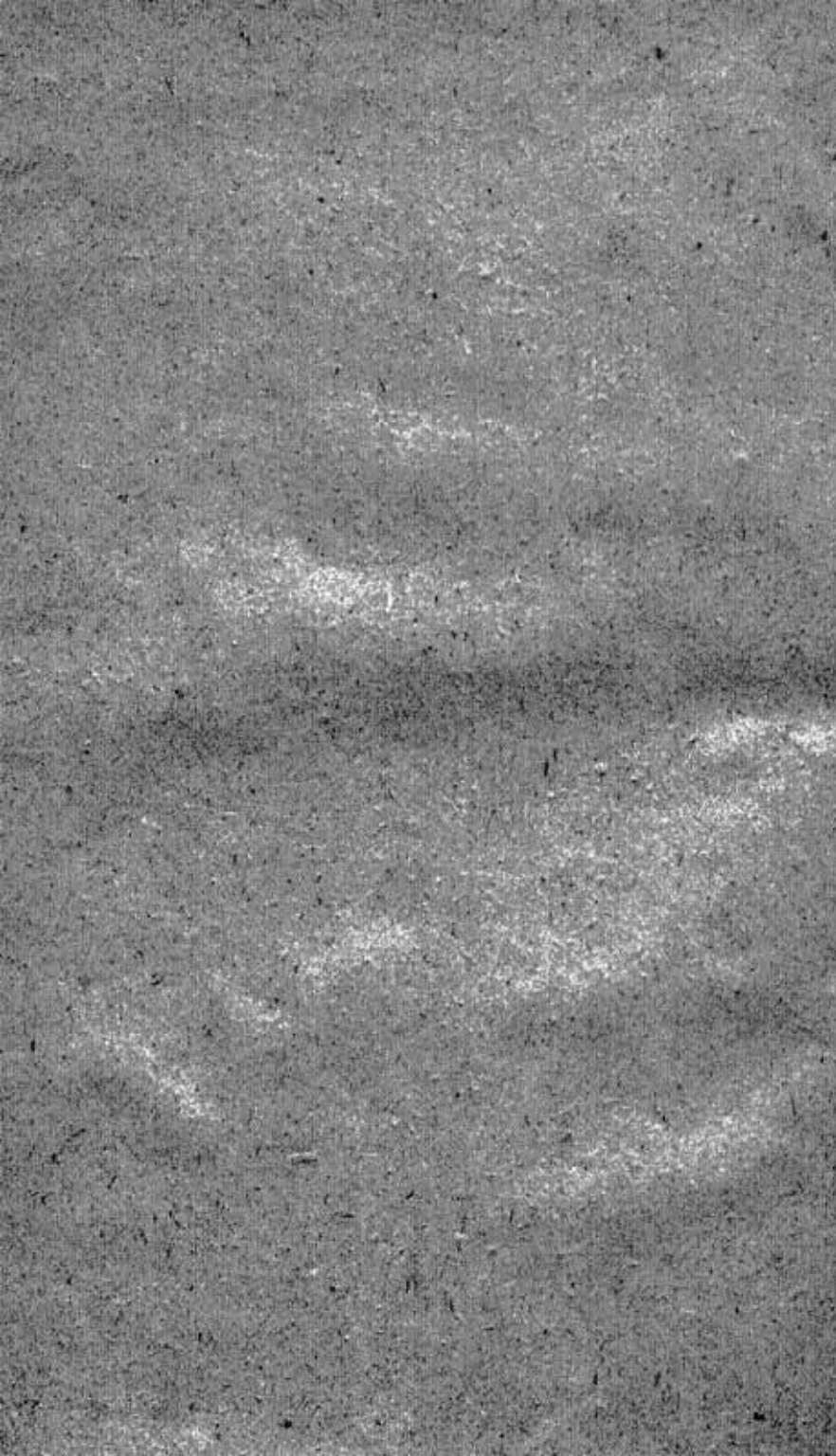


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and Constitutional Changes in India

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Preface

The Indian National Congress and Constitutional Changes in India (1885-1979) is a thoroughly revised, up-dated and more comprehensive version of my dissertation submitted to the Vikram University, Ujjain for the award of a D. Litt degree. With the attainment of Independence in 1947 and the Congress Party in power it was felt necessary to study the development of the history of freedom movement in retrospect and its influence on the initiation and working of the constitutional changes in India. The study could, therefore, be considered the history of Indian National Congress and its achievements. This period afforded a series of problems and events which I have tried to bring forward. During the freedom struggle the Congress was involved in a three-fold activity : (1) Struggle against foreign rule ; (2) Role of opposition in the Legislatures ; (3) Gaining independence of India, and framing a new Constitution based on the ideals of justice, liberty, equality and fraternity. This work deals with the Indian national movement, her constitutional development and implementation of the constitution. The achievements and shortcomings of different phases of the movement have been objectively assessed. Inadequacy of the constitutional reforms, introduced in India from time to time, gave rise to subsequent national demands. It is usual to regard the national movement as one of the causes of all subsequent constitutional changes. This work shall prove that since 1885 the movement of a given period was the main cause of the constitutional change that followed.

The Constitution, which was adopted thirty years ago, it seems to me, has worked very much as the framers intended it to. I accept that all their hopes have not been fulfilled. But the constitution has established the institutions according to political and constitutional needs. The creation of parliamentary political institutions by the Constitution has itself

provided an impetus for their strengthening and growth. The government has successfully operated under the Constitution. One test of a Constitution is whether it can provide a durable framework for the government in the midst of great social, economic and political change. This, the Indian Constitution has so far done.

This book is also a political history of the framing of the Constitution, of how past and present, aims and events, ideals and personalities, moved the members of the Constituent Assembly to write the Constitution as they did. Since its inauguration on 26 January 1950, the central and the provincial governments have been functioning successfully. Parliamentary government worked fairly well due to the predominant position of the Congress. The position has been seriously impaired after the 1977 General Elections. Many serious constitutional and political problems have come since early 1979, for instance.

1. Will the Indian Constitution break down ?
2. Whether India should switch on to a presidential form of government ?
3. Has the position of the President and the Prime Minister shaken ?
4. Should the Constitution be completely revised ?

The present work is a modest attempt to scan and analyse, with a view to assess, the aforesaid problems.

The work is based on a variety of sources, including reports of the Indian National Congress, vernacular literature, journals and periodicals, autobiographies and speeches, official records, proceedings and private papers, and the Constituent Assembly debates. In completing this work, I have tried to give it as much a detached and objective perspective as possible, and have tried to arrive at conclusions which resulted as a natural consequence from these investigations.

Vikram University has provided financial assistance for the publication of this work for which I am indebted to Dr P N Kauthether, Vice-Chancellor, Vikram University. I have

greatly benefitted from the comments and suggestions of Dr A Awasthi, Professor and Head, Department of Political Science and Public Administration, Sagar University, Sagar. I am grateful to Mr B S Upadhyay, Visiting Professor, School of Studies in Political Science, Vikram University who provided many useful suggestions. I am thankful to Dr R K Awasthi, Professor and Head, School of Studies in Political Science, Vikram University for his constant advice and suggestions, as also to my colleagues Dr Vimla Shukla and Dr Rashmi Shrivastava.

