian Union after the passing of the said Act—Andhra Pradesh, Assam, Bihar, Bombay, Kerala, Madhya Pradesh, Madras, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh, West Bengal, Jammu and Kashmir. Delhi, Himachal Pradesh, Manipur, Tripura, Andaman, Laccadive and Minicoy islands were to form the Union territories.

The reorganization of the States was done in order to cater to the public opinion both within and without the Part B and Part C States. The people inhabiting these States were conscious of the well-established principle of equality of states of all the federating units in a federation. The States Reorganization Commission's remarks also are quite revealing "The only rational approach to the problem in our opinion will be that Indian Union should have primary constituent units, having equal status and a uniform relationship with the Centre except where for any strategic security or other compelling reasons, it is not practicable to integrate any small area with the territories of a full-fledged unit." The recommendations of the Commission were given full consideration by the government and ultimately adopted by it, in the form of the States Reorganization Act, 1956. In 1960 Bombay was bifurcated into Gujarat and Maharashtra. In 1962, Nagaland was created as a state. Goa, Dien and Daman and Pondicherry were added to Union territories in March, 1962 and September, 1963 respectively.

Now let us turn to the description of the governmental machinery of the states.

§ 2. THE STATE EXECUTIVE

Broadly speaking, the pattern of government in the States is the same as that for the Union. Though the fathers of the Indian constitution did not make a specific provision of Parliamentary Government in the constitution itself, yet they were keen to establish such a form of government both at the Centre and in the States. They wanted the Head of a State namely the Governor to be a mere constitutional ruler, who would act on the advice of the Council of Ministers commanding a majority in the popular House of the State.

2. For details see last Chapter of the volume.
legislature. The intentions of the fathers of the constitution get obvious if we make a critical appraisal and analytical study of their speeches, on the floor of Constituent Assembly when the method of governor's appointment was being discussed.

1.3. APPOINTMENT OF A GOVERNOR

The Provincial Constitution Committee appointed by the Constituent Assembly recommended that the Governor should be elected by the people. The Drafting Committee did not approve of the suggestion on the plea that the co-existence of a Governor elected by the people and the Chief Minister responsible to the legislature, might lead to friction. Moreover, if the Governor was to be a mere nominal head, there was no point in going through the process of an expensive election. The analogy of Governors in U.S.A. was not deemed applicable to India, because Governors in U.S.A. were to possess the real powers. It was argued by some of the members that since the members of the Cabinet were to derive benefit out of expert knowledge and mature political experience of the Head of the State, it would be advisable to have a nominated rather than an elected Governor. It was opined by a few that the Governor should be above party politics and discharge his duties as an impartial and independent mediator. Election could hardly be devoid of party colour. Of course, the critics of nomination system also were emphatically asserting that if the Governor was nominated automatically and the Chief Minister was elected democratically, chances of conflict would be greater. It was apprehended by the apologists of election method that the system of nomination would be unworkable when different parties came in power at the Centre and in the States.

The Drafting Committee suggested an alternative mode of appointing the Governors. The Legislature should elect a panel of four persons (who need not be the residents of the States) and the President of the Union should appoint one of the four as the Governor. Considering the position as a whole, the Constituent Assembly finally decided in favour of nominated Governors.

The Governor of a State, thus, is a nominee of the Union Government. He is appointed by the President on the advice of Union Cabinet by warrant under his hand and seal. A convention has developed that the Governor, usually hails from outside the State to which he is appointed. The only exception made so far, was in the case of Dr. H.C. Mukerjee who was appointed Governor of West Bengal, his native State. This, in fact, is not a very judicious step.

Why a non-resident Governor? The non-resident Governor can ant with greater independence and impartiality. He is not likely to meddle with internal party politics of the state. Secondly, his appointment emphasizes the sentiment of national unity and militates against the narrow spirit of parochialism and linguism, which seems to be developing in some parts of our country.
Another healthy convention is fast developing that the State Ministry is also consulted in the matter, before the appointment of a Governor is finalised. It is however distressing to note that a very unhealthy precedent is also being set. Prominent leaders of the ruling party, discredited at polls by the electorates, are nominated as Governors. After the election of 1952, K. Santhanam was nominated as Lt.-Governor of Vindhya Pradesh, Shri V.Y. Giri and H.V. Pataskar were elevated to governorships of the U.P. and Madhya Pradesh respectively, when they suffered defeat at the polls.

A common Governor may also be appointed for two or more States. The emoluments payable to the common governor are allocated among the States concerned in such proportion as the President may determine by order.\(^1\)

Qualifications for Appointment. According to Article 157, no person is eligible for appointment as Governor unless he is a citizen of India and has completed thirty five years of age.

Conditions of Governor’s office. Article 153 (1) of the constitution specifies that the Governor is not to be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule. If a member of either House of Parliament or of a House of the Legislature of any such state is appointed a Governor, his seat in the House will be deemed to have fallen vacant from the date of his appointment.

Secondly, the Governor is not to hold any office of profit in the Government.

§ 4. SALARIES AND ALLOWANCES

He is entitled to such emoluments, allowances and privileges as may be determined by Parliament. Until provision is so made by the Parliament, the salary of the Governor has been fixed up at Rs. 5500 p.m., plus such allowances and privileges as the Governor of the corresponding province was entitled to immediately before the commencement of the constitution.\(^2\) His emoluments and allowances are not to be diminished during his term of office.\(^3\) He is also provided with a free official residence.

§ 5. TENURE

The Governor is appointed for a period of five years. He holds office during the pleasure of the President i.e. is removable by him at any time.

§ 6. OATH

Every Governor and every person discharging the functions of the

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1. Article 158 (3-A).
2. Second Schedule, Part A.
3. Article 158 (4).
Governor, shall before entering upon his office subscribe in the presence of the Chief Justice of the High Court or in his absence the senior-most judge of the High Court available, an oath in the following form.

"I, A.B., do swear in the name of God, that I will faithfully execute the office of the Governor (or discharge the functions of the Governor) of......(name of the State) and will to the best of my ability preserve, protect and defend the constitution and the law and that I will devote myself to the service and well-being of the people of......(name of the State)."  

1 7. ABOVE LAW

According to Article 361, the Governor is not answerable to any court for the exercise and performance of the powers and duties of his office or for any act done by him in the exercise and performance of those powers and duties. No criminal proceedings can be instituted or continued against the Governor of a State in any court, during his term of office.  

Even, civil proceedings cannot be instituted against a Governor, in any court, in respect of any act done in his personal capacity, during his term of office, until the expiration of two months after a notice in writing has been delivered to him stating the nature of proceedings, the cause of action, the name of the party intending to sue him and the relief claimed.

1 8. HOW A CASUAL VACANCY OR VOID BY HIS ABSENCE TO BE FILLED UP

Article 160 lays down that the President may make such provisions as he deems fit for discharge of the functions of the Governor of a State to fill a casual vacancy or to act in his absence. The Provincial Constitution Committee had suggested the provision of a Deputy Governor in each state. The Drafting Committee turned down the proposal on the ground that a Deputy Governor will have no function to perform, so long as the Governor is there.

1 9. POWERS OF THE GOVERNOR

"Shorty speaking, the powers of the Governor of a state are analogous to those of the President excepting that the Governor has no diplomatic, military or emergency powers."  

Governor’s powers can be considered under the four usual heads: legislative, financial, administrative (executive) and judicial.

Legislative. Though the Governor is not a member of either House of the State Legislature, yet he is equipped with some important powers and duties in the legislative domains. (i) He is to

1. Article 159.
2. Article 361 (3).
3. Article 361 (4).
summon the House of each House of the State Legislature, if it is a bicameral legislature to meet at such time and place as he deems fit. Six months should not however elapse between its last sitting in one session and first in the next session. (ii) He may prorogue the House or either House and dissolve the Legislative Assembly. (iii) He can address either or both of the Houses, assembled together at the commencement of the first session after each general election and also, at the commencement of the first session each year. (iv) Bills passed by the State legislatures require his assent. He can withhold his assent and return the Bill (other than a money Bill) to the State legislature for reconsideration. But if the House or the Houses pass the Bill second time, with or without amendment, he must assent to it. (v) He is empowered to reserve certain Bills for the assent of the President. For instance, Bills providing for compulsory acquisition of the property or derogating from the powers of the High Court, have to be so reserved for President’s consent. (vi) He nominates about 1/6 of the members of the Legislative Council from amongst persons having special knowledge or practical experience in respect of such matters, as Literature, Art, Science, Co-operative movement and Social Service. (vii) He nominates some members of the Anglo-Indian Community if he finds it inadequately represented. (viii) On the advice of the Election Commission, he is authorised to decide questions arising about the disqualification of any member of either House. (ix) He can issue ordinances during the recess of the legislature if some eventuality arises. These ordinances cease to operate at the expiration of six weeks from the reassembly of the Legislature or earlier, if a resolution disapproving such an ordinance is passed by the Legislative Assembly and agreed to by the Legislative Council, if it exists in a State. The Governor’s ordinances are subject to certain restrictions. If they relate to any manner in respect of which a Bill would have required the President’s previous sanction or his assent after reservation, the Governor has no power to issue them except on the President’s instruction. (x) He may also send messages to the House or Houses on a Bill pending in the legislature or otherwise.

Executive. The Executive powers of the State are vested in the Governor and exercised by him directly or through officers subordinate to him. (i) His powers extend to matters enumerated in the state legislative list. In the case of matters enumerated in the Concurrent List, the Governor exercises them, subject to the executive authority of the President. (ii) He makes rules for the trans- action of the business of the government of the State and for its allocation among ministers. (iii) He has the right to seek information from Chief Minister and it is the duty of the Chief Minister of the State to inform him of all the decisions of his ministry. (iv) He can also require the Chief Minister to submit any individual minister’s decision for the consideration of the Council of Ministers. (v) He

1. Article 171(5).
2. Article 192(1) and (2).
is empowered to make appointments of the Chief Minister and on his advice the other ministers. He can also appoint the Advocate General, the Chairman of the State Public Service Commission and its other members. He is consulted in the appointment of judges of the State High Court. (vi) Within the sphere allotted to the Regional Committees, created in the Andhra and the Punjab States, the advice tendered by these committees will normally be accepted by the government. If difference of opinion crops up, reference is to be made to the Governor, whose decision is to be final and binding.

Financial. (i) No money Bill can be introduced in the Legislative Assembly of the State, except on the Governor’s recommendation. (ii) The Contingency Fund is at his disposal. He can make advances out of it to meet unforeseen expenditure, pending its authorisation by the State Legislature. (iii) No demand for a grant can be made except on the recommendation of the Governor. (iv) Under Article 205, the Governor has the power to ask for supplementary, additional or excess grants from the State Legislature. (v) The Governor is required to see that the annual financial statement or budget of the State is laid before the House or Houses of the legislature and passed by it. (vi) Amendments making provision for financial matters cannot be moved except on the recommendations of the Governor.

Judicial. According to Article 161, the Governor of a State shall have the power to grant pardon, reprieve, respite or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. The Governor of Bombay, for instance, exercised his power of suspension of punishment in Commander Nanavati’s case. Though it entailed a great controversy between the executive and the judiciary, yet the Bombay High Court held that Bombay Government’s suspending the life sentence of the Commander, pending the disposal of his application for leave to appeal to the Supreme Court was neither unconstitutional nor contrary to the law.

Miscellaneous. Apart from these powers, the Governor performs a few more functions as well. (i) He receives the annual report of the State Public Service Commission and passes it on to the Council of Ministers for comments. Further he transmits both the report and the comments of the ministers to the Speaker of the Assembly, for being placed before the legislature. (ii) He is to deal with the report of the Auditor General, regarding the income and expenditure of the State. (iii) If he finds that it is impossible to carry on the administration of the State according to the provisions of the constitution, he reports the failure of constitutional machinery to the President. (iv) He acts as the agent of the President when the latter proclaims emergency in the country due to war, civil war or threat thereof or when he proclaims failure of constitutional machinery in a state. (v) Governor of Assam possesses discretionary authority in
the administration of tribal areas and for settling disputes between the government of Assam and the District Council regarding the share of mining royalties.

§ 10. POSITION OF THE GOVERNOR

A critical appraisal of the long list of powers vested with the Governor according to the constitution, reflects that the Governor is not a mere constitutional ruler. The constitution says, "There shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions except in so far as he is by or under this constitution, required to exercise his functions or any of them in his discretion". The constitution does not define the discretionary powers of the Governor. Whether the Governor is entitled to act in his discretion in any matter, is decided by him "in his discretion." According to Article 163 (2) the validity of Governor's actions cannot be challenged merely on the ground that he ought or ought not to have acted in his discretion. Indeed, the discretionary powers of the Governor, though not defined, seemed alarming to the members of the Constituent Assembly. In the words of Pylee, M.V., "A dominant note that ran through the entire discussion was the almost fanatical opposition which practically every member displayed against the vesting of any discretionary power in the Governor." In fact, the members of the Constituent Assembly had before them the image or symbol of imperialist tyranny and repository of arbitrary authority—the Governor under 1935 Act. Hence they grew suspicious of Governor's role even under the new constitution, when they found the same language of 1935 Act, being repeated, through its Articles. Their fears were, however, false and their suspicions were unfounded. "Government of 1935 Act, was not a fully responsible government. It was a de facto and de jure agent of British Imperialist. The Governor was the embodiment of authoritarianism, being the representative of an alien power. It is rather illogical to keep the Governor under a fully responsible system of government, established on the broadest possible popular basis, on par with the Governor of British times. In the case Sunil Kumar Bose v. The Chief Secretary to the Government of West Bengal, the Calcutta High Court said "The governor under the present constitution cannot act except in accordance with the advice of his ministers. Under the Government of India Act, 1935 the position was different......under the present constitution, the power to act in his discretion or in his individual capacity has been taken away and the Governor, therefore, must act on the advice of his ministers......".

Ours is a parliamentary form of government. When a Cabinet, collectively responsible to the legislature, is to render aid and advice to the Governor, in the discharge of his functions, occasions are almost non-existent for him to act contrary to their advice.

Of course, the constitution does not explicitly say that the Governor must always accept the advice of his ministers. But under a parliamentary form of government, it is inevitable that the Governor should be guided by his ministers. Since the ministers are to assume the responsibility, hence it is natural that they should wield the authority.

The framers of our constitution intended the Governor to be a mere ornamental head. That is why they preferred his nomination by the President to his election by direct popular vote. While pleading for the rejection of elective principle, Dr. Ambedkar opined that the Governor’s power would be so limited, so nominal and his position so ornamental, that it was a waste to spend public resources on a popular election for governorship.

Observations made by some of the Governors also give us an impression that the Governor is to be a mere constitutional ruler. Shri Prakasa, once governor of Madras, while talking on his position said, “I am fully assured that I will have nothing to do, but to act as a constitutional Governor, signing on the dotted lines...” Dr. Pattabhai Sitaramayya, an ex-governor, opined that the duties of a Governor lay more in getting visitors and invitees to lunch and dinner. Sometimes, he found that either the husband or the wives were separately invited. If both the husband and wife came, the children were kept out for their nuisance value. He pointed out, that he was supposed to send a fortnightly report to the President of India, but from the entertainment, he did not know, what to report. Shri H.P. Modi, an ex-governor of Uttar Pradesh, described his position in the U.P. State, in these words: “Having said that, I must really get back to the position that constitutionally, the Governor has got very little to do...”

Keeping in view the above facts and the keen observation of the incumbents of this office, should we presume that the Governor is a mere figurehead, a rubber stamp of his Cabinet or a post office between his Cabinet and the President or between his Cabinet and the official gazette? Should we agree with Shri H.V. Kamath according to whom the Governor is little more than a puppet controlled by the Chief Minister, on the one hand and by the President, that is to say virtually by the Prime Minister, on the other? An analytical study of the constitutional provisions will show that the Governor is neither a figurehead nor a rubber stamp. Instead he is an important functionary designed to play a vital role in the administration of the affairs of the State. Following important provisions reflect that the Governor, though not specifically equipped with discretionary powers, will be in a position to act in his discretion.

II: DISCRETIONARY POWERS OF THE GOVERNOR

Selection of a Chief Minister. Though it is an established practice in India, that immediately after the election a party holding
majority, elects its leader, who is summoned by the Governor to assume Chief Ministership, yet the States may not be blessed with such a happy situation for all times to come. In fact, it did happen in Madras and Travancore-Cochin, in 1952, after first General Elections and in Kerala and Orissa, in 1957 after second General Elections. Under such circumstances, the parties are apt to get together to muster the requisite majority and form the government. Such alliances do not, generally, have cohesive force behind them. They are eager to grasp power. In such a situation, the Governor exercises his discretion. He is to take stock of the situation, dispassionately and decide, in his own discretion, who is to be acknowledged as the leader of the Coalition Ministry. In the course of fourteen months, Orissa provided two occasions for the Governor to make use of his discretion in the choice of a Chief Minister. It happened in 1957 soon after the General Elections and in 1958, when the Mahtab Ministry tendered its resignation. In the latter case despite the fact that the Leader of the Opposition claimed a majority in the Assembly, the Governor did not call upon him to form a ministry.

Dismissal of a Ministry. Suppose there occurs a split in the party in power and a group of its members joins the opposition benches. Obviously, the ministry is not left with the requisite majority though it is keen to retain the power. Hence it advises the Governor to prorogue the Assembly, to save itself from the censure motion, at its hand. In the meantime, the opposition may approach the Governor, with a request to dismiss the ministry as it does not enjoy the confidence of the majority. Thus a political crisis of a baffling nature occurs. What should the Governor do? Here is a clear case where he is expected to exercise his discretion. Though normally, he will not dismiss a ministry, if it enjoys the confidence of the majority yet after consultation with the President, in the interest of purity of administration and to eradicate corruption caused by the ministry he may dismiss the ministry. Moreover, if the ministry is engaged in activities detrimental to the national security or solidarity, Governor may exercise his discretionary power and dismiss the ministry. In the words of Mr. M.V. Pylee, “Although, these are not normal circumstances yet in a country where democratic institutions are in a stage of evolution and regional, linguistic and other disintegrating loyalties are still reigning supreme, in several parts of the country, the probability of such contingencies is not remote. And the Governor is the only person on the spot who can take stock of the situation and initiate appropriate action including the dismissal of the ministry.”

Dissolution of the Legislative Assembly. No doubt, in the normal circumstances, the Legislative Assembly is not dissolved by the Governor, till it has completed its prescribed tenure. Yet in a parliamentary form of government, such a dissolution is possible in

order to appeal to the electorate to end a situation of political instability.

Such a power of dissolution is vested in the Governor. He may not be advised by the ministry to dissolve the Assembly or not to do it. In this case also, the Governor is fully entitled to act according to his discretion, in the interest of the state concerned. In 1955, for instance, in Travancore-Cochin, a defeated ministry advised the Governor to dissolve the Assembly, but the Governor rejected its advice. Thus it is clear that the Assembly may be dissolved by the Governor in his discretion.

**Advising the President for the proclamation of an Emergency.**
Assessment of the situation necessitating presidential intervention, in the affairs of the State, and promulgation of an emergency in the State, is a task of vital importance, assigned to the Governor. The government of the state may not like to advise him to recommend to the President proclamation of emergency in the State. In such circumstances, if the Governor reports to the President a breakdown of the constitutional machinery in the State, it is clearly in accordance with his discretionary power. In five different States namely, Punjab, Punjab, Andhra, Travancore-Cochin and Kerala, the constitutional machinery broke down and the Centre had to intervene, when its failure was reported to the President by the Governor. These instances reveal that parliamentary government has yet to attain stability in the States. Hence Presidential intervention is bound to be there and the Governors are apt to play a decisive role in their discretion.

**Discretionary Powers of the Governor of Assam.** The constitution vests in the Governor of Assam two discretionary powers which are embodied in the sixth schedule of the constitution. Firstly, according to section 9 (2) of the schedule if any dispute arises as to the share of such royalties (accruing from the lease of mining rights within the autonomous District) to be made over to a District Council, it shall be referred to the Governor for determination. The amount determined by the Governor in his discretion, will be payable to the District Council. Secondly, according to section 18 (2 and 3) of the sixth schedule, the administration of certain Tribal Areas and tracts of Assam is to be carried on by the President through the Governor of Assam, as his agent. In the discharge of his functions, as the agent of the President, the Governor acts in his discretion.

**Asking the Chief Minister to place a matter for the consideration of the Council of Ministers.** Article 167 (c) empowers the Governor to ask the Chief Minister to submit for the consideration of the Council of Ministers any matter, on which a decision was taken by an individual minister. Naturally such a step will be taken by the Governor in his own discretion. In the words of K.M. Munshi, the Governor may say "Here is a particular order. I feel that it is a
matter of great importance. I want that by virtue of collective responsibility, all the ministers must meet together and consider it...... If they accept it, he is bound to accept their advice. He has no right to overrule them. It is merely a matter of caution that a decision which in the opinion of the Constitutional Head is such as requires the imprimatur of the whole Cabinet and not of a single minister, should so receive it......”

Seeking information from Chief Minister. The constitution empowers the Governor to seek information from the Chief Minister regarding legislative and administrative matters. He exercises this power in his discretion. In the words of Dr. Ambedkar, “The Governor is the representative not of a party; he is the representative of the people, as a whole of the State...... He must see that the administration is carried on at a level which is regarded as good, efficient and honest administration. How can the Governor discharge these duties, if he has not before him certain information! It is to enable the Governor to discharge his functions in respect of a good and pure administration, that we propose to give the power to call for any information.”

Thus it is quite evident from the preceding arguments that though nowhere in the constitution (except when it deals with the Governor of Assam) discretionary powers of the Governor have been enumerated, yet they are inherent in a particular situation. The provision dealing with discretionary power is couched in general terms. In case no such power was to be actually possessed by the Governor, the provision would have been dubbed superfluous, by now.

It may, however, be pointed out that the reorganization of the States in 1956 and the incorporation of a new Article 371, in the constitution authorize the President to make provision for any special responsibility of the Governors of Punjab, Andhra Pradesh, and Bombay and specifically entitle them to act in their discretion in particular cases. This further adds to the discretionary authority of the Governor.

The President’s order, dated November 4, 1957 further strengthened his position. The said order established two Regional Committees in the Punjab, one for Hindi speaking region and the other for Punjabi speaking region. The Committees were authorised to make proposals to the State government for legislation with regard to questions of general policy. Later on, a modification was effected in the Rules of Business of the Punjab Government.

3. Article 163 (2) reads “If any question arises whether any matter is or is not a matter in respect of which the Governor is by or under this constitution required to act in his discretion, the decision of the Governor in his discretion shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.”
According to it, advice tendered by the Committee was to be normally accepted by the Government, but if in the opinion of the Council of Ministers "it would not be expedient to give effect to any such recommendation or that the Regional Committee was not competent to make any such recommendation, the matter shall be referred by the Chief Minister to the Governor, whose decision thereon shall be final and binding on the Council and action shall be taken accordingly." Paragraph 10 of the order, further equips the Governor with special responsibility for securing the proper functioning of Regional Committees, in accordance with the provisions of this order. Responsibility conferred upon the Governor by Article 371 (1) and (2) no doubt entitles him to act in particular cases in his discretion. But he is subject to the supervision of the Union Government, while he exercises such discretionary powers.

§ 12. CAN GOVERNOR BECOME AN AUTOCRAT?

The question arises, can the Governor become an autocrat? Can he abuse the discretionary powers? The answer is simple. So long as he works within the framework of a democratic constitution, he cannot become autocrat. Of course, neither the Council of Ministers nor the State legislature can control him as far as his discretionary powers are concerned. But dismissal by the President hangs like a sword of Damocles on his head. He is an agent of the Centre. If he abuses his discretionary powers, the President can impose check upon him or even dismiss him. In fact, in the normal circumstances (when the ministry in his state belongs to the same Party as the President and the Council of Ministers at the Centre) he will act upon the advice of the Council of Ministers, enjoying the confidence of the State Legislature. If he substitutes his discretion for the advice of the Council, he will be creating political complications, ultimately leading to his dismissal. Under abnormal circumstances such as an emergency caused by war, internal commotion or a breakdown of the constitutional machinery, he will act as an agent of the President. No doubt, during such critical times, his powers are more real than during normal times when his powers are practically nominal. But he is, in no way, master of the situation himself.

When all is said and done, it will have to be admitted that, by virtue of his position as the head of the State, he has the right to be consulted, the right to encourage and the right to warn. He is a detached spectator, a general observer of the affairs of the State, encouraging and admonishing his government and being kept informed by it. He is not an active politician. His role is that of a respectable and impartial dignitary, standing above the vortex of party politics, always available to the State government for advice and guidance. In the words of Dr. P. K. Sen, "The

functions of the Governor shall be to lubricate the machine of the
government, to see that its wheels are going on well by reason not
of his interference but of friendly co-operation.‘‘ Moreover, he
is an agent of the President, a representative of the Union in the
State. ‘‘He is the link that fastens the federal State chain, the
channel which regulates the Union-State relationship. Thus, he is
an essential part of the constitutional machinery, fulfilling an
essential purpose and rendering an essential service.” In the
words of late B.G. Kher (Ex-Chief Minister of Bombay) ‘‘A Governor
can do a great deal of good, if he is a good Governor and he can
do a great deal of mischief, if he is a bad Governor, inspite of
the very little power, given to him under the constitution, we are
framing.’’ Mr. D. D. Basu is also of the same opinion. In his
words, ‘‘The Governor is not going to be a mere figurehead. If
the Governor is an active and good Governor, he could by means
of getting in touch with the opponents of the party in power, re-
concile them to a good number of measures and generally make
the administration run smoothly.’’

COUNCIL OF MINISTERS

The Council of Ministers in the States is constituted and
functions in the same way as the Union Cabinet. In both cases,
the provisions of law are identical with certain differences of detail.

§ 13. APPOINTMENT OF COUNCIL OF MINISTERS

At the head of the Council of Ministers is the Chief Minister
who is appointed by the Governor, while the other Ministers are
appointed by the Governor, on the advice of the Chief Minister.
The Chief Minister cannot ignore some M.L.As who held office
earlier. Representatives of Scheduled Castes and Tribes must be
included. In some States, with considerable Muslim majority, one
or two must be Muslims. In States like Bombay, Andhra Pradesh
and Madras a balance between different regions of the State is
to be maintained. They all hold office during the pleasure of the
Governor. But as they are collectively responsible to the Legis-
lative Assembly, they will virtually retain office as long as they
enjoy the confidence of the Assembly. Any person may be
appointed a Minister, but he ceases to be a Minister if he is not
or does not get elected to the State legislature within six months.
It means that no minister can retain his office for more than six
months without being elected to the State legislature. The
constitution provides that in Bihar, Madhya Pradesh and Orissa,
there must be appointed a minister to look after tribal welfare.

1. C.A.D., Vol. VIII.
The ministers receive such salaries and allowances, as may be determined by the legislatures of the States.

Strength and Organisation. The number of ministers in State Cabinets varies from State to State. There are small Cabinets as in the Punjab, of ten Ministers and big Cabinets as in Bengal and U.P. consisting of sixteen and twenty Ministers respectively. The Council of Ministers include Cabinet Ministers, Ministers of State and Deputy Ministers. Several States do not have Deputy Ministers. In some States, Parliamentary Secretaries are also appointed. They are not members of Council of Ministers and are not entitled to attend its meeting. Every Minister is the head of one or more administrative departments of the State and is responsible for their proper working. Till recently, the Council of Ministers of the Punjab consisted of 10 Cabinet Ministers, 9 Ministers of State, and 10 Deputy Ministers. Due to the proclamation of emergency and the public pressure to cut down the unwieldy cabinets to effect economy, the number of Punjab Ministers has been reduced to eight only. The credit for such an adaptability goes to the dynamic personality of the Punjab Chief Minister, Shri Partap Singh Kairon. Recently the Congress High Command has specifically told the Chief Ministers of all the States not to have more than 20 ministers in their cabinets. It was implemented in U.P. despite the contrary intentions of the U.P. Chief Minister - Mrs. Sucheta Kriplani.

14. DIFFERENCE BETWEEN UNION CABINET AND STATE COUNCIL OF MINISTERS

Dr. M.P. Sharma points out the difference between the two, in three respects:

1. The Head of the State Cabinet is called the Chief Minister instead of Prime Minister.

2. The State Cabinet does not have the right to aid and advise the Governor, over the whole range of his functions, as Article 163 lays down: "There shall be a Council of Ministers led by a Chief Minister to aid and advise the Governor in the exercise of his functions except when he is required by the constitution to act in his discretion." The Union Cabinet, on the other hand, is supposed to aid and advise the President over the whole range of his functions.

3. In the Cabinets of Bihar, Madhya Pradesh and Orissa, there must be a Minister in charge of tribal welfare and he may also be entrusted with the welfare of the Scheduled Castes and Backward Classes. No such duty has been assigned to Union Cabinet.

15. FUNCTIONS OF COUNCIL OF MINISTERS

1. The Council of Ministers is responsible for formulating and deciding the policies of the State. They jointly take decisions on matters of vital policy. They are collectively responsible to the

1. India, 1962 (as on June 1, 1962).
Assembly for policy decisions. (iii) The Ministers decide the legislative programme of the House and sponsor and pilot Bills. In fact, the basic principles of the proposed legislation may be discussed in the Council and the items to be included in the Governor's speech determined. (iv) All important appointments of the heads of departments are made by the Council. (v) They answer questions on the floor of the House and reply to motions of adjournment. (vi) They determine the taxation policy of the State and assist the Finance Minister in framing the budget. (vii) They are individually responsible for the efficient running of their departments. (viii) All disputes with other States of the Union may come up for discussion here. The representation, to be made to the Union Government about grants; President's assent to the Bills reserved for his assent; and legislative proposals in the Concurrent List, is to be taken up in the Council. (ix) Advice to be tendered to the Governor or the appointment of judges of the High Court, may be considered here and probable changes to be made, determined. (x) Some of the ministers may like to place before the Council questions wherein they had overruled their civil service advisers. (xi) The States' share of work in the Five-Year Plans is considered in the Council and its obligations determined. (xii) No proposal for incurring expenditure out of State reserves can be made except by a minister.

From the above-mentioned powers of the Council of Ministers, it appears that they are the guides and the masters of the legislature, apart from being the formulators and executors of policy of the State. Yet, in actual practice, the State Legislative Assembly still enjoys the right of passing a vote of no-confidence against a ministry, if the former does not find favour with the latter. Moreover, the ministries are often subjected to a severe cross-examination during the question hour in the State legislature. The strict supervision and direction of the national executive of their political party also cannot be easily ruled out.

§ 16. THE CHIEF MINISTER

The position and powers of the Chief Minister of a State are replica of those of his prototype in the Central Cabinet. Like the Prime Minister of India, he can be described as the “keystone of cabinet-arch,” “a moon among the lesser stars” or a “sun around whom the other ministers revolve like planets.” In fact, he is central to the formation, and central to the death of the Council of Ministers. In the States, there have been more cases of differences of opinions among the Ministers and the Chief Minister, than at the Centre. Hence the Chief Minister has been getting better opportunity for asserting himself against the Ministers. The Ministers had either been yielding before the Chief Minister or had been made to quit by the latter.

His Powers. (i) As a Chief of the Council, he presides at its meetings. He is to decide which matters should be brought before
the Council for discussions. (ii) He is to make the Council of Ministers work as a team. He possesses the power of general supervision and co-ordination over all the departments. Any disputes between ministers are referred to him for settlement. (iii) He, being the leader of the Legislature, is in a position to get any legislation within the competence of the state legislature passed, any taxes levied and any supplies voted. He has been authorised to advise the Governor to dissolve the Legislative Assembly. The Governor, being a constitutional ruler, generally acts upon his advice and dissolves the Legislative Assembly. (iv) He is the connecting link between his Council of Ministers and the Governor. He is to communicate to the Governor the decisions of the ministers and any other information, regarding the State administration which the Governor may call for. (v) Being the principal spokesman of the State Government and the majority party in office, his utterances and assurances are deemed to be authoritative and binding on the State government. (vi) Though certain important appointments like that of Advocate General and members of State Public Service Commission are vested with the Governor, yet he exercises determining influence in such appointments. (vii) If the Governor so desires, he is to submit for the consideration of the Council of Ministers any matters on which a minister may take a decision without consulting the Cabinet. But once such a matter is approved by the Council, it becomes binding on the Governor. In fact, such an eventuality will crop up, when a coalition Council of Ministers is constituted in a State. So long as Council of Ministers is a homogeneous team taken from one Party, a minister may not take a decision on any vital matter of policy independently of the Council.

It may thus be concluded that for all practical purposes, the Chief Minister holds a pivotal position in the Council.

§ 17. RELATION BETWEEN THE GOVERNOR AND THE COUNCIL OF MINISTERS

In the words of Mr. D.D. Basu, "In general, the relation between the Governor and his ministers is the same as that between the President and his ministers, with this important difference that while the constitution does not empower the President to exercise any function in his discretion, it authorises the Governor to exercise some functions in his discretion." Basu’s remarks are indeed based upon Article 163 (a) which runs as follows: "There shall be a Council of Minister......to aid and advise the Governor in exercise of his functions except in so far as he is or under this constitution required to exercise his functions or any of them in his discretion." As already discussed in the preceding pages, if any question arises whether any matter is or is not under Governor’s discretion, the decision of the Governor is final. Leaving aside discretionary authority of the Governor, which has not been specified in the constitution, (save in the case of Governor of Assam) the Governor normally exercises his functions in relation to the Council of
Ministers as a constitutional head. Although, the Governor has not been legally fettered to act according to the advice of the Council of Ministers, constitutional propriety demands that he should not act against the advice of the ministers, except in exceptional circumstances. The working of the constitution during the last 13 years has revealed that there have been no instances of serious conflicts between the ministers and the governors. The latter have established healthy constitutional precedents.

The Governor appoints the Chief Minister and on his advice the rest of the ministers of the Council. As already pointed out, the Governor cannot exercise much of discretion, if one party captures absolute majority. He is bound to call the leader of the majority party to form the ministry. If there are many parties in the State Assembly and not one of them has a majority, the Governor can exercise his discretion while selecting a leader out of groups, joining hands to form a Council of Ministers. He administers an oath of office to the ministers before they enter office.

The Chief Minister is to communicate to the Governor the decisions of the Council of Ministers. The Governor has also the right to seek himself information, on all matters concerning the government of the state from the Council of Ministers.

It is also the right of the Governor to require a matter decided by an individual minister to be placed before the whole Council of Ministers. He can, in fact, advise, warn and encourage the ministers. He is their friend, philosopher and guide.

According to the constitution, a minister holds office during the pleasure of the Governor. In theory, the Governor may dismiss a minister if he so likes, but in view of the collective responsibility of the Council of Ministers to the Legislative Assembly, he is not likely to make use of this power in actual practice. If, however, the Chief Minister is guilty of grave unconstitutional acts, the Governor may take a drastic step of dismissing him. Such a situation has not arisen so far.

§ 18. RELATION BETWEEN THE COUNCIL OF MINISTERS AND STATE LEGISLATURE

It is specifically provided in the constitution that the Ministers are to be chosen from among the members of the legislature and they are responsible to it also. According to Article 164 (v) the Council of Ministers is collectively responsible to the Legislative Assembly of the State. This means that they can remain in office only if they enjoy the confidence of the majority of the State Legislative Assembly. The ministers are entitled to attend the meetings of the Assembly and participate in its proceedings. All important and controversial measures are initiated by the ministers in the State Legislature.

Moreover, the Legislature can exercise control over the Ministers in a variety of other ways also.
(i) The members of the Legislature can put questions and supplementary questions and thus expose the acts of omission and commission of the government. (ii) Adjournment motions can be moved in order to bring to light and criticise the errors of the government. (iii) A token cut can be effected in the State Budget. (iv) A bill introduced by the ministry can be thrown out by the legislature, thus indicating that the ministry does not command a majority in the Legislative Assembly. (v) The Legislative Assembly can pass a non-official bill opposed by the ministry.

On the other hand, ministers are also in a position to exercise control and influence over the Assembly. When they are outvoted in the Legislative Assembly, the Chief Minister can ask the Governor to dissolve the Legislative Assembly. The Governor ordinarily accepts the advice of the Chief Minister. If, however, the electorates do not repose their confidence in the ministry and exhibit their disapproval by out-voting the ministry, the ministry resigns, without facing the Assembly after elections. It may however be pointed out that if party discipline is strict and party majority in the Assembly is absolute and clear, the Assembly is apt to be reduced to a mere ratifying chamber or a registering body. The Council of Ministers can be dislodged if Government’s majority is precarious and there is disunity in the party ranks. “In Pepsu and Travancore-Cochin, Congress ministers were turned out. In the Punjab and Pepsu, the waywardness of the ministries ultimately led to the President’s rule. In several other States, the ministries have had to be very careful in their dealing with the legislature.”

In fact the Council of Ministers forms an ad hoc Executive Committee of the legislature and can safely be described as its guide and even, in certain respects, its master. It decides what taxes ought to be raised. According to the constitution, money bill or any measure proposing raising of taxes, cannot be introduced in the legislature, until and unless prior sanction of the Governor is obtained. Prior sanction of the Governor, in reality means the sanction of the Council of Ministers, as in a parliamentary form of government, the head of the state is to act, on the advice of the ministers. Proposals for incurring expenditure out of state revenues always emanate from the Council of Ministers. Most of the laws, initiated in the legislature, come from the ministry and practically all the laws enacted are government measures.