The Library staff of many libraries in New Delhi, namely Indian Council of World Affairs, the Lok Sabha and the Rajya Sabha ; Indian Institute of Public Administration ; Institute of Constitutional and Parliamentary Studies; Jawaharlal Nehru University; and Indian National Congress Committee deserve special thanks. The National Archives of India, New Delhi is the chief source of this work. I am thankful to the authorities. I am also obliged to the Government of India for giving me access to their confidential and non-confidential records. And last, but not the least, to the management and staff of Vikram University Library, for their considerations.

RAM SAKHA GAUTAM

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Historical Background

THE history of India's struggle for freedom is the history of the gradual realisation of self-rule through the representative institutions. People could not imagine, in the nineteenth century, in terms of constituting India into a "Sovereign Democratic Republic," as the framers of the Indian Constitution could do on 26 November 1949. It was the result of a long historical process in which both the English and the Indians played an important role. The British rulers provided the country with a unified administration under a strong Central Government which gave an opportunity to Indians to frame a constitution for India. The first serious attempt in this direction was made by the Regulating Act of 1773. This process was followed by the Charter Act of 1833. It took away from the provinces their power of independent legislation, and vested it in the Governor-General-in-Council. The Charter Act of 1853 established supremacy of the Central Government over the provincial governments.

The revolt of 1857 was a significant event in the developing process of representative institutions in India. It made it clear to the British that in a vast country like India, the concentration of all powers in the centre is not possible. The Indian Council Act, 1861 inaugurated a gradual process of decentralisation by restoring the legislative powers to the Provinces. It provided for the nomination of non-official members to the Legislative Council to keep the Government in touch with the people. The Act of 1861 was a landmark in the constitutional development towards a self-rule in India.

Lord Ripon, the liberal statesman, succeeded Lord Lytton as Viceroy in 1879. His advent as the head of the Government of India marks a new era not only in the Indian administration but also in the introduction and progress of local-self-government in the country. On assuming charge of that high office, he issued a resolution foreshadowing the introduction of the elective system in the district boards and municipalities, giving more popular control over these bodies and this resolution formed the basis of the Bengal Municipal Act of 1884 and Bengal Local-Self-Government Act 1885. Throughout India similar measures were adopted giving wider powers to these local bodies and placing them under popular control to a very large extent, though not till 1933 was the constitution of the municipalities in Bengal fully democratised with wider powers. Lord Ripon also publicly announced that the time was fast approaching when even in India popular power would become a responsible force, and the Government would have to be guided by popular views.

Another action of Lord Ripon's Government which greatly contributed to the rousing of popular consciousness and national solidarity is known as the Ilbert Bill. In this Bill it was proposed to give jurisdiction to Indian Magistrates to try European and American offenders. The Bill was introduced in the Indian Legislative Council by Ilbert, as he then was the Law Member. This roused the racial passions of the Anglo-Indian community who took it as a serious encroachment on their privilege to be tried only by European Magistrates, and started an organised campaign against the measure. Almost all Britons and Anglo-Indians in this country supported this move, raised subscriptions and held public meetings of the members of these communities at which the Government was bitterly criticised and even personal attacks and insults were hurled at the Viceroy. Defence Associations with branches in different parts of the country were formed. Indian opinion naturally took all this as an attempt to perpetuate racial discrimination in favour of the European community as members of the ruling race, and as a claim to racial superiority on the same ground. Indian

popular opinion was very indignant; the agitation further embittered the feelings between the two communities, made Indians more self-conscious and alive to their claim for equality of status and treatment with the British as common citizens of the same country. The Indian public expressed their disapproval of, and resentment against, the attitude and conduct of the Anglo-Indian community by public expression of appreciation of the liberal policy of Lord Ripon and of their gratitude to him. Lord Ripon was accorded a tremendous ovation in Calcutta and throughout his way to Bombay on his retirement. The spontaneity and the magnitude of the demonstration opened the eyes of the most reactionary of British officials and made them realise that Indian popular feeling was no longer to be ignored.

This is the atmosphere in which the national movement was born, and these were some of the factors that helped the foundation of the Indian National Congress. This first Indian National Conference was held in Calcutta on 28, 29 and 30 December 1883, in the Albert Hall; Surendranath Banerjee, Anand Mohan Bose, Ambika Charan Mazumdar and all the leaders of the early nationalist movement took a prominent part in the conference. There were delegates from most of the big towns. Representative Councils, general and technical education, separation of the judiciary from the executive in the administration of criminal justice and wider employment of Indians in the public services were some of the subjects discussed. Towards the middle of the nineteenth century leaders of public opinion in India felt the necessity of establishing political organisations for the purpose of attraction of the British Government to the grievances of the people. The British Indian Association was started in Bengal in 1851 and remained in active power in the land for nearly half a century. In Bombay, the leading political party was the Bombay Association, and in Maharashtra (in the Bombay Presidency), the Poona Sarvajanik Sabha was the principal organ of public work. In Madras, the Madras Mahajan Sabha was established in 1881. In Bengal,

the Indian Association was founded in 1876. The Bombay Presidency Association was started on 1 January 1885.

Lord Ripon retired in 1884, and was succeeded by Lord Dufferin. A diplomat and a statesman of experience, Lord Dufferin soon realised the necessity of being acquainted with the real popular opinion in the country about the Government's policy, and he appreciated the usefulness of a body that might give expression to popular views and so act as an indicator of the reaction on public mind of Government policy as well as popular demands and aspirations. Allen Hume, a senior member of the Indian Civil Service, had been working for many years even as an official to help the uplift of Indian agriculturists through the spread of education, reduction of debts, and speedy and less expensive justice by the introduction of itinerant courts to try debt cases on the spot. He also worked hard for the reform of the police and excise systems. He condemned the raising of excise revenue at the expense of people's morals. An officer of wide culture, broad sympathies and great foresight, Hume advised the British Government to assert its supremacy.

As early as 1859, Hume started an Indian language paper called the *Peoples' Friends*, and in 1863 pressed for the establishment of a reformatory for correction of juvenile offenders instead of sending them to jail and forcing them into a company of hardened criminals. He conceived the idea that the leaders of Indian public opinion, though public opinion was still in a very weak and nebulous state, should meet and take up the work of social reform in earnest and try to impress on the Government and the people the necessity of such reform. On Lord Dufferin's arrival in India, Hume unfolded his plan to him and received considerable encouragement. But the Viceroy wanted him to go further. Lord Dufferin wanted the Indian leaders to take up political questions in earnest and to play the part of His Majesty's opposition instead of confining their activities merely to social reforms, and his advice was accepted. To quote W C Bonnerjee : "It will probably be news to many that

the Indian National Congress, as it was originally started and as it has since been carried on, is in reality the work of Marquis of Dufferin and Ava when that nobleman was the Governor-General of India. A O Hume had, in 1884, conceived the idea that it would be of great advantage to the country if leading Indian politicians could be brought together once a year to discuss social matters and be upon friendly footing with one another."¹

Indian National Congress

The Indian National Congress² was begotten by the spirit of the times and its vitality indicated that it had satisfied a want. The roots of the movements are traceable ultimately to racial difference and the restlessness of a subjugated people, however light may be the yoke. There were, of course, in addition many secondary and contributing influences at work. On the other hand the movement was aided and inspired by English liberalism represented by A O Hume who was one of the original promoters of the movement and until 1897 its General Secretary. The British Government also was by no means antagonistic at the outset, thinking that it would afford a valuable safety valve and source of indispensable information regarding Indian opinion. Lastly, the spread of the English language itself supplied the common medium of communication which had hitherto been lacking. It was this background and these impulses that a group headed by Hume of the Indian Civil Service and Surendranath Bannerjee issued, in March 1885, the call to hold a meeting of representatives from all parts of India at the then coming Christmas.

In the year 1884, Hume addressed an open letter to the graduates of the Calcutta University urging them to organise an association for the social, moral and political advancement of the country³. He also succeeded in enlisting official approval in support of such an organisation. "No Indian" said Gokhale in London in 1913, "could have started the Indian National Congress. Apart from the fact that anyone putting his hand

to such a gigantic task had need to have Mr Hume's commanding personality, even if an Indian had possessed such a personality and had come forward to start such a movement, embracing all in India, the officials could not have allowed it to come into existence. If the founder of the Congress had not been a great Englishman and a distinguished ex-official, such was the distrust of political agitation in those days that the authorities would have at once found some way or the other suppressing the movement."⁴ This view has been generally accepted as accurate. Undoubtedly A O Hume was the driving force; and the name "Father of the Congress", which has been sometimes given to him, is fairly correct. Hume, with the support of some prominent Indians, succeeded in giving a practical shape to his idea, and the first Indian National Congress met in Bombay on 28 December 1885. Henceforth, the Congress met annually in some important town and took up important discussions in the cause of the country. The leading politicians, well acquainted with the English language, from all parts of Bombay, Bengal and Madras Presidencies were invited to attend the conference, whose objects, according to Hume, were stated to be "(i) to enable all the most earnest labourers in the cause of national progress to become personally known to each other; and (ii) to discuss and decide upon the political operations to be undertaken during the ensuing year." It was also stated that subject to the unserving allegiance to the British sovereign, "the Union would oppose by all constitutional methods all official acts or measures opposed to those principles which were laid down by the British Parliament." Lastly, a hope was expressed that "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."⁵

The birth of the Indian National Congress in 1885 marked an important stage in the growth of political consciousness and popular resistance in the country. In fact, it meant the

beginning of a modest and constitutional, but at the same time, steady and continuous agitation. Its character in the early stages was less agitational and more exploratory or evolutionary; the reason being the limitations imposed by the circumstances and the nature of its leadership. Originally conceived and shaped by Englishmen, it was nurtured by those Indian leaders who by doing so, were only reproducing the education that the English had given to them. It was, therefore, unique and exclusive in its evolution as in its role. In the beginning its activities were mainly confined to bring Indian grievances to the notice of the authorities in India and England. There were other important aspects. One was to bring together men from different provinces in order to create an understanding between them and through them to establish nationalism on an all India basis. In the early days, its activities were more or less confined to an annual gathering, in which a number of important resolutions were passed. In those days the Congress was wholly devoted to furthering the cause of India by constitutional means. The early Congressmen had great faith in England. Indeed their whole programme was to obtain political advancement for India by reason and persuasion and not by coercion and threat.

As regards the character and strategy of the Congress struggle, many aspects deserve notice. Unavoidably, the early Congress leaders professed loyalty to the Crown. The spell of the West was fully upon them and such names as Burke, Bright, Macaulay, Carlyle and Gladstone were music to their ears. The magic influence of the beautiful ideals enshrined in English literature and history had produced in them a basic confidence in the English sense of justice. Disloyalty, therefore, did not enter their nature; contempt was out of question. Rather they expressed "unbounded faith in the living and fertilising principles of English culture and English education."⁶ British rule was to them "a rescuing hand held out to a drowning man in the darkness of the night."⁷ In its establishment, they saw a "providential purpose."⁸ They were happy

to feel : "We are British subjects. England has taken us into her bosom and claims us as her own."⁹ And they declared emphatically, "Let us speak out like men and proclaim that we are loyal to the backbone."¹⁰ Due to this sense of loyalty and faith, the liberals always maintained great dignity and moderation. Believing in ultimate justice and liberality of the English nation, they stood for orderly progress and constitutional agitation. They always counselled patience and steadiness conciliation and union. Surendranath Bannerjee said : "The triumphs of liberty are not to be won in a day. Liberty is a jealous Goddess, exacting in her worship and claiming for her votaries prolonged and assiduous devotion."¹¹ Badruddin Tyabji, President of the third Congress (1887) advised : "Be moderate in your demands, just in your criticism, correct in your facts and logical in your conclusions..."¹² Rash Behari Ghosh reminded his audience : "You must have patience, you must learn to wait, and everything will come to you in time...."¹³ Surendranath Bannerjee said ; "It is not severance that we look forward to—but unification, permanent embodiment as an integral part of that great Empire that has given the rest of the world the models of free institution."¹⁴

Due to the same reason, the liberals in the Congress always rejected three things, viz, rebellion, aiding or abetting a foreign invasion and resort to crime. They indulged invariably and passionately in making prayers and appeal to the good sense and democratic nature of the ruling nation. In 1890, Surendranath Bannerjee requested his audience in England to record or vote their emphatic approval for the introduction of elective principles in India in the name of "those eternal principles of justice and liberty, which are engraved deep in the hearts, the convictions and feelings of Englishmen, to whatever party, to whatever creed, to whatever sect they might belong."¹⁵ A marked similarity of approach and appeal may be found in his address in the third Congress in Madras. He said : "When Italy was struggling for liberty England stretched forward the right hand of sympathy. When Greece was endeavouring to assert her

place among the nationalities of the earth, England was then the foster-mother of freedom, responsive to the call. We are neither Italians nor Greeks. We are English subjects."¹⁶

Again, the Congress leaders, notwithstanding their avowed loyalty, believed in their inalienable right to constitutional agitation. Gokhale defined it very clearly, but the importance of it was more or less theoretical. The early Congress leaders were also not oblivious of an ultimate aim, and the evils of foreign rule. S N Bannerjee said in 1886: "Self-Governing is the order of nature, the will of Divine providence. Every nation must be the arbiter of its own destinies—such as the omnipotent fiat inscribed by nature with her own hands and in her own hand."¹⁷ Presiding over the 20th Congress, Henry visualised the ideal of "a Federation of Free and Separate States of India." Dadabhai Naoroji said in London: "It is not my opinion only that foreign rule is a distinct evil, but it is the opinion of eminent Anglo-Indian officials. 120 years ago John Shore said: 'Whatever may be the benefit of the British system of Government, the evil of foreign domination counter-balances all those benefits'. Macaulay said: 'The heaviest of all yokes was the yoke of the stranger. Again, he said that of all tyrannies the worst was the tyranny of a nation over a nation. Lastly, the late Lord Salisbury put the relation of India to England with brutal frankness in saying that 'India must be bled.'¹⁸