The State Legislature

1. WHAT IT CONSISTS OF?

The constitution provides for a legislature for every State in the Union. The legislature of every State shall consist of the Governor and the House or Houses of the States. In some of the States, the legislature consists of two Houses, the Legislative Assembly and the Legislative Council while in the rest, there shall be only one House—the Legislative Assembly. The constitution originally provided bicameral legislatures for Bihar, Bombay, Madras, Punjab, Uttar Pradesh, West Bengal (Part A States) and Mysore (Part B) States. Since the passing of the Constitution Amendment Act, 1956 and the Legislative Council Act 1957, the number of States having bicameral legislature is ten. These are Andhra Pradesh, Bihar, Bombay, Madhya Pradesh, Madras, Mysore, Punjab, Uttar Pradesh, West Bengal. Jammu and Kashmir adopted a bicameral legislature by her own state constitution. In the remaining states of Rajasthan, Kerala, Assam, Orissa, the legislatures are unicameral i.e. they consist of only one House—the Legislative Assembly.

Creation and abolition of Legislative Councils. Article 189 of the constitution provides for the abolition of the second chamber in a State where it already exists and also for the creation of such a chamber in a State, where it does not already exist: The process to be adopted for abolition or creation of a legislative council is very simple. The State Legislative Assembly could pass a resolution by a 2/3rd majority of the votes of the members present and voting and by majority of its total membership, asking Parliament to enact a law for such abolition or creation of the legislative council. The constitution clearly lays down that such an Act of the Parliament would not be deemed to be an amendment of the constitution.

LEGISLATIVE COUNCIL (Vidhan Parishad)

2. COMPOSITION OF THE COUNCILS

The constitution originally provided that the strength of the legislative council in a State must not exceed 1/4th of the total members
of the State Assembly. The total number in the Council is not to be less than forty in any case. The Constitution (Seventh Amendment) Act passed by Parliament in October, 1956 provided that the maximum strength of the Council should be 1/3rd of that of the Legislative Assemblies. "This provision has been adopted so that the Upper House (the Legislative Council) may not get a predominance in the Legislature."

Article 171(2) of the constitution vests Parliament with the final power of providing the composition of this Chamber. But until Parliament legislates on the matter, the composition of the Council will be determined according to the constitution which makes it a partly nominated and partly elected body. The election is to be indirect and in accordance with the principle of proportional representation by the single transferable vote.

Broadly speaking, 5/6th of the total members of the Council are to be indirectly elected and 1/6th are to be nominated by the Governor subject to the above maximum and minimum as follows: (i) 1/3rd of the total number of members of the Council shall be elected by the Electoral College, consisting of members of Local Bodies of the State (Municipalities, District Boards, or any other Local Authorities specified by the law of Parliament). (ii) 1/12 are to be elected by the electorates consisting of graduates of three years' standing, residing in the State, (iii) 1/12 are to be elected by the electorates consisting of persons engaged for at least three years in teaching in educational institutions not lower in standard than secondary schools. (iv) 1/3 are to be elected by the members of the Legislative Assembly from amongst persons who are not members of the Assembly. (v) The remainder i.e. 1/3 are to be nominated by the Governor from persons having knowledge or practical experience in respect of such matters as Literature, Science, Art, Co-operative Movement and Social Service.

Strength of the Legislative Councils in accordance with the Legislative Councils Act 1957 is given below:

<table>
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<tr>
<th>State</th>
<th>Members</th>
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<tbody>
<tr>
<td>Andhra</td>
<td>90</td>
</tr>
<tr>
<td>Bihar</td>
<td>96</td>
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<tr>
<td>Bombay</td>
<td>108</td>
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<tr>
<td>Madras</td>
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<td>Madhya Pradesh</td>
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Qualification of Members. The qualifications laid down for a person seeking election to the Legislative Council are:

(i) He must be a citizen of India. (ii) He must not be less than 30 years of age. (iii) He must possess such other qualifications, as may be prescribed by the State legislature.

Disqualifications for Membership. A person shall be disqualified for being chosen as and for being a member of the Council if he (i) holds any office of profit under the Government of India or the Government of any State, other than that of a minister for the Indian Union or for a State or an office declared by a law of the state not to disqualify its holder; or (ii) is of unsound mind as declared by a competent court; or (iii) is an undischarged insolvent; or (iv) is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement, or allegiance or adherence to a foreign state; or (v) is so disqualified by or under any law made by Parliament. The Representation of People's Act, 1951, for instance, has laid down some grounds of disqualifications e.g., conviction by a Court, having been found guilty of a corrupt or illegal practice, in relation to election, being a director or managing agent of a corporation in which government has financial interest.

According to Article 192, whether a member of a House of the legislature of a State has become subject to any of the disqualifications enumerated above, the question is to be referred to the Governor of that State for decision who will act, according to the opinion of the Election Commission. Governor's decision, however, is not liable to be challenged in any court of law.

§ 3. THE TEAM

The Legislative Council is not subject to dissolution, but 1/3 of its members retire every two years. That implies that the term of its members is six years. Like the Rajya Sabha (Council of the States), the Legislative Council is a permanent body only a fraction of its members being changed every third year.

§ 4. QUORUM

The quorum for the meetings of the Legislative Council is 1/10 of its membership or 10 members whichever is greater. According to Article 180(3), this is so, until the State Legislature provides otherwise by law.

§ 5. THE PRESIDING OFFICERS

The Council has two elected officers elected by the Council. Both are removable by a resolution notice. Both of them receive salaries. Their powers and functions are the same as are vested with the Chairman and Deputy Chairman of the Council of States.

The constitution provides for each House of the State Legislature a separate secretariat staff whose members are independent in the matters of recruitment and conditions of service.

§ 6. CONDUCT OF BUSINESS

"Most of the Articles in this part of the constitution are a reproduction almost verbatim of those which deal with corresponding
provisions regarding the two Houses of the Parliament. The State Legislature, i.e., both the Houses, must meet at least twice a year and the interval between any two sessions should not be more than six months. A new session begins with an address by the Governor, which lays down the policy of the state government in the ensuing year. The address is then subjected to discussion in both the Houses and is finally voted upon in the form of a resolution expressing thanks to the Governor.

Any Bill, except a Money Bill, may be introduced in either House of the Legislature. All questions are decided by a majority vote of the members present and voting other than the Chairman. The Chairman exercises a casting vote, in case of a tie.

1. FUNCTIONS OF THE COUNCIL

The Legislative Councils are extremely weak legislative bodies, much weaker than even Council of States. Their functions can be enumerated in three categories.

(a) Legislative. A Non-Money Bill can be introduced in either House and requires to be passed by both in order to become law. When a Bill goes to the Council for the first time from the Assembly, the Council has four alternatives: (i) it may reject the Bill; (ii) it may amend the Bill; (iii) it may take no action on it. (But when three months have elapsed since its receipt by the Council and the Council does not inform the Assembly as to what action it has taken on the Bill, it is deemed to have been rejected by the Council); (iv) it may pass the Bill as sent by the Assembly. In the first three cases the Assembly considers the Bill for a second time. It may or may not accept the amendments made by the Council and pass the Bill. It now goes for the second time to the Council, which can adopt any of the above alternative courses of action. It cannot, however, delay the Bill, for more than a month, for the second time. The Assembly acts again according to the same procedure as before if the Council does not agree with it. It is, thus, obvious that the Council is vested with only a suspensory veto, the first time for a period of three months and the second time for a month. So the utmost that the Council can do is to delay the final passage of a Bill passed by the Assembly for a period of four months. The constitution is, however, silent on an important point 'What is to happen to a Bill, which is passed by the Council but rejected or disagreed to by the Assembly?' We can, however, presume that such a Bill is to be deemed to be finally rejected. Thus, there is not even a pretence of parity between the Council of States and House of the People.

The original draft of the constitution did make a provision for a joint session of both Houses in case of differences. But the Constituent Assembly dropped the proposal.

(b) Financial. In the financial domain, the position of the Council is the same, as that of the Council of States. A Money Bill cannot be initiated in the Legislative Council. After a Money Bill has been passed by the Legislative Assembly, it is sent to the Council for its suggestions and recommendations. The Council is required within fourteen days of the receipt of Bill to return it to the Assembly with its recommendations. If it fails to do so, it becomes a law after lapse of fourteen days. The Assembly is free to accept or reject its recommendations, even when they are made by the Council. It is thus quite evident that in financial matters, the Legislative Council has neither the initiative nor any effective voice.

(c) Administrative. The Council does not exercise control over the Ministry, in the sense Assembly does. The constitution definitely provides that the Council of Ministers is collectively responsible to the Legislative Assembly. The Council can, however, put questions and supplementaries on matters connected with public administration. It can move, discuss and pass resolutions on any matters of public importance. But it cannot pass a vote of no-confidence against the Council of Ministers.

The Council does not possess powers of any other kind. It can be abolished altogether if the Assembly demands so, by a resolution passed in a prescribed way.

§ 8. PROBLEM OF THE UPPER HOUSE IN THE STATES

The problem of the second chamber has ever been the subject of much controversy. Since the introduction and passage of 1935 Act, the problem of second chamber is being hotly discussed, even in the units which formerly comprised British provinces and now constitute units of the Indian Union. There has not been unanimity of opinions regarding the desirability or otherwise of the second chamber in the Indian States. In fact, the framers of the Indian constitution were themselves uncertain of the utility of second chambers. Hence they made a provision for their abolition as well as their creation. They introduced bicameralism in certain States only as an experimental measure. If it proved to be a fruitful experiment, the rest of the States would also like to establish second chambers.

Arguments against. Either superfluous or mischievous. The critics of second chambers in the States were rather uncharitable in their remarks. They argued that either a second chamber agreed with the first, in which case it was superfluous or it disagreed with the first, in which case it was pernicious.

Not an effective check. It was emphasised that powers of the Legislative Councils are so much limited that they can hardly impose any effective check on the Assemblies. Whether a Bill is well-conceived or ill-conceived, it is apt to be passed if Assembly so wishes. Since the Council can delay a Non-Money Bill for a period of four months only, it can hardly afford an opportunity to the M.L.A.s to discuss it thoroughly. A check on hasty and ill-considered legisla-
tion emanating from the Assembly could be imposed, in case the Council could detain the Bill for longer period. Regards Money Bills, only fourteen days delay can be caused by the Council, which is more or less a formality rather than a substantial barrier in the way of Assembly.

**Stronghold of vested interests.** A few of the critics were opposed to the institution as it served only as a stronghold of vested interests who were not expected to exercise a healthy influence on the life of inhabitants of the States. They may block progressive legislation sponsored by popularly elected Legislative Assembly.

**Backdoor entrance of the defeated members.** It was apprehended that the Legislative Councils would be utilized to provide scope for the ambitions of party-men who might not be accommodated in the Assemblies, due to their marked unpopularity amongst the masses, or to enlarge the circle of party influence. The nominated quota placed in the hands of the Governor might be used for enabling certain defeated leaders at the polls to seek chief ministerships, rather than accommodating scholars, scientists, artists or those devoted to social service.1 Hence in the words of S.S. Iyengar, "Bi-cameralism in democracy is an outworn creed."

**Costly Institution.** It was pointed out by certain apologists of unicameralism that bicameralism in the States would be a roll royce institution in the bullock-cart country. It would be an expensive experiment and a great drain on the national exchequer.

**Utility doubtful.** The critics further point out that the very fact that some of the States, such as Orissa and Assam decided against having Second Chambers in their legislatures goes to prove the strength of public opposition to the second chambers in these States. The provision for their abolition further confirms that the Constituent Assembly itself was doubtful about their utility.

**A heterogeneous Chamber.** The composition of the Legislative Council entails a very severe criticism. A combination of direct election, indirect election and nomination makes the Council a hotch-potch of representation. A chamber so heterogeneously constituted, neither serves the purpose of a revising chamber nor can it act as an effective brake against the hasty legislation. Moreover, right of franchise given to teachers and members of local bodies indicate that emphasis is laid primarily on functional representation. From functional representation point of view, the representation is too narrow. Many other professions deserve such representation and can be more conducive. Moreover, too much importance has been given to the M.L.As as 1/3 of the members of the Council are to be elected by them. The percentage of seats reserved for nomination seems to be too small. If the Council was to be constituted of

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1. Morarji Desai suffered defeat at the polls but was appointed Chief Minister of Bombay in 1955 as he was accommodated by the Governor in Bombay Legislative Council. C. Rajagopalachari was nominated to the Madras Legislative Council and appointed Chief Minister of Madras.
meritorious elders, who could play an effective role in revising the measures, and toning them down, it should have been composed of more of luminaries in the domains of art, science, literature and social service.

Argument for Council. *A check against hasty legislation.* The advocates of second chambers in the States emphatically assert that the second chambers in the States would be necessary to protect the interests of the people against the hasty and ill-considered legislation of the Lower House. A single chamber, it was apprehended, was in danger of being rash and one-sided and swayed by emotions or passions. If there were two chambers, the measures passed by one would be scrutinised by the other. Hence, laws passed finally would be carefully analyzed and properly discussed.

*A restraint on autocratic lower chamber.* It was argued by the apologists of the second chambers that imposition of check on autocracy of the lower chambers was indispensable. In case of India, retention of second chambers or their creation is all the more important, as India is inhabited by illiterate masses, most of whom are the electorates. If democracy was to be saved from the whims and caprice of these illiterate electorates, creation of second chambers to impose checks on them was most essential. To vest all the legislative powers in the hands of a popularly elected House in a country like India, would be disastrous.

*A reservoir of talent.* Moreover, elderly, experienced and sober individuals cannot bear the ordeal of an electioneering campaign, nor are they keen to put themselves in unnecessary botheration. But presence of such an element in the legislature of the State not only adds to its grace, but also exercises a sobering, ennobling and purifying influence on the politics of the State.

Our legislative councils, do accommodate such mature and serene personalities, through their nominated quota.

*Not an insuperable barrier.* Supporters of the Councils point out that the latter cannot put insuperable barriers in the way of Assemblies, since they can delay the Bills only for a period of four months. Such an interposition of delay is needed to crystallise public opinion on all Bills before they become Acts.

*Burden of Lower Chambers lessened.* Since popular chambers are flooded with work, due to the growth in the functions of the State, one chamber cannot devote fully to the measures. Hence bills of non-controversial nature can start their course in the Councils first. This enables the Lower House to avoid accumulation of business and also concentrate on measures of great importance.

*Thorough discussion on the Bills possible.* The atmosphere in the Councils is moreover serene. Passions do not run high there, as the members are comparatively more mature and experienced. Political antagonism does not lead to emotional outbursts in the Council. Hence the standard of debates is fairly high and the
pros and cons of the legislation in question are thoroughly thrashed out.

Conclusion. To counterbalance the undue preponderance of the popular element in the Assembly, representation to special interests is essential. In the words of Dr. Garner, "A conservative force to curb the radicalism of the popular chamber" is essential. Legislative Councils, undoubtedly serve such a purpose. Graduates, teachers, outstanding persons in the fields of art, literature, science and social service constituting the Legislative Councils, serve as a great curb to the radicalism of the legislative Assembly. But, in the words of the Secretary, Punjab Legislative Council, "If the second chamber is to fulfill its desired object, it should be the endeavour of all parties to return therein men of eminence who have long and varied experience of life and maintain a good position in society and have got the strength of character and also capacity to render service to the nation."

LEGISLATIVE ASSEMBLY (Vidhan Sabha)

9. COMPOSITION

The Legislative Assembly of each State consists of members not more than 500 or less than 60 according to its population. They are elected directly on the basis of adult suffrage from territorial constituencies. Most of the constituencies are single membered, but a few are plural-membered also, e.g. in the U.P. out of 347 constituencies 264 were single-membered and 83 two-membered. There is to be proportionately equal representation accorded to population in respect of each territorial constituency within a State.

After each census, the number of seats in Legislative Assembly of each State and division of each State into territorial constituencies is readjusted according to a prescribed manner.

Article 332 of the constitution provides for the reservation of seats in the Assembly of every State for the Scheduled Castes and Tribes on a population basis. In the Legislative Assembly of Assam, similar reservation for the autonomous tribal districts is provided. Article 333 empowers the Governor to nominate to its Assembly such number of the representatives of the Anglo-Indian community as he deems fit, in case in his opinion, that community is not adequately represented. Originally all such reservation of seats for the Scheduled Castes, the Scheduled Tribes and the representatives of the Anglo-Indian community by nomination were to cease after ten years from the commencement of the constitution. The Constitution (Eighth Amendment) Act extended all such reservations and nominations to the State Assemblies for another ten years.

The total number of seats in the Legislative Assemblies of the various States is as follows:

1. Article 170.
2. Article 334.
States | Total number of seats in the Legislative Assembly
--- | ---
Andhra Pradesh | 301
Assam | 108 (excluding the North East frontier Tract and the Naga Tribal Area).
Bihar | 330
Bombay | 396 (now Maharashtra 240 and Gujarat 154).
Kerala | 128
Madhya Pradesh | 288
Madras | 205
Mysore | 208
Orissa | 140
Punjab | 154
Rajasthan | 176
Uttar Pradesh | 430
West Bengal | 238
Jammu & Kashmir | 75 (This excludes 25 seats for Pakistan occupied areas of the State which are kept in abeyance pending the return of those areas to the Indian Union).
Nagaland | 60

§ 10. TERM

The term of the Assembly is five years. At the expiry of this term, the Assembly stands automatically dissolved. During the operation of a proclamation of emergency, the life of the Assembly can be prolonged by a law of the Parliament for one year at a time, any number of times, but in no case beyond six months after the proclamation has ceased to operate.

§ 11. QUALIFICATIONS

The qualifications and disqualifications for a member of the Assembly are the same as those in the case of the House of the People. A member must be a citizen of India, of not less than 25 years of age and possess such other qualifications as may be prescribed by Parliament.

No one can be a member of both the Houses of the Legislature of a State or a member of the Legislatures of two or more States at the same time.

Disqualifications. A person is disqualified from being chosen as and for being a member of the Legislative Assembly of a State: (i) if he holds any office of profit under the Government of India or the Government of any State other than an office declared by the State Legislature by law not to disqualify its holder, (ii) if he is of unsound mind as declared by competent Court, (iii) if he is an undischarged insolvent, (iv) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign or state is under any acknow-
ledgement of allegiance or adherence to a foreign state; (v) if he is so disqualified by or under any law of Parliament.

Qualification of a voter. As already said, the elections to the Legislative Assembly of a State are held on the basis of adult suffrage. Every citizen not less than 21 years of age is entitled to be enrolled as a voter provided he is free from disqualifications of non-residence, unsoundness of mind, crime, or corrupt or illegal practice as laid down by the constitution or the law of the appropriate legislature.

It may, however, be stated that the same electoral roll is used both for the elections to the House of People and the Legislative Assembly of the State. The Election Commission assisted by Regional Commissioners is to direct and supervise the State Assembly Elections.

§ 12. QUORUM

The quorum for the meetings of a State Assembly is 1/10th of its membership or 10 whichever is greater. This is so until the Assembly fixes the quorum otherwise by law.

§ 13. SESSIONS

The constitution requires that the Assembly must meet at least twice a year and not more than six months must elapse between two sessions. The Governor can prorogue the Assembly and dissolve it before the expiry of its normal term of five years.

§ 14. THE SPEAKER AND THE DEPUTY SPEAKER

Every Assembly has a Speaker, elected by its members immediately after it meets. A Deputy Speaker is also elected. The Speaker nominates a panel of Chairmen (including Chair-women) to preside in his and Deputy Speaker’s absence. Both the Speaker and the Deputy Speaker can be removed from office by a resolution of an absolute majority of the House in a session held fourteen days after the receipt of the notice. The Speaker or the Deputy Speaker is not to preside at any sitting of the Assembly while any resolution for his removal is before the Assembly. He does have a right to be present in the House and participate in its proceedings. He is even entitled to vote, in the first instance on such resolution. But he does not possess a casting vote, when he exercises vote like any ordinary member of the House.

Both the Speaker and the Deputy Speaker vacate their seats when they cease to be members of the Assembly. They may also tender their resignation, whenever they so choose. If the Speaker resigns, the letter of resignation is addressed to the Deputy Speaker and if the latter tenders his resignation, it is addressed to the former. The Speaker does not vacate his office on the dissolution of the Assembly. He continues holding office, until immediately before the first meeting of the Assembly after dissolution.
The Speaker and the Deputy Speaker are paid such salaries and allowances as may be fixed by the State Legislature by law. Their salaries are not votable, as they are charged on the Consolidated Fund of the State.

If the offices of Speaker and the Deputy Speaker are vacant, the Governor is authorised to appoint a member of the Assembly, to perform the duties of the office for the time being. If both are absent from the sitting of Assembly, such person, as may be determined by the rules of the Assembly, acts as a speaker. If no such person is present, any other member of the Assembly as determined by it, will take the chair.¹

**Duties and powers of the Speaker and the Deputy Speaker.**

Their position, duties and powers are the same, as those of the Speaker and Deputy Speaker of the House of the People. Briefly speaking, the Speaker is an impartial and independent presiding officer. He is vested with powers consistent with the dignity of the chair and necessary to ensure the maintenance of proper decorum in the Assembly. His powers are as follows:

(i) He admits questions, resolutions and motions. (ii) He allot time to the different kinds of business before the Assembly. (iii) In consultation with the leader of the House, he determines the order of the business and also fixes the time-limit for speeches. (iv) He nominates the panel of Chairmen, the Chairmen of the Select Committees on Bills and of other Committees of the Assembly. (v) He recognizes the members. (vi) He interprets the rules of the Assembly and decides all points of order and questions of procedure. His rulings are final. (vii) He maintains decorum in the House. As such, he can ask a member to withdraw from the House, for any violation of the rules of the House. He can suspend him for the whole session if the member flagrantly disregards the authority and the rulings of the chair. (viii) In the case of grave disorder, he can adjourn the House or suspend its Session. (ix) He is to protect the rights and privileges of the members of the House. (x) He is to decide whether a Bill is a Money Bill or not.

There is no denying the fact that the Speaker of a State in India is vested with the same powers, as entrusted to the Speaker of the Lok Sabha or House of Commons in England. But the high traditions of the office and the prestige, a Speaker in House of Commons commands, are conspicuous by their absence, at least, in the States of India. Exchanges of hot words between the Speaker and the members of the House are quite frequent. In certain cases a member, who is named by the Speaker, refuses to quit the chamber.

In certain other cases, Marshal is to be requested to make a recalcitrant member leave the Assembly. In Uttar Pradesh on September 8, 1953, even the Marshal had to seek the assistance of the armed constabulary to turn out the leader and members of the

¹ Article 180 (1, 2)
socialist group who did not quit despite Speaker's vehement requests. In West Bengal on September 21, 1959, the members of the Congress and Communists Parties not only shouted at each other on the floor of the House but also hurled shoes at one another. Even microphones were thrown on the treasury benches by the opposition. A couple of members challenged each other on the floor of the House and actually exchanged blows in the lobbies. All these disgraceful occurrences in the State Assemblies present a picture contrasting to the one, depicted by Morrison regarding the Speaker of House of Commons in England. In his words, the Speaker in the House of Commons "has no bell with which to restore order, not even a gavel. When he rises in his place and says 'order, order', it is rare for the members not to come to order at once. And if some members should be noisy, a large proportion of the House will aid the Speaker by crying 'order, order', until the noisy and disorderly ones are quietened, or a member standing at the same time as the Speaker rises, resumes his seat."

1.5: POWERS OF THE ASSEMBLY

We have already observed that the Assembly is dominant in the legislation and the sole master of finance. Where the state legislature is unicameral in character, the Assembly is all in all. As in the case of the Council, the functions of the Assembly can be discussed under three main headings.

Legislative. In the field of legislation, the jurisdiction of the state legislature over the subjects included in the state list, is exclusive. Their jurisdiction extends to matters included in the concurrent list as well, though in case of a conflict with the Parliament, the will of the latter is to prevail. If, however, the state law over a concurrent subject had received the assent of the President, when so reserved, it is apt to prevail, even if it is repugnant to the law of the Parliament on the same subject. Though a Non-Money Bill can be initiated in either House of the State Legislature (if it is a bicameral legislature) yet the Council cannot force its decision on the Assembly, so far as enactment of the Bill is concerned. It can simply delay the passage of a Bill for a period of four months. In fact, all legislative power of the State is concentrated with the Assembly.

Financial. The Assembly controls the purse of the state. Money Bills must originate in the Assembly. As already stated, the Council can detain Money Bills for a period of fourteen days only. Of course, the Budget is required to be laid before both the Houses of the legislature (where bicameral legislature exists) yet proposals for expenditure except the expenditure charged on the revenues of the State, which is non-votable, must be submitted to the Assembly in the form of demands for grants. The Assembly possesses the exclusive privilege of voting the grants. It can pass or reject a

demand or reduce its amount. It cannot increase the amount. Moreover, no tax can be levied in a state without the sanction of the Assembly.

Control over administration. In a parliamentary form of government, the Council of Ministers is to be collectively responsible to the Lower House. The Assembly can ask questions, and supplementary questions regarding any matter of public administration. It can also move and pass resolution, recommending to the government steps on matters of public importance. The Assembly can pass a vote of no-confidence against the Ministry, entailing its resignation.

Miscellaneous. Apart from the above mentioned main functions of the Assembly, it participates in the election of the President of India. It may be termed as the electoral function of the Assembly.

Secondly, ratification by the Legislatures of one half of the States is essential, when Parliament by majority of all and 2/3rd of the members present and voting wants to effect amendment in certain specific subjects. In the States where unicameral legislatures are provided, this power vests exclusively with the Assembly. In bicameral legislatures, however, both the Council and the Assembly have to ratify the amendment proposal.

§ 15. RESTRICTIONS ON THE STATE LEGISLATURE

The constitution confers far wider powers on the state legislatures than were enjoyed by provincial legislatures under the Government of India Act 1935. Under normal circumstances, they enjoy sovereignty within their prescribed domain, but certain restrictions placed on them, reveal that they are not fully autonomous bodies.

(a) In the first place, certain types of Bills cannot be moved in the State Legislature, without the previous sanction of the President of India. For instance, a Bill seeking to impose restrictions on trade, commerce or inter-course with other States within that State, needs his previous sanction.

(b) Some state laws are invalid unless they receive the President's assent after having been reserved for his consideration. For example, bills relating to the acquisition of property by the State, bills providing for the imposition of taxes on the sale or purchase of commodities declared by Parliament to be essential for the life of the community; bills in respect of concurrent matters which are repugnant to earlier legislations of Parliament, must receive President's assent.

(c) The constitution empowers the Parliament to frame laws on subjects included in the State List if the Council of States declares by a resolution passed by majority of all and 2/3rd of its members present and voting that it is expedient in the national interest for the Parliament to do so.
(d) While a proclamation of emergency is in operation, Parliament is vested with the authority of making laws, regarding subjects included in the State List. Such a law of the Parliament will cease to have its effect, six months after the proclamation of emergency ceases to operate.

(e) In the case of failure of constitutional machinery in a State, the President may declare that the powers of the State legislature shall be exercisable by or under the authority of Parliament.

(f) The Governor of Assam is vested with discretionary power in respect of administration of certain frontier tracts. He is to act as the agent of President while administering these areas. The State Legislature of Assam cannot make laws regarding these frontier tracts of Assam.

(g) Regarding subjects in the Concurrent List, the will of the Parliament is to prevail, if simultaneously with the State Legislature, it makes laws on such subjects.

(h) The financial autonomy of the States is also limited by the fact that while the Union Government can raise money in India or outside on the security of the General Consolidated Fund within limits fixed by the law of Parliament, State governments cannot borrow outside the territory of India. A State Government may raise loans on its own initiative and without general intervention but it cannot do so without the consent of the Union Government.

Thus from the limitations enumerated above, it is quite obvious that State Legislatures are not sovereign entities.

17. LEGISLATIVE PROCEDURE

"The procedure of legislation in a bicameral state legislature is, broadly, similar to that in Parliament, as outlined under Article 107."

Non-Money Bills. All bills can originate in the Assembly of a State. In States where bicameral legislature exists, a Bill is not deemed to have been passed, unless it has been assented to by both the Houses either without amendments or with such amendments only as are agreed to by both the Houses. In the case of a Bill which has been passed by the Legislative Assembly and is rejected by the Legislative Council, or if more than three months pass from the date on which it is placed before the Council, or if the Bill is passed by the Council with such amendments as are not acceptable to the Assembly, the Assembly may pass the Bill again in the same or in a subsequent session, with or without amendments suggested by the Council and pass it on to the Council. The Bill will be considered as having been passed by both the Houses in the form in which it is passed a second time by the Assembly, even if the Council rejects it or if more than one month elapses from the date, on which the

Bill is placed before the Council without the Bill being passed by it, or if the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree.

A Bill pending in the Legislature of a State does not lapse by the prorogation of the House or Houses. A Bill pending in the Legislative Council of a State, which has not been passed by the Legislative Assembly does not lapse, on the dissolution of the Assembly. A Bill pending in the Legislative Assembly, or having been passed by it, pending in the Legislative Council lapses on the dissolution of the Assembly.

The stages through which a Bill has to pass to become an Act are the same, as in the Union Parliament except that where the President is mentioned, the Governor is to be substituted. Secondly, there are not joint sittings of the two Houses of the State Legislature, as there are at the centre. The Upper Houses in the States have ultimately to give way to the Lower Houses which represent the will of the people. They can only delay the passage of the Bills for a period of four months.

Money Bills. "Article 196 (dealing with Money Bills exactly corresponds to Article 109."

Money Bills must originate in the Assembly. They cannot start their course in the Legislative Council. When passed by the Assembly, they are sent to the Council which must return them to the Assembly with its recommendations within fourteen days of their receipt. The Assembly may then accept or reject all or any of the recommendations. The Bill shall be deemed to have been passed in the form finally adopted by the Assembly. But if the Bill is not returned by the Council within 14 days, it is also considered to have been passed by both the Houses in the form in which it was originally passed by the Assembly.

It may, however, be stated that the procedure for passing Money Bills and Appropriation Bills is exactly the same as in the Union Parliament.

After having been passed by both the Houses, the Bill is sent to the Governor for his assent. He can either assent to or withhold his assent from or reserve the Bill for consideration by the President. If it is not a Money Bill, he can return it to the Legislature for reconsideration on the lines recommended by him and the Legislature is apt to reconsider it. But if the Legislature passes the Bill again, with or without amendments, the Governor cannot withhold his assent a second time. If a Bill is likely to affect the powers of the High Court of the State, the Governor must reserve it for the consideration of the President. The President can either withhold his assent or give it. In the former case, he can direct the Governor to return the Bill to the Legislature for reconsideration. The Houses are bound to reconsider it within six months from the date of its

1. Article 196 (3, 4, 5)
receipt. If it is again passed by the Legislature, with or without amendment, it is presented to the President for his consideration. If he again refuses to give his assent, the Bill fails. It is thus quite obvious that the President of India is vested with the veto, in the case of State Legislation, reserved for his consideration. Such a provision in the constitution is contrary to the federal principle. No such reservation of State Bills for the consideration of President of U.S.A. or Governor-General of Australia is done, since both these countries have opted for a federal form of government. In Canada, the Governor-General has been vested with the power of refusing assent to the Provincial Bills, reserved for his consideration, by the Governor of the province concerned.

It is, however, expected that the President will not abuse his authority. He will make use of it, only to avoid unnecessary diversity in principle and secure uniformity of legislation. It is indeed strange that the constitution does not fix up the time-limit for the President’s assent. It means that an unscrupulous President can shelve a Bill by not expressing his will for an indefinite period. In Canada, the time-limit is fixed.
State Judiciary

§ 1. HIGH COURT

The constitution establishes a High Court in each of the constituent States. The Parliament has the power to establish a common High Court for two or more States. The High Court stands at the apex of the state judicial organization.

Originally, a High Court was provided in each Part A and B States. Parliament was authorised by the constitution to create a High Court in a Part C State or vest any existing Court in Part C State with any of the powers of a High Court or extend the jurisdiction of the High Court of a neighbouring Part A or Part B State to a Part C State. There were thus 18 High Courts, established in Part A and Part B States, 7 Judicial Commissioner’s Courts, one for each Part C State other than Coorg and Delhi. The reorganization of the States in 1956 not only reduced the number of the States but also involved the abolition of High Courts of Hyderabad, Madhya Bharat, Pepsu and Saurashtra and the Courts of the Judicial Commissioners for Ajmer, Bhopal, Kutch and Vindhy Pradesh.

Constitution of High Courts. Every High Court consists of a Chief Justice and such other judges as the President may from time to time determine. Originally, the President was empowered to appoint as many judges as he might deem necessary from time to time and also fix from time to time, the maximum strength of each High Court. The Constitution (7th Amendment) Act omitted the proviso as it was not deemed of any significance from the practical point of view.

The President appoints the Chief Justice of a High Court by warrant under his hand and seal, after consultation with the Chief Justice of India and the Governor of the State concerned. While making the appointment of judges of a High Court, the President consults even the Chief Justice of the High Court concerned.

Besides, the President possesses the power to appoint (i) additional judges for a temporary period, not exceeding 2 years, in order to clear off the arrears of work in a High Court or (ii) an acting judge, when a permanent judge of a High Court (other than a Chief
Justice) is temporarily absent or unable to perform his duties or is appointed to act temporarily as Chief Justice. The acting judge is to hold office, until the permanent judge resumes his office. It may, however, be pointed out that neither an additional nor an acting judge holds office beyond the age of sixty years.

Qualifications. A person shall not be qualified for appointment as a judge of a High Court unless he is a citizen of India and has held a judicial office in the territory of India for at least ten years or has served as an advocate for at least ten years in one or more High Courts. In the words of D. D. Basu, "The glaring anomaly that becomes evident when the above qualifications are compared with those for judgeship of the Supreme Court is that a distinguished jurist is fit for appointment to the Supreme Court, but he has no place in the High Court, which also is in the main, an appellate tribunal dealing with the principles of law at the highest level in a state."

12. TERM, REMOVAL AND CONDITIONS OF SERVICE

A judge of the High Court shall hold office, until the age of 60 years. Every judge—permanent, additional or acting—may vacate his office earlier in any of the following ways:—(i) by resignation in writing addressed to the President, (ii) by being appointed a judge of the Supreme Court or being transferred to any other High Court, by the President, (iii) by removal by the President of India on an address of both Houses of Parliament (supported by the vote of 2/3rd of the members present) on the ground of proved misbehaviour or incapacity.

The mode of removal of a judge of a High Court is thus the same as that of a judge of the Supreme Court. Both hold office during good behaviour.

The Chief Justice gets a salary of Rs. 4,000 and other judges Rs. 3,500 per mensem. They are entitled to such allowances and rights in respect of leave and pension as Parliament may, from time to time, determine. Such allowances and rights are not, however, variable to the disadvantage of a judge after his appointment. They are charged on the Consolidated Fund of the State. Hence they are non-votable.

A person who has been a permanent judge of a High Court after the commencement of the constitution is debarred from pleading before any Court or authority in India, except the Supreme Court and the High Court other than that of which he has been a judge.

A judge of a High Court can be transferred by the President, after consultation with the Chief Justice of India, from one High Court to another.

They have to take an oath before assuming their offices, affirming that they will bear true faith and allegiance to the constitution of India and will perform the duties of their office without fear or favour, affection or ill-will and will uphold the constitution and the laws.
§ 3. INDEPENDENCE OF THE JUDGES

In respect of their appointment, security and longevity of tenure, salary, handsome and non-votable, rights and privileges, the High Court judges are equipped with the same safeguards as the judges of the Supreme Court. Thus their impartiality and independence is ensured. Even in the British regime, the High Courts were esteemed highly by the people, due to their impartiality and independence of character. There is no reason, why should they not maintain their old tradition and uphold the principles of equity and justice in independent India.

§ 4. TERRITORIAL JURISDICTION OF A HIGH COURT

Except where Parliament makes a provision for a common High Court for two or more States or extends the jurisdiction of a High Court to a Union Territory, the jurisdiction of the High Court of a State is coterminus with the territorial limits of the State concerned. By passing States Reorganization Act, 1956, Parliament has extended the jurisdiction of some of the High Courts to their adjoining Union Territories. Jurisdiction of Calcutta High Court extends to the Andaman and Nicobar Islands; that of the Kerala High Court extends to the Laccadive, Minicoy and Amindivi Islands, and that of the Punjab High Court extends to Delhi.

Ordinary Jurisdiction of High Courts. The constitution does not provide for the general jurisdiction of the High Courts, but maintains their jurisdiction as it existed at the commencement of the constitution. An improvement has however been effected, i.e., restrictions on their jurisdiction as to revenue matters that existed prior to the framing of the present constitution, no longer exist.

The present jurisdiction of the High Courts are governed by the letters patent and Central and Provincial Acts. Civil and criminal jurisdictions of the High Courts in particular, are mainly governed by the civil and criminal procedures codes.

Original Jurisdiction. The High Courts of three Presidency towns of Calcutta, Bombay and Madras possess an original jurisdiction, both civil and criminal, over cases arising within the Presidency Towns. The original criminal jurisdiction of the Bombay and Madras High Courts has recently been entrusted to City Session Courts established by the State Legislatures. Though City Civil Courts have also been established to try civil cases within the same area, yet the original civil jurisdiction of these High Courts is still retained in respect of actions of higher value. In West Bengal, a city Session Court and a Civil Court have been set up, yet the jurisdiction of the High Court of Calcutta has been affected only partially. The High Court of Calcutta still retains its jurisdiction over the more serious cases.