The Congress leaders took their stand upon the solemn pledges given by the rulers themselves from time to time. The Queen's Proclamation of 1858 was to them as clear and fresh in memory as the first touch of love. It was to them as authentic and sacred as the Sermon on the Mount. This Proclamation and similar other promises were repeatedly quoted by them in support of the justice of their demands. Surendranath Bannerjee declared: "The Proclamation is the Magna Charta of our rights and liberties. The Proclamation, the whole proclamation and nothing but the Proclamation—is our watchword, our battle-cry and the ensign of victory. It is the gospel of our political redemption."¹⁹ In the fourth

Session of the Congress at Allahabad, Lord Ripon's words were quoted : "Queen's Proclamation is not a treaty ; it is not a diplomatic instrument ; it is a declaration of principles of Government."²⁰

British reaction to the Indian National Congress

The above role and strategy of the Congress was not without entailing the hostility of the Paramount Power. During the first three years of its inception, the authorities were well-disposed towards its activities. High officials attended its deliberations, not only as observers but even as delegates. The Congress leaders were entertained by Lord Dufferin in Calcutta at a garden party in 1886 and by the Governor of Madras in 1887. But as the Congress developed its strength and stature the Government attitude also changed. Even as early as 1887, a district officer called upon a gentleman to furnish a security of Rs 20,000 to keep the peace simply because he had attended Madras Congress in defiance of his wishes. In 1888, Lord Dufferin expressed himself against the aspirations of the Congress. He felt Congressmen "seek to sit in the chariot of sun by demanding representation and enlargement of councils and legislatures on elective basis."²¹ He warned : "The man who stretches forth his hand towards the ark, even with the best intentions, may well dread lest his arm should shrive upto the shoulders."²²

The government was not, however, prepared for the vigorous pressing by the Congress for the fulfilment of its programme, and the official attitude speedily changed to one of tolerant suspicion, if not of antagonism. In a celebrated speech at Calcutta on 1 November 1888, Lord Dufferin 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 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. It is not evident that large sections

of community are already becoming alarmed at the thought of such self constituted bodies interposing between themselves and the august impartiality of English rule."²¹

In 1904, Lord Curzon displayed the same attitude by refusing to receive the resolution of the Congress at the hands of its President, Henry Cotton, though for his own sake he expressed willingness to meet him personally, and insisted that the custom of sending the messages to the Government be followed. In 1907, even the liberal John Morley wrote the following : "A prominent cause of the unrest among the educated Hindus is the Indian National Congress movement. The members are practically self elected and include all who have time, money and inclination to travel to the annual place of meeting and who are in no sense the authoritative representatives of even the educated class."²² Samuel Smith represents the liberal opinion, saying ; "The Indian National Congress is a very great political factor, a factor of the first magnitude, it cannot be ignored. It has raised in the most moderate and constitutional manner serious demands, and the principal of these... it may be said to lie at the basis of all the others—is one for elective representation in the great council in India. That is a legal and constitutional demand which we must deal with sympathetically if we wish to retain the good will of the large body of the people of India. Unless we do so, we are preparing ourselves a time of trouble in India, when seditious agitation may take the place of constitutional action."²⁴ The more radical view is represented by the following contemporary English estimate of the Congress in 1885 by RS Watson : "The importance of the meeting cannot be estimated by the numbers who attended it. It must be the first time that an attempt has been made to obtain united political action from the various races and religions which make up the people of our great Indian dependency. It was the beginning of a movement which our generation will not see the end of, but which must be fraught with momentous consequences for England and India alike. Whether they shall prove alike happy for both lands or shall be disastrous to either or both depends upon the wisdom, patience and for-

bearance, which are mutually practised."²⁵ John Slagg also remarked in the same tone : "Now, this Congress is to my mind one of the most extraordinary occurrences that are to be found during the period of British rule in India. Many may dislike it, but it would be the folly to under-rate its profound importance. It is like the handwriting on the wall of Belshazzar's palace. It shows that the time has passed when the paternal despotism we have hitherto maintained in India could satisfy the new life and the new desires which the English language and literature have breathed into the population. The voices which tell us of this great fact are altogether friendly. The debt of gratitude is freely admitted and they only call upon us to worthily complete the work which has been begun. It rests with the people and their leaders in this country to determine the character of the response that shall be given to the appeal thus made from India."²⁶ Representing the conservative attitude, the *Times*, in 1886, said : "The first question which this series of resolutions will suggest is whether India is ripe for the transformation which they involve. If this can be answered in the affirmative the days of English rule are numbered. If India can govern itself our stay in the country is no longer called for. All we have to do is to preside over the construction of the new system and then leave it to work. The lawyers, schoolmasters and newspaper editors will step into the vacant place and will conduct affairs with no help from us. Those who know India best will be the first to recognize the absurd impracticability of such a change. But it is to nothing less than this that the resolutions of the Congress point. If they were carried out the result would soon be that very little would remain to England except the liability which we should have assured for the entire Indian debt..."²⁷

In the first decade of the twentieth century, the Indian National Congress had to pass through a great crisis. In 1900, Lord Curzon wrote to the Secretary of State : "The Congress is tottering to its fall, and one of my great ambitions, while in India, is to assist it to a peaceful demise."²⁸ In 1897, it was

in relation to the Congress demands as well as other happenings in India that Lord George Hamilton, the Secretary of State for India, flung the most provoking reply. He said : "The liberties of British Constitution did not apply, for instance, to criminal lunatics; and in India, almost without warning, an apparently peaceful population might suddenly become as dangerous as criminal lunatics, with one subject before them to murder the class alien to them."²⁰

In spite of this growing hostility of the Government, the basic strategy of the Congress and deeper loyalty of the majority of its members remained unshaken. Basically, they had pinned their faith not so much on the good sense of every British ministry or its spokesmen as on the traditional and institutional sense of justice of the British people and the liberals. For example, the President of the Twelfth Congress unambiguously acknowledged that "a more honest or sturdy nation does not exist under the sun than this English nation."²⁰ The Government hostility, however, threw the Congress into stronger and more definite opposition. Its orators gathered fire. Its activities widened and its roots deepened. A O Hume warned the Government that it was surrounded by time servers, self seekers, flatterers, underlings and therefore it was out of touch with real public opinion. William Wedderburn cited the parallel of the Bourbones of France : "They had neither eyes to see nor ears to hear, and sudden destruction was brought about them by the hatred of intellectuals energising the dull despair of the peasant masses."²¹ In this way the Congress movement outlived the age of satire and opposition, and by the year 1900, arrived at a period when its president justified its existence as the political conscience of the country. Gradually, the Congress began to fulfil the object for which it had been created. Patiently and candidly, it criticised the various policies of the Government and suggested the obvious remedies for national ills. The Congress was not merely a safety valve as the officials had visualised it. It was something real and substantial. To the educated classes, it offered a national platform to create a new India. It was for