The rest of the High Courts possess original jurisdiction in matters of admiralty, probate, matrimonial and contempt of Court cases only.

Appellate Jurisdiction. The appellate jurisdiction of the High Court extends to both civil and criminal cases.
(a) On the civil side, an appeal to the High Court is either a first appeal or a second appeal. First appeal means an appeal from the decisions of district judges and from those of subordinate judges in cases of a higher value they lie direct to the High Court, on questions of fact as well as law. When a Court subordinate to the High Court decides an appeal from the decision of an inferior Court, a second appeal lies to the High Court from the decision of the lower Appellate Court. Such an appeal is made only on questions of law and procedure, and not questions of fact.

A provision for appeal under the Letters Patent of the Allahabad, Bombay, Calcutta, Madras and Patna High Courts exists. These appeals lie to the appellate side of the High Courts from the decision of a single judge of the High Court itself whether made by such judge in the exercise of the original or appellate jurisdiction of the High Court.

(b) The Criminal Appellate jurisdiction of the High Court lies in appeals from the decisions of (i) the High Court exercising original criminal jurisdiction; (ii) a Sessions Judge or an Additional Sessions Judge; (iii) an Assistant Sessions Judge and a Magistrate specially empowered where the sentence of imprisonment inflicted on an accused exceeds four years; (iv) a Presidency Magistrate; (v) a District Magistrate, in case of conviction under section 124A of the Indian Penal Code.

Power of superintendence. Power of the superintendence of the High Court is very wide as it extends to all Courts and tribunals (except Military Tribunals) throughout the territory whether such Court or Tribunal is subject to the appellate jurisdiction of the High Court or not. This power of superintendence also includes a revisional jurisdiction, to intervene in case of gross injustice or non-exercise or abuse of jurisdiction, even though no appeal or revision against the orders of such Courts was otherwise provided. The High Court may also settle tables of fees to be allowed to the sheriffs and all clerks and officers of such courts and to the attorneys, advocates and pleaders. It may call for returns from such courts, make and issue general rules regulating the practice and proceedings of such courts.

Jurisdiction over Administrative Tribunals. In order to cope with the growth of government activities and complicated administrative issues, administrative bodies in India, as in other countries have been entrusted quasi-judicial authority. In fact, the ordinary courts are already overcrowded with variety of cases and are, in certain cases, not in a position to take up complicated administrative authorities such as Custodian of Evacuee Property under the Administration of Evacuee Property Act, 1950; the Transport Authorities under the Motor Vehicles Act; the Rent Controller under the State Rent Control Acts. Apart from this, certain special tribunals though not a part of the Administration but having all the trappings of a Court, exist.

The decisions of such tribunals have the force or effect of a judicial decision upon the parties though they do not follow the exact pro-
procedure adopted by courts of justice. Hence the necessity for keeping
them under proper limitation crops up. The constitution by several
of its provisions, keeps these tribunals under the control and supervi-
sion of the superior courts of the land i.e., the High Courts and the
Supreme Court.

Power of issuing writs. Article 226 of the constitution vests all
the High Courts with the power of issuing prerogative writs and
orders, directions and writs for the enforcement of Fundamental
Rights and for other purposes throughout the territories in relation
to which they exercise jurisdiction. In the words of D.D. Basu,
"The jurisdiction to issue the writs under these Articles, is larger in
the case of the High Court, in as much as, while the Supreme Court
can issue them only where a Fundamental Right has been infringed,
a High Court can issue them not only in such cases but also where an
ordinary legal right has been infringed, provided a writ is a proper
remedy in such cases according to well established principles." The
jurisdiction is wide, no doubt, but not so wide or large as to enable
the High Court to convert itself into a Court of appeal and examine
for itself the correctness of the decisions impugned and decide what
is the proper view to be taken or order to be made. Malik C.J. of
Allahabad High Court once held that the power under Article 226
would be sparingly used by the Court and only in those exceptional
cases where there is no adequate remedy and an application under
Art. 226 is the only convenient, beneficial, and effectual means of
getting redress. 5

Power to take over cases from subordinate Courts, regarding the
Interpretation of Constitution. According to Article 228, if the
High Court is satisfied that a case pending in a Court subordinate to
it, involves a substantial question of law as to the interpretation of
the constitution, it is empowered to withdraw the said case and may
either dispose of the case itself or determine the said question of law
and return the case to the Court concerned along with a copy of its
judgment on that point. In the latter case, the subordinate court
concerned gives decision in the light of the judgment of the High
Court.

Appointment of its officers and servants. Article 229 of the con-
stitution empowers the Chief Justice of the High Court or such other
judges or officer directed by him, to appoint officers and servants of
the High Court.

The Governor of the State may, however, require that in certain
cases, no person not already attached to the High Court shall be
appointed, save after consultation with the State Public Service
Commission. The conditions of service of officers and servants of a
High Court are to be prescribed by rules to be made by the Chief Justice or
by some other judge or officer authorised by him. The rules regarding
salaries, allowances, leave or pensions require the approval of the

Governor of the State and of the President if the principal seat of the High Court is in a Union Territory.

43. AS A COURT OF RECORD

The High Court is a Court of Record as well. As such, it is equipped with all the powers of such a Court. The two characteristics of a Court of Record are that the records of such a Court are admitted to be of evidentiary value and that they cannot be questioned when produced before any Court, and that it possesses the power to punish for contempt of itself.

46. EXTENSION OR EXCLUSION OF HIGH COURT'S JURISDICTION

Parliament may by law, extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any State specified in the first schedule appended to the constitution other than or any area not within, the State in which the High Court has its principal seat. Where a High Court exercises jurisdiction in relation to any area outside the State, in which it has its principal seat, the legislature of the State in which the Court has its principal seat, cannot increase, restrict or abolish that jurisdiction.
Zonal Councils

In order to effect inter-State co-operation, Zonal Councils were provided under the States Reorganization Act of 1956. In the words of Benjamin N. Schoenfeld, this device of Zonal Councils "is designed to provide a forum for closer co-operation among the States included in each zone, with reference to matters of common concern which any State may wish to place before the Council." The Act divided the States and the Territories as reorganized (excluding the Laccadive, Minicoy and Admindivi Islands and the Andaman and Nicobar Islands) into five zones and established a permanent Zonal Council for each of them.

1. ZONES

The five zones are as follows:

(a) Central Zone comprising the States of Uttar Pradesh and Madhya Pradesh, was inaugurated on May 1, 1957 with Allahabad as headquarters.

(b) Northern Zone comprising the States of Punjab, Rajasthan, Jammu and Kashmir and the Union Territories of Delhi and Himachal Pradesh, was inaugurated on April 24, 1957 with headquarters at New Delhi.

(c) The Eastern Zone comprising the States of Bihar, West Bengal, Orissa, Assam and the Union Territories of Manipur and Tripura was inaugurated on April 30, 1957 with Calcutta as headquarters.

(d) The Western Zone comprising the States of Bombay and Mysore was inaugurated on September 20, 1957.

(e) The Southern Zone comprising the States of Andhra Pradesh, Madras and Kerala with Mysore as permanent invitee, was inaugurated on July 11, 1957 with Madras as headquarters.

2. COMPOSITION OF THE ZONAL COUNCILS

The membership of each Zonal Council consists of the Union Home Minister, the Chief Minister of each State included in the Council and

1. Indian Journal of Political Science, July-Sept., 1959 issue p. 19
two other ministers from each State selected by the Chief Minister of the State.

The Union Territories are represented in the Councils by not more than two members from a Territory, one member being the Administrator of the Territory himself namely the Chief Commissioner or the Lieutenant Governor as the case may be.

In the North-East Frontier Agency, (NEFA) the Adviser to the Governor of the State of Assam for NEFA is its representative on the Eastern Zonal Council.

The Zonal Council for each Zone has also a body of Advisers consisting of (i) a nominee of the Union Planning Commission, (ii) the Chief Secretaries of the States included in the Zone, and (iii) the Development Commissioners of the States included in the Zone. These advisers may participate in Council's discussions and render advice but have no right to vote.

Staff of the Council. The Chief Ministers function as Vice-Chairmen of the Council by rotation and hold office for a period of one year. The Union Home Minister is its chairman. Each Zonal Council has its own Secretariat which consists of a secretary, a joint secretary and such other officers as the Chairman of the Council may deem necessary to appoint. The Chief Secretaries of the States represented in the Zonal Councils act in the capacity of the Secretary of the Council by rotation and as such hold office for a period of one year at a time. The Joint Secretary is appointed by the Chairman of the Council from amongst the officers not in the service of the States, represented in the Council. The Secretariat of each Council is located within the Zone at a place determined by the Council.

§ 3. ITS MEETINGS

The Zonal Council is to meet when summoned by the Chairman. Normally it meets after three months. The Chairman is to preside at the meeting of the Council. In his absence, the Vice-Chairman is to take the chair. In case both the Chairman and the Vice-Chairman are absent, any other member chosen by the members present from amongst themselves is to preside. The Chairman is to observe such rules of procedure, in these meetings, as the Council may with the ratification of the Central Government lay down. Decisions in the Zonal Councils are arrived at by a majority of votes of the members present. In case of a tie, the presiding officer possesses a casting vote. The proceedings of meetings of these Councils are presented to the Union Government and also to each State Government concerned. Provision has also been made for the holding of joint meetings of two or more Zonal Councils.

§ 4. FUNCTIONS

A critical appraisal of the work of Zonal Councils reflects that its principal role has been to carry out the programme of the Centre in a given policy developed in the nation's capital. Thus (i) they have discussed the ways and means of implementing the policy of the
Centre in matters of food policy, conservation, savings and water conservation. (ii) They have also discussed regional problems affecting the member-States. These problems include border disputes, watershed development, regional hydro-electric power resources, food distribution and police protection, inter-State transport and linguistic minorities. (iii) They can also discuss any matter connected with or arising out of the reorganization of States.

§ 5. OBJECTIVES OF THE COUNCIL

(a) The Zonal Councils have been created to provide a forum for closer co-operation among the States and Territories on the one hand and the Centre and the States on the other with respect to common problems. The nomination of Home Minister as the Chairman of the Council was done in order to achieve the needed co-ordination both between the Centre and the States and Territories.

(b) They stand for fostering habits and institutions of economic cooperation and administrative co-ordination among the States within each Zone. Such co-operation and co-ordination is apt to contribute to the proper integration of the development programmes of the Zones.

(c) They have to serve as correctives, to the mounting rivalries and accentuating separatist tendencies, promoted by the extreme types of linguistic claims. The objectives of these Councils were enumerated by late Pandit Pant, at the inaugural meeting of the Northern Zonal Council. They are as follows:—“(i) to achieve an emotional integration of the country; (ii) to help in arresting the growth of acute state consciousness, regionalism, linguism and particularist trends; (iii) to help in removing the after-effects of separation in some cases so that the processes of reorganization, integration and economic advancement may coalesce and synchronise; (iv) to enable the centre and states, which are dealing increasingly with matters, economic and social to co-operate and exchange ideas and experience in order that uniform policies for the common good of the community are evolved and the ideal of a socialistic society is achieved; (v) to co-operate with each other in the successful and speedy execution of major development projects; and (vi) to secure some kind of political equilibrium between different regions of the country.”

§ 6. CONCLUSION

We can thus conclude that the scheme of Zonal Councils is the test in the art of living together. This regional device serves as a mechanism to carry out national objectives. It heals the wounds that separatist tendencies may cause in some places. It serves as an inflexible instrument to develop inter-state co-operation. It acts as an inter-state forum where the states meet to promote and facilitate cooperative efforts towards the economic and social development of each Zone and towards the unity and prosperity of the nation. In the words of late Pt. Pant (Our Home Minister) “......what we have now is an inter-state forum without impinging on the legislative and executive authority either of the centre or of the states,
the idea to provide in each zone a common meeting ground where the states could be associated with each other to promote and facilitate co-operative effort towards the economic and social development of each zone and towards the unity and welfare of nation as a whole."

There is no denying the fact that the Councils are playing significant role in the field of economic and social planning and collaboration. "In matters such as rationalization of inter-State road transport regulations, co-ordination of irrigation plans, pooling of facilities for technical and other types of higher education, uniformity of sales tax, restrictions on inter-state trade, enforcement of prohibition and similar matters on which there is hardly any room for serious disputes and much scope for co-operation, the Zonal Councils are in an advantageous position to settle matters more quickly and easily than all-India bodies and conferences."

In the solution of problems like that of border disputes and linguistic minorities, the utility of the Councils seems to be rather doubtful. Such problems are settled due to the good offices of Centre. Hence a few critics denounce them as ornamental pieces in the elaborate machinery of the State. But it is an exaggeration. Their achievements in certain fields have been quite impressive. They have been taking measures for effecting inter-state co-operation in the field of training of technical personnel in the zones and making such personnel available to the States in need of them. They have successfully solved some of the problems confronting inter-State transport. They have promoted better co-ordination and maintenance of control and construction of bridges on inter-state roads. They have reviewed agricultural production and development programmes in the Zones. They have constituted common police reserve forces in the Zones. They have effected co-ordination in the development of electrical power resources. Provision of these Councils has resulted in the mitigation of evils of linguistic fanaticism and regionalism. They have, in fact, proved to be clearing houses of ideas and not a mere device for registering arguments. They have helped the member-States in building up an atmosphere of fraternity and fellowship which is indispensable for fostering national unity.

1. Fyles M.V.: Constitutional Government in India, p. 599.
Federalism in India

1. WHY CALLED UNION OF STATES?

The Sovereign Democratic Republic of India is a "Union of States". The term Union instead of a federation was intended to connote a higher degree of integration. Various federal constitutions were ransacked. Federation as contemplated under the Government of India Act, 1935, was also in view. After great deliberations, on the foundations of the Federation as envisaged under the Constitution Act of 1935, a structure after the Canadian pattern was erected and deemed to be the best suited to the genius of the Indian masses. Experiences of the American and Australian federations also were given every consideration. Their good points were embodied in the Indian Federation and their pitfalls avoided. Dr. Ambedkar, the chairman of the Drafting Committee, eulogised the term "Union of the States" on the plea that it indicated two important facts—

(a) Federalism in India had not been the result of an agreement among the units and (b) the constituent units of the Indian Federation had no right to secede from it. He emphasised that such an arrangement made the federation a permanent and unbreakable union. In the words of Dr. Ambedkar, the constitution of the union and the States is "a single frame from which neither can get out and within which they must work."

2. CHARACTERISTICS OF A FEDERATION

The characteristic features of a federal constitution according to a well known authority on constitution, Prof. Dicey, are: (i) supremacy of the constitution, (ii) the distribution among bodies with limited and co-ordinate authority of different powers of government, (iii) the authority of the courts as interpreters of the constitution.

No federal constitution can completely fulfil all the above mentioned characteristics. Even the constitution of U.S.A. may not be completely federal in character. If, however, the constitution predo-

1. C.A.D., Vol. VII
minantly fulfils the federal characteristics overshadowing the unitary features, it may be categorized as Federal Constitution. A student of Political Science, however, should not be oblivious of the difference between the law and the practice of the Constitution, signifying the difference between the Federal Government and the Federal Constitution. In the words of Prof. Wheare, "A country may have Federal Constitution, but, in practice, it may work that constitution in such a way that its government is not federal. Or a country with a non-federal Constitution may work it in such a way that it provides the example of a federal government."

The Canadian constitution, for instance, was not wedded to the narrow ideas of federalism. Prof. Wheare characterised the Canadian constitution as a "quasi-federal" constitution. With the passage of time when the unitary features of the Canadian constitution became obsolete or could not compromise with the federal principles, Canada became a federal government though it did not have federal constitution. Australia, Switzerland and U.S.A., on the other hand not only possess federal constitution but also federal Governments. The current of centralization is sweeping over these countries and there is every apprehension that they may also be converted into quasi-federal governments.

The above description of the theory and practice of federalism is necessitated to decide the oft-repeated controversy among the political thinkers on this soil of ours, regarding the nature of Indian Federation.

§ 3: NATURE OF INDIAN FEDERATION

Different opinions have been expressed by different critics regarding the nature of Indian Federation. Before we come to a conclusion, regards its true character, it is worthwhile to quote the opinions of luminaries on the subject. According to Dr. Wheare, the Indian constitution establishes a "system of government which is at most quasi-federal, almost devolutionary in character; a unitary state with subsidiary federal features rather than federal state with unitary features." Dr. Krishna P. Mukerjee writes, "I have come to take the view that whatever might have been the position at the drafting stage or previous to that stage the constitution that emerged out of the august deliberations of the Constituent Assembly of India in January 1950 is definitely non-federal or unitary constitution." According to Dr. Ambedkar, "The constitution has not been set in a tight mould of federalism."

The Indian constitution could be unitary or federal according to requirements of time and circumstances. In the words of D.D. Basu, "The constitution of India is neither purely federal nor unitary, but is a combination of both. It is a union or a composite of novel type." Pandit Nehru who had used the word "federation" a number of times in the assembly, once described the states as "mere administrative units" in one of his off-hand speeches later.

The views of Dr. Wheare and Dr. Krishna P. Mookerjee seem to be rather exaggerations. The Indian constitution is a federal one, though it leans towards a strong centre. It does not violate the essentials of a federal polity. In fact, the federal system has been adjusted to the needs of the country. No doubt a number of following federal features are found in the Indian polity.

(a) India is a dual Polity. The constitution makes a distribution of powers between the Union and the States, the jurisdiction of each being demarcated by the Union, State and Concurrent lists. The governments, in normal circumstances, function without interference from the other. The fields of activities are distinct, defined and exhaustive. A State legislature can pass laws "for the whole or any part of the State," with respect to matters expressly assigned to it in State List. Parliament may pass laws for the whole or any part of the territory of India, with respect to matters in Union List within its jurisdiction and power. It may, however, be pointed out that 97 specific items and one general clause have been provided in the Union List. 47 items have been provided in the Concurrent List. Laws with respect to these may be passed both by the Parliament and the State Legislatures. In case of a conflict between the two legislatures over a matter in the Concurrent List, the will of the Parliament prevails. Laws made by the State legislatures whether anterior to or posterior to the Union Laws give way to the latter and to the extent of the inconsistency, are void. The exhaustive list of union subjects and the prevalence of the will of the Parliament over the State legislature, regards the subjects in the Concurrent List, reflects the tendency of making the centre comparatively stronger.

(b) Supremacy of the Constitution. Supremacy of the constitution—the hallmark of a federation is conspicuous by its presence, in the Indian polity. The provisions of the constitution are binding on all governments. Neither the central government, nor any State government can override or contravene them. Neither of the governments can alter the distribution of powers, as earmarked in the constitution.

Supremacy of constitution also involves its written and rigid character. The Indian constitution is the most lengthy and comprehensive document. Moreover, most of its clauses and articles are not easily amendable. It may not be as rigid as U.S. constitution, but we cannot term it flexible either.

3. Ibid., p. 365.
(c) Independent Judiciary. Another pre-requisite of a federation viz. independent judiciary—an interpreter and guardian of the constitution, also is present in the Indian federation. The Supreme Court is an independent and impartial body to whom the States can turn for an impartial interpretation of the constitution and get their position vindicated. “To this extent, our constitution is more federal than that of Switzerland or Russia.” The Supreme Court can declare any law passed by the Union Parliament or a State Legislature ultra vires, if it contravenes any of the provisions of the constitution.

Mr. A.B. Keith adds two more tests of federalism: (i) The right of the units to make their own constitutions and (ii) their right to define the privileges of their legislatures. When applied to India, the first test is conspicuous by its absence. The States are not allowed to have their separate constitutions. The second test is adequately met. It is however not known, whether a State legislature could define its privileges, in contravention of a law of the Parliament.

In the words of Dr. V. K. Rao “By far a greater test is whether the States as units have their own citizens apart from mere residents, on whom state laws exclusively operate.” In other words, federation provides for double citizenship. Our federation lacks this characteristic. We have only one citizenship and it has been emphasised by Article 14 which gives equal protection of laws to all persons, by Article 19 which permits freedom of movement, acquisition of property and practising of any profession throughout the territory of India and by Article 301 which assures freedom of trade, commerce and intercourse throughout the territory of India. In this respect, obviously, the units have a far lesser degree of status than the units in the U.S.A.

It is quite evident from the preceding facts that most of the pre-requisites of a federation are found in the Indian constitution. In the words of Dr. Ambedkar, “It establishes a dual polity with the Union at the Centre and the States at the periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the constitution. The Union is not a League of States united in a loose relationship, nor are the States the agencies of the Union, deriving powers from it. Both the Union and the States are created by the constitution; both derive their respective authority from the constitution. The one is not subordinate to the other in its own field; the authority of one is co-ordinate with that of the other.”

A hard fact, however, cannot be easily masked. Our constitution sets up a highly centralised structure of Government reminiscent of a unitary system. This makes the critics remark that our constitution is federal in form, but unitary in spirit. In the words of Dr. Jenn-

1. Dr. V.K. Rao: Parliamentary Democracy in India, p. 280.
2. Ibid., p. 280.
ings, “The Union of India is a federation with strong centralizing tendency”. The strong unitary bias is obvious from the following factors.

4. HOW UNITARY BIAS?

Strong Centre. The Fathers of the Indian Constitution were conscious of the centrifugal tendencies which have been prevalent in India, since times immemorial, and which have always wrecked the unity of the Indian people. The foreign invaders have always been exploiting the disunity of Indians and pitching their tents on the Indian soil. The Indian leaders wanted to avoid any such eventualities in times to come. Moreover, the partition of the country shook India’s solidarity and left behind a sad trail of sinister forces of communalism, casteism, provincialism etc., which could induce a foreigner to foment trouble amongst the Indians and ultimately enable him to jeopardise their hard-won independence. Hence the members of the Constituent Assembly did not like to divorce the constitution from the realities of the time. They did not like history to repeat itself. K. M. Munshi emphasised that the glorious days of India “were only the days...... when there was a strong central authority in the country and the most tragic days were when the central authority in the country was dismembered by the provinces trying to resist it.”

Munshi’s warning not to “repeat that fact” went a long way to reconcile even the worst protagonists of provincial autonomy.

The Native States, formerly ruled by autocratic rulers, were also a constant source of danger and anxiety to the fathers of our constitution. They were clamouring for autonomy, dominion status and even independence. It was feared they might like to play the part of the Villain and disrupt the Indian unity. Hence a strong Centre was necessitated to put an end to disruptive forces, which might be unleashed by the Princes and the Nawabs.

The framers of the constitution also realized that they would have to take into consideration the latest trends towards a centralised system of government. Alladi told the members that the constitution had “taken note of this tendency instead of leaving it to the Supreme Court to strengthen the Centre by a process of judicial interpretation.”

As already pointed out, in the three fold distribution of powers, the most important subjects have been included in the Union List, which is the longest of the three lists, containing 97 items. Even regarding the Concurrent List comprising 47 items, the Parliament enjoys an overriding authority over the State Legislatures.

Parliament has been empowered to legislate on any matters in the State List which contains 66 subjects if the Rajya Sabha passes a resolution supported by not less 2/3rd of the members present and voting that the matter is of national importance or interest.

2. Ibid., p. 333
3. Article 249,
Article 253 empowers the Union Parliament to make laws implementing any treaty, agreement, or convention with another country or "any decision made at any international conference, association or other body". In the opinion of Dr. Jennings, the Union Parliament can acquire jurisdiction of any subject, as for example, even over University education, "by the simple process of a decision of inter-University Board of India, which is an international body because it contains representatives of Universities in Burma and Ceylon."

Moreover, the constitution vests residuary powers in the Union unlike that of U.S.A., where such powers have been assigned to the individual States. The division of power thus reflects that the Indian constitution is "noticeably centripetal".

Emergency Powers of the President. (i) When the President of India proclaims an emergency due to war, civil war or imminence thereof, the Executive power of the Union comprehends all power and the Union Government can give directions to the State Governments as to how they should exercise their own powers. Moreover, the Union Parliament gets the authority to make laws, with regard to matters in the State List. Thus the autonomy of the States stands suspended during the emergency period. (ii) Emergency can be declared even when the constitutional machinery of the State fails. In such an event the President assumes to himself all or any of the executive functions of the State Government and can declare that the functions of the State legislature shall be exercised by or under the authority of the Parliament. (iii) In case of financial emergency, the Union Government may give directions to any State and ask it to observe such canons of financial propriety as may be specified in the directions to meet the financial difficulties and in order to restore the financial stability or credit of India. The President can issue necessary directions, including orders for the reduction of salaries and allowances of public servants, belonging to the Union or the States. All money bills passed by the State Legislature during the period of financial emergency are subject to the control of the Government of India.

Appointment of the Governors. The Governor is appointed by the President and holds office during the latter's pleasure. In other words, he is the nominee of the Central Government and will primarily act as its agent. So long as the same party reigns supreme both at the Centre and in the States, there will be smooth sailing. But when different parties come in power at the Centre and in the States, chances of conflict between the popularly elected ministry of the State and the Governor—the nominee of the President—are not remote. The Union Government may through the Governor, try to be assertive and reduce the autonomy of the State concerned to a mere farce. This is another distinguished factor which enables the Centre to exercise control over the administration of the States and is deemed to be contrary to the spirit of genuine federalism.

2. Article 360 (3).
Appointment of Comptroller and Auditor General of India. Uniformity in financial administration is ensured by empowering the President of India to appoint the Comptroller and Auditor General of India. They supervise the administration of the finances of the States as well as those of the Union. This also implies the control of the Central Government over the units.

Appointment of Members of Election Commission. The members of the Election Commission are appointed by the President. They are required to direct, supervise, and control election not only to the State legislatures but also to the Parliament of India. This reflects centralization.

Common All-India Services. To maintain administrative unity, common All-India services are provided. They are appointed by the U.P.S.C. which is a central body and whose members are appointed by the President of India. The All-India Services operate both at the Centre and in the States. This, in fact, is the legacy of the British rule, which has been preserved, despite vehement protests on the part of the State Chief Ministers.

Unification of Judiciary. The unification of the judiciary has been carried to the maximum extent. The High Courts of the States are the branches of the Supreme Court which has been assigned a breadth and variety of jurisdiction unparalleled elsewhere. The High Courts are constituted and organized by the Union authorities. Dual system of Courts is found in U.S.A. which is claimed as a more perfect type of federation.

Dependence of States on the Centre in respect of finance. In respect of finance, the States bank upon Central assistance to a large extent. The sources of revenue assigned exclusively to them are not enough to meet their requirements. Hence, they have to depend upon the Centre for more financial help, in the form of shares of the proceeds of some of the Union Taxes. Though the constitution itself fixes the taxes to be assigned to or shared with the States but the proportion of the latter’s share in many cases is to be determined by the President of India. It is but natural that financial dependence always brings in its train dependence in policy and administration.

Parliament can alter names and redistribute the territories of the States. The territories of the units of the Indian Union are not inviolable. According to Article 3 of the constitution, Parliament may by law “(i) form a new state by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State; (ii) increase the area of any State; (iii) diminish the area of any State; (iv) alter the boundaries of any State; (v) alter the name of any State.” The same Article further provides that these changes can be effected if Parliament passes a Bill, on the recommendation of the President who is required to ascertain the views of the State or States concerned. It is quite obvious that the President is only to ascertain the views of the States concerned. He may or may not accept their advice.
In the U.S.A., the boundaries of the States cannot be altered without their consent. The arrangement provided for, under the constitution, has enabled the Central Government to redraw the political map of India. The Andhra State Act 1953, created the new State of Andhra by the partition of Madras. The States Reorganization Act of 1956 and the seventh amendment to the constitution reduced the number of units from 28 to 21. They abolished the classification of units into Part A, Part B and Part C. All the Part A States except Orissa and Uttar Pradesh experienced an alteration of boundaries by addition or diminution of territory or both. Of the eight Part B States, only Kashmir, Mysore, Rajasthan and Kerala survived, though all of them except Jammu and Kashmir suffered some change of territory. Hyderabad was disintegrated and its territory was distributed among Andhra, Mysore and Bombay. Madhya Bharat was merged with Madhya Pradesh, Saurashtra with Bombay and Punjab with Punjab. Of the nine Part C states, Delhi, Himachal Pradesh, Manipur and Tripura were declared as Union Territories. The remaining were merged into neighbouring States—Ajmer into Rajasthan, Bhopal and Vindhya Pradesh into Madhya Pradesh, Coorg in Mysore and Cutch in Bombay. The bifurcation of the State of Bombay into Maharashtra and Gujarat States on May 1, 1960, and creation of Nagaland a few months later, has meant again redrawing of the map of India.

No independent power of constitutional amendment with the States. The Indian States unlike the Provinces of Canada, do not possess independent power of constitutional amendment. Even a decision to create or abolish Legislative Council in a State requires an Act of Parliament. Moreover, except for a few matters when ratification of at least one half of the State Legislatures is needed, the constitution can be amended by the Parliament by a majority of its total membership and by majority of not less than two-thirds of the members of that House present and voting.

Approval of the Centre regards introduction and final passage of certain Bills. According to Article 31 (3), certain State laws will be invalid, unless they are reserved for consideration of the President and are assented to by him. For instance, laws passed by the State legislature for the acquisition of property, laws in respect of concurrent matters which are repugnant to earlier legislations of Parliament, laws providing for the imposition of taxes on the sale or purchase of commodities declared by Parliament to be essential for the life of the community must be reserved for the consideration of the President and assented to by him. According to Article 304 (5), some bills require the previous sanction of the President, before they can be introduced in the State legislature, for example, bills seeking to impose restrictions in the public interest on the freedom of trade, commerce or intercourse within or without that State.

1. Article 31 (3).
2. Article 253 (2).
3. Article 286.
Welfare of Scheduled Tribes and Backward Classes under President. The welfare of the Scheduled Tribes and Backward Classes has been placed under the special care of the Indian President who is empowered to appoint a commission to investigate their conditions. In the light of recommendations of the Commission, the President may give direction to the States for their improvement.

Centre's authority to settle inter-State disputes. The Union government has been authorised to effect co-ordination among the States and settle their mutual disputes. The President, as such, may set up an inter-State Council to resolve disputes among the States and investigate and discuss matters of common interest and make recommendations for the co-ordination of policy and action therein. Article 263 lays down that the functions of this Council will be advisory. Disputes regarding the distribution or use of the waters of inter-state rivers may be regulated by a law of the Parliament.

Administration of former Part B States and Union Territories. Article 371 placed Part B States under the general control of the Union Government and they were expected to comply with such instructions as were issued to them from time to time by the Centre. The said Article has however been omitted from the constitution with the disappearance of Part B States.

The constitutional set-up of the Union Territories and their relationship with the Union Government is different from that of the States. They are still administered by the President through an administrator appointed by him with such designation as he may specify. Since the circumstances of the Union Territories differ widely, hence their constitutional set ups also vary. Parliament has been authorised to make appropriate arrangements by law for each case. For the territories of Andaman, Nicobar Islands and Laccadive, Minicoy and Amindivi Islands, the President possesses the power to make regulations having the force and effect of a law of Parliament. Even a law of Parliament applicable in these territories is amendable and repealable by a regulation of the President. "In fact the status of these territories in relation to the Union is like that of the subdivisions of a unitary state to its Central Government."

Control over Regional Committees. The former Article 371 is defunct. A new Article 371 introduces a new institution—Regional Committees of the Legislative Assemblies of Andhra Pradesh and the Punjab. The President provides for the constitution and functions of the Regional Committees and for the modifications to be made in the rules of the business of the Government concerned and in the rules of the procedure of the Legislative Assembly of the State and for any special responsibility of the Governor, in order to secure the proper functioning of the Regional Committees.

Uniformity of Civil and Criminal Law. The Indian federation maintains unity in all basic matters which is conspicuous by its absence in typical federations. Apart from having common All-India

services, and a single judiciary, the constitution makes a provision for uniformity in fundamental laws, civil and criminal. To eliminate the diversity of laws, Civil and Criminal Courts have been placed in the Concurrent List where in case of conflict, the will of the Parliament prevails.

According to Dr. Ambedkar, "The Federation being a dual polity based on divided authority with separate legislative, executive and judicial powers for each of the two polities is bound to produce diversities in laws, in administration and in judicial protection. Upto a certain point, this diversity does not matter. It may be welcomed as being an attempt to accommodate the powers of government to local needs and requirements. But this diversity when it goes beyond a certain point is capable of producing chaos and has produced chaos in many federal states.

No equal representation to the States in the Rajya Sabha. In the U.S.A., Switzerland and Australia, equal representation has been accorded to the units in their respective upper chambers. This is generally done, irrespective of the size and the population of the units, in order to safeguard their interests, Indian constitution does not provide for equal representation to the States in the Rajya Sabha. This is a clear departure from an important federal principle and, in a way, caters to the unitary spirit of the constitution.

§ 5. CONCLUSION

The above-mentioned factors establish the fact beyond any doubt that the process of unification and centralization has been carried farther, under the Indian constitution, than is generally found in other federations. "The emergency powers of the Union Government undoubtedly enable it to make serious inroads on state powers, by its unilateral action." Thus in times of emergencies, the sun of federalism is eclipsed. But gradually, when normalcy prevails, the eclipse begins to recede and the sun of federalism reappears. Normally the Indian Union is apt to function as a federal system. The Government is undoubtedly vested with great constitutional powers, but it cannot ride roughshod over the susceptibilities of the States in normal times. Eventually a working balance between the requirements of national unity and autonomy of States is bound to be evolved and established just as in other federal countries. Fourteen years of its working, in actual practice, has demonstrated the reality and vitality of the federal system. General emergency provisions have not been, so far, abused. No undue advantage has been derived out of Article 356. Institution of President's rule in the State of the Punjab, Peepu, Andhra and Travencore-Cochin was amply justified by abnormal circumstances, prevailing there. The autonomy of these States was restored, as soon as the conditions so permitted. We can therefore agree with Prof. Alexandrowics who says "India is undoubtedly a federation in which the attributes of sovereignty are shared between the centre and the states."

Relation between the Union and the States

As already discussed in the preceding pages, ours is a federal constitution though with unitary bias. A federal constitution "establishes a dual polity with the Union at the Centre and the States at periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the constitution...... The one is not subordinate to the other in its own field, the authority of one is coordinate with that of the other."1 In fact, the basic principle of federalism is that the legislative and executive authority is divided between the Centre and the States not by any law to be enacted by the Centre but by the constitution itself. This is what Indian constitution does.

§ 1. LEGISLATIVE RELATIONS

Within their respective spheres, the Union and the State governments are made supreme and their authority is co-ordinate. If conflicts of jurisdiction between the two authorities occur, decision rests with Supreme Court—an independent judicial tribunal. A critical analysis of various federations of the world reveals that the division of powers in each federation was done in accordance with the peculiar political conditions prevailing in the country concerned. In the United States, for example, the sovereign states which were keen to federate, did not like complete subjugation under Central government. Hence they believed in entrusting subjects of common interest to the Central government, while retaining the rest with them. Thus the American constitution enumerated a list of Legislative Powers, leaving the residuary powers to the States. The Canadian constitution, makers, however, followed the reverse policy. They were conscious of unfortunate happenings in U.S.A. culminating in Civil War of 1861. They were aware of pitfalls of a weak Centre. Hence, they wanted to opt for a strong Centre. They divided the subjects into two lists—Federal and Provincial and left the residue for the

Centre. Australia toed the line of U.S.A., as their problems were similar to the Americans.

Our constitution makers followed the Canadian scheme, though our lists are more elaborate and also include an additional list—the Concurrent List. A few critics opine that our constitution is a copy of India Act of 1935. The scheme of distribution of powers remains substantially the same as it was under the Act of 1935. It is very true. The constitution divides the legislative authority between the Union and the States in three lists—the Union, the State and the Concurrent. The Union List, consisting of 97 items, is the longest of the three. The Union Parliament alone can make laws regarding the subjects enumerated in this list.

The State list consists of 66 subjects. These subjects are of local interest and envisage the possibility of diversity of treatment in respect of different items in the different states of the Union. Though the constitution confers exclusive jurisdiction upon the State legislatures to make laws regarding these subjects in the State List, yet Articles 249-53 empower the Parliament to legislate on the State subjects. According to Article 249, if the Council of States passes a resolution supported by two-thirds of the members present and voting that it is expedient in the national interest that, Parliament should make laws with respect to any matter enumerated in the State List, then Parliament is empowered to make laws on that matter for the whole or any part of India. Such a resolution normally lasts for a year. If, however, the situation under which such a resolution was passed, perpetuates, another resolution to the same effect may be passed. In the absence of such a resolution, the Parliamentary law passed in this connection will cease to operate within six months after the end of the year.

Article 250 empowers Parliament to legislate with respect to any matter in the State list during the operation of the Proclamation of Emergency. Such a proclamation is issued if the President is satisfied that the security of India is threatened either by war or civil war or if imminence of either of these exists.1 The maximum period for which such a law can be in force is the period for which the Emergency lasts and six months beyond that period. Since the Executive authority of the Union is co-ordinate with its legislative authority, during the emergency period the Central government possesses the authority to give directions to the State governments for exercising their executive authority. Under Art. 356, relating to the breakdown of constitutional machinery in the states, also, Parliament can legislate on the matters enumerated in the State List. According to Art. 252, if the legislatures of two or more States pass resolutions to the effect that it is desirable to have a parliamentary law regulating any of the matters included in the State List, it becomes lawful for the Parliament to make laws regulating that matter. Such laws can also be made applicable to the other states, if the latter pass resolution to

1. Article 352 (1), (3).
that effect. Only Parliament is authorised to amend or repeal such laws. Article 253 empowers the Parliament to make any law for the whole or any part of the territory of India for implementing treaties and international agreements and conventions in which India is a party. It is thus quite evident that the states are not vested with exclusive jurisdiction over the subjects, assigned to the states by the constitution. The Centre has however exploited the provisions of the constitution to encroach upon the domain of the state legislatures.

As regards 47 matters in the Concurrent List, both the central legislature and the state legislatures are empowered to make laws.

In case of a conflict, however the Central law, to the extent of repugnancy prevails over the State law. If the law, passed by the state legislature on a concurrent subject has received the assent of the President of India on being so reserved, it will prevail over the Central law, unless Parliament passes a new law overruling the provisions of the State law. The Concurrent List was to serve as a device to avoid the excessive rigidity of a two-list distribution which was to create two water-tight compartments. In the words of Pylee, "The Concurrent List is like a twilight zone, as it were, for both the Union and the States are competent to legislate in this field without coming into conflict." There is no denying the fact, that the possibility of mutual encroachment is reduced to a minimum by making a provision for Concurrent List containing matters over which conflicts of jurisdiction are likely to arise. The Concurrent List includes matters having varying degree of local and national interests. In fact, the Concurrent List is like a shock-absorber which enables both the Union and the States to go beyond their own exclusive legislative spheres, as necessity arises, so as to meet exigencies without transgressing the boundaries of each other."

The Residuary Powers. Residuary powers not specifically mentioned in the three lists have been vested with the Centre a departure from the practice prevalent in U.S.A., Switzerland and Australia. This reflects the leanings of the constitution makers towards a strong Centre.

Thus, the plan of the distribution of legislative powers clearly indicates a strong tendency towards a high degree of centralization which is deemed as a product of realism and an analytical comprehension of the general tendency towards centralization in all conspicuous federations. A few critics however denounce it as a "deviation from a strictly federal pattern and an attempt to embody unitarism in a federal form." It is feared that the danger of excessive centralization may lead to apoplexy at the Centre and anemia at the circumference.

2. Ibid., p. 527.
§ 2. ADMINISTRATIVE RELATIONS

In the words of D.D. Basu "...the success and strength of the federal polity depends upon the maximum of co-operation and coordination between the governments." In fact the adjustment of administrative relations between the Union and the States is one of the knottiest of the problems in a federal form of government. The Fathers of the Indian constitution therefore decided to include detailed provisions to avoid clashes between the Centre and the states in the administrative domain, and to ensure effective federal executive control of matters falling within the jurisdiction of the Parliament. In order to ensure smooth and proper functioning of the administrative machinery, they made provisions for meeting all types of eventualities, resulting through the working of federalism or emergence of new circumstances due to difference of opinion between the dual authorities. Moreover, the Union government was to be responsible for maintaining peace and order in the country. As such, co-ordination between the Central and the State administrative authorities was thought indispensable. Such co-ordination was effected through:
(1) Techniques of Union control over the States and ; (2) Inter-State comity.

(1) Techniques of Union Control over States. During emergencies, the Government of India exercises complete control over the States and functions as if it were a Unitary Government. Even in normal times, the Centre possesses vast authority. It exercises control over the states through different agencies and varied techniques which are enumerated below.

(a) Directions to the State Government, (b) Delegation of Union functions, (c) All-India services, (d) Grants-in-aid, (e) Inter-state councils, (f) Inter-State Commerce Commission.

(2) Directions by the Union to the State Governments. "The idea of the Union giving directions to the states is foreign and repugnant to a truly federal system. But this idea was taken by the framers of our constitution from the Government of India Act, 1935 in view of the peculiar conditions of this country and particularly, circumstances out of which the federation emerged." Article 256 specifies that the executive power of every state is to be exercised in such a way as to ensure compliance with the laws made by Parliament. Moreover, the Union Executive is empowered to give such directions to the states, as it may deem essential. Ambeykar asserted that if the Centre was not vested with such power, the proper execution of the laws passed by the Parliament would become next to impossible. The constitution goes a step further. According to Article 257, every State is called upon not to impede or prejudice the executive power of the Union in the State. Thus if any Union agency cannot function within a state, the Union Executive is empowered to issue proper directions to the state government to remove all obstacles. There are two specific matters regarding which the Union's power of issuing directions extends:

(i) the construction and maintenance of means of communication which are of national or military importance and (ii) the protection of railways within the State. It may be stated that this power of giving directions does not in any way affect the power of Parliament to declare highways or waterways or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military or airforce works.

Since there is every possibility that special directions given by the Centre may result in incurring of extra cost by the states, the constitution makes a provision for compensating the states. If the Centre and states cannot come to an agreement regarding the compensation to be paid by the former to the latter, the matter is to be referred to the arbitrator appointed by the Chief Justice of India.

It may, however, be stated that the constitution prescribes a coercive sanction for the enforcement of such directions through Art. 356 which enables the President to proclaim emergency and assume himself functions of the State.

(b) Delegation of Union Functions. The Union Executive with the consent of the State Government is empowered by the constitution to entrust to that government or its officers, functions which fall within the scope of the Union’s Executive functions. Parliament also possesses the powers of entrusting powers or imposing duties on State officers through any of its laws, which has application in a state. The liability of payment to such officers for discharging such duties rests upon the Union Government. In case any dispute arises, it is settled by an arbitrator appointed by the Chief Justice of India. Article 258-A incorporated in the constitution by Amendment Act, 1956, lays down that the Governor of a State, may, with the consent of the Government of India, entrust to that government or its officers functions in relation to any matter to which the executive power of the state extends. It is thus clear that where it is inconvenient for either government to directly carry out its administrative functions, it may get those functions executed through the other Government.

(c) All India Service. There is no denying the fact that the constitution of India provides for two separate public services, one for the Union and the other for the States. But it makes a provision for certain services common to the Union and the States. They are termed as “All India Services”.

The constitution provides for the creation of additional All India Services as well. If the Council of States passes a resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest to do so, Parliament may by law provide for the creation of one or more All-India Services common to the Union and the States and also regulate the recruitment and the conditions of service of persons appointed to any service. Dr. Ambedkar very well emphasised the object of this provision for All India Services in the following words, “The Dual Polity which is inherent in a federal system is followed in all federations by a dual service. In all federations, there is a federal civil
service and a state civil service. The Indian federation, though a
dual polity, will have a dual service, but with one exception. It is
recognized that in every country, there are certain parts in its ad-
ministrative set-up which might be called strategic from the point of
view of maintaining the standard of administration.... The consti-
tution provides that without depriving the states of their right to
form their own civil services, there shall be an All-India Service
recruited on an all India basis with common qualifications with uni-
form scale of pay and members of which alone could be appointed to
these strategic posts throughout the Union.

(d) Grants-in-aid. In order to cope with their ever expanding
needs, the Central Government extends grants in-aid to the federating
governments. Art. 275 of our constitution empowers the Parliament
to extend such grants in-aid as it considers necessary. Such grants-
in-aid to the states would enable the Union to remove inter-State
disparities in financial resources which impedes the all round develop-
ment of the country and welfare schemes of the States on a national
scale. Such grants are chargeable on Consolidated Fund of India.
Apart from this general power to make grants to the states for
financial assistance, the constitution provides for specific grants in
two matters:

(i) For schemes of development for the welfare of Scheduled Tribes
and for raising the level of administration of Scheduled Areas, as
may have been undertaken by a State with the approval of the
Government of India. (ii) For the State of Assam, for the develop-
ment of the Tribal Areas in that State.

Grants in-aid constitute a prolific source of central control and
direction. Various apron strings are attached with such grants.
They are extended to the states to better their lot but under certain
restrictions which reduce the states concerned to mere supplicant
tools of the central government.

(e) Inter-State Council. The President of India has been em-
powered to establish an Inter-State Council in public interest. He
is fully authorised to define the nature of duties to be assigned to
such a Council. The constitution, however, outlines the three-fold
duties that may be entrusted to this body. The Council is to enquire
into and advise upon disputes which may occur between the States.
It may investigate and discuss subjects of common interest between
the Union and the States or between two or more States inter se,
e.g., research in such matters as agriculture, forestry, public health
and make recommendations for co-ordination of policy and action
relating to such subject. The President has already established a
Central Council of Health and a Central Council of Local Self-Govern-
ment for effecting co-ordination of policy amongst the States, regard-
less these matters.

(f) Inter-State Commerce Commission. In order to enforce the
provisions of the constitution relating to freedom of trade, commerce
and intercourse throughout the territory of India. Parliament can constitute an authority analogous to the Inter State Commerce Commission in the U.S.A., and assign to such an authority such powers and duties as it may deem fit.

(g) Immunity from Mutual Taxation. Smooth working of a federal form of government necessitates the immunity of the property of one government from taxation by another. The extent to which this immunity is implemented, varies from a federation to a federation though they agree on the principle that mutual immunity from taxation would save, to a large extent, fruitless labour in assessment, calculation, and cross-accounting of taxes between the two governments. Articles 285 and 289 throw enough light on this point. Article 285 (i) specifies that the property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

In case of the property of State it is specified that not only the property but also the income of a State is exempted from Union taxation. It may, however, be pointed that such an exemption is confined to the State government and does not extend to any local authority situated within the state concerned. Parliament is, however, authorised to tax the income of a state derived from a commercial activity. Moreover, if Parliament declares any apparently trading functions as functions "incidental to the ordinary functions of government," the income from such functions will not be taxable, till of course such a declaration persists.

(2) Inter-State Comity. In the words of D.D. Basu, "Though a federal constitution involves the sovereignty of the units within their respective territorial limits, it is not possible for them to remain in complete isolation from each other and the very exercise of internal sovereignty by a unit would require its recognition by and cooperation of other units of the federation." Federal constitutions therefore generally lay down certain rules of comity which the units are expected to take into consideration while dealing with each other. These rules relate to under mentioned matters:

(a) Recognition of the public acts, records and proceedings of each other; (b) Extra-judicial settlement of disputes; coordination between States; and (c) Freedom of inter-State trade, commerce and intercourse.

(a) Recognition of Public Acts etc. According to Article 245 (1), the jurisdiction of each State is to be confined to its own territory. Hence there was every apprehension that the acts and records of a State might not have been recognized by another State, till a provision for compelling such recognition was also incorporated in the constitution. Article 261 (1) therefore provided, "Full faith and credit shall be given throughout the territory of India, to public acts, records and judicial proceedings of the Union and the State."

1. Articles 301-305.
It reflects that duly authenticated copies of statutes or statutory instruments, judgments or orders of one State are to be given recognition in the other States in the same manner as the statutes of the latter State itself. Parliament is empowered to lay down by law the mode of proof and the effects of such acts and proceedings in other States. Article 301 too specifies that final judgments or orders delivered or passed by Civil Courts in any part of India are executable in all parts of India according to law.

(b) Extra-judicial settlement of disputes. In a federation, conflicts of interest between the units are apt to arise. Hence, adequate provision for judicial determination of disputes between the units and for settlement of disputes by extra-judicial bodies and their prevention by consultation and joint action, must be made. Article 131 makes a provision for the judicial determination of disputes between States by empowering the Supreme Court with the exclusive jurisdiction in the matter. Article 263 provides for the adjudication of one class of such disputes by an extra-judicial tribunal. Parliament may, by law, provide for the adjudication of any dispute or complaint, regarding the use, distribution or control of the waters of, or in any inter-State river or river valley and also provide for the exclusion of the jurisdiction of all courts including the Supreme Court to entertain such disputes. Inter-State Water Disputes Act, 1956 actually establishes an ad-hoc Tribunal for adjudication of any such dispute. Article 263 is incorporated in the constitution for the prevention of Inter-State disputes by the establishment of Inter-State Councils. Whenever the President of India is convinced that the public interests would be served by the creation of such a Council, he can establish it. Such a Council will perform the following duties:

(i) inquire into and advise upon disputes which may have arisen between States, (ii) investigate and discuss subjects in which some or all the States or the Union and one or more of the States, have a common interest, (iii) make recommendations upon any such subject and in particular recommend for the better co-ordination of policy and action regarding that subject.

As already referred, the President has exercised this power by constituting the Central Council of Health and the Central Council of Local-Self Government. The States Reorganization Act, 1956 established Zonal Councils for advising on matters of common interest to each of the five zones (the Central; the Northern; the Eastern; the Western; and the Southern Zone) into which the territory of India has been divided. They help in securing co-operation and co-ordination between the States, the Union Territories and the Union.

They discuss matters of common concern to the states and territories comprising each Zone. For instance, economic and social planning, border disputes, inter-State transport, matters cropping up out of the reorganization of states and the like are taken up by these Zonal Councils.

1. Article 262 (1).
The River Boards Act, 1956 made a provision for the establishment of a River Board for advising the governments interested in relation to the regulation or development of an inter-State or river valley.

(c) Freedom of Inter-State Trade and Commerce. In the words of D.D. Basu, "The great problem of any federal structure is to minimise inter-state barriers as much as possible, so that the people may feel that they are members of one nation, though they may, for the time being, be residents of any of the units of the Union." Article 19 of our constitution guarantees freedom of movement and residence throughout the territory of India. Free flow of commerce and intercourse as between different States without any barrier is secured through the provisions of Arts. 301—307. The provisions of these articles are not confined to inter-state freedom but include intra-State freedom as well. In other words, subject to a few exceptions provided in these articles, no restrictions are imposed upon the free flow of trade and commerce and intercourse between one state and another but as between any two points within the territory of India.

Following are the limitations upon or exceptions to the freedoms of trade and commerce.

(i) In the public interest, non-discriminatory restrictions may be imposed by Parliament. The Essential Commodities Act, 1955, passed in pursuance of this power, empowers the Central Government to control the production, supply and distribution of certain essential commodities, such as coal, cotton, iron, steel and petroleum. (ii) Parliament is authorised to pass any law giving preference to one state over the other or even making discrimination between states if the said law specifies that due to scarcity of goods, it was expedient to do so. (iii) Reasonable restrictions may be imposed by a state "in the public interest." No Bill or amendment for this purpose can be introduced or moved in the state legislatures without the previous sanction of the President. (iv) Non-discriminatory taxes may be imposed by a state on imported goods, similarly as on inter-state goods. The provisions of any existing law except in so far as the President may by order otherwise provide, (vi) The power of the Union or a state legislature to make a law for carrying on by the State or by a corporation owned or controlled by the state of any trade, business, industry or service whether to the exclusion, complete or partial, of citizens or otherwise.

Article 307 authorises the Parliament to establish such authority as it deems fit for enforcing the provisions of the constitution regarding inter-state trade and commerce and confers on it such duties as it considers fit.

1. Art. 302.
2. Art 303 (2).
3. Art. 304 (b).
4. Art. 304 (a).
5. Art. 305.
8 3. FINANCIAL RELATIONS BETWEEN THE CENTRE AND THE STATES

In the words of D.D. Basu, "No system of federation can be successful unless both the Union and the States have at their disposal adequate financial resources to enable them to discharge their respective responsibilities under the constitution." It is a hard fact that if legislative and administrative authority of the component units, is to be a reality rather than a mere formality, they must be autonomous financially. However this principle of a federation has not been fully implemented in any existing federation of the world. In Canada and Australia, the sources of revenue placed at the disposal of the units are so meagre that they have to be substantially assisted by Central contributions. The Swiss Federation, on the other hand, makes the Centre subservient to the units, as regards financial contribution from the latter to the former. The American constitution tried its best to ensure complete financial independence for both the Union and the States, but with the passage of time, the increased obligations of the states due to the advent of the "positive state" made them rely on grants in-aid from the Federal Government. It has led to the development of centralization and curbing of autonomy of the states in U.S.A.

In case of India, the Drafting Committee recommended the retention of the existing distribution of the sources of revenue as laid down under Government of India Act, 1935 for at least five years after which a Finance Commission may be appointed to review the whole position. The constitution provided for the appointment, within two years of the inauguration of the Republic or thereafter at the expiration of every fifth year or earlier a Finance Commission which should consist of a Chairman and four other members. The Commission was to recommend to the President the requisite changes to be made in the distribution of taxes between the Union and the States and also define the principles on which the Union Government was to make grants-in-aid to the States. Thus the constitution of India introduced a unique element of flexibility while tackling the problem of distribution of public revenues. Pylee remarks "No other federal constitution makes such elaborate provisions as the constitution of India with respect to the relationship between the Union and the States in the financial field. In fact, by providing for the establishment of a Finance Commission for the purpose of allocating and adjusting the receipts from certain sources, the constitution has made an original contribution in this extremely complicated aspect of federal relationship."

The first Finance Commission was constituted with Noogy as the chairman in November, 1951. It submitted its report in February 1953. The second Finance Commission with Santhanam as chairman was constituted on April 2, 1956. It submitted its report on September 30, 1957. The recommendations of both these Commissions were accepted by the Government.

Allocation of Revenues. As already stated, the distribution of the sources of revenue between the Centre and the States, is based on the scheme laid down in the Government of India Act, 1935. The states possess exclusive jurisdiction over taxes enumerated in the State List and the Union is entitled to the proceeds of the taxes on the Union List. The Concurrent List includes no taxes. It may, however, be pointed out that while the proceeds of taxes within the State list are entirely retained by the states, the proceeds of some of the taxes in the Union List are or may be earmarked, wholly or partially, for the states. The constitution makes a mention of four different categories of union taxes which are wholly or partially assigned to the states:

(i) Duties levied by the Union, but collected and wholly appropriated by the states such as stamp duties in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts and excise on medicines and toilet preparations containing alcohol. (ii) Taxes levied and collected by the Union but whose net proceeds are wholly assigned to the States, such as duties in respect of succession to property other than agricultural land; estate duty in respect of property other than agricultural land; terminal taxes on goods and passengers carried by railway, sea or air; taxes on railway fares and freights; taxes other than stamp duties on transactions in stock-exchanges and future markets; taxes on the sale or purchase of newspapers and advertisements published therein; taxes on the sale and purchase of goods in the course of inter-state commerce and trade. (iii) Income Tax is levied and collected by the Union but is shared between the Union and the States, after deductions of sums attributable to the Union Territories and to the Union emoluments. (iv) Taxes which are levied and collected by the Union but whose net proceeds are shared between the Union and the States. Union excise duties other than those on medicinal and toilet preparations fall in this category.

Grants-in-aid. The constitution makes a provision for three kinds of grants to the states from the Union resources: (i) The states of Assam, Bihar, Orissa and West Bengal are extended grants in lieu of export duty on jute and jute products. The sums of such grants are prescribed by the President. These sums are payable to the states, so long as the export duty on jute and jute products continue to be levied by the Government of India or until the expiration of ten years since the inauguration of the Republic whichever is earlier. (ii) According to Article 275, Parliament is empowered to make such grants as it may deem essential, to the State, in need of financial assistance. The extent of such a grant is also to be determined by the Parliament and is variable according to the needs of the different states. Moreover, the Union is expected to finance schemes, it has approved for the welfare of the Scheduled Tribes and for raising the standard of administration of the Scheduled

1. Article 273.
Areas. A special provision for a grant to Assam, in respect of its Tribal Areas, also exists in the constitution. (iii) Article 282 empowers both the Union and the State Governments to extend grants for any public purpose even if it is not within their respective legislative competence.

Exemption from Taxation. Here, too, the Government of India Act, 1935 was the pattern before the framers of our constitution. According to Article 285, unless Parliament otherwise provides, Union’s property is not subject to State taxation. Article 287 prevents a State from imposing tax on electricity supplied to the Government of India or a Railway unless permitted to do so by Parliament. Article 288 specifies that without the consent of the President, a State may not tax water or electricity supplied or controlled by any authority established for regulating or developing any inter State river or river-valley. Article 289 exempts the property and income of a tax from Union taxation. This exemption does not, however, extend to trade or business carried on by the government of a State unless Parliament, by law, declares such trade or business incidental to the ordinary functions of government.

Power to borrow. The Union possesses unlimited power of borrowing upon the security of the revenues of India either within India or outside. The Union Parliament is to exercise this power, subject only to such limits as may be fixed by Parliament from time to time. The borrowing power of a State is however subject to a number of constitutional limitations: (i) It cannot borrow outside India. (ii) The State Executive possesses the power to borrow within the territory of India, upon the security of the revenues of the State, subject to the following conditions:

(a) Limitations may be imposed by the State Legislature;

(b) If the Union has guaranteed an outstanding loan to the State, no fresh loan can be raised by the State without the consent of the Union Government.

(c) The Government of India may itself extend a loan to a State, under a law made by Parliament. So long as such a loan or any part thereof remains outstanding, no fresh loan can be raised by the State without the consent of the Government of India.‌

Financial Control by the Union in Emergencies. (a) While Proclamation of Emergency is in operation, the President of India may by order direct that for a period not extending beyond the expiration of the financial year in which the Proclamation ceases to operate, all or any of the provisions concerning the division of the taxes between the Union and the States and grants in aid shall be suspended. If any such order is made by the President, the States will be left to their narrow resources from the revenues under the State list, without any financial assistance from the Centre.

1. Article 292.
2. Article 293.
3. Art. 354.
(b) While a Proclamation of Financial Emergency is made by the President, the Union Government will be competent to give directions to the States: (i) to observe such canons of financial propriety and other safeguards, as may be specified in the directions; (ii) to reduce the salaries and allowances of all persons, serving in the States including the judges of the High Courts; (iii) to reserve for the consideration of the President all money bills, after they are passed by the legislatures.¹

Control by the Comptroller and Auditor-General of India. Parliament is empowered to impose such duties upon and grant such powers in relation to state accounts to the Comptroller and Auditor-General of India, as it may by law prescribe.² Without any such legislation, these two functionaries of the Union Government, with the approval of the President of India, can prescribe the form in which the state accounts are to be kept.³

1. Article 360.
2. Article 149.
3. Article 150.
Amendment of the Constitution

1. AN ADAPTABLE CONSTITUTION

Ours is a federal constitution. Federal constitutions are generally rigid in character as their procedure of amendment is unduly complicated. U.S.A. is an example. Even the amending process of the Australian constitution is quite complex. The framers of the Indian constitution, however, were keen to avoid excessive rigidity. They were anxious to have a viable document which could grow with a growing nation and adapt itself to the changing needs and circumstances of a growing people. They were wise enough to predict the impact of new powerful social and economic forces on the working of governmental mechanism. They realized that if the constitution impeded such essential changes, it might be wrecked. The nature of the amending process envisaged by the framers of our constitution can best be construed, by referring to the following observation of our beloved Prime Minister, Pt. Nehru: "While we want this constitution to be as solid and permanent as we can make it, there is no permanence in constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop the nation's growth, of a living, vital, organic people......In any event, we could not make this constitution so rigid that it cannot be adapted to changing conditions. When the world is in period of transition, what we may do today may not be wholly applicable tomorrow." In fact, so long as our government continues to be a responsible government, so long as we believe in Parliamentary Democracy and so long as "the government is all the time on the anvil, on trial, responsible to the people, responsible to the judiciary," constitutional changes reflect the needs and the requirements of the nation. Hence they should be effected easily and smoothly.

The framers of our constitution were also not oblivious of the fact that if the constitution was so flexible as that of Great Britain, it would become a plaything of the whims and caprices of a ruling party. Hence they were anxious to avoid flexibility of an extreme type. They therefore steered a mid course. It is neither "too rigid to admit necessary amendment or not rigid enough to prevent undesirable

1. Dr. Ambedkar: C.A.D.
changes." Dr. Ambedkar beautifully portrayed the new novel scheme of amendment in these words: "... We propose to divide the various articles of the constitution into three categories. In one category, we have placed certain articles which would be open to amendment by Parliament by simple majority...... The second set of articles (for amendment) requires a two-thirds majority of Parliament plus ratification by the States. The States are given an important voice in the amendment of these matters. These are fundamental matters where States have important power under the constitution and any unilateral amendment by Parliament may vitally affect the fundamental basis of the system built up by the constitution."  

§ 2. PROCEDURE FOR AMENDMENT

The above portrayal of Dr. Ambedkar is absolutely correct. Article 368 lays down the procedure of amendment. Two categories (second and third) are covered up in this Article.

(a) A Bill for constitutional amendment may be introduced in either House of Parliament and if passed by a majority of its total membership and by not less than a 2/3 of majority of members present and voting, it is sent to the other House and on being similarly passed by it and and also receiving the consent of the Parliament of India, it becomes the part of the constitution. Part III and Part IV of the constitution dealing with Fundamental Rights and Directive Principles, and all other provisions of the constitution except few specified ones relating to the judiciary or the rights and powers of the units fall in this category.

(b) The amendment of the provisions mentioned below requires the ratification of each House of the Parliament by the above procedure and also of at least one half of the legislatures of the States of India. The following provisions of the constitution fall under this category: The manner of election of the President (Articles 54, 55). (ii) Extent of the executive power of the Union and the States (Arts. 73, 162). (ii) High Courts for Union Territories (Art. 341). (iv) Chapter IV of Part V (The Union Judiciary), Chapter I of Part XI (Legislative relation between the Union and the States). (v) Any of the Lists in the Seventh Schedule. (vi) The representation of States in Parliament. (vi) Provisions dealing with amendment of the constitution, as laid down by Article 268.

It may however be pointed out that the above matters affect usually the rights and powers of the States and the federal character of the constitution. Hence apart from ratification by both the Houses of Parliament by majority of total and 2/3 majority of members present and voting, approval of at least 1/2 of the legislatures of the States is deemed essential.

(c) A good many provisions of the constitution can be amended by both the Houses of the Parliament by a simple majority of the

members present and voting. Parliament may act on its own initiative or on the recommendation of some other agency. Acting on the recommendation of the President, for instance, Parliament may by law (i) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State, (ii) increase the area of any State, (iii) diminish the area of any State, (iv) alter the boundaries of any State, (v) alter the name of any State.

Parliament can, on its own accord amend certain provisions of the constitution. The provisions concerning citizenship and those relating to the administration of the Scheduled Areas and Scheduled Tribes and also those concerning the constitution of centrally administered areas and a good number of other provisions can be amended by an ordinary law of the Parliament.

The constitution however provides that the alterations of the provisions as quoted above, were “not to be deemed to be amendment of the constitution.” But a student of Political Science cannot afford to agree with the framers of the constitution on this point. The above provisions undoubtedly deal with matters of constitutional importance. Hence “from the practical point of view, they are nothing but constitutional amendments.” The procedure of amendment in the case of these provisions reflects the element of flexibility ingrained in the Indian constitution.

Thus the constitution of India provides a novel blend of rigidity and flexibility unparalleled in the history of the top-ranking constitutions of the world. It is, as such, unique in character.

4. GENERAL FEATURES OF THE AMENDING PROCEDURE

According to D.D. Basu “…the amending process prescribed by our constitution has certain distinctive features compared with the corresponding provisions in the leading constitutions of the world.”

(i) Unlike other constitutions of the world, no separate body for amending the constitution has been provided in the Indian constitution. The constituent power has been vested with the ordinary legislature of the Union, i.e., the Parliament. (ii) The State Legislatures are not empowered to initiate any Bill or proposal for amending the constitution. (iii) Subject to the provisions of Article 368, Constitution Amendment Bills are passed by Parliament in the similar way as ordinary legislation. They may be introduced in either House. They must be passed by a prescribed majority of both the Houses of Parliament and must receive the President’s assent like any other Bill. No provision of Referendum or Plebiscite exists in the constitution. (iv) The previous sanction of the President of India is not needed for introducing any Bill relating to the amending of the constitution in the Parliament. (v) While the American constitution requires ratification by not less than three-fourths of the States, the Indian

1. Article 4 (2).
constitution is liberal enough to provide for ratification by not less than half of the States. (vi) All provisions of the constitution are subject to constitutional amendment. The Constitution Amendment Act may even effect amendment in Article 368 itself. Even the provisions relating to Fundamental Rights may be amended by the Union Legislature itself, in the ordinary legislative procedure. Of course, the prescribed majority is to pass the amendment bill.

§ 4. EXAMPLES OF AMENDMENTS

Since its inauguration on January 26, 1950, sixteen amendments have been effected in the Indian constitution.

The Constitution (First Amendment) Act, 1951. Besides making minor alterations in Articles 15, 19, 87, 174, 176, 341, 372 and 375, the Act added two Articles 31A and 31B and a Ninth Schedule after the Eighth. Among the more significant features of this Act are: (i) the addition of a saving clause to Article 15 (prohibition of discrimination) enabling the State to make special provisions for the advancement of socially and educationally backward classes, (ii) the substitution of clause (2) in Article 19 by a new clause broadening the State's power to impose reasonable restrictions on the citizens' rights to freedom of speech and expression in the interest of friendly relations with foreign states and in relation to defamation or incitement to an offence, besides security of State public order, decency and morality, etc., which were included in the original clause as well. The two new Articles added after Article 31 (right to property) made a provision for the saving of laws relating to acquisition of estates and validation of certain Land Reform Acts and Regulations passed by the States and specified in the Ninth Schedule.1 It may however be stated that the above amendment was necessitated due to the decision of Supreme Court in (1) *Ramesh Thapar V. State of Madras* 1950, and (2) *Brij Bhushan V. State of Delhi*, 1950.

The Constitution (Second Amendment) Act, 1952. The Act sought to amend Article 81 (1) (γ) in order to readjust the scale of representation in the Lok Sabha, necessitated by the completion of the 1931 census.2 As originally provided, there was not to be less than one member for every 750,000 and not more than one member for every 500,000 of the population. The amended article removed the upper limit of population.

The Constitution (Third Amendment) Act, 1954. The substituted entry 33 of the Concurrent List in the Seventh Schedule by a new one, including food stuffs, cattle fodder, raw cotton and jute as additional items whose production and supply can be controlled by the Central if expedient in the public interest.3 The Act further amplified the scope of that entry by the inclusion of imported goods

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1. *India* 1960 (An extract)
2. Ibid.
3. Ibid.
of the same kind as the products of centralised industries in order to enable the Centre to exercise full control over the development of such industries."

**The Constitution (Fourth Amendment) Act, 1955.** The Act dealt with Zamindari abolition laws which were first in the series of acts aiming at social welfare legislation. It amended Articles 31, 31A and 305 and added a few more entries to the Ninth Schedule. The amendment to Article 31 (2) provided that when the State compulsorily acquires private property for a public purpose, the scale of compensation prescribed by the authorised legislation would not be called in question in a court of law. Article 31A was amended so as to exclude the temporary taking over of a property by the State, either in public interest or to secure its better management from the compensation clause. The amendment to Article 305, was in the nature of a saving clause for laws providing for State monopolies. The Parliament or State Legislature were authorised to make laws introducing State monopoly in any particular sphere of trade or commerce. Seven new entries were also added to the Ninth Schedule.1

**The Constitution (Fifth Amendment) Act, 1955.** The Act substituted the proviso to Article 3 by a new one empowering the President to fix a time limit for State Legislatures to express their views on proposed central laws affecting the area and boundaries etc. of their respective States.2 The original constitution had provided that any Bill aiming at the formation of a new State or altering the area, boundaries or name of any State could not be introduced in Parliament unless the views of the State Legislatures concerned were ascertained by the President.

**The Constitution (Sixth Amendment) Act, 1956.** The Act passed in 1956 added a new entry *i.e.*, 92A to the Union List of the Seventh Schedule, relating to taxes on the sale and purchase of goods in the course of inter-State transactions and the relevant clauses under Articles 269 and 286 on the same subject.3 The Act was necessitated to empower the Centre to impose and control taxes on the sale and purchase of certain goods other than newspapers in the course of inter-State trade or commerce.

**The Constitution (Seventh Amendment) Act, 1956.** The Act necessitated by the reorganization of States involved not only the establishment of new States and alterations in State boundaries but also the abolition of the three categories of the States and the classification of certain areas as the "Union Territories". This resulted in the amendment of Article 1 and the First Schedule to the constitution which now included 14 States and 6 Union Territories. The other important Articles which were affected by this amendment were Articles 81 and 82 which were substituted by new ones; Article 131 on the original jurisdiction of the Supreme Court; Article 168 providing for bicameral legislatures in Punjab and Mysore States; and

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1. India 1960.
2. Ibid.
3. Ibid.
Articles 216, 217, 220, 222 and 224 dealing with the High Courts. Two new Articles, 350A and 350B were added to implement the recommendations of the States Reorganization Commission regarding constitutional safeguards for linguistic minorities.

It is now enjoined upon every State to make provision for adequate facilities for imparting instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minorities. To this end, the President of India can also issue direction to any State. Article 350 B envisaged the appointment of a special officer to investigate all matters relating to the safeguards provided for linguistic minorities under the constitution and reports to the President. The report is to be laid before each House of Parliament and also is to be sent to the Government of the State concerned.

By amending Article 371, the Act provided for the constitution of Regional Committees of the Legislative Assemblies of the new Andhra Pradesh and Punjab States and the establishment of separate Development Boards for Vidharbha, Marathawada, the rest of Maharashtra, Saurashtra, Kutch and the rest of Gujarat. The revised Article made a provision for equitable allocation of development expenditure in these areas and of adequate facilities for technical, educational, vocational training and employment in services under the control of the State governments in respect of these areas.

The Act amended Part VIII of the constitution. It provided that the Union Territories would be administered by the President to such an extent as he thought fit through an Administrator to be appointed by him. It also empowered the President to appoint the Governor of a State as the Administrator of an adjoining Union Territory. Moreover, the President was authorised to make regulations for the peace, progress and good government of the Andaman and Nicobar and Laccadive, Minicoy and Aminidivi Islands. Formerly, the President was empowered by Article 258 (Clause I) to entrust Union functions to a State Government or its officers. It impeded the execution of certain development projects in the State. The incorporation of a new Article 258A, sought to obviate this difficulty.

The Act amplified the scope of Article 298 by authorising the Union and the State Governments to carry on any commercial and industrial undertaking, trade or business and to acquire, hold and dispose of property. The executive power of the Union and States in this respect was made subject to legislation of the Union and the State concerned respectively.

Article 216 of the original constitution had empowered the President of India to fix the maximum number of judges for each High Court by separate orders. The appointment of additional and acting judges for which provision in Article 217 was made would have involved frequent modifications in the order. Consequently, the above quoted proviso of Article 216 was dropped.
Article 220 was modified, as to relax the ban imposed on retired judge of High Court debarring him from practising in any court after his retirement. The Act of 1956 permitted a retired judge to practise in the Supreme Court and in a High Court other than the one in which he acted as a judge.

Articles 230, 231 and 232 were substituted to provide "for the extension of jurisdiction of High Courts to Union Territories and the establishment of a common High Court for two or more States. These amendments were necessitated as a result of the reorganization of States and the creation of the Union Territories."

Article 171 of the constitution had fixed the maximum strength of a Legislative Council at one-fourth of the Legislative Assembly of the State. The proposed strength was not sufficient in case of smaller States. The Act added a new clause according to which the maximum strength of a Legislative Council was fixed at one-third of that of the Lower House.

The Act substituted a new Article—Article 170—which laid down that the Legislative Assembly of each State was to consist of not more than 500 and not less than 60 members chosen by direct election from territorial constituencies in the State.

The Amendment Act also effected a revision in the strength of the House of the People. It provided that the House would consist of not more than 540 members, 500 to be chosen by direct elections from the territorial constituencies in the States and 20 representing the Union Territories to be chosen in a manner specified by the Parliament. The previous upper and lower limits were abolished and it was provided that each State would be assigned seats for the House of the People in such a manner that the ratio between the number of seats and the population was to be, so far as practicable, the same for all the States.

The territorial changes and the constitution of new States and Union Territories necessitated a complete revision of the Fourth Schedule which provided for the allotment of seats to the various States in the Rajya Sabha. The revised Schedule allotted 213 seats to the 14 States and 7 to the Union Territories.

The rest of the provisions of the Seventh Amendment dealt with the power of the President of India to adapt laws in force in the country before the commencement of this Amendment to accord with the provisions of the constitution as amended.