them the part of embarkation on a patriotic voyage. Through it they concerned themselves not only with the criticism of Government policies or demanding reform but also with the creation of a national outlook embodying political education of large classes of people. In criticising the Government or in carrying out the task of national regeneration, the Congress adopted Western methods. Monster meetings, petitions and resolutions became common. The platform became an institution and the pamphlets or the placards were put to new uses. In 1888, Hume set on foot aggressive propaganda. Lecturers were sent out; over 1,000 meetings were held in towns and villages; pamphlets, tracts and leaflets were distributed. "One pamphlet which was translated into twelve different languages, raised a storm. By way of a parable it contrasted two villages, one typifying India under representative Government, the other, India under the existing system. The former was thriving and prosperous, the latter a scene of misery. The people were oppressed and grew poorer everyday, half the houses were in ruin; their land was going out of cultivation, a picture was given of a British official under the suggestive name of 'Mr Zabardast'—meaning oppressor. The moral of the parable was that if the people wanted to improve their lot, they must unite and press for representative institutions."³¹

This type of constitutional agitation was carried on even in England. In the same year, ie, 1888, a paid agency was established in London, which organised meetings and arranged lectures in different parts of England. It distributed pamphlets and displayed placards to mould public opinion. It was followed by the 'British Committee' of the Indian National Congress which published a weekly paper, *India*. Next year, the Congress Session of Bombay (1889) decided to send a seven-man deputation to England to represent before the British public its views on the question of political reforms or representative councils in India. The deputation (1890) which included prominent leaders like Hume, Ferozeshah Mehta, Manohar Ghosh and Surendranath Bannerjee, made a deep impression on the English audiences. Many such deputations.

and tours followed, especially the one made by Gokhale in 1905. After hearing Gokhale the following impression was conveyed by a correspondent: "Converts to the cause have been numerous... The power and the directness of his appeal was impossible to resist.. His constructive skill is the theme of universal laudation. My happiness is great for prose, and I curse my fate, I am not a poet."³³

The role of the Indian National Congress, ever since its inception, had no doubt been important and beneficial in many respects. In creating a wider outlook and providing a national platform its work had been pioneering. It had succeeded in exposing consistently the real nature of the fiscal, administrative and constitutional policies of the foreigners. It had tried to mobilise public opinion in India and abroad as never before. Even in respect of leadership and talent, few organisations could have been equally God-given. During its long history of struggle for India's freedom, carried on from generation to generation, the Congress experienced both sorrow and fulfilment and many triumphs and defeats. "But under the superb leadership of the Father of the Nation, sorrow was made to chasten and purify the people and every defeat was turned into an incentive for redoubled effort and a prelude to victory."³⁴

References

1. Bonerjee, W C, *Introduction to Indian Politics*, p. 63.
2. *Round Table*, December 1917, p. 27.
3. Mazumdar, RC, *Advanced History of India*, Vol. III, p. 892.
4. Wedderburn, W, *AO. Hume*, p. 63.
5. Mazumdar, RC, *History of National Movement in India*, Vol. I. p. 397.
6. Mehta, Ferozeshah (1890)—vide Maganlal, *Rise and Growth of Indian Liberalism*, pp, 190-91.
7. Basu, Bhupendranath, *Legislative Assembly Debates*, 8 February 1910, p, 116.
8. Ranade, vide Desai, AR, *Social Background of Indian Nationalism*, p. 294.
9. Bannerjee, Surendranath—vide *Modern Review*, June 1909, p. 642.

10. Naoroji, Dadabhai—vide Desai, AR, *Social Background of Indian Nationalism*, p. 294.
11. Maganlal, *Rise and Growth of Indian Liberalism*, p. 186.
12. *Report of 22nd Indian National Congress at Calcutta*, p. 12.
13. *Ibid*, p. 12.
14. Desai, AR, *Social Background of Indian Nationalism*, p. 294.
15. Bannerjee, A C, *A Nation in Making*, p. 117.
16. *Modern Review*, January to June 1909, p. 542.
17. Sitaramayya, P, *The History of the Indian National Congress*, Vol. I, p. 62.
18. Vide Department of Home (Public—Deposit), Progs. 29 of of February 1906 (Confidential).
19. Vide Maganlal, *Rise and Growth of Indian Liberalism*, p. 190.
20. Sitaramayya, P, *The History of the Indian National Congress*, Vol. I, p. 61.
21. Bannerjee A C, *Indian Constitutional Documents*, Calcutta, 1961 (No. 84), p. 57.
22. *Parliamentary Debates*, 4th Ser, Vol. III (1892), Col. 90.
23. "Signs of Times in India", *Edinburgh Review*, July-October 1907, p. 292.
24. *Parliamentary Debates*, 4th Ser., Vol. I (1892), Cols, 82-83.
25. "Indian National Congress", *Contemporary Review*, LIV (1888), pp. 91-92.
26. "The Indian National Congress", *Nineteenth Century Review*, XIX (1886), p. 710.
27. *Hindu* (Madras), 16 January 1908, p. 1, Col. 1.
28. Ronaldshay, *Life of Lord Curzon*, II; p. 151.
29. Hansard, *Parliamentary Debates*, 5 August 1897, p. 460.
30. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 61.
31. *Ibid*, p. 66.
32. Malley, O, *Modern India and the West*, p. 747.
33. Department of Home (Public Deposit), Prog. 29 of February 1906 (Confidential).
34. Sharma, Jagdish Saran, *India's Struggle for Freedom*, Vol. III, p. 838.

Early Administrative and Constitutional Reforms

OUT of the transformation going on in India the growth of the educated class, and all the forces which had contributed to bring the birth of the Indian National Congress, came another series of reforms. This time it was parliament that was called upon to act and, moreover, a conservative Parliament that finally passed the measures. The laws passed at the initiative of Lord Ripon had carried the political development as far as it was legally possible for any legislative body in India to do, and had been made elastic enough to accommodate such local political development as was taking place. It was in the larger fields of the provincial and imperial governments the pressure of the government was felt to be ill distributed.

The development of Indian National Congress, from its origin in 1885 to 1909, falls into a pattern. From 1885, to the passing of the Indian Councils Act 1892, was a period of slow growth. From 1892 to the introduction of the Morley-Minto Reforms in 1909, was a period of storm and unrest, in the process of which the Congress itself underwent a metamorphosis. Thus, the Indian Councils Act 1892, and the Morley-Minto Reform of 1909, formed two important landmarks in the development of the Congress. The period between them was of vital importance for during this time the Congress was faced with various questions—social, religious and economic and with problems of governmental policy, both administrative and constitutional. During this

period, Congress was also confronted with a crisis in its development, which nearly brought an end to it.