The Constitution (Eighth Amendment) Act, 1959. The Act amended Article 334 so as to extend the special provision relating to the reservation of seats for the Scheduled Castes and Scheduled Tribes and the representation of the Anglo-Indian Community by nomination in the House of the People (Lok Sabha) and the Legislative Assemblies of the States for a further period of ten years from January 26, 1960,

1. India 1960.
The Constitution (Ninth Amendment) Act, 1960. The Act amended the First Schedule to the Constitution, in order to give effect to the transfer of certain territories to Pakistan in pursuance of the agreements entered into between the Governments of India and Pakistan, in September, 1958.\(^1\)

The Constitution (Tenth Amendment) Act, 1961 integrated the areas of free Dadra and Nagar Haveli with the Union of India and provided for their administration under the regulation making powers of the President.\(^2\)

The Eleventh Amendment Bill was passed on 5th December, 1961. It sought to make it clear that the election of the President or the Vice-President could not be challenged on the ground of any vacancy in the appropriate Electoral College. Such an amendment was necessitated, as all the elections could not be completed before the election of the President. Moreover, even a single vacancy in the Electoral College could make the election of the President impossible.\(^3\)

The Bill also sought to do away with the requirement that members of the two Houses should assemble at a joint sitting for the election of the Vice-President. It provided that the Vice-President would in future be elected by members of an Electoral College consisting of both Houses of Parliament.\(^4\)

Twelfth Amendment Bill was passed by Lok Sabha on the 14th of March, 1962. It sought to amend the constitution of India to include Goa, Daman and Diu formerly Portuguese enclaves, among the Union Territories. The Bill was passed unanimously.\(^5\) Rajya Sabha passed the Bill unanimously on the 20th of March, 1962.\(^6\)

Thirteenth Amendment. On the 28th of the August 1962 the Lok Sabha amended the constitution for the 13th time to pave the way for a separate State of Nagaland in pursuance of an agreement between the Government and the Naga Peoples' Convention.\(^7\)

The Fourteenth Amendment Bill passed by Lok Sabha on September 4, 1962 provided for (i) the creation of Legislatures and Council of Ministers for Union Territories; (ii) the conversion of the former French possessions—Pondicherry, Karikal, Mahe, Yaman into Union Territories; (iii) constitution of another Union Territory for Goa, Daman and Diu, with a separate legislature.\(^8\)

Sixteenth Amendment Bill was passed by Lok Sabha on May 1, 1963. The amendment effected following important changes: (i) Article 311 was amended. The right of civil servants was restricted to only one enquiry in respect of departmental action. (b) The President of India was empowered to determine the correct age of Supreme

1. *India* 1961.
2. *India* 1962.
4. Ibid.
8. Ibid., September 5, 1962.
Court and High Court Judges in case of doubt in consultation with
the Chief Justice of India. (e) The age of retirement of judges of
High Courts was raised from 60 to 62 years.¹

The 16th Constitution Amendment Bill was passed unanimously by
Lok Sabha on May 1, 1963. Article 10 of the constitution was
amended in order to enable the State Governments to impose restric-
tions on all activities aimed at disintegration of the country and
prohibit political parties from making secession from India an election
issue. Moreover, the Bill sought to amend Articles 84 and 173 and
forms of oath in the Third Schedule of the constitution so as to pro-
vide that every candidate for membership of Parliament or of a State
Legislature, Union and State Ministers, M.Ps and M.LAs judges of
the Supreme Court and the High Courts and the Comptroller and
Auditor-General of India should take an oath to uphold the sovereign-
ty and integrity of India.²

17th constitutional amendment has also been introduced in the
Lok Sabha.

1.5. FLAWS OF THE PROCEDURE

A few problems relating to the amending process have been left
unresolved.

(i) If the two Houses of Parliament disagree with each other over
an amendment to the constitution, how the deadlock is to be resol-
ded? The constitution is silent on this vital point. In Vakil
Prasad v. Union of India, however, the Supreme Court held that
Article 368 did not constitute a complete code of constitutional
amendment and that the process of amending the constitution is a
legislative process governed by the rules of that process.

(ii) The constitution does not specify whether the President of
India can refuse assent to the Constitution Amending Bill. In the
U.S.A. constitutional amendments are not even presented to the
President for his assent. D. B. Basu however opines that like the
President of the U.S., the Indian President is fully entitled to refuse
assent if the procedure laid down by Art. 368 is not followed.

(iii) The constitution does not prescribe a time limit within which
State Legislatures should ratify or reject an amending bill. They may
kill the bill by sleeping over it.

(iv) As already pointed out the power of initiation of an amend-
ment lies only with the Union Parliament. The States are not vested
with the power of proposing a constitutional amendment except in
Article 169 which entitles the States' Legislative Assembly to propose
the creation or abolition of the Legislative Council of the State. The
exclusion of the State from the process of amendment makes the
federal principle and is contrary to the practices followed in other
federations.

(c) The critics are of the view that the provisions are inflexible. Why should a 2/3 majority be imposed on the future Parliament to amend the constitution, while the Constituent Assembly could settle it by a simple majority? The constitution should be amendable by a simple majority at least for some years.

In fact, the critics apprehended that once the multiple parties secured hold in the Parliament and the State legislature, it would be a tough task to muster the prescribed majority to amend the constitution. The constitution, would, in such circumstances which are easily predictable, become very inelastic. Dr. Jenning also is of the opinion that the Indian constitution is rigid in character. Dr. Ambedkar, however, justified the provision of prescribed majority in the constitution, in the following words: "...The Constituent Assembly in making a constitution has no partisan motive. Beyond securing a good and workable constitution, it has no eye on getting through a particular measure. The future Parliament if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the constitution to facilitate the passing of party measures which they have failed to get through Parliament by reason of some article of the constitution which has acted as an obstacle in their way... That explains why the Constituent Assembly though elected on limited franchise can be trusted to pass the constitution by simple majority and why the Parliament elected on adult suffrage cannot be trusted with the same power to amend it."

§ 6. CONCLUSION

A critical appraisal of the amendments that have been effected in the Indian constitution during the last 15 years makes us conclude that the procedure for amendment has rather proved to be too flexible. So long as the party in power at the centre commands a solid majority in Parliament and in more than half of the State Legislatures, we should apprehend the possibility of its being used too often either to achieve political purposes or to get rid of judicial decisions which may appear to be unwholesome to the party in power."

2. B="I introduction to the Constitution of India, p. 108."
Public Services in India

§ 1. ROLE OF CIVIL SERVICES IN A DEMOCRATIC STATE

In the words of Ramsay Muir, “Bureaucracy has become during the last century and especially during the last generation, a far more potent and vital element in our system of Government than the textbooks realize. It has indeed become the effective and operative part of our system...”. The above contention of Ramsay Muir is correct. 20th century is the century of a “Welfare State”. The State has ceased to be a mere police state. It stands not only to protect and restrain, but to foster and promote. Hence its activities have multiplied. The successful operation of these activities depends upon the availability of Civil Services of integrity equipped with administrative ability and practical sagacity.

Our constitution makers were not oblivious of the new trends. They had embarked upon a new era—era of hopes and aspirations. Establishment of a welfare state was their goal. Hence, they realized that the standard and efficiency of administration depended ultimately upon the calibre, training and integrity of the Public Services. A member of the Constituent Assembly emphatically asserted “With the independence of our country, the responsibilities of the services have become onerous. They may make or mar the efficiency of the machinery of administration, a machinery so vital for the peace and progress of the country. A country without an efficient Civil Service cannot make progress inspite of the earnestness of the people at the helm of affairs in the country. Whatever democratic institutions exist, experience has shown that it is essential to protect the public services as far as possible from political or personal influence...”.

There is no denying the fact that the ultimate responsibility for running the administration of a country rests with the ‘Political Wing’—the ministers who are accountable to the Legislatures. But a handful of ministers can hardly cope with the plenitude of duties devolved upon the modern democratic government aiming at the welfare of the masses. The Civil Services help them in carrying out their manifold

duties. The ministers formulate the policy. The Civil Services carry it out. The former enter and leave the offices according to the will of the electorates, but the latter hold offices permanently and translate into action different policies formulated by different masters. Hence they serve as a link between successive ministries, which is very essential to maintain for effecting continuity of policy and consistency of administration. In the words of P. Subbarayan “Without an efficient Civil Service, it will be impossible for the government to carry on and the continuity of policy to be kept. The importance of Government administration has been in fact that there is continuity and unless there is continuity there is chaos.”1 Moreover, Democracy is run by politicians most of whom are amateurs. They are assigned portfolios which they readily take up but regarding their ‘ins and outs’ they know nothing. The Civil Services fill up the void. They provide expert knowledge and mature experience which the ministers generally lack. The association of an amateur, lay, political leader with an expert, non-political administrator provides an ideal combination of popular and efficient elements of administration. In fact “the higher echelons of the civil services today not only advise and assist the ministers in the formulation of policy, they indirectly influence decision.”2

§ 2. SERVICES BEFORE INDEPENDENCE

During the British regime, the civil services in India were classified in three categories, the All-India Services, the Central Services and the Provincial Services.

The All-India Services. The All-India Services were comprised of Indian Civil Service and the Indian Police Service. Prior to 1924, all-India service for the education, medical, agriculture, veterinary and public works department, also existed. In 1924, on the recommendation of the Lee Commission recruitment to all these services, except the Indian Medical Service, was stopped. These Services were recruited by the Secretary of State for India who acted as the custodian of their rights and privileges. Though each all-India Service constituted a single service and its members could serve anywhere in India, yet they were allowed to spend their whole career, ordinarily in the provinces where their first appointment was made. It may, however, be pointed out that these services were generally a preserve of the white masters. The policy of Indianization inaugurated in 1919, was a mere artifice to hoodwink the Indians.

Another peculiar feature of the “All-India Services” was that its members not only implemented the policy but also formulated it. The Governors and the Councillors of the Central and Provincial Executive Councils used to be appointed from amongst these Civil Services.

The Central Services. The Central Services dealt with matters which were directly administered by the Government of India. The employees of the Central Secretariat, the Indian Post and Telegrapha,

2 H.V. Kamath: Ibid.
Customs and Railway Services fall in this category. They were appointed by the Government of India, through the Federal Public Service Commission. A lion's share of these services was however earmarked for the Anglo-Indian community."

The Provincial Services. The Provincial Services covered the provincial administration and were almost assigned to the Indians. The Provincial Governments recruited them. They "represented the middle grade in the official hierarchy". Subordinate services of varied categories were also recruited and controlled by the Provincial Government.

§ 3. SERVICES AFTER INDEPENDENCE

With the dawn of Independence in 1947, reorganization of public services in India was thought indispensable. By an agreement between the Government of India and the Secretary of State for India, control over the All-India Services was transferred from White Hall to Delhi. Members of the Imperial Services were to be accorded liberal compensation if they wanted to retire. About five hundred British officers opted for retirement. Moreover, every member of the existing All India Services was first assured by the Government of India and later on was entitled by the constitution to same conditions of service and same rights in disciplinary matters as before. All laws concerning the services in the pre-independence days were made applicable to the existing services provided they were not inconsistent with the constitution. Despite a stormy discussion on the floor of the Constituent Assembly on an amendment moved by Mr. K.M. Munshi for provision of special safeguards to the LCS, the Government of India entitled such services to the conditions of service available to them before the commencement of the constitution. Sardar Patel vehemently supported such a move when he said, "... in point of patriotism, in point of loyalty, in point of sincerity and in point of ability you cannot have a substitute. The guarantee to the services is included in the Indian Independence Act also. All provinces agreed. It was also agreed to incorporate these in the Constituent Assembly's new constitution... Learn to stand upon your pledged words... Do not quarrel with the instruments with which you want to work."

Partition of the country gave a setback to the existing services. Most of the Muslim officers opted for service in Pakistan. The senior ranks of the All-India services were seriously depleted. The new role of a welfare state adopted by our infant democracy further added to the responsibilities of our services. Hence, the Government was faced with a baffling problem. The Government of India rose to the occasion and prepared itself to meet the challenge of the grave situation. A special Recruitment Board was founded in July, 1948 and was empowered to survey the available administrative manpower both inside and outside the government and to make selection of suitable officers to fill up the void caused by Partition and departure.

of the British officers from India after 1947. The recruitment was made from the various age groups of people and from different walks of life. Members of principal services were elevated to the positions formerly meant for All-India Services. The Recruitment Board completed its work in September 1949. Thus All India Services were almost completely Indianized within a short span of time.

Our first and second Five Year Plans further necessitated the strengthening of the services. Fairly large number of senior officers were to be assigned jobs in the numerous state undertakings. State banks, insurance companies, diplomatic posts and international institutions were also to be manned by these services. Hence, a special Recruitment Board was again set up in 1956, to undertake a fresh recruitment for the Indian Administrative Service, to meet these new requirements. About 150 persons were so selected.

Reorganization of the "Central Secretariat Service" also was taken up in 1951. This service is now organized into four grades: Grade I (Under Secretaries), Grade II (Section Officers), Grade III (Assistant Superintendents), and Grade IV (Assistants). Assistants are recruited through an open competition and interview. Higher posts are filled up partly by selection and partly by promotion.

An "Industrial Management Pool" was constituted under the supervision and control of Home Ministry, for manning senior managerial posts in the public enterprises which are managed directly by the Government, or by Government-controlled corporations, by the companies in which Government has a controlling interest. To allow flexibility in the personnel administration of the pool, its composition and administration was immune from Civil Service Rules. Proposals are at present to constitute more All-India Cadres e.g., Parliamentary Personnel Cadres, Social Services Officers Cadres, Information Cadres in order to secure experienced and well-trained officers to run these important services both at the Centre and in the States and to effect uniformity in all India policies and administration.

Lastly, the name of the Indian Civil Service (I.C.S.) was changed to the Indian Administrative Service (I.A.S.).

4. SERVICES UNDER THE NEW CONSTITUTION

Under the new order, there are two sets of services, "Central Services" and "State Services". The Central Service deals with the administration of Union subjects, such as Foreign Affairs, Defence, Income-tax, Customs, Posts and Telegraphs. The officers of these services are recruited by the authority of the Union Government and work under it. The subjects such as Land Revenue, Agriculture, Forests, Education, Health etc. are administered by the State services. Officers in the State services are recruited by different States through their respective Public Service Commissions.

Apart from the above named two classes of services, the constitution provides for the "All India Services" which are common to the Union and the States. Their officers are in the exclusive employment of neither. They can be placed at the disposal of either. Two
services namely, I.A.S. and I.P.S., fall in this category. It is provided in the constitution that if the Rajya Sabha passed a resolution by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest to do so, Parliament may by law provide for the creation of one or more All-India Services common to the Union and States and regulate the recruitment and conditions of service of persons appointed to any such services. Why such a provision was incorporated in the Indian constitution, was very well explained by Dr. Ambedkar, on the floor of the Constituent Assembly in these words, “The Dual Polity which is inherent in a Federal system is followed in all Federations by a dual service. The Indian Federation, though a dual polity will have a dual service, but with one exception. It is recognized that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. There can be no doubt that the standard of administration depends upon the calibre of the civil servants who are appointed to these strategic posts. The constitution provides that without depriving the States of their right to form their own Civil Services, there shall be an All India Service recruited on all-India basis with common qualification with uniform scale of pay and members of which alone could be appointed to these strategic posts throughout the Union.”

15. RECRUITMENT AND CONDITIONS OF SERVICE

Employees of vision, ability, honesty and loyalty to man the administrative machine of our welfare state could be procured, only if they were protected from political or personal influence and provided ideal conditions of service.

The constitution provided that the Acts of the appropriate Legislature might regulate the recruitment and conditions of service of persons appointed to the public services and posts at the Centre and in the States. Until this was done, the President and the Governors were empowered to regulate such recruitment and conditions of service. The constitution itself made a provision for the creation of the Public Service Commissions for the Union and the States to assist in the recruitment to the public services.

The All-India Services Act, LXII of 1951, empowered the Government of India to carry on the day to day management of the all-India Services in matters of recruitment, and condition of service. The Act specifically laid down that the Union Government in consultation with the Government of the States concerned may make rules for the regulation of recruitment and conditions of services of officer of All India Service.

All such rules were, however, to be placed before the Parliament for its approval. The existing rules were however allowed to continue as rules framed under this Act. Some of these rules regulated the political activities of the Civil Services. They cannot participate in political activities, indulge in canvassing, contest elections to a legislative body or without government’s permission even to a local body or issue addresses.
§ 6. TENURE OF OFFICE

Article 310 ensures that all persons who are members of the Defence Services or of the Civil Services of the Union or of All India Services hold office during the pleasure of the President. Similarly, the State Services hold office during the pleasure of the Governor. In actual practice, this amounts to permanent tenure. "To hold office during the pleasure of the President or the Governor," does not however mean that the public services can be arbitrarily dismissed by the former. Article 311 embodies some constitutional safeguards against such an action namely—(i) No member of a Civil Service of the Union or an All-India Service or a State Service can be dismissed or removed by an authority subordinate to that by which he was appointed. (ii) No such member shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Eulogising Article 311, Dr. Ambedkar said "I should have thought that that was probably the best provision that we have for the safety and security of the Civil Service, because it contains a fundamental limitation upon the authority to dismiss." Permanence in office is indeed one of the most important aspects of the public services. This is closely interwined with the "security of service." Constant change in the services is costly in money and more costly in effectiveness.

Such constitutional guarantees are not provided in a few exceptional cases i.e. (i) Where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. (ii) Where it is impracticable to give the civil servant an opportunity to defend himself but the authority taking action against him shall record the reasons for such action. (iii) Where in the interest of the security of the State, it is not expedient to give such an opportunity to the civil servant. Defending the above mentioned restrictive provisions, Dr Ambedkar concluded, "Under the provisions relating to Public Service Commissions, there is a provision that every civil servant who is aggrieved by any action taken by an officer relating to the conditions of service will have a right of appeal to the Public Service Commission. Therefore even in cases where the Government has not given the officer an opportunity to show cause, even such an officer will have the right to go to the Public Service Commission and to file an appeal that he has been wrongly dismissed contrary to the provisions contained in the rules made relating to his services."1

It may be pointed out that if any question arises whether it is reasonably practicable to accord to any person an opportunity of showing such cause, the decision of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.2 No Court is entitled to call in question such decision.

2. Ibid.
3. Article 311 (3).
7. THE PUBLIC SERVICE COMMISSIONS

Since the passage of the Government of India Act of 1935, India had been experimenting with Public Service Commissions both at the Centre and in the provinces. The experience of the working of these Commissions proved to be of a great value to the Fathers of our Constitution. With the exception of a few modifications, they adopted the pattern of Federal Public Service Commission very closely.

In a multi-lingual and multi-racial state inhabited by millions of people embracing different faiths and professing different religions, any sort of political considerations and favouritism in recruitment would have resulted into measurable injury to the nation. Administrative efficiency and integrity of the public services would have been conspicuous by their absence, if merit system had been neglected and 'spoils system' had been substituted for it. Merit system is given proper recognition only through Service Commissions. Speaking on the importance of Public Service Commissions, H.V. Kamath, a distinguished member of the Constituent Assembly, observed, "...In countries where the principle has been neglected and where, instead, the spoils system has taken its place, an inefficient and disorganized Civil Service has been the inevitable result and corruption has become rampant with all its attendant consequences."

Constitution of the Union and State Public Service Commissions. Constitution of U.P.S.C. Article 315 makes it obligatory for the Union to constitute a Public Service Commission. The constitution does not fix the strength of the Commission. Its exact strength is determined by the President. Under the same Article, each constituent state of the Union should also have a Public Service Commission. A provision for setting up Joint Public Service Commission serving more than one state also exists in the constitution. Such a Commission will however come into existence, only if a request to that effect is made by the legislatures of the States concerned, to the Parliament of India. The constitution permits the U.P.S.C. to serve any particular or all the needs of a state with the approval of the President, if the Governor so requests.

The U.P.S.C. at present consists of a chairman and seven other members though its membership may vary from six to eight. The Chairman and the members of the Commission are appointed by the President. They hold office for a period of six years from the date they join duty or until they attain the age of sixty-five years whichever is earlier. It is however provided that at least one half of the members of the Commission should be persons equipped with a minimum of ten years' experience in Government service. "This is intended to ensure always the presence of men of experience in Civil Service on the Commission so that it may function as an expert body."

Constitution of State Public Service Commission. The Chairman and the members of the State Public Service Commission are appointed by the Governor and those of a Joint Public Service Commission by the President. The State Commissions usually consist of three members. The Punjab Public Service Commission, however, consists of six.
members (including chairman) at present. One half of the members of State Commissions are, as far as possible, from those who have been in the service of the Government at least for ten years. As in the case of the Union Commission, the appointment of the members is made for a maximum period of six years. If a member attains the age of sixty years, while in service, irrespective of his having completed six years, he must retire from service.

§ 8. CONDITIONS OF SERVICE

A member of the Commission is not eligible for the same appointment for a second term. Restrictions are imposed on his further employment as well. The Chairman of the U.P.S.C. is ineligible for any future employment both under the Government of India or under the Government of a State.

A member other than the chairman is entitled to accept the chairmanship of the U.P.S.C. or of a State Public Service Commission only. A chairman of a State Public Service Commission is eligible for the chairmanship or membership of the U.P.S.C. or chairmanship of other state or Joint Public Service Commission. A member of a State Public Service Commission in addition to the above mentioned offices may become the Chairman of the Commission of which he is a member.

As regards salary and other conditions of service of the members of the Public Service Commissions, the President is fully empowered to determine them by regulations. The chairman and members of the U.P.S.C. are paid Rs. 4000 and Rs. 3500 per month respectively, as their salary. The entire expenses of the Commission, their salaries and allowances inclusive are charged on the Consolidated Fund of India.

In order to ensure their independence, their conditions of service are not variable to their disadvantage after their appointment. The conditions of service of the members of the State Public Service Commissions are more or less the same as those of the U.P.S.C. and also not variable to their disadvantage after their appointment. It may however be pointed out that their salaries vary from state to state.

§ 9. REMOVAL OF THE MEMBERS

The Chairman or any member of the Public Service Commission is removable from his office by order of the President on the ground of misbehaviour. The constitution prescribes a procedure to prove such misbehaviour. According to this procedure, the matter is to be referred to the Supreme Court by the President. The Court will conduct an enquiry and submit a report to the President on the basis of which the member concerned will be removed from the office. Pending the enquiry by the Supreme Court, the President may suspend the member concerned. The Chairman or a member of a Commission may also be removed by the President if he (a) is adjudged an insolvent or (b) engages in his term of the office, in any paid employment outside the duties of his office or (c) is in the opinion of the President
unfit to continue in office on account of infirmity of mind or body (d) becomes in any way concerned in any contract or agreement made by or on behalf of the Government of India or a State Government or in any way participates in its profit or benefits except as an ordinary member of an incorporated company.

The procedure and the basis for the removal of the members of the State or Joint Commissions are the same as for the members of the U.P.S.C.

The above provisions aim at making the Commission an independent and impartial body, in order to enable it to discharge its responsibilities efficiently.

§ 10. FUNCTIONS OF THE PUBLIC SERVICE COMMISSION

Article 320 specifies following functions of the Public Service Commission.

(a) To conduct examinations for appointments to the services of the Union or States.

(b) To assist the States in framing and operating schemes of joint recruitment if two or more States request the Union Commission for the same. Such joint recruitment will be necessitated if candidates possessing special qualifications are to be recruited.

(c) To advise the Union or State Government: (i) On all matters relating to methods of recruitment to Civil Services and Civil posts, (ii) on the principles to be followed in making appointment to Civil Services and Civil posts and in making promotions and transfers from one service to another, (iii) on all disciplinary matters affecting government servants of the Union or the States, (iv) on the claims made by any person who is serving or has served under the Government of India or the Government of a state, in a civil capacity, that the costs of defending legal proceedings against him in respect of acts done or to be done in the execution of his duty should be borne by the Government, (v) on claims for the award of pension in respect of injuries sustained by a Union official or state official on duty and any question as to the amount of any such award.

(d) According to Article 321, the functions of the Union or a State Commission may be extended by an Act of Parliament or the Legislature of the State concerned, such an act may extend the jurisdiction of the Commissions to the matters connected with the services of public institutions such as local bodies or public corporations established under the Union and the State Governments.

The Commissions thus act as advisory bodies both in the Union and the State Government. Though opinions of the Commissions are treated as advisory, yet it is hoped that these recommendations will generally be accepted.

Matters excluded from the purview of the Commissions, The President and the Governors are empowered to make regulations, specifying the matters in which the Commission may not be consulted.
For instance, the Public Service Commissions may not be consulted on matters relating to the reservation of appointments or posts for the backward classes, Scheduled Castes and Scheduled Tribes. All such regulations made by the President or the Governor specifying the matters on which the Commissions may not be consulted are to be laid before each House of the appropriate legislature for not less than fourteen days.

§ 11. REPORT OF THE COMMISSION

The Commissions are required to submit an annual report on the work done by them to the President or the Governor as the case may be. The report along with a memorandum explaining the action taken by the government on the recommendations of the Commission is to be placed before the respective legislatures. The memorandum is to explain the reasons for the non-acceptance of the recommendations of the Commission by the government if any such case cropped up. Such a provision was made in order to ensure that the government does not ordinarily reject the advice of the Commission. If it does so, it must be answerable to the legislatures for all deviations from the recommendations of the Commissions. In the words of Shri S.B. Bapat “This provision simultaneously ensures that consultation with the Commission is not overlooked that the advice of Commission is as a rule accepted and that the government are free in cases where they consider the matter of sufficient importance to follow their own judgment provided they are prepared to justify their action before the legislature.”

§ 12. POSITION OF THE PUBLIC SERVICE COMMISSION

It has been correctly observed that the Public Service Commissions in India are in a much better and stronger position than their counterparts in U.S.A. and Great Britain. This is because of the fact that these Commissions are established by the same sovereign authority which sets up the executive, the legislature and the judiciary. They are the creations of the constitution. So is the case with these commissions. In U.S.A., Great Britain and some other democratic countries they are set up by the law passed by the Legislatures. As such, the British Parliament and the American Congress are empowered to effect modifications in their constitutions. Thus they are reduced to a subservient position. In India, Public Service Commissions are neither subordinate to the Legislature nor to the Executive. It is thus evident that while a Public Service Commission would not ordinarily withhold information on any particular subject, it is equipped with a constitutional right to withhold any such information. It was done purposely “to make the Public Service Commissions in India immune to all undue influences and to enable them to carry out their duties with impartiality, integrity and independence.”

Secondly, though the constitution vests with the Commissions the power of conducting examinations for recruiting employees for the

Union and the States yet the status of these commissions is advisory. The Commissions have to make recommendations to the President or to the Governor with regard to the suitability of the candidate for the post under consideration. As already stated, the President or the Governor may or may not accept the recommendations. But the provision of laying down the annual report of the Commission along with a memorandum of the cases where the advice of the Commission was not accepted before the legislatures hangs like a sword of Damocles on the head of the President and the Governor. It may, however, be pointed out that the State Governments have paid comparatively inadequate respect to the recommendations of the State Commissions. Recommendations of the U.P.S.C. on the other hand, have been generally accepted by the Government. The U.P.S.C., in its Eight Report (for the period 1st April, 1957 to 31st March, 1958) acknowledged that apart from a few isolated instances, Ministers and departments generally observed the provisions of the constitution. It means that, on the whole, the recommendations of the Commission are accepted and acted upon by the government. In fact, the report for 1957-58 shows that there was not even one case where the Union Government had not accepted the recommendations of the Commissions.1 The above report proves the effectiveness of the Commission as an independent body, though its recommendations are to be advisory in character.

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1. POLITICAL PARTIES AND DEMOCRACY

Before we discuss the role and framework of political parties in India, it is essential to understand the indispensability of political parties in a parliamentary democracy.

A parliamentary Government is a Government by discussion and consent. Voters are apt to differ on vital questions of policy. Political parties serve as organized channels for peaceful outlet of these differences of opinions. Without organized political parties, conflict of ideas may be substituted by clash of arms. Coup d'état may be the order of the day. In the words of Dr. Finer “Without parties, an electorate would be either impotent or destructive by embarking on impossible policies that would only wreck the political machine.” In fact, if political parties were not to exist, governments were bound to be unstable and their policies incoherent.

They provide alternate teams to run the Government. They place alternate programmes before the masses and enlighten them about their respective merits and demerits. Thus it is established “No one is indispensable.” MacIver has rightly said. “The ruling class ceases to have the mere privilege of ruling and must stand or fall in respect of issues and on a ground not chosen by itself.” Thus no Government can afford to get autocratic or abuse its authority. Legislative despotism also is restrained, when opposition takes counsel in its hands to expose the infirmities of the party in power.

They remove apathy and indifference of the people to the affairs which concern them the most. They make the electorates conscious of their rights and inculcate civic enthusiasm in them. Election campaigns are educative and fairly instructive. Bryce says “The party strife is a sort of education for those willing to receive instruction and something seeps through even into the less interested or thoughtless electors. The parties keep a nation’s mind alive as the rise and fall of the sweeping tide freshens the water of long ocean inlets.” Eternal vigilance is the price of democracy. This is very true in a parliamentary democracy in particular. Political parties keep the people vigilant and informed of the activities of the Government of the day.
Nowadays when the population of the State is ever on the increase and the number of electorates is multiplied by the time, the country is to face the General Elections, political parties play a significant role by making the elections easy. The candidates are nominated by the respective political parties well in advance of the polling. It enables the electorates to know the worth of the individual candidates and also to comprehend the policies of the various political parties much before the elections. Moreover, political parties enable a poor candidate, who is otherwise a man of sterling worth, to contest the elections since the party funds and party organization is out to help him.

Due to the facts mentioned above, political parties are considered as the essence of democracy. A good number of critics have indulged in disparaging talks against the political parties probably because of certain evils inherent in the human nature itself. The importance of the political parties can hardly be minimised by the tall talk of the advocates of “partyless democracy” or exponents of “Classless and Stateless society.” We agree with Bryce who in his concluding remarks on the alternative to Political Parties said, “Must there then always be parties? No one has yet shown how such governments could get on without them.” It will not be out of place to point out that the Fathers of American Constitution who were most vehemently opposed to political parties saw in their own life time, the emergence of political parties in their country. By 1800, the party system was firmly rooted on the soil of U.S.A though it was an extra legal growth. Similarly in U.K., the House of Parliamentary Democracy, party system is a vital element in the working of the unwritten constitution of England. Opposition in England has been given official recognition as it is deemed essential to the health of government’s existence.

4. POLITICAL PARTIES IN INDIA (a brief background)

Congress and Muslim League. Ours is an infant parliamentary democracy. We do not have any tradition of well developed political parties. The earliest form of People’s organization in India was Sarvajanik Sabha Poona, the Mahajan Sabha Madras; the Indian Association, Calcutta etc. The establishment of Congress in 1885 brought into existence first ‘all India organization’ which in its rudimentary stage was to serve as an unofficial Parliament of Indians rather than a regular political party. It invoked sympathies of the rulers in the initial stages. But soon after, its vehement criticism of Imperialists and demand of “Swaraj” made the British government feel that enlightened section of Indians have consolidated their ranks to shake the citadel of British bureaucracy and ultimately topple it down. Hence they thought of a counterpoise of natives against natives. Certain vested interests and a handful of Muslims led by Sir Sayyed Ahmed Khan were made to feel as rival organizations of the Congress. The ever-mounting opposition of the Muslims to the Congress brought into existence “All India Muslim League” in 1906. In fact, it will be a misnomer to call Muslim League a party, as it was a communal organization whose membership was open to
the Muslims only. It stood to infuse the sense of loyalty in the heart of the Indian Muslims for the British and safeguard the political rights and interests of the Muslims through respectful representation. At a later stage, in 1937, Mr. Jinnah—a well-known leader of Muslim League and (later on founder of Pakistan) in his Presidential address said, "The Muslim League stands for full democratic Self Government of India". "But adherence to "the two nation theory" and a perpetual hostility to the Congress led the Muslim League to pass a resolution in March 1940 and amend its constitution in 1941 to embody it in the constitution. The resolution is popularly known as "Pakistan Resolution" which culminated into the creation of Pakistan.

**Hindu Maha Sabha (1916).** By way of a reaction to the constitution of Muslim League—a communal organization, a new party to protect the interests of Hindus came into existence, in 1916. It stood for the revival of military glories of the Hindus to secure 'Purna Swaraj' and establish Hindu Rashtra. It was opposed to the policy of non-violence cherished by the Congress. In 1933, its President Mr. Savarkar explained the aims of his party. The Sabha stood for "the maintenance, protection and promotion of the Hindu race, Hindu culture and Hindu civilization and the advancement of the glory of the Hindu Rashtra and with a view to securing them, the attainment of 'Purna Swaraj'. However, it may be said that the Sabha remained a loose organization for many years.

**Liberal Party (1920).** Two groups appeared even in the Congress. They differed on the tactics to be adopted to attain independence from the foreign yoke. The right-wing popularly called as the "Moderates" stood for constitutional methods like making of speeches and passing of resolutions at its periodic sessions. The other wing—the Extremists dubbed it as ineffectual method. They described it as "political mendicancy." Hence they stood for organized agitation. In "Surat Session" of the Congress held in 1907, there was an open rupture between the two wings. Their reunion at Lucknow session in 1916 was also a transient phase. The emergence of Mahatma Gandhi and the endorsement of the Congress of his 'direct action' programme at its Nagpur session in 1920, resulted in the final break of the Moderates from the Congress and the formation by them of a new Party i.e. "Liberal Party".

**Mushroom growth of Political Parties.** For about three decades after 1907, the Congress, the Liberals, the Muslim League and the Hindu Maha Sabha constituted the mirror of the main sections of the public opinion in India. However, the allurement of offices envisaged by the reforms of 1919 and 1935 caused a mushroom growth of "groups" based on communal, sectional or local loyalties. The Muslim Conference, the Justice Party of Madras, the 'Krishak Praja' Party of Bengal, the National Agriculturist Party of U.P., the Unionist Party of Punjab, the Democratic Swaraj Party of Bombay and C.P., the Depressed Classes parties and those of
Sikhs etc. are some of the instances of such factions or groups which can hardly be categorised as political parties. They soon went into oblivion.

Leftist Parties. The Communist Party came into existence in 1924 but it worked underground. Till 1943, it remained an illegal organisation. The ban on it was withdrawn only when toeing the line of Russians, it expressed its full support to the Britishers in executing World War II.

The Socialist Party was organised in 1934 though it worked within the fold of the Congress for years to come. It was in March, 1948, that it got separated from its parent body and started functioning independently.

The Republican Socialist Party, the Forward Bloc, the Peasants and Workers Party etc. also emerged out after 1937. A Terrorist Party which had its origin in Bengal, however, got merged with the Congress after the acceptance of Ministries by the Congress in 1937.

This brief account of the evolution of political parties in India prior to the achievement of independence, reflects that all-India parties having some set principles and clear-cut policies could popularise themselves with the masses. The sectional groups were soon defunct and could hardly appeal to them. This is an encouraging sign of our ultimate leaning towards a Bi-party system as it prevails in U.K. Of course, during the past few years, a score of political parties have come into existence—an alarming growth which seems to contradict our wishful prophecy. Yet, it is hoped, sense will dawn upon Indian politics and in the interest of sound and effective opposition for the healthy development of parliamentary democracy, only two parties will be left in the field.

3. POLITICAL PARTIES AFTER INDEPENDENCE

Despite our efforts to secularise politics by abolishing communal electorates and introduction of adult suffrage, India could not completely get rid of communalism. Of course, a good number of non-communal parties also came into existence. Fourteen all-India parties were assigned election symbols by the Election Commission in the first General Elections. The Election Commission fixed a minimum of 3 per cent of votes polled to get or retain the symbols. Only four All-India parties—Congress, P.S.P., Communist and Jan Sangh could be assigned symbols in the elections of 1957. They secured votes as follows in the General Elections of 1957:

<table>
<thead>
<tr>
<th>Party</th>
<th>Votes in %</th>
</tr>
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<tbody>
<tr>
<td>Congress</td>
<td>47.7</td>
</tr>
<tr>
<td>P.S.P.</td>
<td>8.9</td>
</tr>
<tr>
<td>Communists</td>
<td>8.4</td>
</tr>
<tr>
<td>Jan Sangh</td>
<td>4.6</td>
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</table>
ORGANIZATION AND PLATFORM OF SOME IMPORTANT PARTIES

4. THE INDIAN NATIONAL CONGRESS

We have already gone in details in tracing the origin, the growth and the role of the Indian National Congress in the previous chapters. We will, therefore, refer to its present organization, programme and functioning only in the following few pages.

Its Organisation. Prior to 1947, the Congress derived its strength from the lower and the middle classes; the tillers and the labourers; the merchants and traders; salaried employees and lawyers. Even the Indian industrialists were its supporters, since it believed in the policy of “Swadeshi”. The landlords and the princes were deadly opposed to its policies. Since the attainment of independence and resumption of power, the Congress is tending to get their support also. Hence, its popularity as the custodian of the interests of the working classes is on the decline. It could capture 45% votes in 1951, 47.7% of votes in 1957 and 42% of votes in 1962. Thus it is obvious on these three occasions, the Congress secured less than 50% total votes, though it captured thumping majority of seats at the Centre and in most of the States. Its membership according to its constitution of 1948 as amended in 1957 is divided into three classes. (i) Primary Membership is open to a person of 21 years of age or more who makes a written declaration of his allegiance to the Congress ideology. An annual subscription of only annas four is to be paid by these primary members. (ii) Qualified membership is open to persons who are teatotallers, and believers in inter-communal unity, equality of status and opportunity for all and also constructive work as laid down by the Congress. (iii) Effective membership is confined to those who regularly devote a part of their time to some form of national and constructive activity. Primary members of not less than 2 years standing possess the right to vote at the election of the delegates to the Primary Panchayats. Qualified members can seek election to these primary panchayats. Effective members are however entitled to contest elections to any Congress Committee.

The Congress comprises of: (i) Primary Congress Panchayat which is commonly termed as the Gram or the Mohalla Congress Committee. Every Village or Mohalla or a group of them, having population of not less than 500, forms a Gram Congress Committee. (ii) District Congress Committees at the District Headquarters. Between the Primary Congress Panchayats and the District Congress Committees, there are Taluka and Tehsil Committees. Their designation and jurisdiction is determined by the Pradesh Congress Committee whose members from the area concerned are ex-officio members of the District Congress Committees. (iii) Provincial (Pradesh) Congress Committees. These com-
mittees do not always coincide with state boundaries. For instance, Madhya Pradesh is divided into three Congress provinces of Nagpur, Mahakoshal and Vidharbha. There are twenty five 'Pradeshes' or provinces for Congress organization. They (Pradesh Congress Committees) consist of delegates elected from its territorial constituencies, each of which generally is constituted on one lakh of population and also ex-officio delegates resident within the provinces. Moreover, the Presidents of the Congress are also the members of these committees within whose jurisdiction they live. These committees deal with the Congress affairs within the provinces. They are authorized to frame their own constitution which must not conflict with the Congress constitution. If they violate the constitution, their working committees can suspend them and assign their functions to ad hoc committees. (iv) The All India Congress Committee. It consists of three types of members—elected, ex-officio and representatives of affiliated organizations. The elected members who are 1/8 of the total delegates of the Congress in each province are chosen from amongst these delegates by the single transferable vote system of Proportional Representation. The President of the Congress for the time being, and the ex-president, constitute the ex-officio element. The representatives of affiliated organizations who are not to exceed 5% of the elected element, are those whom the All-India Congress Committee may rope in from the affiliated organizations.

Its supreme body is a 'working committee' which consists of a president, a treasurer, and eighteen members including secretaries. The President is elected for a period of three years by the delegates. The delegates are authorised to propose the name of any delegate or ex-president for the presidentship. The election is conducted by the preferential or alternate voting system. The successful candidate must secure more than 50% of valid votes cast. Casual vacancies in the office are also filled up by the same procedure. If it is impracticable to do so, the A.I.C.C. is fully entitled to fill it by electing the President.

He is the chief of the organization. He is to appoint working committee, from among the members of the All-India Committee ordinarily. No one can remain a member of the working committee beyond six months, till he is elected to A.I.C.C. The Working Committee is the highest executive authority of the Congress and is responsible to the A.I.C.C.—the party parliament. It is fully empowered to frame rules for regulating all matters but these rules are subject to approval by the A.I.C.C., in its next meeting. It superintends, directs and controls, all the Congress Committees except the A.I.C.C. It is to get the accounts of the A.I.C.C. audited. It is authorised to institute enquiries and take disciplinary action against individual members or Committees for misconduct or neglect of duty. It elects a Parliamentary
Board consisting of the President and five other members; and regulates and co-ordinates the parliamentary activities of the Congress Legislative Parties.

It may, however, be pointed out that the number of ministers in the working committee are not to exceed 1/3 of the total membership of the Committee.

The General Secretaries of the Congress. The General Secretaries who are appointed by the President are in charge of the A.I.C.C. office. They have to prepare the report of the proceedings of the Congress Sessions along with the audited accounts of its sessions.

Central Election Committee. The Central Election Committee consists of the members of the Parliamentary Board and five other members elected by the A.I.C.C. It conducts the election campaigns and selects party candidates for the Union and the State legislatures. Similar election committees exist in the provinces as well. They are empowered to recommend candidates for the Central and the State Legislatures. Out of these recommended members, the Central Election Commission makes the final selection after hearing appeals and objections from other such aspirants.

Election Tribunal. Each P.C.C. constitutes an Election Tribunal consisting of three to five members by a 3/4 majority vote. Their members are debarred from contesting election for any Congress office during their tenure as members of these Tribunals. They settle the election disputes of the Congress office bearers and also of the members of the committees in their jurisdictional areas. In 1957 General Elections, it captured 336 seats in Lok Sabha whereas in 1962, it could win 361 seats, in the 1962 General Elections.

The Policy and Method of the Congress. Prior to the attainment of its goal of independence, the Congress was deemed as the spearhead of Indian National Movement. Its basic policy during the alien rule was to awaken the masses against their autocratic regime and strive for the emancipation of teeming millions. The party was correctly considered as synonymous with the National Movement. With the dawn of new era, the rebels became the rulers. Gandhi advised dissolution of the Congress and assumption of a new role under the new name “Lok Sewak Sangh”. The bulk of the Congressmen however did not opt for political suicide and decided to continue functioning under the banner of “Indian National Congress”. Of course, some sort of disintegration in its ranks was discernible, yet the party is still the dominating party both in the States and the Centre. However, its basic policy and methods to achieve economic and social emancipation underwent a great change.

The new constitution of the Congress, as adopted in April, 1948 stated the Congress objective as “the well-being and advancement of the people of India and the establishment in India by peaceful and legitimate means of a co-operative commonwealth based on equality
of opportunities and of political, economic and social rights and aiming at world peace and fellowship”. In another resolution adopted at the Avadi session of the Congress, establishment of a socialistic pattern of society was emphasised. Prof. Shriman Narayan (the then General Secretary of the Congress) explained seven basic principles underlying a socialistic society:

(i) Full employment and the right to work. (ii) Maximum production of the national wealth through the development of small-scale village and cottage industries which could ensure full employment. (iii) Attainment of maximum national self-sufficiency. (iv) Social and economic justice which can be assured by the abolition of untouchability, raising the status of women, eradicating prostitution, introducing prohibition, removing the disparities between the rich and the poor and wiping out economic inequalities. (v) The use of peaceful, non-violent and democratic methods to achieve the objective of a socialist society. (vi) Decentralization of economic and political power by establishing village panchayats and industrial co-operatives. (vii) Top priority to the due necessities and requirements of the poorest and lowliest sections of the population.

In the opening session of the Congress at Amritsar, Pt. Jawaharlal Nehru emphasised that our way of achieving industrial revolution was different both from the Anglo-American and Russian methods. He explained the method for the achievement of the goal in the following words: “We have finally decided to go towards the goal of socialism and build a socialist structure rapidly through peaceful means......India wanted to reach the goal as rapidly as was done by the Russians but we want to do it in a democratic and peaceful way.”

Indore Session, 1957. In another session held at Indore in January 1957, the constitution of the Congress was amended. Its object was defined as the establishment in India by peaceful and legitimate means of “a socialist co-operative commonwealth”. Moreover, the then President of the Congress said emphatically that the socialistic pattern of society did not differ from socialism. The Election Manifesto of the party, on the eve of General Elections held in 1957, further affirmed these objects of the Congress in very clear words.

Nagpur Session, 1959. At the famous Nagpur session held in January 1959, the Congress passed another very significant resolution on Agrarian organizational pattern. The resolution emphasised, “the future agrarian pattern should be that of co-operative joint farming in which the land will be pooled for joint cultivation, the farmers continuing to retain their property rights and getting a share from the net produce in proportion to their land. As a first step, prior to setting up joint farming service co-operation should be organized and this stage should be completed within a period of three

years. Ceilings should be fixed on existing and future holdings and legislation should be completed before the end of 1959...The surplus land should vest in the Panchayats and should be managed through co-operatives consisting of landless labourers."

The election manifesto, issued on the eve of General Elections of 1962, was based on the policies emphasised at Bhavnagar Session. The party promised a new social set up based on equality and fraternity. It lays down, "The existing inequalities and disparities in the social fabric are ethically wrong and will obstruct progress on all fronts and produce considerable strains. The new social order must preserve the worth and dignity of the individual and create a sense of equality, fraternity and cohesion." The manifesto lays stress on the efficiency of improving the standards of living of millions of people of the country by providing them better opportunities for earning bread and butter through Five-Year Plans. It warned the people against the dangers of disruptive and disintegrating forces like communalism, linguism, casteism which are out to hamper unity and solidarity, peace and prosperity of the nation. It asserted, "The Congress has always stood and stands to-day for a united non-sectarian and secular India." It condemned colonialism and imperialistic tendencies of the Portuguese and promises to liberate Goa from the clutches of the Portuguese imperialists. It proclaimed that the illegal occupation of India’s land by Pakistan and Red China would be vacated and areas legitimately due to us would be recovered.

Analysis of resolutions. (a) **Opposed to violent means or Direct actions.** A critical and analytical study of the resolutions of the Congress on some of its important sessions and also of the statements of its top leaders reflects that the Congress is opposed to technique of class struggle, war and violence or revolution for bringing about social and economic changes in the country. It no longer advocates "Direct action" since ‘ballot’ can change the government any time.

(b) **Pursuit of common interest.** Sarvodaya is the basis of creed of the Congress which does not believe in any inherent animosities or conflict between the rich and the poor, or the capitalists and the labourers. It stands for the uplift of the poor and the down-trodden exploited classes particularly the peasants, labourers and the Scheduled Castes. In other words, it promotes the interests of all.

Moreover, the Congress stands for a secular state. Despite the fact that the majority community had resented the establishment of a non-communal state, the Congress stood for the betterment of all the communities and strongly advocated secularism. The constitution of India makes ample provision for the achievement of goal of "Secular State".

As regards its economic programme, the Congress is not wedded to any particular ideology. It stands for a curious blend of private and public enterprise, commonly known as "mixed economy". It favours
the inflow of foreign capital too for the economic development of the country. In the agrarian field it believes in the abolition of Zamindari system and also elimination of intermediaries between the State and the cultivators. It advocates co-operative farming. Industrialization on the western lines is also being given great importance by the chief adherent. However, Khadi and other cottage industries are not ignored. In its 68th session held at Bhubaneshwar the Congress declared 'Socialism based on parliamentary democracy' as its goal.

**Congress and Foreign Policy.** As regards foreign policy, the Congress has been the exponent of world peace. India's Prime Minister—the soul of the Congress—placed before the warring camps the golden principles of Panch Sheel. At its Amritsar Session, the Congress leaders declared that the world had to make a choice between Gandhi and Buddha and the Atom Bomb. Pt. Nehru, speaking on the resolution pertaining to foreign policy, said, “Humanity had to choose today between the message of Buddha and the Hydrogen Bomb. There is nothing in between to choose from.”

Congress has always stood for the policy of non-alignment. They have not favoured dancing to the tune of either of the Blocs, which have divided the world into two main camps. Even in the sorest trials, the Congress has advocated the policy of non-alignment. While addressing A.I.C.C., at its Poona session on June 5, 1960, Mr. Nehru asserted that India's policy of non-alignment had proved to be a correct policy during this period of crisis, the world was confronted with. Despite Chinese aggression and Pakistan's emotional outbursts and threats for invading Kashmir, the Congress has not deviated from its course. It has never advised the Government to get provoked. However, this policy of non-alignment and non-violence is not to be pursued at the cost of our national integrity. Our Government’s whole-hearted support to the U.N., its vehement opposition to Imperialism and its strenuous efforts to liberate Asiatic countries from the yoke of foreigners, its occasional intervention in the world affairs, if international peace was at stake or national freedom of any country was in jeopardy, reflects that the Congress—the ruling party—is the advocate of those principles which if followed earnestly can usher in an era of peace and prosperity for the world and save the succeeding generations from the scourge of war.

**Views of Critics.** The critics, however, opine that the policy and programmes of the Congress seem to be quite impressive and fascinating, yet they are based on hollow idealism, and high sounding jargons. They emphasise that progress and prosperity of a country depends upon action and not talk. They condemn its oft-repeated resolutions on socialism, secularism, Panch Sheel and democracy as innocuous embellishment of unrealizable objectives. K.M. Munshi condemns it from another angle. He says: “Instead of playing the role of a Parliamentary Party so essential to the development of a healthy democracy, it became a monolithic power machinery.” The entire power in his opinion concentrates in the hands of Pt. Nehru.
who is intolerant of criticism and fond of seeing his own view reflected by those who surround him."

3. COMMUNIST PARTY (PRIOR TO INDEPENDENCE)

The Communist Party is the second largest party in our country. It came into existence in 1924, though was banned soon after by the then Indian Government. A good number of its workers joined the Congress and in collaboration with some of the leftists in the Congress ranks started making efforts for furtherance of its programme. Their influence on the Congress is evident from the fact, that in its Karachi Session held in 1931, the Congress emphasised on "Economic Democracy" as well. Some of the Communists functioned through trade unions, student organizations and Kisan Sabhas and instilled a class consciousness into the minds of the workers, peasants and the elite of the towns. It may, however, be pointed out that right from the very beginning, the Party has been dictated by foreign masters. Its policies have been fluctuating according to the directions of the Russian Communist Party. For instance, it condemned World War II as an Imperialist War and propagated against it. Russia's entry into the war in 1941 made it change its stand altogether. 'Imperialist War' was sanctified and termed as 'People's war' by it. The 'Quit India Movement' launched by the Congress in 1942, pushed the Congress into wilderness and enabled the Communist Party to gain ground in various parts of the country. The number of its members went up from 4000 in July, 1942 to over 50,000 in 1946. The release of Congress leaders in 1945, caused expulsion of the Communists working in its fold as the former dubbed them as traitors. This further strengthened the ranks of the Communist Party which was not fully organized to work independently under the guidance of "Comintern".

After Independence. Soon after the dawn of independent era, ideological differences cropped up into the party. A minority group led by Mr. B.T. Randive vehemently opposed any sort of compromise with the Congress. Whereas Joshi's Group enthusiastically supported the Congress. By 1948, Randive's group came in power and Mr P.C. Joshi was expelled from the party. Joshi had stood for soft pedalling of the programme of his party whereas Randive advocated violence. "Reign of terrorism" ensued. In Telangana (Hyderabad) a most obnoxious campaign of loot, arson, and sabotage was launched by the party. The same story was repeated in West Bengal, Madras and Malabar. The Central Government and the State governments could not tolerate lawlessness. The party was banned in West Bengal and other States. Its prominent leaders were arrested. Military action in Telangana made the communists flee away to jungles. The party lost its support and got fairly unpopular.

Triumph of Communism in China, induced the Indian communists to change their outlook. They decided to abjure violence and devote to peasant problems. Randive was asked to resign and Rajeshwara
Rao, Andhra peasant leader, took over as the secretary. In October, 1951, Ajoy Ghosh replaced him.

In 1951, the party contested the General Elections and captured 26 seats in the Lok Sabha and 173 seats in the State Legislatures. During elections, it condemned Congress as “anti-democratic” and a protector of “landlords, moneylenders and other exploiters”. It exhorted other parties to forge a united front, on the basis of a minimum programme, to fight the Congress. It attempted to form coalition ministries in Madras, Travancore-Cochin and Andhra, but failed miserably. A change in the foreign policy of the Government of India in its dealing with the U.S.S.R. and People’s Republic of China and subsequent visits of Russian and Chinese leaders to India, the denunciation of ‘personality cult’ by the Russian leaders and their expression of faith in constitutional methods and Pandit Nehru developed a close understanding between the Soviet Union and India. Mr. Nehru was acknowledged by the Russian Communists as the champion of Free Asia, the ambassador of peace and the great leader of a great nation. All this was apt to bring a change in the attitude of the Communist party towards Congress. Hence in April, 1956, at its Palghat session, the party recognized the commendable points of the foreign policy adopted by the Congress and followed by its Government. It appreciated the efforts of the Congress in developing the country through the five-year plans to some extent. It openly declared its full faith in the parliamentary form of government in the Socialist State of their conception. Such a radical departure from the orthodox communist line led to a welcome change as regards the attitude of the people towards the Communist Party of India. Hence in General Elections of 1957, the Communist Party captured 29 seats in the Centre and 162 seats in the States. It emerged as the largest single party in Kerala and formed its government with Shri Nambodiripad as the Chief Minister. The Communist Government could not last for long, as it followed the policy of repression towards its non-communist opposition. Governor’s rule was instituted by a proclamation of emergency. Elections in February, 1960, gave a verdict against the party. Coalition government with Congress as the largest party was formed. In fact, Communist party suffered a setback due to its anti-nationalist attitude on “Sino-Indian” border tangles. Not only this, dispute with China caused a split in the party ranks. It provided an opportunity to other parties to condemn its members as the spies of the foreigners in India.

However, in the 1962 General Elections, the Communists held their own in most areas exploiting the widespread assumption that they have been discredited by Red China’s grab on India’s North-West frontier. In Lok Sabha they captured 29 and in the State Legislative Assemblies 197 seats.\footnote{India 1962 (as on May 15, 1962).} It may, however, be stated that
it derives its strength from its relatively good discipline and organisation from its substantial labour base. It has failed to attract significant support from the peasants.

The Organization of the Party. Young students, industrial labourers and a few intellectuals who embrace Marxist ideology constitute Communist Party. It has its stronghold in Bombay, Calcutta, Madras, Hyderabad States and also Malabar.

A young person of above 18 years of age, sponsored by at least two members of the party, can join the party provided that he professes faith in the communist ideology and assures active interest in the party. He is required to affirm by an oath, loyalty to the party and submit to its discipline and make regular contribution to its funds.

The Cell is the lowest unit of the party. It consists of two or three members and can be set up in any factory, workshop or place where communist faith can easily be preached. The Cell stands for the propagation of the Communist ideology among the people.

The hierarchical structure of the party consists of village, town, district and provincial committees. The governing body of each such committee is designated as an “Executive Committee,” which consists of five members and a secretary. Lower bodies are periodically accountable to the higher ones immediately above them.

“All India Party Congress” is the top organ of the party. The Congress elects a general secretary and a central committee known as the Central Executive of the Party. Each member of the Central Committee is entrusted some branch of the party work.

Politbureau—the inner ring of the party—consists of the General Secretary and a few other very important members. It is the motive-power behind the party machine. It is the propounder of its policy at the meetings of the Party Congress.

Its Basic Policy. The party poses itself to be the vanguard of the workers and the tillers. Its fundamental object is “the organization of the toiling masses in the struggle for the victorious anti-imperialist and agrarian revolution, for complete national independence, for the establishment of a people’s democratic state led by the working class for the realization of the dictatorship of the proletariat and the building up of socialism according to the teachings of Marxism-Leninism.” The party’s manifesto in the General Elections of 1957, which elucidates its policy and programme for winning the votes of the masses runs as follows:—(i) severance of India’s connections with the Commonwealth; (ii) abolition of landlordism without compensation; (iii) nationalization of foreign industries and capital; (iv) living wages for workers; (v) abolition of police force and organization of national militia; (vi) full recognition of civil liberties; (vii) linguistic reorganization of the states; (viii)
employment for all and conditions of full social security and (ix) development of industries with nationalized capital.

The party's constitution as adopted, at the extra-ordinary session of Party Congress held at Amritsar, in April, 1958 also is self-revealing. The constitution runs as follows:—"The Communist Party of India is the political party of the Indian working class, its vanguard, its highest form of class organization. It is a voluntary organization of workers, peasants and toiling people devoted to the cause of socialism and communism." It is quite evident from the above manifesto and the words of the constitution that mostly the party follows the foot-prints of the Communist Party of Russia and is guided by the fundamentals of Marxism-Leninism.

Moreover, the Party is strongly opposed to all obstructionists conceptions such as communalism, untouchability, caste and denial of equality to women. It pleads for the uplift of the minorities and stands for the welfare of the inhabitants of the tribal areas.

Its Foreign Policy. As regards its foreign policy, it is a strong advocate of Panch Sheel. It upholds peace and believes in peaceful co-operation between all countries on the basis of full freedom and equality of all peoples and nations. It is an anti-Imperialist party. Hence, it is the torch-bearer of colonialsists and those groaning under the heels of the imperialists. As already stated, the party sees eye to eye with Nehru's foreign policy in most of the matters. At the extraordinary party session held at Amritsar in April, 1958, the Party resolved that it "supports the foreign policy of the Indian Government and consistently works for strengthening it." However, it condemned the policy of the Indian Government towards Tibet and has not so forcefully deplored the Chinese aggression on the Indian border, as others have done.

Though the Party's policies and programmes seem to be very imposing yet we may agree with Dr. Sampurnanand, who said, "Throughout its history, it has been consistently playing an anti-national role. Its inglorious record in 1942 is too fresh in people's memories to need any elaborate description. Even today, in spite of its attempts to talk patriotism, it has not been able to muster enough courage to denounce the Chinese as aggressors..........in spite of its tall verbiage, which it introduces in its resolutions, it would be false to itself if it were honestly to believe in Democracy." 1

§ 6. BHARATIYA JAN SANGH

Jan Saugh is the party of the right. It was founded in 1951, under the presidency of Dr. Shyama Prasad Mukerji. Its influence is chiefly confined to the States of the North. Its hold in the Punjab, U.P., Delhi, Madhya Pradesh and Rajasthan is quite substantial. It has been gradually gaining importance as is obvious

1. Dr. Sampurnanand: Future of Parliamentary Democracy (Extract from an article).
from the election results of three General Elections held in India. In 1952 Elections, Jan Sangh secured only 3 seats in Lok Sabha and 34 seats in the State legislatures. In 1957 Elections, its strength in Lok Sabha was raised from 3 to 4 and from 34 to 46 seats in the State legislatures. In 1962 Elections, it made spotty gains in the Centre and the State legislatures. It captured 14 seats in the Lok Sabha and 116 in the State legislatures.

In 1956, some serious attempts were made to merge Jan Sangh, Ram Rajya Parishad and Hindu Mahasabha in order to strengthen their ranks and throw their doors open to all Indians without any discrimination on the basis of caste and religion. But the attempts proved futile as Hindu Mahasabha's leaders were reluctant to lose their entity completely and were very keen for the total dissolution of Jan Sangh. Ram Rajya Parishad also was unwilling to permit Harijans in their fold.

**Its Policies (Main activities).** The party stands for democracy, rule of law and freedom of the individual. It has always been emphasising the complete integration of Jammu and Kashmir with the Indian Union. It always exhorts the government to strengthen its defence to meet the challenge of Pakistan and Red China. Its Maha Punjab agitation as a counterblast to the Punjabi Suba demand of Akalis made it popular amongst the Hindus of the Punjab.

**Its Foreign Policy.** In the international domain, it advocates the policy of non-involvement in the international affairs, not affecting India. It dittos Congress's policy of non-alignment with any of the Power Blocs. Annulment of Partition of India and establishment of Akhand Bharat; re-examination of Indian's position in the Commonwealth; strict reciprocity towards Pakistan; assertion for decent treatment of minorities in Pakistan; withdrawal of Kashmir issue from the U.N. and military training for all to meet any baffling eventuality we may be confronted with, are some of important features of its foreign policy.

**Economic Policy.** Its economic objectives seem to be quite laudable. Fair deal to the common man through abolition of sales tax and reduction in other direct taxes, appointment of a national wage board; guarantee of economic power; land reform by abolition of Zamindari; encouragement to private enterprise in industry; and self-sufficiency, profit sharing in industry; acceptance of foreign capital but without strings, progressive de-control; nationalisation of basic and defence industries; Indianisation of mining, tea plantation, coffee, rubber and such other industries, as are mainly run by the foreigners; labourer to be a co-sharer in the management and profits of industry; provision of minimum standard of living to all citizens; fixation of Rs. 2,000 as the maximum monthly expendable income are some of the cardinal points of its economic policy which aims at the establishment of economic democracy and provision of equal opportunities for the nationals of India and also
eradication of exploitative tendencies from motherland.

Home Policies. As regards its Home Policy, the Party stands for (i) the establishment of a unitary state with decentralisation of powers to the lowest levels; (ii) the overhauling of the administration and wiping out of its age-old flaws as red-tapeism, corruption and inefficiency; (iii) organisation of a Territorial Army; (iv) uplift of backward classes; (v) development of Ayurveda on modern scientific lines; (vi) opposition to Hindu Code Bill; (vii) speedy adoption of Hindi as national language and due importance to Sanskrit; (viii) provision of free primary education; (ix) prohibition of cow slaughter and (x) discouraging of strikes and lockouts.

It may however be pointed out that unbending nationalism of Jan Sangh is gradually drifting towards Fascism. In the words of Dr. Sampurnanand "Even today, its constitution, written or unwritten, is Fascist, and its Fascist tendencies will probably be intensified in the future. This is a party which makes a powerful appeal to the sentiments of a large section of the population and may well shake democracy to its very foundations in certain circumstances."

4. 7. PRAJA SOCIALIST PARTY

Brief background. The Praja Socialist Party is the oldest among the Socialist parties of India. In its present form, it came into existence in September, 1952, as a result of merger of the former Socialist Party and the "Krishak Mazdoor Praja Party" founded by Acharya Kripalani. Originally, it functioned within the fold of the Congress as the "Congress Socialist Party" and was constituted in 1934-35 as a left wing of the organisation.

In fact, in 1930 three comrades, Jai Prakash Narayan, Achyut Patwardhan and Ashok Mehta who were fellow-prisoners in Nasik Jail, were inspired by October Revolution in Russia. They could not tolerate domination of their Party (Congress) by the capitalists. Hence, they resolved to form a left wing in the Congress, immediately after their release from the jail and strive for the achievement of socialist democracy. The group was actually inaugurated in May, 1934 at Patna. Shri J.P. Narayan was elected as its Organising Secretary. The group stood for impeding compromising tendencies of the Congress with the British as well. During "Quit India Movement" launched by the Congress in 1942, the members of this group went underground and continued indulging in unceasing attack on the British Imperialists. Hence the Government imposed ban on them. After the end of World War II, when Congress Government was installed in the provinces, it lifted the ban on the Congress Socialist Party. The Socialists immediately after the lifting of the ban conferred at Kanpur in March 1947. Soon after the demise of Mahatma Gandhi, they decided to form themselves into an

1. Dr. Sampurnanand: *Future of Parliamentary Democracy—an article.*
independent party. Hence "Socialist Party" came into existence. The election reverses in the first General Elections held in 1952 prompted all like-minded Socialists to forge a united front. Thus "Krishak-Mazdoor Praja Party" led by Kripalani got merged with the Socialist Party. The party was named as "Praja Socialist Party".

Merger not lasting. The merger proved to be a transient phase. The K.M.P.P. had faith in Sarvodaya whereas the Socialists were the apologists of the Marxian ideology. Hence the alliance was apt to be loose. The differences soon appeared in the Party. The Party was split into two groups—rightists who had affinity for their parent organisation, the Congress and the Leftists who were opposed to the Congress. The former pleaded for co-operation with the Congress whereas the latter wanted to have no truck with the Congress. Nehru's invitation to J.P. Narayan for seeking his co-operation for national reconstruction on progressive lines further infuriated the leftist like Ram Manohar Lohia and Madhu Limaye. The latter challenged the bonafides of J.P. Narayan who is acknowledged as the embodiment of serenity and sincerity. Unfortunately, the Leftist group dominated the Party. In December 1953, it proclaimed, in unequivocal terms, its opposition to the Congress.

Not only this, in August, 1954, the leader of the Leftists Dr. Lohia went to the extent of suggesting tendering of resignation by Socialist Chief Minister of Travancore-Cochin Shri Pattom Thannu Pillai whose government ordered firing to quell disturbances which were the consequence of demonstrations in Tamil speaking areas of the State for merger with Madras. Though such an irresponsible suggestion was not accepted by the Party Convention held at Nagpur in November 1954, yet it widened the gulf between the two groups of the Party.

The gulf yawned still wider when Chairman of the P.S.P. welcomed the declaration of the Congress (at Avadi session) for the establishment of socialism in India. Dr. Lohia and his chief adherents called it a colossal fraud and condemned the rightists as collaborationists. Limaye, a leading leftist, launched personal attack on Ashok Mehta with the result that the former was suspended from the Party. The U.P. Party's executive supported Limaye and asked him to address their Party Conference at Ghazipur. Such an act of indiscipline was beyond toleration. The entire Pradesh Executive was suspended. In July, 1955 Dr. Lohia was also expelled from the Party. Thus, there was an open rupture in the ranks of the Party. Some of the important Socialists like D.P. Misra and Sucheta Kripalani joined the Congress. Thus they suffered a great organisational setback and that too, on the eve of the General Elections of 1957. Yet it goes to their credit that they captured 20 seats in the Lok Sabha and 205 seats in the state legislatures, whereas in 1952 Elections, Socialists captured 12 and
K.M.P.P. 10 seats in the Lok Sabha and in the State legislatures. Socialists won 125 seats and K.M.P.P. captured 77 seats, in January, 1959, the P.S.P. formed an electoral alliance with the Congress in Kerala. In 1962 General Elections, however, the P.S.P. mainly supported by the non-communists intelligentsia lost heavily in the State Legislatures and also in the Lok Sabha. It captured only 179 seats in the State Legislatures and 12 seats in the Lok Sabha. Thus virtually, it has ceased to function as an opposition party.

Programme of the Party. In fact when the Socialists parted company with the Congress in 1948, they felt strongly for an effective opposition to challenge the authoritarian and totalitarian tendencies in the ruling Party. Moreover, they were apprehensive of Congress efforts for the establishment of a socialistic order in the country. Thus they wanted to champion the cause of socialism. They aimed at the establishment of a democratic socialist society free from social, political and economic exploitation through peaceful means. The Party had a firm faith in the reconstruction of the country on the basis of an equalitarian social order ensuring personal freedom. It is opposed to the "Mixed Economy" policy of the Congress and advocates a planned socialist economy. It recommends the nationalisation of existing undertakings, at least of coal, iron and steel industries with immediate effect.

It, in fact, aims at the economic development of the country through its own resources in men, material and skill and decentralisation of industry. It also caters to the development of a new technology based on small machines operated by power. Such a technology is apt to harmonise economic and social conditions in our country and eliminate bureaucratic control. It stands for the development of the cottage and small-scale industries as well. It emphasises the necessity of transferring land to the tillers, hence it suggests the redistribution of the economic holdings in such a way, that a family of five persons is left with a maximum of three time the unit of land that they can easily cultivate without engaging labour or mechanical tools. An extract from its Election Manifesto, clarifies the position: "The Party realizes that the peasant and the rural people have received a raw deal so far. Evictions continue, land reforms are halting and often remain a dead letter. Extension services and state aid are cornered by the well-placed and the privileged while the needy remain unattended. The Party advocates comprehensive and integrated land reforms that will make the tiller of the soil its owner. It will foster cooperative marketing, credit and development societies and endow the Panchayat cooperatives with the authority and resources needed to provide extension services to every nook and corner of the country. It will

1. India 1962 (as on May 15, 1962).
2. Recently Ashok Mehta one of its founder members was expelled from the party because he accepted Deputy Chairmanship of the Planning Commission.
provide housing sites and building facilities to rural areas and introduce crop insurance and similar measures to safeguard the peasants against the hazards of their occupation." Thus, following the above mentioned economic policy, the P.S.P. hopes to usher in an era of prosperity for the common man. They are sure to provide employment to everybody and also raise the standard of living of the masses.

**Home Policy.** As regards Home Policy, it insists on the amendment of the Constitution to extend Civil Liberties, limit the Emergency Powers of the President of India, and modify the right to private property, so as to facilitate the acquisition of property for public good. It further aims at purifying the administration which is rotten to the core, by effecting decentralization in administration. It wants the village or a group of small villages to be the unit of administration. Village is to function on democratic lines. Local bodies, duly elected by their people, are to be vested with legislative and administrative power. Some of them are to be assigned control over police except special armed constabularies. It insists on a clearcut demarcation of the functions and the power of the state from those of political parties. Lastly, it suggests constitution of an Economic Civil Service.

**Foreign Policy.** In this domain, the P.S.P. believes in non-alignment with Power Blocs and full co-operation with the neutral countries. It suggests ban on atomic warfare and reduction in armaments. It is a vehement opponent of racialism and imperialism. It won't mind foreign aid for the development of economically backward regions, if it is without strings. It has firm faith in the principles of Panch Sheel. The Party accused the government for mishandling the Goa Problem. It is not in agreement with the attitude and policies of the ruling party towards Tibet and Red China. The Party advocates complete severing of our connections with the Commonwealth, as it is not very much in favour of having relations with Great Britain. It supports the membership of the U.N. which not only can bring in world peace but also foster balanced economic development in the world. It is a very strong advocate of a close collaboration amongst the Afro-Asian nations.

Though the economic, administrative and foreign policy of the P.S.P. seems to be very alluring and quite comprehensive, yet it is correct beyond any doubt that its point of view is too much doctrinaire, extremely dogmatic and quite ambiguous.

### 18. SWATANTRA PARTY

The Swatantra Party came into existence in 1959 as a reaction to the “Nagpur Resolution” of the Congress on co-operative farming. It attracted the attention of the nation as it was being supported by seasoned politicians like Rajgopalachari and veteran statesmen like K.M. Munshi. Right from the very beginning, its supporters emphasised the “naked totalitarianism” of the Congress and condemned the ever-vaccillating policies of the ruling party. Shri
K.M. Munshi condemned repeated changes in its economic policy in particular. From the establishment of ‘Co-operative Commonwealth’ to ‘Socialist Pattern of Society’ and from the latter to ‘Socialism’ and from ‘Socialism’ to ‘what next’ were quoted as concrete instances to support the charge of vacillation levied against the Congress. Shri Rajagopalachari, its founder-member, expressed apprehension of its getting red and thus tend to lower the value of “Dharma” and heighten the value of money and property. At the National Convention of the Party held at Patna on March 21, 1960, K.M. Munshi launched a very severe attack on the Congress when he said, “The common man has been the first victim of the policies of the ruling party. He has been denied the basic needs. He is faced with a perpetual food crisis. The food production is under-planned, under-estimated and under financed. . . .” Such an economic deterioration was attributed to unscientific planning, direction and control on the Communist pattern which stood for industrialization imposed from the top. In the words of Shri Munshi, the Planning Commission which controlled all welfare activities of the people, was a sort of super-government which owed no responsibility to the Parliament.

The party posed itself to be the custodian of the parliamentary form of the government which was on its decline in the Congress regime. “We left the Congress when the Congress left Democracy” said Munshi at the National Convention of the party at Patna on March 31, 1960.

The party leaders pointed out the ever-mounting corruption and nepotism in the present administrative set up which was a tool in the hands of a few top leaders of the ruling party. Intrigues and manoeuvring of those in power were the permanent features of the present body politic. Respect for religion was on its lowest ebb, Social legislation was thoughtless and out to destroy social bonds.

Submission to foreign occupation of part of our soil was nothing short of utter humiliation. From the above account, it is quite evident that the Swatantra Party started its career as a vehement critic of the Congress. In the words of Dr. Mahatab (M.P.) “The Swatantra Party has been born out of the combination of two fears, one relating to Socialism and the other relating to Parliamentary Democracy.”

Its Programme. According to public utterances of the party leaders, the party stands for “Gandhian Socialism as distinguished from Marxist Socialism which was reduced to the slogan of ‘Licence and Permit Raj during the Election’.” In the domain of agriculture, the party upholds the right of the self-employed peasant-proprietor to own, manage and till his land without any sort of interference from the State side. In the industrial field, the State

2. Ibid.
Intervention is to be limited to those spheres only which would be of assistance to the Private Enterprise. The party is a strong advocate of original constitution of 1950. It permits freedom of trade and employment. It stands for the payment of proper compensation to the propertied classes if their property is to be acquired for national purposes. It is on account of such emphasis on the private sector that the Congress suspects Swatantra Party leaders' sincerity for the establishment of Socialism. In fact, the main attack on the party was on the basis of this suspicion. The party was dubbed as reactionary by Pt. Nehru, on the same grounds. It derived its support from the jagirdars and ever-decaying feudalism, during the General Elections held in 1962. Hence the myth of Gandhian Socialism was exploded.

The party stands for the maintenance of the rule of law and restoration of fundamental rights to the people in the true sense. It has been strongly opposing any sort of restrictions imposed upon the Fundamental Rights enshrined in the Indian constitution. The party will therefore not like to curb the urge of self expression of the individual which is manifested through the control of the economic activities by the individual himself.

Incentives will be allowed a free play. Excessive state interference of any type will be avoided. Red-tapism, will no longer haunt the government offices. Corruption will be wiped out. Nepotism will be uprooted. Thus era of a true democratic society will be ushered in. Rajaji would like it to be called Rule of Dharma—embodiment of efficiency, justice and honesty.

As regards its foreign policy, every member of the party was allowed to have his own opinion on the subject. Rajaji, however, stood for withdrawal of India from the Commonwealth, policy of non-alignment and of effecting disarmament to save humanity from scourge of war. Since the Red Chinese attack on our sacred soil the party strongly advocates alignment with the Western Bloc in order to get full armament aid to repel the aggressors.

**Views of the Critics.** Despite its high sounding ideals and lofty objectives, the Party is dubbed as reactionary, conservative and backward by the top leaders of the Congress. Pt. Nehru described it as a mere political projection of free enterprise. Dr. Hare Krishna Mahtab condemned it as a "party which stands for slowing down the process of development." The General Elections held in 1962 have undoubtedly given verdict in favour of Democratic Socialism which the Congress Party stands for. Yet, the Swatantra Party which was dubbed as a Fascist Party by our Prime Minister won 170 seats in the State Assemblies and 18 seats in the Lok Sabha (House of the People). Its strength was, however, largely limited to three conservative and backward states—Bihar, Gujarat and Rajasthan. Rajaji was not happy over such a success, limited to three States. He called it a "rout" though exhorted his chief allies to exhibit the "patience and grit" and to rally again. It may,
However, be safely concluded from its success in some of the State Assemblies and also victory in some of the parliamentary constituencies, that the party has quite a bright future and also mass appeal, probably because our people are neither fully aware of the concept of socialism nor conscious of party's allegiance to private enterprise.