The period between 1885 and 1892 was naturally the most critical phase. The vital issue, which could only be solved by experience, was whether there was a sufficient volume of serious thought and enthusiasm in the country which could make united action, year after year, on a large scale, feasible. On the whole, the first decade of Congress history gave great encouragement and hope for the future. New life seemed to spring up everywhere, at whatever centre the holding of the Congress was fixed. By thus passing from one part of India to another each year the All-India character of the new Congress organisation became gradually determined and national unity was consolidated. This period, therefore, may best be regarded as one in which the National Congress was taking shape and finding its own place in the new life of the Indian nation. The store of new power and energy which had been accumulated within the nation as a result of the social and religious awakening was found to be far greater than had ever been imagined. These budding forces of life from within began to flower and bear fruit.

Most impressive thing in the first Congress was the far-sighted vision of the speakers themselves. Although it was the first time that Indian leaders had met on a political platform, their acquaintance with the public questions of the day appeared to be thorough and full. The knowledge of administration which they exhibited in their speeches was remarkable, judging from the fact that until then the Indian people had very little share in it. Although the first Congress leaders did not set out with any ambitious scheme, in view of self government, there were men who were already thinking in original terms about India's future. Norendranath Sen, for instance, a delegate from Bengal, made the remarkable suggestion that as an alternative for a Standing Committee of the House of Commons in place of the India Council, there might be a small parliament in India with many Indian members. Indian political bodies should be asked to name

such members and also have a voice in the formation of the existing Executive Councils.¹

The Congress has admirably focussed educated opinion, passing valuable judgments on events and policy, and demanding necessary reforms from Government. The nine resolutions² of the first Indian National Congress mark the beginning of the formulation of India's demands. The first asked for a Royal Commission to enquire into the working of the Indian administration. The second for the abolition of the India Council. The third dealt with the defects of the Legislative Councils in which then all the members were nominated, and asked for the admission of elected members, for the right of interpellation, for the submission of budgets to the Councils, for the creation of Councils in the N W P and Oudh and in the Punjab and for a Standing Committee in the House of Commons to consider formal protests from majorities in the Councils.

The second resolution was moved on 29 December 1885 by Chiplonkar, and asked for the abolition of India's Old Man of the Sea, the India Council. He pointed out that India was not governed by the Crown but by retired Anglo-Indian officials, looked on doubtfully by Lord Beaconsfield in 1858.³ Ananda Charlu was very caustic in seconding the resolution, and commented on the oddity of the "oligarchy of fossilised Indian administrators", who were "superannuated for service in India", being competent to deal with increased complexity of problems in England, where the improved climate could only diminish the rate of decline. The abolition of the Council was a primary condition of all other reforms. Pherozechah Mehta also thought that effete Anglo-Indians, who would be partial to their brethren in India, were a very unsatisfactory appellate tribunal. The resolution was adopted unanimously and was carried at intervals ever since, but in vain. The third resolution was moved in a full and careful speech by K T Telang, who usefully indicated possible electorates for members of the Legislative Councils and S Subramania Iyer seconded, both by personal experience as members knowing how "little influence they possessed in the

Councils either for good or for evil.”⁴ They could not be “of any great use to the country.” Dadabhai Naoroji cogently said that they had learnt from “the English people how necessary representation is for good government”; without it “what good is it to India to be under the British sway? It will be simply another Asiatic despotism.... We are only British drudges or slaves.”⁵ There was a long debate and the resolution was carried unanimously on the following day. It was partly granted in the Minto-Morley reforms 34 years later. It should not be overlooked, however, that in the same year, 1885, Lord Robert Churchill in introducing the Indian Budget promised a full administrative reform of India, a fact which shows that the Indian government had itself perceived the need for readjustment.⁶

The second Congress had captured the heart as well as the mind of India. The famous scholar, Rajendralal Mittra demanded, with no uncertain voice, that representatives of the people should be elected to the Legislative Councils: “We live, not under a National Government, but under a foreign bureaucracy; our foreign rulers are foreigners by birth, religion, language, habits, everything that divides humanity into different sections. They cannot possibly dive into our heart. They cannot ascertain our wants, our feelings, aspirations. They may try their best, and I have no reason to doubt that many of our Governors have tried hard to ascertain our feelings and our wants; but owing to their peculiar position, they have failed to ascertain them”⁷.

In 1886, the resolution of the Congress drew up some tentative suggestions regarding the reform of the Legislative Councils. The most important feature of them was that the supreme and the provincial Legislative Councils were to be materially increased. On the total number of members: no more than one-half were to be elected, not more than one-fourth were to be officials and not more than one-fourth were to be nominated by the government. The elected members of the Supreme Legislative Council were to be elected by the elected members of the provincial Legislative Councils. The Council should be given the power to discuss all legislative

measures and all financial questions including the budget. Moving the resolution, Surendranath Bannerjee suggested that if the above programme did not please the government, than they could devise any system of their own. Congress only wanted representation, for according to him, "Representation, is our motto, our watchword, our battle-cry, the gospel of our political redemption."⁸ Delivering the Congress Presidential address, Dadabhai Naoroji remarked: "Whatever Acts they pass that do not quite please us, we, whether rightly or wrongly, grumble and grumble against the Government and the Government only. It is true that we have some of our own people in the Councils. But we have no right to demand any explanation, even from them, they are not our representatives, and Government cannot relieve themselves from any dis-satisfaction we may feel against any law we do not like."⁹

The third Indian National Congress met at Madras in December 1887. It reaffirmed the necessity of the admission of representatives to the Legislative Councils, and Surendranath Bannerjee said in proposing it: "We unfurl the banner of the Congress, and upon it are written, in characters of glittering gold, which none may efface, the great words of this resolution: "Representative Institutions for India."¹⁰ Pandit Madan Mohan Malaviya laid great stress on the neglect of Indian affairs in Parliament. The Fourth Session of the Congress also passed a resolution on the necessity of the expansion and reform of the Legislative Councils. The fifth Congress met in Bombay on 26 December 1889. Eardley Norton moved a resolution.¹¹ The existing councils were shams, and they demanded to be given half of each council, "to do with as we choose". He declared: "We shall have the right to control ourselves; we shall have the right, to a certain extent, to control our taxation; we shall have the right to criticise the budget, and last, but not least, we shall have the glorious privilege of interpellation, a right which, if properly applied, will ensure enormous benefit both of the rulers and of the ruled."¹² Pandit Ayodhyanath, in seconding the resolution, said that the existing Councils were a *farca*, and

Pandit Bisan Narayan Dhar remarked that if the Government really wished to know the opinion of the people, the principle of election must be accepted. Delivering the Congress Presidential address in 1889 at Bombay, William Wedderburn remarked : "...in the matter of Parliamentary control, things have gone from bad to worse, until they are now about as bad as can be. It is now more than a hundred years ago since Edmund Burke pointed out the crying need for a strong impartial control in England over Indian affairs."¹³