9. THE ALL-INDIA HINDU MAHASABHA

As already said in the preceding pages, the Hindu Mahasabha came into existence as a reaction to the constitution of another communal organization—All India Muslim League. It was very strongly opposed to the Partition of India and policy of appeasement of Muslim communists. It stood for the maintenance, protection and promotion of the Hindu race, Hindu culture and Hindu civilization and for the enhancement of the glory of Hindu Rashtra. Its laudable aims won for it a great popularity at the hands of fanatics amongst the Hindus. The assassination of Mahatma Gandhi by one of its adherents dealt a severe blow to its prestige. It was under eclipse till its leaders were exonerated of this heinous crime by the Tribunal which took up Gandhi murder case.

It suspended its political activities temporarily but re-entered the political arena soon after. All India Council of Hindu Mahasabha re-announced its policy and programme in December, 1948. The results of the General Elections reflect that Hindu Mahasabha has failed to appeal to the sentiments of the people. In the first General Elections, the party captured not even one per cent of votes. It captured only four seats in the Lok Sabha and nineteen seats in the State Assemblies. In 1957, Elections, it further suffered a decline. It could retain only one seat in the Lok Sabha and eight seats in the State Assemblies. In the 1962 Elections, its seats in the State Assemblies were further reduced to eight only whereas in the Lok Sabha, it captured only one seat.

Policy and programme. The party is the chief exponent of “Akhand Bharat” which means the re-establishment of the integrity of India by constitutional means. The party is, however, not clear, how this object is to be achieved! It is keen to establish a really democratic state in India based on the culture and tradition of the land. It strives for the consolidation of all sections of the people into one organized whole by assuring them equal rights and opportunities and exhorting them to share equal responsibilities. It assures the nationals of the country all freedoms and aims at the removal of all sorts of social inequalities and disabilities. It advocates the reclamation of those who have severed their link with Hindu religion. It stands for cow protection and abolition of cow slaughter. According to its views, the constitution of India is a mere hotch-potch constitution and is unsuited to the genius of India. The constitution, therefore, needs a sort of modification, as to be consonant with the Indian traditions and Indian culture. It condemns

1. *India* 1962 (as on May 15, 1962)
separatist tendencies and aspires to turn India into a well-knit homogeneous state and not a loose combination of autonomous units.

As regards its economic programme, the party is practically indistinguishable from that of the Socialists. It advocates nationalization of key industries, credit, transport and means of communication, rapid industrialization of the land, collectivized agriculture, an enforcement of adequate national income and prevention of concentration of money in a few hands.

Its foreign policy differs radically from the Congress. It proposes to sever India's connection with the Commonwealth, as otherwise India does not remain a free and independent country. It wants India's foreign policy to be coloured by enlightened self interest and reciprocity. Recently the All-India Hindu Mahasabha's Working Committee in its session held at Bareilly urged the Government of India to reorient its foreign policy and drastically change its internal economic policy. It suggested India's withdrawal from all international involvements, not directly affecting her interests. Keeping in view the genocidal Hinduism in Pakistan, and failure of Pakistan Government to protect their lives and properties, it suggested a complete exchange of population between the two countries.

Since the world is passing through a very critical period which may explode civilization any moment, it urges the government to make military education compulsory for all young men between the ages of 18 and 25. It will like the industries connected with war to develop at a rapid speed, to cope with any eventuality.

Its organization (in brief). A Hindu (Hindu is he who regards India from the Indus to the Seas as his motherland and his holy land) over eighteen years of age accepting its creed can embrace its membership on payment of annas four as annual subscription. In October, 1950 its doors were thrown open to non-Hindus as well but only for parliamentary part of its programme.


Apart from the above important organs of the party, there is a Reception Committee formed by the Provincial Sabhas within whose jurisdiction, the session is to be held. Any person, paying a fee of Rs. 3 only, can seek its (Reception Committee) membership. The Committee is entitled to one vote at the Presidential Elections. In case of tie, it possesses a casting vote.

It may, however, be said in the end that the party banks upon the support of those Hindus who are orthodox and fanatic in their

outlook. Its influence is the strongest in Maharashtra Bengal and the Punjab. A fairly large number of capitalists and landlords have sought its membership which has induced the critics to challenge its socialistic bona fides.

§ 10. MISCELLANEOUS PARTIES

Besides the All-India Parties, referred to in the preceding few pages, there are a number of other insignificant parties in the country. Their influence is confined to particular states and the areas where they have originated. A brief account of some of these parties will interest the reader.

(a) Gantantra Parishad. The ex-rulers of Orissa and Chhattisgarh States, constituted this party in 1950. Backward and unenlightened "Adivasi" masses who regard their feudal lords as demi-gods are its followers. The Party came into existence in order to agitate against the merger of two small states 'Seraikela' and 'Kharaswan' with Orissa instead of Bihar. They captured thirty one seats in the Orissa Assembly in 1951. In the next elections of 1957, it won fifty one seats in the Orissa Assembly and seven in the Lok Sabha. In 1962 General Elections, it could capture only four seats in Lok Sabha and 37 seats in Orissa Legislative Assembly. Now it has merged itself with Swatantra Party.

(b) Peasants and Workers Party. The Party was originated in Maharashtra. Shri S.S. More and K.M. Jeddi were its prominent members. The former staged a march back to the Congress in 1956. It gave a great setback to the Party. Still, it captured four seats in the Lok Sabha and thirty seats in Bombay Assembly, in the General Elections held in 1957. Whereas in first General Elections, it could win only one seat in the Lok Sabha, fourteen seats in Bombay, fourteen in Hyderabad and one in Madhya Pradesh. In 1962 General Elections it captured 15 seats in Maharashtra but could not retain a seat in the Lok Sabha.

It stands for the establishment of a People's Democratic Government of workers and peasants, abolition of Zamindari system without compensation, redistribution of land, abolition of usury and guarantee of minimum living wage for the peasants. It is opposed to both the Congress and the Communist Party.

(c) Ram Rajya Parishad. The party was formed by Swami Karpatriji on the eve of first General Elections. It is a communal organization which stands for "Akhand Bharat" and establishment of Ram Rajya. It aims at the maintenance of the integrity of the Hindu community in accordance with the Vedic principles. It condemns Hindu Code Bill and advocates repeal of Temple Entry Act.

The Party commanded influence only in Rajasthan. In the first

1. India 1962 (as on May 15, 1962).
2. Ibid.
General Elections, it captured thirty two seats in Rajasthan Assembly. In the Second General Elections, it suffered a decline as it could retain only seventeen seats. In the General Elections held in 1962, it was routed in Rajasthan (as it could retain only three seats) though it captured ten seats in Madhya Pradesh.¹

(d) Scheduled Castes Federation. The Party was established by late Dr. B.R. Ambedkar. It stands for safeguarding the interests of the Scheduled Castes. It does not cater to any economic or political programme. Bombay, Madras, Andhra and Punjab happen to be its strongholds. It captured six seats in the Lok Sabha, one in Andhra, twelve in Mysore and five in the Punjab Assemblies in the General Elections held in 1957. In the General Elections held in 1962, it could not capture any seat in the Lok Sabha.

(e) The Muslim League. The party had a very bright career before the partition of India, since the credit for formation of Pakistan goes to it alone. After partition, the party was hardly needed in India. Still, it persists under the name of “All Union Muslim League” in Madras and Kerala states. It is almost a defunct group in the rest of the States. In fact, future of such a communal organization which undermined the national unity and sowed the seeds of dissensions amongst Hindus and Muslims and helped the Britishers to perpetuate their misrule in India is bound to be dark in our land. In the General Elections held in 1962, it captured two seats in the Lok Sabha and eleven seats in Kerala Legislative Assembly.²

(f) The Jamiat-ul-Ulema Hind. It is an organization of Muslim divines and religious preachers. It does not advocate any political or economic programme. It supports the Congress on all policies.

(g) Akali Party. Akali Party was formerly led by Master Tara Singh—a staunch Akali—who demands a “Punjabi speaking” state for his fellow religionists. Punjabi in Gurmukhi script is to be the official language of such a state and the Sikhs are to be in dominant majority in such a state.

It joined hands, in fact, got merged as political party, with the Congress in the General Elections held in 1957, since it was agreeable to a regional formula adopted by the Punjab Government. According to this formula, each linguistic region in the Punjab was to have an effective control over its own affairs in specified matters. The party agreed to function as a religious and social organization. It did not however abjure politics as it undertook to do before its merger with the Congress. In the General Elections held in 1962, it fought elections independently and captured 3 seats in the Lok Sabha and only nineteen seats in the Punjab Assembly.³

The party has neither been able to win the sympathies of the Hindus of the Punjab nor the support of the entire Sikh population.

1. Ibid.
2. Ibid.
3. Ibid.
The Central Government adopted a firm attitude even when its leader, Master Tara Singh, adopted a "fast into death" to cow down the Government and achieve "Punjabi Swa". Some internal dissensions have appeared in the Akali Party which if not patched up are likely to deal a death blow to the organization. There are now two groups in Akali Party, one is led by Sant Fateh Singh and the other still toes the line of Master Tara Singh. Sant Fateh Singh group is at present backed by a majority in S.G.P.C.

(h) Lohia's Socialist Party. Lohia's Socialist Party came into existence in December 1955 when dissenting P.S.P. members parting company with their comrades, decided to form a new party. It is strongly opposed to the P.S.P., as the latter stands for aligning with the ruling party and some other parties of the opposition for the achievement of its goal. It believes in the achievement of socialism through a straight road and not following short cuts, as done by the P.S.P. In the by-elections held in May 1963, Shri Lohia was elected as member of Lok Sabha defeating his Congress rival Dr. Keskar.

(i) Forward Block. It derived its inspiration from Netaji Subhas Chandra Bose. It stands for socialism. It believes in following both parliamentary and extra-parliamentary methods for the achievement of its goal. The Block is divided into two wings under the leadership of K.S. Jogelekar and R.S. Ruiker. It captured one seat in Lok Sabha, three seats in Madras Assembly and 13 seats in West Bengal Assembly1, in the General Elections held in 1962.

(j) The Radical Democratic Party. The party came into existence under the leadership of M.N. Roy, but it lasted up to 1948. In 1948 it ceased to be a political body and undertook to preach "New Humanism". During its existence, "it toyed with communism of Trotskyite variety, nationalism of the Congress and finally came out as a supporter of the allied war effort in India during World War II".2 It lacked in a coherent policy, programme and following.

(k) Dravida Munnetra Kazhagam : (D.M.K.). D.M.K. is a group of secessionists who stand for Dravidnad. The party captured 7 seats in Lok Sabha and 50 seats3 in the Madras Legislative Assembly, in the General Elections held in 1962. It captured one more seat in the Lok Sabha, in the by-elections held in August 1962, and wrested another seat from the Congress in Madras Assembly in the by-election held on June 29, 19634. Its leader Mr. E.V. Ramaswamy Naicker and his other comrades have been preaching murder of Brahmins in order to establish a casteless society. D.M.K.'s recent violent agitation against the Madras Government under the guise of a protest against the soaring prices in the State throws enough

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1. India 1962 (as on May 15, 1962).
3. India 1962.
light on its methods for the achievement of its goal. The picketing
of Collectoratees, damaging of buses and coming into clash with
authorities not only caused embarrassment to the State Government
but also revealed D.M.K's intentions to spread lawlessness in
the State.

"...A body like the D.M.K. should be given no quarter. It should
not be allowed to enlarge its activities and spread its tentacles far
and wide......... The time may not be distant when the government
will be compelled by the force of circumstances to take some penal
action against that organisation." 2

In fact, such a party following such a disruptionist policy deals a
deadly blow to our national integration which is the crying need
of the hour.

§ 11. OPPOSITION IN INDIA

In the words of Prof. Laski, the life of a democratic state is
built upon the Party system. To talk of Democracy without
political parties is an act of political blasphemy. Parliamentary
Democracy, in particular, cannot function successfully unless oppo-
sition is accorded a proper recognition. One of the outstanding
features of Parliamentary Government in England has been the
emergence and recognition of the opposition as Her Majesty's
Opposition. According to Professor Lowell, the expression "Her
Majesty's Opposition" in England embodies the greatest contribu-
tion of the nineteenth century to the art of government. India, too,
had an experience of parliamentary government under British rule.
Hence, she opted for parliamentary government. Parliamentary
government was apt to have an opposition. During this short span
of our parliamentary government, opposition in a disintegrated
form emerged out. A plethora of political parties embracing con-
fllicting ideologies and professing different faiths appeared on the
political horizon. Factional disputes and splits even in the indi-
vidual parties were no less frequent. About two dozen political
parties captured seats in the Lok Sabha and about fifty won seats
in the State Assemblies. Amidst such a welter of political parties,
permutations and combinations of parties and groups within the
parties have been a regular feature of Indian Parliament before and
after General Elections. Hence a sound and effective opposition
on the British pattern has been conspicuous by its absence.

Multiple Parties and their horrors. In fact, to allow a mushroom
growth of multiple parties is tantamount to encourage the de-
velopment of fissiparous tendencies which not only undermine national
unity but consequently bring in military rule. Moreover, political
intrigues and manoeuvring which are the usual outcome of multiple
groups or parties eclipse the national prosperity and wreck the
administration of the country. The governments are unstable

1. The Hindustan Times dated July 1, 1962.
and policy is inconsistent and incoherent. The students of Constitutional History are aware of the lot of administrations and ministries before the inauguration of Fifth Republic in France. It may be said, India is not catering to the French system. Of course, it is very true.

A coalition in India, at the Centre or in most of the States dominated by a comfortable majority of the Congress, is rather an impossibility, at least for the present. But setback to the Congress in some of the States and also loss of seats in the Lok Sabha in the General Elections held in 1962 reflects that an impossibility may be turned into possibility. The Congress may lose its hold on the masses. Other parties may capture more seats. Domination of Congress at the Centre and the States may be substituted by a mere relative majority. Thus era of coalition ministries may dawn. Instability of the governments may become the order of the day. Of course, forecasting political weather is rather difficult, yet a student of constitutional policies must not be oblivious of a few concrete possibilities.

§ 12. ALTERNATIVE TO MULTIPLE PARTIES

(a) One Party System. Hence the question arises, what is the alternative to present multiple party system in India? Should we opt for one Party Democracy of the Russian type? The Russians are proud of one Party Parliamentary Democracy. But we agree with Burke who while speaking on Russian Democracy and referring to its totalitarian tendencies said that if this be a Democracy approaching perfection, then perfect Democracy is the most shameless thing on the earth. In fact, one party Democracy is a deliberate attempt to veil steel claws by soft gloves. It is to invite dictatorship—an irresponsible and irresponsible type of government. We, therefore, cannot afford to prefer "one Party Democracy" to our present multiple party system. It will be suicidal to our interests. Will partyless Democracy as suggested by one of the sincere sons of our soil, Shri J. P. Narayan, be a good substitute?

(b) Partyless Democracy. His suggestion to the top leaders to quit offices and work among the people and his oft-repeated assertion for the establishment of non-party Democracy on the Yugoslav pattern has entailed a keen controversy in our political quarters. The suggestions are laudable but utopian. A partyless government can be set up if political parties are dissolved and a centralized authoritarian rule like benevolent despotism or a military dictatorship is installed in. Or alternatively “political parties animated by a spirit of compromise voluntarily come forward and join hands in the framing and functioning of a government”. If political parties are done away with, it would mean dealing deliberate blow to our hard-won infant democracy, as political

parties are the basis of a representative government. If the latter course is foreseen, (i.e. if political parties voluntarily agree to get together, to form and function as a government) human nature, itself is defied. Human nature induces human beings to will differently and thus form different political parties which must not think alike. In fact, the existence of political parties is a sign of vitality of a nation. Hence partyless Democracy is not only a chimera but means putting the clock back.

(c) The only alternative. The only suitable alternative to multiple party system is a bi-party system on the British pattern. It alone can be categorised as a sound party system. It alone can curb authoritarian tendencies in the party in power as it hangs like a sword of Damocles on its head. The party in power apprehends that the party on the opposition benches may any time step in its shoes. Thus the corrupting influence of the power is curbed to a great extent. Public liberty gets more secure and democracy becomes more real. Opposition of this nature is the crying need of the hour.

123. OPPOSITION IN INDIA

Opposition in India, as already said in the introductory remarks, is neither sound nor effective as yet. It, in fact, lacks the true characteristics of an opposition. It is a conglomeration of heterogeneous groups which are fundamentally and ideologically opposed to each other. They do not have political scruples. Their vision is confined to their regions, their language, their castes, their religion and their community. Their electoral alliances just to oppose the ruling party are based on no set principles. In the words of Pandit Nehru, “They (groups) hold together, I suppose, because of the stress of circumstances and sometimes, there are marriages of convenience, sometimes followed by rapid divorces and on the whole, we find these strange bed-fellows consorting together because of a certain spirit of opposition to the majority group.” In fact, in India there is not one opposition, but many oppositions consisting of many groups and independent individuals. Hence, the opposition is weak and disintegrated. The late Shri Mavalankar rightly observed at the Speakers’ Conference held in 1953, “The difficulty is that one should reckon with the vagaries of mammoth official party which has three to one majority in the House, while the opposition is a heap of contradictory and conflicting elements.”

In such a state of affairs, our parliamentary government is bound to meet its end. The ruling party is apt to entrench itself firmly on our soil and ultimately “degenerate into a haunting ground for every kind of ambition and self-seeking”. A critical survey of the history of the Congress, after 1947, bears an ample testimony to the fact that there has been a perceptible deterioration in the ethical standards of a bulk of Congressmen, since absolute power is intoxicating and does have a corrupting influence. Shri S.K. Patil, during his tenure as President Bombay Pradesh Congress Committee, opined
that the Congress should not have overwhelming majority in the Legislatures because in the absence of opposition, they indulge in mutual recrimination and go in for bouts.

Moreover, Congress "instead of playing the role of a Parliamentary Party, so essential to the development of a healthy democracy, has become a monolithic machinery." In fact, till Sardar Patel was alive, the Congress was functioning as a Parliamentary Democracy within itself. After his inopportune death, Pt. Nehru emerged as a supreme leader whom nobody in the Congress ranks can have the courage to defy. Thus "our Parliament has become no better than a facade to carry out the policies of the Congress Party, which in reality means the policies and the programmes sponsored by one man......"

All this makes us conclude that parliamentary government in India is apt to be extinct if sound opposition does not develop. We may even go to the extent of saying that the country may have to face political chaos and ultimately coup d'etat after the disappearance of that dynamic personality Mr. Nehru, from the Indian scene if an effective opposition does not emerge out during the next few years.

Now the question arises how this opposition can be made possible?

I 14. HOW SOUND OPPOSITION CAN DEVELOP?

Indeed, it is the most vexing question. We do not want a disintegrated opposition of the type as it exists at present. We need a responsible, constructive and effective opposition. We do not cater to the view of Tierney who says that the duty of an opposition is to propose nothing, to oppose everything and to oust the government. We want an opposition which does not function merely to discredit the government, in the eyes of the floating vote, but also exhorts it to modify its policy as to suit the national requirements. Opposition of that type can develop if British pattern is followed by our politicians. Political parties will have to follow some set principles. Communal forces will have to be curbed and disallowed from raising their ugly head. Our country has already suffered at the hands of the barbaric and inhuman misdeeds of the communalists. Wounds inflicted on the humanity by the so-called adherents of certain religions have not yet healed. Hence the communal parties exploiting the masses in the name of religion or "Bhasha" should be banned. A good number of such parties which irreparably pollute the body politic would thus vanish. The parties of the extreme left, such as the communists who feel inspired by the political and economic achievements in the U.S.S.R. and other communist countries in the world have shown agreement with the

2. Ibid.
Congress on certain vital matters of policy probably because of India’s growing friendship with Soviet Russia. The change in the policy of the Communist Party and its keen desire to establish socialism through peaceful means paves the way for its joining hands with the Congress. Ajoy Kumar Ghosh, while exhorting the patriotic and democratic forces to forge united front hoped that with the formation of such a front, “Our great country with a glorious past might march forward to a greater glory. The parties of the democratic left such as P.S.P. and the Socialist Parties have no justification to exist, apart from the Congress, since the Congress policy of establishing a socialist pattern of society in India have robbed them of much solid ground. Moreover, the withdrawal of Shri Ram Manohar Lohia from the parent Socialist Party gave it a staggering blow. It can be said that the Party is on its last legs. The P.S.P. seems to be closer to the Congress. Formation of a coalition government by the Congress and P.S.P. in Kerala can enable us to foresee the possibility of merger of P.S.P. with the ruling party. Thus the Communists, Socialists, Praja Socialists and some of their offshoots, standing for socialism and democracy can afford to merge with the Congress which is progressively and professedly becoming more and more socialistic. Swatantra Party which pays only lip sympathy to socialism and is opposed to the economic policy of the Congress fundamentally can emerge out, as the party of the rightists. The political parties are deemed as political parties, when they cater to different social and economic programmes. In the words of Arthur Halcombe, “The National parties cannot be maintained by transitory impulses or temporary needs. They must be founded upon permanent sectional interests, above all upon those of an economic character.” The Congress would strive for Socialism whereas the Swatantra shedding its divided loyalties, can advocate private enterprise in unequivocal terms and appear on the political horizon as the custodian of the capitalists. Thus bi-party system on the British pattern can come into existence. When the opposition becomes prominent and effective, it should be given statutory recognition and may be given the name “The Constitutional Opposition of India”. Then and then alone parliamentary government in India will become a reality.

1. The Tribune, April 14, 1956.
The Indian States: Their Integration and Democratisation

Though the question of the princely States in the context of the constitutional evolution of India has already been dealt with at appropriate places in this volume yet the importance of the question induces us to discuss it a bit more elaborately.

1. ORIGIN AND GROWTH OF THE STATES

"India is one geographical entity. Yet throughout her long and chequered history she never achieved political homogeneity." Since times immemorial, India was a house divided against itself. The Indian States came into existence long before the British Imperialists stepped on her sacred soil. Some of them like Travancore and Cochin and Cooch-Bihar had a very ancient origin. Mysore, Jodhpur, Udaipur etc., were in existence long before the East India Company pitched her tents on our land. Most of the States were born at a time when the magnificent edifices of the Mughal Empire was tottering on its last legs and the East India Company had started fishing in the troubled waters by taking undue advantage of the mutual struggles of these principalities. By intervening in the mutual conflicts of these rulers, the Company was in a position to annex many of them through conquest or by entering into treaties and agreements with them.

Relations with East India Company and British Crown. According to Sir William Warner, the relations of the East India Company and British Government with the Indian States can be divided into three distinct periods,

(a) From 1757 to 1813. During this period, the East India Company followed the policy of neutrality and non-intervention in the affairs of the Indian States. Since the East India Company was not very strong during this period of 56 years, it treated the princes by having a few exceptions as independent rulers and

entered into agreement and treaties with them on the basis of reciprocity and equality. Annexations were avoided as far as possible. Such an attitude of the East India Company is described as "the policy of ringfence" which hardly concurred with the imperialistic designs of the Britishers.

(b) From 1813 to 1858. The second period commenced in 1818 when Lord Hastings sponsored the policy of subordinate isolation which aimed at extending the protection of the British Government to as many states as possible. During this period, the States were compelled to accept the Company as the paramount power through a new device of subsidiary alliances which empowered the Company to make the States conduct their foreign relations through the Company and to avoid employing non-Britishers and Europeans. The Company, however, was to undertake the guarantee of the territorial integrity of the States. At a later stage, Lord Dalhousie exploited the policy for annexing the States through the "Doctrine of Lapse" which entitled the British Government to assume the sovereignty of Indian States in the absence of natural heirs to a throne. The policy of subsidiary alliances and annexation ultimately resulted in the national uprising—"Mutiny of 1857". In the words of Colonel Luard, "This period is by far the most important in the history of the relationship of the States to the British Government...step by step sorely against its will, the Company had been driven by inexorable fate to abandon its policy of Ring Fences and non-interference and so pass through the system of subordinate alliances to the wise and generous policy of co-operative partnership....."

(c) From 1858 to 1947. After the Great Revolt of 1857, the rule of the East India Company came to an end and India was henceforth to be governed by the Queen Empress. The existing Indian States were also brought under the suzerainty of the Crown. The Proclamation of 1858 assured the Princes that their territories would not henceforth be annexed and the treaties and 'sanas' entered into with them by the East India Company would be honoured. In the words of Prof Dodwell "......The Princes were no longer looked upon as rulers driven by force into an unequal alliance. They had become members of the Empire and the new position was accepted, not unwillingly." It is a fact that the Indian rulers were given a long rope to run the administration of their respective states at least for a few years, probably because the Britishers realized their importance as "a breakwater to the political storm" and wanted to have them as their permanent and faithful allies, to curb the progressive forces of the country. Lord Curzon during his tenure as Governor-General of India (1899 to 1905) once again resorted to rigid internal and external control over the states. In 1916, Lord Harding adopted the policy of consulting the Princes. On February 8, 1921, the Chamber of Princes was constituted as a permanent

1. Cambridge History of India, Vol. V.
2. Ibid.
advisory body on behalf of the Indian Princes.

§ 2. CHAMBER OF PRINCES

The Chamber of Princes which was established on February 8, 1921 originally consisted of 12 members though, later on, the number of its members was enhanced to 140. Its membership was purely on voluntary basis. Hyderabad and Mysore chose to keep out of it. The Chamber elected a Standing Committee of 35 members, a Chancellor and a Pro-Chancellor, from among its members. The Viceroy was to be its ex-officio Chairman.

Its functions. As already said, it was a purely advisory body. It discussed matters pertaining to common interest of the princely States. It was not allowed to discuss the internal administration of a State or question the authority of the ruler. A conflict between the States or between the Central or Local Government and a State was to be resolved by a Commission consisting of a judge and two nominees of the parties concerned. If, however, the Viceroy did not see eye to eye with its finding, he could further refer it to the Secretary of State for his final decision.

Its importance. The Chamber was strongly commended by the Statutory Commission in its Report of 1930, which ran as follows:

"The establishment of the Chamber of Princes marks an important stage in the development of relations between the Crown and the States for it involves a definite breach in an earlier principle of policy according to which it was rather the aim of the Crown to discourage joint action and joint consultation between the Indian States and to treat each State as an isolated unit apart from its neighbours. That principle, indeed, had already been giving place to the idea of conference and co-operation amongst the ruling princes of India but this latter conception was not embodied in permanent shape until the Chamber of Princes was established."

In fact, the Chamber did not serve any useful purpose. As an advisory body, it could neither force its decision on the Government nor on the Rulers of the States. The members of the Chamber failed to voice their feelings or express their views in the presence of the Viceroy. The Chamber often made discrimination between the princes and sowed the seeds of discord and dissenion among them.

§ 3. PARAMOUNTCY

Its meaning. The term 'Paramountcy' was never clearly defined but in general, it explained the supremacy of the British over the States. It was to be exercised through the Crown Representative in India i.e., the Viceroy. A critical analysis of the statements of some of the Viceroy of India throws enough light on the real mean-
ing of undefined paramountcy. Lord Canning declared in 1858, "The Crown of England stands forth the unquestioned ruler and paramount power in all India. There is a reality in the suzerainty of England which has never existed before and which is not only felt but eagerly acknowledged by the Chiefs." Lord Minto in 1909, emphasised the same fact when he said ".....But the relationship of the Supreme Government to the States is one of suzerainty." The paramount authority of the British Crown in relation to Indian States was asserted by Lord Reading in 1926 through his letter to the Nizam of Hyderabad. He wrote "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 based not only on treaties and engagements but exists independently of them and quite apart from its prerogative in matters relating to foreign powers and policies.....The varying degrees of internal sovereignty which the rulers enjoy are all subject to the due exercise by the Paramount Power of this responsibility."

The above statements explain 'Paramountcy' in crystal clear terms. It clearly implied that the Indian States were not sovereign in character. Thus they could hardly be designated as 'States'. They were mere dependencies or protectorates of the Britishers. They had no status in international law. Their foreign relations were to be conducted by the British Government. They could neither declare war nor conclude peace. They did not enjoy unfettered internal sovereignty. The Crown could meddle in their affairs if the Imperial interests were at stake or if justice was in jeopardy. In fact such interference in the domestic matters of Indian States on one pretext or the other was a frequent affair.

Instances of exercise of Paramountcy. (i) Gaekwar of Baroda and Raja of Manipur were forced to abdicate. Maharaja of Nabha was deposed and imprisoned in 1928. The Ruler of Alwar was made to leave his State within twenty hours in 1936. (ii) Succession to the throne of a State and adoptions had to be approved by the Crown. The disputed succession was to be decided by the Crown. (iii) The British Government was empowered to establish Regencies if the Prince was a minor or the ruler of a State was temporarily suspended or permanently separated from the State. (iv) The British Government assumed the right of wardship over minor Princes. Lord Curzon once asserted the right of the British Government to satisfy itself that the young Chief received the education and training that qualified him to rule before he was invested with powers to govern the State. (v) Important legislation in the State necessitated the previous sanction of the Government of India. (vi) Certain States like Baroda, Mysore, Travancore, Alwar, Jaipur were deprived of the right of having their own coins, despite resentment on the part of the Princes of these States. (vii) The Rulers were not
allowed to develop direct relations with any foreign State or with the subjects of any foreign State. They were debarred from receiving consular agents in their territories or employing Europeans without the consent of the British Government. The foreign interests of the States were to be secured through the Government of India. (viii) The States were to pay varying amounts of annual tributes to the British Crown as a token of their subservient position. (ix) The States were allowed to possess limited military establishments. They could not have unlimited army even at their own cost. (x) The States were expected to render subordinate military co-operation to the British Government in repelling or resisting foreign aggression and maintaining peace and order in any part of the country. (xi) The British Government exercised extra-territorial jurisdiction over the British subjects and foreign nationals inhabiting these States. (xii) The British Government was the final arbiter of the disputes between itself and the Indian States.

Thus, it is quite evident that the paramount power of the British Government amounted to virtual sovereignty of the Crown over these States, though the Crown hesitated to confess it in unequivocal terms and the Princes were reluctant to believe it. The Indian Princes enjoyed their rights only by sufferance. Their rights arising out of treaties or annexations were not legally enforceable.

Legal rights of the Rulers. Though the Rulers enjoyed subservient position yet they could claim certain rights from the paramount Power which are enumerated below: (i) Maintenance of territorial integrity of the States. (ii) Security from external aggression and internal disturbances. (iii) Maintenance of the dynastic rights and privileges of the Rulers.

How Paramountcy was exercised. The Paramountcy of the British Crown was exercised through the Crown Representative i.e., the Viceroy. The latter exercised control over the States through the Political Department of the Government of India. At the head of the Political Department was placed the Political Adviser who advised the Viceroy in all matters concerning the States. The Political Department appointed Residents or Agents to the Governor-General in Indian States. They acted as intermediaries between the Political Department and the States' administration.

Functions of the Political Agent. They were responsible to the Governor-General and not to the Princes. They kept a close watch over the activities of the Rulers. Generally, at their instance, the Viceroy intervened in the internal administration of the States. They collected tributes from the Rulers and remained in touch with the private lives of these aristocratic princes. "The political department came gradually to assume the position of a Government within a Government." Moreover these Political Agents performed certain judicial functions. They settled boundary disputes between

different States and regulated extradition of criminals. In the words of Menon, "In the case of the smaller States these officers frankly adopted the attitude of a superior towards a subordinate. Even in the case of bigger states... they had much their own way." The authority of these Political Agents has been very aptly portrayed by K.M. Panikkar, in the following words, "All those who have direct experience of Indian States know that the whisper of the Regency is the thunder of the State and there is no matter on which the Resident does not feel qualified to give advice."

Control of Secretary of State. "The Secretary of State kept a close control over the activities of the Political Department mainly because of the interest of the Crown in matters affecting the rights and privileges of the rulers."

IV. APPOINTMENT OF BUTLER COMMITTEE

Butler Committee's opinion about Paramountcy. According to the Butler Committee appointed in 1927 under the chairmanship of Sir Harcourt Butler:

The relationship of the paramount power with the States was not merely a contractual relationship resting on treaties made more than a century ago, but that it was a living growing relationship shaped by circumstances and policy, resting on a mixture of history, theory and modern fact. Hence, they could not define Paramountcy precisely. They did however assert that "Paramountcy must remain paramount; it must fulfil its obligations defining or adapting itself according to the shifting necessities of the time and the progressive development of the States."

Recommendations of the Butler Committee. The Butler Committee which was appointed primarily for making recommendations for effecting satisfactory adjustment between the Indian States and the Government of India, made the following main recommendations:

(i) The Viceroy and not the Governor-General-in-Council should be the agent of the Crown in all dealings with the states. (ii) "In view of the fact of the historical nature of the relationship between the paramount power and the princes, the latter should not be transferred without their agreement to a relationship with a new Government in British India responsible to an Indian Legislature." (iii) Special committees should be appointed to enquire into disputes that may crop up between the States and British India. (iv) A committee should be appointed to institute an inquiry into the financial relations between the Indian States and British India. In this field the Committee merely expressed "some pious platitude and broke no new ground." (v) Showing encomiums on the work of the Political

2. Ibid., p. 10.
3. Ibid., p. 23.
department, the Committee suggested that provision for separate recruitment and training of political officers drawn from the universities of England should be made. The prevailing practice of recruiting for Political service from the Indian Civil Service and the Indian Army should be stopped. The scheme regarding the creation of a States' Council should be rejected.

Reaction to the Recommendations. The above recommendations of the Butler Committee were strongly condemned by various shades of opinion in India. In the words of Chintamani, "The Butler Committee was bad in its origin, bad in the time chosen for its appointment, bad in its terms of reference, bad in its personnel, and bad in its line of enquiry while its report is bad in reasoning and bad in its conclusions." Nationalist opinion in the country also expressed grave apprehension on the Report. The Nehru Committee presided over by Pt. Moti Lal Nehru emphasised the historical, religious, sociological and economic affinities between the people of British India and of the States and expressed fears that "an attempt is being made to convert the Indian States into an Indian Ulster by pressing constitutional theories into service." The Indian Rulers were greatly frustrated with the findings of the Butler Committee, with regard to their main hope of getting free 'from the unfettered discretion of the political department to intervene in their internal affairs'.

§ 5. STATES AND THE ACT OF 1935

The Government of India Act 1935 provided for a constitutional relationship between the Indian States and British India, on a federal basis. For the first time, such a plan was contemplated, though it could never materialise. According to Menon, "A special feature of the scheme was that whereas in the case of the provinces accession to the federation was to be automatic, in the case of the States, it was to be voluntary."*

States and proposed Federation. It was laid down that the federation would come into being only if the rulers of the Indian States whose aggregate population was equal to not less than half the total population of all States and which were entitled to at least half the seats allotted to Indian States as a whole in the Upper House of the proposed Federal Legislature agreed to join the Federation. (The total number of seats allotted to the States in the Council of State was 104). The States opting to join the Federation were to execute Instruments of Accession, the terms of which were to vary from State to State. The Crown was fully empowered to reject such an Instrument, if the State concerned was not prepared to surrender sufficient powers to the Federation. The Crown was entitled to draw a basic 'Instrument of Accession' specifying the minimum

2. As quoted in *The Story of the Integration of the Indian States*, p. 34.
powers: that a State must concede to the Federation, before it decided to join the Federation. It is thus obvious that the range of Federal authority was to differ from a State to State which was apt to create lot of complications.

The Representatives of the States were to be nominated by their respective Rulers. The disputes arising out of the Instrument of Accession between the States and the Federation were to be resolved by the Federal Court. The Governor-General and the Governors were entrusted a special responsibility to safeguard the honour and the privilege of the Rulers and the rights of the States.

The Act withdrew the Paramountcy duties from the Government of India and provided for their exercise directly by the Crown. It created the office of the Crown Representative, who was to act as the agent of the Crown in all dealings with the Indian States. The Governor-General who was designated as Crown Representative was to deal with the Crown’s relations with the Indian States without reference to the Government of India.

Federation could not materialise. The Federation could not come into existence as the requisite conditions could not be fulfilled. The Indian Princes opposed it. In fact, neither the urge to unity of India nor the keenness to look to the benefit of India could induce the rulers to join the Federation. They were anxious to preserve their rights and interests. They were rather eager to better their position. Their attitude to the proposed Federation could be summed up in the following words: "We are being given the opportunity of entering a Federation from which when once we are in, there is no escape. Nor, since the ultimate interpreter of the Federal constitution is the Federal Court, can the Government of India or anyone else predict the course of future events or anticipate the use which Federation will make of its powers. We owe it therefore to ourselves and to our successors to safeguard to the utmost our own position inside the Federation."

In reality, the Rulers feared that they would be sandwiched between the two masters—the Crown and the Federal Government. Some of the States looked upon their accession to the Federation as "a process of levelling down, so far as their internal sovereignty was concerned." A conference of Rulers at Bombay expressed in clear and unequivocal language that the terms on the basis of which accession was offered were unsatisfactory. Hence, the terms were declared unacceptable.

On the other hand, the people of India expressed the fears that without the democratization of the internal administration of the States, the Rulers would play a reactionary role in the Federation and give a prop to the tottering citadel of British Imperialism. A Resolution passed by the Congress in February, 1938 portrays the nationalist opinion regarding the establishment of a true Federa-

tion—"A real Federation must consist of free units, enjoying more or less the same measure of freedom and Civil Liberty and representation by the democratic system of election." The proposed Federation was hardly coming up to these expectations. It was an obnoxious scheme. Hence, an all-round condemnation of the Federation was quite obvious. The British Government also did not make special efforts to enforce the Federal Scheme. The outbreak of the second world war in 1939 shelved the scheme.