In 1889, a skeleton scheme for the reform and reconstitution of the supreme and the provincial Legislative Councils was drawn up by the Congress. According to it, as in the 1886 scheme,¹⁴ the Councils were to consist respectively of members not less than one-half of whom were elected, not more than one-fourth to be ex-officio members and the rest to be nominated by the government. Members were to be elected by indirect elections at the rate of one per five millions of the population to the Supreme Legislative Council and of one per million of the population to the provincial Legislative Councils. The scheme was adopted by the Congress and the president submitted it to Charles Bradlaugh, MP, who was present at the session, with the request that "he may be pleased to cause a Bill to be drafted on the lines indicated" in the skeleton scheme and introduce it in "the British House of Commons."¹⁵ The scheme according to Eardley Norton, the mover of the resolution, took in to consideration two great principles and proposed to embody them in an act of Parliament. These two principles were first, "the principle of election by the people" and second "the representation of the minorities of the country."¹⁶ By another resolution, a deputation was to be sent to England "to represent its views in England and press upon the consideration of the British Public, the political reforms which the Congress had advocated."¹⁷ The members of deputation including AO Hume, Pheroze Shah Mehta, Manmohan Ghose, WC Bonnerjee, Eardley Norton, RN Madholker, Sharfuddin and SN Bannerjee, left for England early next year. This was the first Congress deputation sent to England, and its mission in the words of one of its

members, was to "press for the inauguration of a reform that was to culminate in the establishment of self-government in India."¹⁸

On meeting on 29 December 1891, Surendranath Bannerjee who moved Resolution II, insisted on the value of the Congress in bringing about reforms, pointing to the demand of the Congress for Legislative Council in the NWP and the Punjab. He urged that India was not well governed, but "it is not the men who are to blame; it is the system, it is the bureaucracy, the autocratic despotism, that has been established, that must be arranged before the bar of public opinion in India and throughout the civilised world.... It is a despotism, tempered by a free press and the right of public meeting."¹⁹

India Councils Act 1892 :

Right upto the time of the passing through the British Parliament of the India Councils Act in 1892, the Congress had repeatedly, year after year, confirmed its own "Council Reform" Resolution and sent it to the British Parliament. This was done with a somewhat dreary iteration and the monotony of it began to pale. At the Poona Congress of 1889, which was attended by Charles Bradlaugh and presided over by William Wedderburn, from London, the Congress went much further. It submitted a complete scheme to Bradlaugh with a request that he would cause a Bill to be drafted on the lines therein indicated, and that he would introduce this at the earliest possible moment into the House of Commons as the Congress proposal. Acting on these instructions Bradlaugh introduced a Bill in the House of Commons in 1890 but it had to be dropped after the first reading. In a letter to the Secretary of the British Committee of the Congress, Bradlaugh explained that it was "disapproved" of by the English press of all shades of opinion and was also not supported by "any considerable number of members of the House."²⁰ A new and modified bill, entitled "An Act to amend the India Councils Act of 1861" was drafted and introduced in the House by Bradlaugh again. Lal Mohan Ghosh, at the Congress in 1890, referring to the above bill, stated: "This new and modified Bill affirms all the great

questions of principle upon which we are all agreed." These were firstly that there should be "some substantial expansion of our Supreme and Local Legislative Councils" and secondly that there should be "some fair share of popular representation in these councils, and, further, that this popular representation should be based upon some application of the principle of election."²¹ Bradlaugh, unfortunately, did not live to finish his great and noble work for India to which he had dedicated the later years of his life. He died in 1891.

At about the same time, Lord Cross, the Secretary of State for India, introduced a government measure in the House of Lords which was ultimately passed as the India Councils Act 1892. By this Act the number of additional members in both the Supreme and the provincial Legislative Councils was increased. The Act also provided that the Governor-General in Council "may from time to time with the approval of the Secretary of State in Council, make regulation as to the conditions under which such nominations or any of them shall be made", and also "prescribe the manner in which such regulations shall be carried into effect," When the India Councils Bill was being read for the second time in the House of Commons, an amendment was moved by C E Schwann, a member of the British Committee of the Congress, that "no reform of the Indian Councils which does not embody the elective principle will prove satisfactory to the Indian people, or compatible with the good government of India."²² G N Curzon, who later became the Viceroy of India and who, at that time, was Under Secretary of State for India, in reply pointed out that the Bill did not exclude some such principles, "be the method of election, or selection, or delegation or whatever be the particular phase that you desire to employ." Even Lord Kimberley, stated Curzon, had declared that he regarded the words of the Act to a certain extent as "an admission of the elective principle."²³ But Curzon also said that the amendment was vitiated by a two-fold fallacy, for while Schwann affected to speak on behalf of the Indian people, he at the same time entirely ignored the primary conditions of Indian life, for who were the people

of India? The people of India were the voiceless millions who would neither read nor write in their own languages, who had no knowledge what so ever of English and who were not perhaps universally aware of the fact that the English were in their country as rulers. These people of India were "the ryots and the peasants", whose life was not one of political aspiration but of mute penury and toil. "The plan and policy of the Congress Party in India would leave this vast amorphous residuum absolutely untouched." Although the Congress contained a number of intelligent liberal-minded and public spirited men, who undoubtedly represented that portion of India, people who had profited by the educational advantages placed at their doors and who were more or less imbued with European ideas, "as to their relationship to the people of India, the constituency which the Congress Party represent cannot be described as otherwise than a minute and almost microscopic minority of the total population of India."²⁴ The amendment was withdrawn and the bill was passed as the India Councils Act of 1892. It is interesting to note that the term "election" was never used in the Act. the process was described as "nomination."²⁵

The Congress, at its annual session in 1892, by its first resolution, while accepting in a 'loyal spirit' the India Councils Act, regretted that the Act itself did not in specific terms "concede to the people the right of electing their own representatives to the Council."²⁶ It regretted the absence of the elective principle in the Act all the more, as Lord Cross, the mover of the bill, had believed in introducing the principles of representation by it and Gladstone also had declared in the House of Commons that the reforms intended to give to the people of India "a real living representation in the Legislative Council."²⁷

The Congress, even though it had won a victory, felt disappointed at the provisions of the Act. The position of Dadabhai Naoroji in England was also considerably weakened by the death of Charles Bradlaugh, who had so firmly championed the Indian cause in the British House of Commons. The Congress regretted "that the act itself does not concede

to the people the right of electing their own representatives to the Council and hopes and expects that the rules now being prepared under the Act will be framed on the lines of Gladstone's declaration in the House of Commons and will do adequate justice to the people of this country."²⁸ In spite of the somewhat meagre results of its early efforts, the Indian National Congress had now fully realised the usefulness of sustained political work. However dissatisfied the leaders of the public were with the Act, the general feeling was that the Congress had justified its existence and proved the value of united public opinion. It had also clearly succeeded in moving the Indian Government to go further than it had intended, and that in itself was a victory. Furthermore, it had begun to train a number of public men to conduct public affairs in a thoroughly able manner and to take responsibility in the public administration.