6. CRIPPS PROPOSALS AND THE RULERS' STATES

The Cripps proposals also proposed to establish a Union of India on the basis of the voluntary accession of the States to the Indian Union. The Rulers however resolved to stay out of the Indian Union and constitute a separate union or unions on the same terms as the non-acceding provinces. Since the Cripps Mission was a failure hence the resolution of the Rulers cannot be given much thought.

7. THE CABINET MISSION PLAN AND THE STATES

The Cabinet Mission made an announcement on May 12, 1946 that the British Government would not and could not in any circumstances transfer Paramountcy to an Indian Government. It was, however, made perfectly clear to the States that on coming into existence of a new self-governing Government in British India, the British Government would not be in a position to carry out the obligations of Paramountcy. Of course, in case of establishment of such a self-government in the Provinces, the rights surrendered by the States to the Paramount Power were to be transferred back to the States. The States were advised to accede to the Indian Union through negotiations and participation in the work of the Constituent Assembly to negotiate with the States and the Negotiating Committee of the Princes to decide about the method of choosing the representatives of the States, the allocation of seats to the different States and other matters relating to their participation in the Constituent Assembly. In accordance with the decision arrived at, the representatives of the various States took their seat in the Constituent Assembly.

It may, however, be pointed out that both the Cripps Proposals and the Cabinet Mission Plan, made it crystal clear that the Indian States were not to be forced to join the Indian Union. It was an alarming development fraught with dangers of disintegration and perpetuation of British Influence in India through these "pockets"—the States. Hence, the Indian leaders expressed resentment on such a move of the clever masters.

8. MOUNTBATTEN PLAN (JUNE, 1947) AND THE STATES

The publication of the 'Mountbatten Plan' established it beyond any doubt that the British Government had made up its mind to
part with power over the Indian States, which would be free to join any of the Dominions—India or Pakistan or even declare themselves independent. The Indian leaders strongly condemned such an attempt to encourage the States to remain independent, as that would be tantamount to undermine the territorial integrity of the newly proposed Dominions and split the country into fragments. The British Government did not care for such resentment and took up an irrevocable stand that the States could in no case be compelled to join either of the Dominions.

1 9. INDIAN INDEPENDENCE ACT AND THE STATES

The Act declared that Paramountcy of the Crown would lapse. Though the Act remained silent in regard to the relationship between the Dominions and the States, yet the latter were allowed to join any of the two Dominions, they liked or remain independent. Thus, the States reverted to their position before they were brought under the suzerainty of the Crown. This was evidently a mischievous move to disrupt the unity of India and sabotage her long cherished, newly won freedom. In the words of V. P. Menon "so, the prophets of gloom predicted that the ship of Indian freedom would founder on the rock of the States."

If the States had chosen to assume independence, it would have indeed dealt a staggering blow to India's national strength and unity. About one hundred and fifty two States falling in the areas adjacent to Indian territory would have forged their heads individually and posed a big threat to India for all times to come. In the words of Prof. Coupland, "An India deprived of the States would have lost all coherence. How these States were to be brought into the framework of a 'Sovereign Democratic Republic of India'? How the Indian unity was to be effected without shedding even a drop of blood!—were indeed complicated, problems which were solved amicably due to the pointed statesmanship of Sardar Patel, our iron Home Minister; judicious approach of Lord Mountbatten, Governor-General of India and patriotism exhibited by the majority of the rulers of the States. Since the announcement of Mountbatten Plan, three substantial steps were taken to solve the problem of the Indian States—Accession, Integration and Democratization of the States. We discuss below these three steps which not only brought the Rulers' States in the fold of the Indian Union but also enabled the inhabitants of these States to enjoy democratic rights and privileges which were denied to them in the regimes of these autocratic rulers.

Instrument of Accession was drawn up. The Rulers were assured an honourable place in the future set up of the country. They were expected to surrender only three subjects—Defence, Foreign Affairs and Communications to the Indian Union. In rest of the matters, their autonomy was to be scrupulously preserved. Sardar Patel appealed to the Princes that "We are at a momentous stage in the history of India. By common endeavour, we can raise the country to a new greatness while lack of unity will expose us to new calamities. I hope, the Indian States will bear in mind that the alternative to cooperation in the general interest is anarchy and chaos which will overwhelm great and small alike in common ruin, if we are unable to act together in the minimum of common tasks. Let not the future generations curse us for having had the opportunity but failed to turn it to our mutual advantage. Instead, let it be our proud privilege to leave a legacy of mutually beneficial relationship which would raise this sacred land to its proper place and prosperity." Lord Mountbatten while addressing the Chamber of Princes on July 25, 1947, exhorted the Rulers to accede to either of the Dominions before August 15, 1947. He emphasised that there are certain geographical compulsions which cannot be evaded. The vast majority of States were irrevocably linked up with India...You cannot run away from the Dominion Government which is your neighbour any more than you can run away from the subjects for whose welfare you are responsible." The judicious advice of Lord Mountbatten and fervent appeal of Sardar Patel induced most of the Rulers of the Indian States to accede to the Indian Union before August 15, 1947. Nawab of Junagarh, Maharaja of Kashmir and Nizam of Hyderabad did not like to read the writing on the wall and decided to adopt a policy contrary to the wishes of their people and the Iron Home Minister. But soon after, they had to yield before the public pressure and the stirring circumstances. A brief account of these three States would interest the reader.

Junagarh. Junagarh—a small state in Kathiawar, predominantly populated by Hindus but governed by a Muslim ruler, decided to accede to Pakistan on the eve of independence. The inhabitants of the States who were overwhelmingly in favour of acceding to India resolved against the Ruler who had to flee away to Pakistan to save himself from a tragic end. The Muslim Diwan was compelled by these chaotic circumstances to request the Government of India on November, 9, 1947 to intervene and restore normalcy in the State. Thereafter plebiscite was held in the State to decide through popular vote whether the State would like to join India or Pakistan. The people of the State with thumping majority decided to accede to India. Thus on January 20, 1949, the State was merged with union of Kathiawar.

Hyderabad. Hyderabad—the largest Indian State predominantly Hindu was under the subjugation of a Muslim Ruler—the Nizam of Hyderabad. Since the State was situated in the heart of the
Indian Union, the Government of India requested the Nizam to accede to India before August 15, 1947. The Nizam was a tool in the hands of ‘Razakars’ and ‘Ittehad-ul-Mussalmeen’ led by Kasam Razvi and danced to the tune of Pakistani rulers. Hence, he rejected the invitation of the Government of India. Mass persecution of Hindus in the State who were opposed to fell designs of Razakars followed the Nizam’s decision not to accede to India. Lord Mountbatten’s efforts to remonstrate with the Nizam to accede to India failed. Reason did not dawn upon the Nizam. Instead, with the assistance of Pakistan, the Nizam tried to raise an army to fight against the Indian Government. Thus a drastic action against the Nizam was the only alternative left with the Indian Government to settle the issue. The Indian Government decided to take ‘Police Action’ against the State. The Indian Army entered the portals of the State on September 13, 1948, and within three days, the Razakars and the forces of Nizam were brought to knees. On November 1, 1948, Hyderabad acceded to the Indian Union and a democratic government was set up with the Nizam as a constitutional head.

Kashmir. Kashmir—the heaven on the earth—presented a contrasting picture. Three-fourths of its population was Muslim and the rest was Hindus, Sikh and Buddhists. The Ruler was a Hindu. Lord Mountbatten’s advice to the Maharaja to accede to India or Pakistan before August 15, 1947, fell flat on him. Lord Mountbatten had assured the Maharaja that if he acceded to Pakistan, India would not consider it an unfriendly act. The Ruler was hesitant. He decided to enter into standstill agreement both with India and Pakistan. In reality, he entered into Standstill agreement only with Pakistan. Despite that, Pakistan cut off supplies of essential commodities to Kashmir and even induced the frontier tribes to invade Kashmir. When the raiders were going to capture aerodrome of Srinagar, the Maharaja of Kashmir made a fervent appeal to India to help him, in the hour of crisis and expressed his willingness to accede to India. The Instrument of Accession was signed by the Maharaja on October 26, 1947. Troops were immediately rushed to Srinagar by air. The raiders were pushed out of the major part of the soil of Kashmir. Since Pakistan openly jumped in the field against India, India approached the U.N.O. which ordered an immediate ceasefire. In the initial stages, the Government of India had declared that the final accession of the State to India or Pakistan would be decided by Plebiscite. The Governor-General of India made it clear that “consistently, with their policy that in the case of any State where the issue of accession had been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government’s wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invaders, the question of accession should be settled by a reference to the people.”

Negotiations followed the declaration of such a policy under the
auspices of the U.N.O. But no agreement could be arrived at between India and Pakistan. India made it specifically clear that peaceful negotiations could not be initiated till Pakistan agreed to withdraw her armed forces from the occupied area of Kashmir. Pakistan failed to agree to this suggestion. Pakistan, at a later stage, armed herself to the hilt by accepting military aid from U.S.A. It entered into military alliances through Baghdad Pact and S.E.A.T.O. which made our Prime Minister to change India's position regarding "Plebiscite in Kashmir"). Both the Constituent Assembly and National Conference of Jammu and Kashmir declared their decision to accede to India completely. A democratic government was set up in the State with Yuvraj Karan Singh as a constitutional head. He is designated as 'Sadar-i-Riyasat'. The Constitution of India was applied to the State of Jammu and Kashmir by the constitutional order issued on May 14, 1955, of course with certain exceptions and reservations.

It may, however, be said that 'Kashmir issue' is still a bone of contention between India and Pakistan and is the main cause of our strained relations with our immediate neighbour. Even Red China's invasion of NEFA and Ladakh which pose a great threat to the entire sub-continent has not been able to bring the two neighbouring States closer to each other to repel the Red aggressor who is out to sweep over Asia.

II. PROCESS OF INTEGRATION

About 450 States were left in India after the formation of Pakistan. They differed widely in size and population. Some of them were as small as a village. Some of them were as big as British Indian Provinces. The merger of these petty independent States with the big States or the adjoining Provinces was thought indispensable, as a house divided against itself posed a serious threat to the security of India. In 1947 speaking before the Constituent Assembly, the Prime Minister remarked "First thing must come first and the first thing is the security and stability of India." Thus the 450 Indian States were reduced to 8 Part B and 10 Part C States when the new constitution of India was framed. The process of reducing 450 States to a few units was adopted in the manner as stated in the following paragraphs.

(a) Merger of the smaller States into the neighbouring States or Provinces. The Orissa and Chattisgarh States which were 39 in number having a population of 70 lakhs and an area of 56,000 sq. miles got merged in Orissa and Central Provinces on January 1, 1948. Sardar Patel, the iron man of India, negotiated with the ruling princes of these petty states on 14th and 15th of December 1947 and convinced them that individually they were too small to fit in a modern system of administration. According to the Merger Agreements, the Princes surrendered to the Dominion Government "full and exclusive authority, jurisdiction and power for and in relation to the
governance of their states and agreed to transfer their administra-
tion on January 1, 1948." Sardar Patel, however, assured these
princes a fair deal, as they had exhibited patriotic zeal and practical
sagacity, in happily and voluntarily surrendering their powers.

In March, 1948 17 Deccan States got merged with Bombay, Kolha-
pur was the next to merge with Bombay. Thus an area of 10,860 sq.
miles inhabited by 27 lakhs of people, was merged with Bombay
Presidency. In June 1948, 289 petty States of Gujarat covering
17,630 sq. miles area got merged with Bombay. In May, 1949
Baroda, having an area of 8,236 sq. miles and a population of 30
lakhs, decided to merge with Bombay. Some other small States
as Banganapalle, Sandur and Pudokotah got merged with Madras.
Makrai joined C.P., Loharn and Pataudi joined East Punjab,
Goosh-Behar in West-Bengal; the Khasi Hills States in Assam and
Tehri-Garhwal and Banaras and Rampur in U.P. were merged with
their adjoining provinces in 1948 and 1949. Thus through the
process of merger, 216 petty states having a population of about
170 lakhs became part and parcel of the neighbouring provinces
which were named as ‘Part A’ states in our future set-up.

It may, however, interest the reader when we apprise him of the
fact that the merger agreements of practically all these States were
identical. The inhabitants of these states were accorded representa-
tion in the Provincial Legislatures.

(b) Formation of States Unions. The States Unions were brought
about with due regard to geographical, linguistic, social and cultural
affinities of the people residing in the States. The Ruler of the
most important state was designated as the Rajpramukh of the
States forming a new State through the process of integration. The
units thus coming into existence, were allowed to set up their own
legislatures duly elected by the people and to constitute ministries
responsible to the legislature.

petty States, estates and talukas formed "the United States of
Kathiawar" which was designated as "Saurashtra". According to
the agreement, these States agreed to have a common legislature,
executive and judiciary. A Council of Rulers with a Presidium of
five members was constituted. The rulers were to elect a President
and Vice-President of the said Presidium from amongst themselves.
The President was to act as the Rajpramukh who was to be assisted
by a Council of Ministers and act as a mere constitutional head.
Thus an area of 21451 sq. miles having a population of 41 lakhs be-
came a well-knit unit.

Other Unions. On March, 18, 1948, the ‘United States of Matsya’
composed of Alwar, Bharatpur etc. came into existence. The Union
of Vindhy Pradesh was created on April 4, 1948 and the United
States of Gwalior, Indore and Malwa (Malwa Bharat) on May 28,
1948. It had an area of 46710 miles and a population of 80 lakhs.
The Patiala and East Punjab States Union (Pepsu) was inaugurated
on August 20, 1948. States like Patiala, Nabha, Faridkot and Kapurthala etc. having a population of 35 lakhs and an area of 10999 sq. miles constituted this new union. The United States of Rajasthan developed in three stages. To begin with the United States of Rajasthan consisting of Mewar and nine other Smaller Rajputana States was created on April 18, 1948. In the second stage, States of Jaipur, Jodhpur, Jaisalmer and Bikaner joined it. Finally on May 15, 1949, the United States of Matsya was incorporated into Rajasthan.

On July 1, 1949, the United States of Travancore-Cochin came into existence. Its total area was 9155 sq. miles whereas its population was 93 lakhs. All these unions were designated as Part B States.

(c) Integration into Chief Commissioners’ Provinces. A few individual states or groups of States constituted into Chief Commissioners’ Provinces (Part C States). They were to be administered by the Central Government. Twenty two Simla Hill States were integrated into Union of ‘Himachal Pradesh’ which was inaugurated on April 15, 1948. It covered an area of 10,600 sq. miles and a population of about 10 lakhs.

Bundelkhand and Bhagelkhand States numbering thirty five covering an area of 24,600 sq. miles, were consolidated into ‘Vindhy Pradesh’ which was inaugurated in April, 1948. To start with, a responsible ministry was established in Vindhya Pradesh, but on January 1, 1950 its government was taken over by the Government of India. ‘Kutch’ having an area of 17249 sq. miles and inhabited by 5 lakhs of people was created into a Chief Commissioner’s province in May, 1948. Bilaspur state of the Punjab was taken over by the Government of India on October 12, 1948. The States of Bhopal and Tripura were taken over by the Central Government on the 1st of June, 1949 and 15th of October, 1949, respectively. All these States along with other areas like Delhi, Ajmer, Coorg, Manipur were designated as ‘Part C’ States.

§ 22. DEMOCRATIZATION OF THE INDIAN STATES

Not only the issue of integration and accession of States haunted the minds of Indian politicians but the problem of democratization of these States groaning under the autocratic rule of the feudal lords also attracted their attention. Barring a few exceptions like Travancore-Cochin, Baroda and Gwalior where semblance of progressive and democratic administration was already discernible, the rest of the States were being governed by autocratic rulers. In some of the States, legislatures existed but they exercised no or little control over the Executive. Such a state of affairs could not be allowed to exist after the dawn of independence and integration of these States. The States merging with the Indian Provinces automatically adopted democratic pattern of government. The States forming unions like Saurashtra, Rajasthan etc. attained a
political status almost similar to that of the British Provinces. Full-fledged responsible governments were established in these states. The Rulers designated as Rajpramukhs and up-Rajpramukhs were reduced to mere constitutional rulers, like the Governors in Part A States. Of course, for a period of ten years, since the commencement of the constitution, the Government of India was to be responsible for the good government of these Part B States. Since most of these States were experimenting with democratic governments for the first time, the temporary supervision of the Central Government over them was deemed essential.

As regards the Part C States i.e. the Chief Commissioners’ Provinces, the Centre had no other alternative but to shape and guide their destinies till they were politically advanced. Hence the Central Government appointed the Chief Commissioners who administered the affairs of these Part C States and were responsible to the Government of India. In Delhi and Himachal Pradesh, fully elected Legislative Assemblies and responsible governments of the cabinet type were established.

I 13. REORGANIZATION OF STATES

Dar Committee and its outcome. The above arrangement according to which Indian Union was to consist of 9 Part A, 8 Part B and 10 Part C States was by no means satisfactory. Neither could it make a provision for coherence and balance among the units of Indian Union nor could it remove their constitutional disparities. In fact such a decision of having three types of units was not made on rational grounds. It was purely on the basis of convenience and exigencies of the situation that India was split up into three categories of units. For a long time the people were clamouring for the reorganisation of the provinces of India on linguistic basis. In 1948 Government had appointed Dar Commission to go into the matter. The Commission had given an adverse report. They were of the opinion that the formation of the new provinces on linguistic lines was inadvisable. The circumstances also were not ripe for such a reorganization. They emphasised that administrative convenience, history, geography, economy and culture were the conspicuous factors which should be kept in mind while carving out the new Provinces.

JVP Committee. Since bulk of opinion was opposed to Dar Commission’s recommendations, the Congress Working Committee appointed a three-man committee popularly termed as the JVP Committee (Jawaharlal—Vallabhai—Pattabhai) to examine the findings of the Dar Commission. The Committee reported against linguistic principle. But the violent agitation in Andhra and subsequent death of Andhra leader—Sciramulu—changed the situation. The Government of India was forced to appoint Justice Wancho to examine the case and report. Under these circumstances, Andhra State was set up. The adherents of linguistic states got an oppor-
tunity to exploit the situation. To pacify the masses, the Prime Minister stated in the Parliament on December 22, 1953 that a commission would be appointed to examine ‘objectively and dispassionately’ the question of the reorganization of the states of the Indian Union so that the welfare of the people of each constituent unit as well as the nation as a whole is promoted.

**States Reorganization Commission, December 29, 1953.** Hence on 29th December, 1953, the States Reorganization Commission consisting of S. Fazl Ali as Chairman and H.N. Kunzru and K.M. Panikkar, as members, was appointed to review the entire problem objectively and dispassionately and make recommendations to the Government for reorganizing the ‘Union Structure’. The Commission toured the entire country, interviewed over 9,000 persons, examined over 1,52,250 memoranda, petitions and communications and submitted a detailed report comprising 267 printed pages on September 30, 1955. It was released to the public on October 10, 1955.

The Commission did not recommend language as the basis for the reorganization of the States. Instead, it laid down four tests for reorganizing the states viz., (a) preservation and strengthening the unity and the security of India, (b) linguistic and cultural homogeneity, (c) financial, economic and administrative considerations and (d) the need for the successful implementation of the Five-Year Plans.

### 14. RECOMMENDATIONS OF THE COMMISSION

Following were its main recommendations:

(a) India should be divided into sixteen States—Andhra, Assam, Bihar, Bombay, Hyderabad, Jammu and Kashmir, Kerala, Karnataka, Madras, Madhya Pradesh, Orissa, Punjab, Rajasthan, Uttar Pradesh, Vidarbha and West Bengal.

(b) Three territories namely, Delhi, Manipur, and Andaman and Nicobar Islands should be administered as centrally administered areas. Manipur should not for the present be merged with Assam as it would add to the problems of the State though ultimately it should be part of Assam.

(c) Part C States should be abolished. The distinction between Part A and Part B States must not persist.

(d) The constituent parts of the Union (i.e., the States) should be treated on par with each other as regards their powers and position in the constitution.

(e) Institution of Rajpramukhs should be abolished.

(f) Special safeguards should be provided for linguistic minorities who should be entitled to get instructions in their mother tongues at the primary school stage.
(g) In order to foster national unity and improve administration, certain All-India services should be reconstituted. Moreover 50% of the new entrants in the All-India Services should be from outside the States concerned and regular transfer to and from the Centre and the States should be arranged.

(ii) At least 1,3rd of the Judges of the High Court should be appointed from outside the State concerned so that they might help in arresting parochial trends.

(iii) Study of Indian languages other than Hindi should also be encouraged. Moreover, for sometime to come, English should be retained in the universities and institutions of higher learning even after switchover to Hindi and regional languages for official and educational purposes.

(iv) The creation of a Punjabi speaking State was not justified as it lacked the general support of the inhabitants of the area and also was suicidal to economic interests of the area. Carving out a Punjabi Suba was neither the solution of language nor the communal problem. Rather any such move was deemed to exacerbate the existing feelings. A majority of the Commission recommended that the Punjab would be administratively sound and politically and economically stable if Punjab and Himachal Pradesh were merged with it. Punjab should be merged with the Punjab on the ground that it was physically and geographically a part of the Punjab. Moreover, it was not a compact unit. Instead it consisted of five disconnected bits surrounded by the territories of the Punjab. Lack of geographical contiguity obstructed the political integration of the people of the State. Besides, Punjab and Punjab had common problems to face. Merger of Himachal with Punjab was considered justified on the grounds that the catchment area of the Sutlej and the Beas was mostly situated in Himachal Pradesh. From the point of view of Bhakra project, the fact gained still more importance. Since Punjab and Himachal had been showing surplus budgets in the past, hence they would not pose any problem to the newly expanded state.

(v) Tripura should be transferred to Assam because it was a Part C State adjoining Assam. Such a merger would result in coordination of the development plans in Cachar and the contiguous areas of Tripura.

(vi) Rajasthan should consist of the existing state minus Sironj, sub-division of the Kotah district plus the Abu Road taluq, the Loharu sub-tehsil and the State of Ajmer. The linguistic, cultural and geographical links of Ajmer necessitated its merger with Rajasthan. Abu Road Taluq legitimately belonged to Rajasthan as 65% of its people spoke Rajasthani. Moreover, it was a part of the Sirohi State which had already been merged with Rajasthan. Similarly, Loharu, for the last 350 years had been a part and parcel of Rajasthan. Hence there was no justification in keeping it apart from Rajasthan.
(m) Bombay State should comprise the areas of the existing Bombay State excluding the Abu Road Taluq area and the Karnataka districts of Dharwar, Bijapur, North Kanara and Belgaum. It should however include the Marathwada areas of Hyderabad, ‘Part B’ State Saurashtra and the Centrally administered area, Kutch.

(n) The Commission stood against the demand for ‘Samyukta Maharashtra’. It recommended that Vidarbha should be formed which should consist of the Marathi-speaking districts of Madhya Pradesh. Since Vidarbha was economically sound, hence the inhabitants of the area were reluctant to join Maharashtra. Moreover it was apprehended that in Samyukta Maharashtra, Vidarbha might not have received adequate attention. It was also feared that Nagpur would be completely overshadowed by the Bombay city which was apt to be the capital of the single Maharastrian State. Above all, there was likelihood of communalism finding its way into the political life of Vidarbha.

(o) Madhya Pradesh should, henceforth, consist of the fourteen Hindi-speaking districts of the existing Madhya Pradesh the whole of Bhopal, Vindanya Pradesh, Madhya Bharat and Sironj sub-division of the Kotah District of Rajasthan. Thus the entire area of Bundelkhand and Baghelkhand will become a well-knit administrative unit. The new state will be financially on a sound footing as it would have at its disposal plenty of undeveloped resources.

(p) The Commission recommended the dismemberment of Hyderabad state in consonance with the public sentiment. It suggested that Marathawada and Kanarese-speaking districts of the Hyderabad State should be added to the neighbouring States of Bombay and Karnataka. Telengana should form a second Telugu State. The Commission, however, confused its awareness of the advantages of ‘Vishal Andhra’. Hence it made a provision for Telengana’s unification with Andhra in 1961, if Telengana legislature by a two-thirds of vote so decided.

(q) A new state known as Kerala consisting of Travancore-Cochin, Malabar and Kasargod taluq should be brought into existence. Kasargod was added to Kerala because 72% of its people spoke Malayalam and it was geographically contiguous to Malabar which was to constitute a part of Kerala. Laccadive and Amindivi Islands also should form part of Kerala.

(r) Karnataka should include Mysore State excluding Siruguppa, Bellary and Hospet taluq and a small area of Mallapuram sub-taluq where Tungabhadra project was situated. It would also include Belgaum, Bijapur, Dharwar, North Kanara, Raichur and Gulbarga—the four southern districts of Bombay and also South Kanara, excluding the Kasargod and Kollegal taluq from Madras and Coorg. It may however be stated that while suggesting
constituting of Karnataka, linguistic considerations were relegated to the background and administrative and economic reasons were given precedence.

(5) As regards Madras, the Commission suggested that South Kanara minus Kasargod taluk should form part of Karnataka. Malabar and Kasargod taluk should go to Kerala. Tamil taluqs of Travancore-Cochin should be transferred to Madras save Deviculum and Peeramedu which would be attached with the newly constituted Kerala State in order to save the latter from financial embarrassment. The other Tamil speaking taluqs of Agastheswaram Thovala, Kalkulam, Vilavancode and Shencottah were to be merged with Madras.

(6) Small boundary changes were suggested for West Bengal and Bihar States. Purulia sub-district of Manbhum district minus Chas Thana and part of Purnea was transferred to West Bengal on the ground that Bengali speaking people were concentrated in the area. It was further suggested that Kishenganj should be transferred to West Bengal as it would make the state geographically contiguous.

Notes of dissent. In a separate note of dissent, the Chairman of the Commission recommended that Himachal Pradesh should be administered by the 'Central Territory'. In the second note of dissent, K. M. Pannikar favoured the creation of a new State—Agra which was to consist of part of Uttar Pradesh, Madhya Bharat and Vindhy Pradesh.

1.5 CRITICISM OF THE RECOMMENDATIONS

The recommendations of the Commission were released to the Press on October 10, 1955. They evoked a lot of criticism. Following were the main comments against these recommendations.

Undue importance to Cult of Bigness. It was emphasised by the critics that the cult of bigness has been shown excessive deference by the Commission but optimum size of the State was not determined by it. It failed to define large and small states. For instance, Mysore was quite large a State for all practical purposes but it was forced to merge with Karnataka areas which could easily form a distinct state of their own.

Commission's proposals did not concur with the tests it laid down. The Commission had clearly stated that no change would be effected save for compelling reasons. Moreover, permanent advantages and recurring economies would be the criteria for such changes. But its proposals did not concur with the tests it laid down. For example, Saurashtra with an area of 2,100 sq. miles was merged with Bombay on the plea of small size, though a new State Vidarbha was created with a size not much bigger than Saurashtra. The Commission failed to quote compelling reasons for
such a merger. Similarly there was hardly any justification in merging of Madhya Bharat with Madhya Pradesh—a huge and unwieldy state. Both these states did not have much of racial, historical or cultural affinity with the Hindi areas of Madhya Pradesh. “The fact that Hindi is spoken in all these regions is no justification for forming yet another huge Hindi conglomerate in addition to Uttar Pradesh and Bihar.”

Creation of Madhya Pradesh resulted in disparity. A large section of public opinion was opposed to the suggestion for the creation of a huge state to be known as Madhya Pradesh on the plea that it would amount to the emergence of a big disparity between State and State. Such a glaring disparity would lead to the gross maldistribution of power. Moreover, appearance of such a State on the political map of India was considered to be neither administratively feasible nor economically sound. K. M. Pannikar’s recommendations, in his minute of dissent, to bifurcate huge state of Uttar Pradesh were commended by a vast section of people who had condemned the suggestion of constituting Madhya Pradesh.

Language Principle condemned but adopted. The Commission had emphatically rejected the idea of reorganizing the States on the basis of language or culture and had pleaded for a balanced approach to the whole problem for fostering national unity. But the Commission acted quite contrary to its laudable principle. Of the 14 languages mentioned in the 8th Schedule everyone except Punjabi, Gujarati, Urdu and Sanskrit was to be the dominant language in at least one State. Hindi was to be the dominant language in four huge states and Telegu in two of them. Only two languages, Punjabi and Gujarati, were to be stateless. Thus the contradiction is quite obvious which the Commission vehemently repudiated ‘One State and one language rule’ it made a provision for such a rule in most of the States.

Denial of Unilingual Marathi State not just. The critics opined that denial of a separate unilingual Marathi State was hardly justified from any canon of justice when Kerala, Madras, Andhra and Karnataka substantially satisfied the other linguistic groups.

Haphazard approach. “The Commission postponed the creation of Vishal Andhra while at the same time whetting the appetite for it. In the case of Telengana its fate would be decided in 1961, but Vidarbha would remain permanent.” Similarly the merger of Vidarbha with the Marathi districts of Bombay was disallowed on the plea that Vidarbha disliked and feared Poona Maharashtrians. No such consideration weighed with the Commission as regards Karnataka where the Lingayat communalism embarrassed the Mysoreans.

1. Ibid., April-June, 1956, p. 187.
2. Ibid., p. 188.
A decree of Sikhs' annihilation. The Akalis were highly dissatisfied with the Commission's recommendations regarding the Punjab. Master Tara Singh, the veteran Sikh leader, characterised them as a decree of Sikh annihilation.1

Clamour over Bombay. The Maharashtrians raised a lot of hue and cry over the city of Bombay. They claimed it as a natural part of their State. The Gujratis on the other hand objected to its transfer to Maharashtra.

Reaction of Congress High Command. The Congress High Command expressed willingness to make alterations in the recommendations of the Commission if the interested parties could agree upon an alternative. Many changes were effected in these recommendations in response to the various opinions but the problem of Bombay could not be solved. The problem was however ultimately solved when the States Reorganization bill was under discussion on the floor of the Lok Sabha. Better sense prevailed and it was mutually agreed upon to create Bombay as a bilingual state comprised of all the territories of Maharashtra and Saurashtra with Bombay as the capital.

16. GOVERNMENT'S DECISION

As already stated above, the recommendations of the Commission were carefully studied and thoroughly discussed by all political parties. The Government of India convened a conference of the Chief Ministers of the States in October 1955 to examine reaction of the various states, to the proposals made in the Report. The State Legislatures and the State Governments also indulged in hair-splitting of the Report. A marathon debate in the Indian Parliament followed these reactions and considerations. After careful scrutiny and analytical appraisal of these proposals, the Government announced its decision on January 16 and March 16, 1956. Following were the main points of the decision of the Government:

(a) As recommended by the Commission the existing constitutional disparity between the different States of the Indian Union must disappear.

(b) The institution of Rajpramukh must be abolished.

(c) The new States of Kerala, Karnataka and Madhya Pradesh must be formed.

(d) The old states of Madras, Rajasthan, Uttar Pradesh, Bihar, West Bengal, Assam and Orissa must continue.

(f) Though the Government considered the Commission's proposals of the formation of Bombay and Vidarbh states as fair and reasonable, yet keeping in view vehement opposition from the Marathi speaking area to the proposed bilingual state and also the special

position of the city of Bombay, the Government decided to constitute two states—Gujarat and Maharashtra. Gujarat would comprise the Gujarati speaking areas with its capital within the state and Maharashtra would comprise the Marathi areas including Vidarbha. Bombay instead would be a Centrally administered area. The inclusion of Vidarbha in Maharashtra was thought logical and also an economical measure in view of its small size and also linguistic affinity with Maharashtra.

(f) The city of Bombay was not to be included in Maharashtra firstly because the people of Bombay were opposed to any such move and secondly because it was the nerve centre of the Indian financial and commercial life.

(g) Tripura for the time being was to continue as the Centrally administered area and not to be included in Assam. Laccadive, Minicoy and Amindivi islands would be the Centrally administered areas as they were under-developed areas.

(i) The recommendations of the Commission were not accepted, as regards Punjab, Himachal Pradesh which was for the present economically backward area would not be merged with the Punjab. Its separate entity would however sooner or later end when it was economically well off. Pepsu would merge with the Punjab. In fact the main motive to merge Pepsu with the Punjab was to appease Sikhs who feared the diminution of Sikh percentage in case Himachal—a Hindu dominated area—was also merged with the Punjab.

The assurance of termination of Himachal’s separate existence at a later date was a source of consolation to the Hindus as well.

(j) The Government decided to unite Andhra and Telengana areas of Hyderabad State into a single state—Andhra-Telengana. Bellary would not be transferred to Andhra though the Government of India assured Andhra Government that Mysore would not impede the proper execution of Tungabhadra project. We may, however, state that the merger of Andhra-Telengana had certain important and obvious advantages. Apart from solving a difficult and vexed problem of finding a permanent capital for Andhra it was intended to ameliorate the lot of the people of the area and develop Godavari and Krishna rivers through a unified control.

(k) The Government did not accept the proposal of K.M. Pannikar for the bifurcation of U.P.

Three draft bills embodying the decisions of the Government were placed before the Parliament. They were termed as States Reorganization Bill, the Bengal and Bihar (Transfer of Territories) Bill and the Constitution (7th) Amendment Bill and were passed by both the Houses in September, 1956, after controversial discussions and heated debates. These three Acts duly passed by the Parliament and approved by the President of India were enforced on November 1, 1956. According to these Acts the Indian Union was
to consist of 14 States and 6 Union Territories. As already discussed in the preceding paragraphs during the discussion of the Bill it was mutually agreed upon by the interested parties to have a bilingual state of Bombay instead of Maharashtra and Gujarat. Thus the political map of India was redrawn as under:


Union Territories. Andaman and Nicobar Islands, Delhi, Himachal Pradesh, Manipur, Tripura, Laccadive, Minicoy and Aminidivi Islands.

§ 17. CONCLUSION

The reorganization of the States into a few units and abolition of disparity between Part A, Part B and Part C States and also the institution of Rajpramukhs was indeed a remarkable achievement of the Indian Republic. The constituting of large states aimed at better coordination and more efficient execution of plans for the economic development and amelioration of the lot of the Indian masses. Dr. Ambedkar’s fears that in the ‘monolithic and monstrous States’, the interests of the minorities would be at stake and Sardar Hukam Singh’s doubts about the possible attempt on the part of the bigger states to assert autonomy and undermine the Central Government have proved false. Perpetuation of smaller States would have certainly impeded the national development plans and most probably would have resulted into unproductive expenditure. Moreover, national unity demanded the discouragement of provincialism and linguistic fanaticism and the provision for the unhampered growth of the geniuses of each group. Hence we can afford to conclude that on the whole, reorganization of the States was a commendable step for further fostering unity among our people and consolidating our newly established Republic.

§ 18. BIFURCATION OF BOMBAY

Hardly the ink on the States Reorganization Act was dry, when a bitter agitation for the separation of Maharashtra from Gujarat was started. To start with, the Government of India was reluctant to concede the demand but the Marathas were bent upon getting it fulfilled. Riots broke out in Bombay on a large scale and ultimately the Government decided to accede to the people’s longstanding demand. The Bombay Reorganization Act was passed on April 25, 1960 and Bombay was bifurcated into two states—Gujarat and Maharashtra, on May 1, 1960. Bombay was to be the capital of Maharashtra. Provision for a separate capital, and a separate High Court for Gujarat was also made in the Act. Both Gujarat and Maharashtra were accorded separate representation in Lok Sabha and Rajya Sabha. The former was to send 22 and the latter 44
representatives in the Lok Sabha. The Legislative Assembly of the former was to consist of 132 and that of the latter of 264 members. A Legislative Council consisting of 78 members was provided for Maharashtra though no such provision was made for Gujarat. Provision was made for the division of assets of former Bombay State between these two newly sprung-up States. The judges of the former Bombay High Court were also divided between these two States.

Thus, henceforth there were to be 15 States.

19. CREATION OF NAGALAND

The political map of India redrawn on May 1, 1960, was further changed when the Prime Minister of India announced in the Parliament on August 1, 1960, the decision of the Government for the formation of Nagaland as a new State thus making a total of 16 States. On 28th of August, 1962, the Lok Sabha passed the 13th Amendment Bill providing for a separate State of Nagaland with Kohima as its capital. Thus the discontented elements of the frontier region were satisfied.

20. LIBERATION OF GOA, DIER AND DAMAN

Goa, Dier and Daman—the Portuguese enclaves were liberated from the clutches of the Portuguese, through military action on December 18, 1961 and brought in the category of centrally administered areas. The 12th Amendment Bill passed by Lok Sabha on the 14th of March, 1962 included Goa, Dier and Daman into "Union Territory". By 14th amendment Bill passed by the Lok Sabha on September 4, 1963 separate Legislature for these enclaves was also to be set up. Elections to Goan legislature took place on December, 9, 1963.

21. PONDICHERRY, KARIKAL, MAHE, YAMAN TURNED INTO UNION TERRITORY

The 14th Amendment Bill passed by Lok Sabha on September 4, 1963 provided for the conversion of the former French possessions—Pondicherry, Kariikal, Mahe, Yaman into the "Union Territory of Pondicherry".

It may also be stated that the 14th Amendment made a provision for the setting up of Council of Ministers and separate Legislatures for the Union Territories.

At present there are 16 States and eight Union Territories in the Indian Union.
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