The Act of 1892 for the first time accepted the principle of election and also gave members of the Council the right to question and discussion for the annual budgets without the right of voting. The official majority was maintained. The non-official members were to be recommended by municipalities and district boards. Five more non-official members were added to the Viceroy's Council, one to be elected by each of the four provincial councils and one by the Calcutta Chamber of Commerce. The Congress accepted the Act chiefly on the recommendation of WC Bonnerjee who was President at Allahabad in 1892. He fully hoped that the rules framed under the Act would be such as to give members the power to expand the Act. "I have no doubt", he said in his Presidential address, "that we shall be glad to put away the first plank in our Congress platform, namely, the reform and reconstruction of the Legislative Council."²⁹ He spoke thus because he thought that by their reconstruction the Government for the first time would be face to face with the representatives of the people and would know their wishes and fulfil them. But when the rules were framed there was great dissatisfaction. Dadabhai Naoroji, presiding over the ninth Congress at Lahore in 1893, said: "not only are the

present rules unsatisfactory, even for the fulfillment of the Act itself as interpreted in the House of Commons by Gladstone; not only have we yet to obtain the full living representation of the people of India; but also a much further extension of their extremely restricted powers, which render the Councils almost a mere name.... We are still to all intents and purposes under an arbitrary rule."³⁰

In the next year, at the Madras Congress of 1894, the following resolution was passed: "The rules now in force under the India Councils Act of 1892 are materially defective and the Congress prays that the Viceroy in Council will be pleased to have fresh rules framed in a liberal spirit with a view to the better working of the Act and suited to the conditions and requirements of each province"³¹ Alfred Webb, MP presiding over the tenth Congress at Allahabad, gave expression to the general feeling of educated India where he said: "Within the lifetime of a generation you have obtained in India what may be regarded as the first instalment of reform in the direction of the expansion and reconstruction of the Legislative Councils, which has cost their countries centuries of toil and effort. You have many reasons to be proud of what you have achieved in other direction also."³² Thus the educated middle-class of India in these years had gained their first victory, however limited and incomplete, over bureaucracy.

The India Councils Act of 1892 did not come upto expectations of the Congress. Surendranath Bannerjee stated: "Year after year we have been recording resolutions praying for the introduction of the representative element in the Councils and the expansion of their functions." Lord Dufferin he continued, had despatched a minute to the Secretary of State in which he had "partly supported the view of the Congress" and recommended the reconstitution of the Provincial Councils on an "elective basis." But the representative element had not been recognised in the Act. Instead, a clause known as "the Kimberley clause" provided for "the selection but not the election, of representative members from the various bodies."³³ He appealed to the leaders of the Liberal

Party in England for the application of the elective principle to the constitution of the Councils.

At its next session held in Lahore in 1893 a resolution was passed which while thanking the Viceroy for the liberal spirit in which he had endeavoured to give effect to the India Councils Act of 1892, pointed out that if real effect was to be given to it some material changes were necessary in the rules and in the practice of most of the local governments. Discussing the rules framed for Bombay, Gopal Krishna Gokhale remarked that although he would not say that the rules had been deliberately framed as to defeat the object of the Act, yet if the person who had drafted them, had been asked to frame them with the deliberate purpose of defeating the object, he would not have done better. Next year Madan Mohan Malaviya speaking with regard to the North-West Provinces pointed to the illiberal dispensation of the franchise. In his opinion it was necessary to have a further reform of the Legislative Councils so that "a larger number of non-official members" could be appointed, "armed with greater and more substantial powers to protect the interest of the people of this country."³⁴

In 1893, R N Mudholkar moved a resolution, dealing with the unsatisfactory results of the Councils Act of 1892. He pointed out that some success had indeed been gained, but less than they wished. Since 1887 reforms had been asked for by the Government of India, and in three sessions Bills were brought into Parliament; in 1892 an Act was passed, and the Conservative Government feared that its successor would bring in a more liberal measure. That Act did not give the right of election, but allowed the Viceroy to make rules to be approved by the Secretary of State, and in these there was "a sort of a right of election", also the right of interpellation was granted, but no discussion on the answers and the submission of the Budget to the Council without any right to vote thereon. In 1894 at Madras, Eardley Norton was called upon to move a resolution asking for the abolition of the India Council, without which the reconstitution of the Legislative Councils was useless. He observed : "At present

"we stand sandwiched between officials in India and officials in Europe." He warned : "If the Secretary of State is to be controlled by the Council, then abolish the Secretary of State. If the Council is to be controlled by the Secretary of State, then abolish the Council. The dual existence is useless, dangerous, expensive, obstructive."³⁵ Again the resolution was moved protesting against the retrograde policy of the Government in nominating a member to the Supreme Council without any consultation with the Provinces he was supposed to represent. The resolution was adopted.

A M Bose delivering his Presidential address in 1898 at Madras, said : "At present, out of the two hundred millions and more of India's people, not one solitary individual finds a place in any of those councils; and as we know, the Legislative bodies exercise no sort of control, direct or indirect, over them. Their deliberations are in secret chambers, and not even the faintest echo of suggestion, information or criticism can reach them from a public more ignorant of their proceedings than of the movements of the double stars or the composition of the Milky way in the far off heavens."³⁶ In 1904, the resolution claiming enlarged representation was moved by V Krishnaswami Iyer, who referred to the enlargement of the Council in 1892, and the power then given to discuss the Budget; but the budget having been settled before the discussion, the members had only to state their opinions and read their little essays, the discussion being a farce. Madan Mohan Malaviya seconded the resolution and said the reforms were good as far as they went, but more power should be given to the councils and they should be enlarged. He observed : "We have our minds imbued with the ideas of freedom through a body of English literature.... In our own country we are anxious to feel that we are really a part and parcel of the great British Empire which we love because of its love of freedom."³⁷ In 1905, the resolution on the further reform of the Legislative Councils was moved by J Choudhary, who remarked that recent legislation would have been very different had the Supreme Council been more than a debating society. Indians practically said to the officials : "That is

our suggestion : reason is on our side : justice is on our side : the votes are on your side : do just as you please.”³⁸ L A Govindaraghava Iyer seconded in a weighty speech, pointing out that England’s chief aim was not merely to govern India efficiently but “to make her self-governing.”³⁹

Although the Indian National Congress failed to secure from an unsympathetic Government any substantial grant of political reforms which it demanded for twenty years (1885-1905), it helped the political advancement of India in various ways. The annual sessions of the Congress, bringing together the leading representative men from remote parts of India, gave a reality to the ideal of Indian unity, developed patriotic feelings among all classes of the diverse races and creeds of India, and awakened political consciousness among a steadily increasing circle of educated Indians. Besides, as the more important political, economic and administrative problems of India were regularly discussed in the meetings of the Congress, and later also in the Provincial conferences, and these discussions often reached a very high level, the Indian National Congress became instrumental in widely diffusing very useful and accurate knowledge necessary for the political development, and educating public opinion on all questions concerning the welfare and progress of India.

The same object was further achieved by the part played by some of the Congress leaders in the enlarged Legislative Councils set up by the Act of 1892. A large number of very distinguished political leaders were elected members of these councils, and for the first time Indian point of view on every public question was most ably pleaded by them. The eloquent speeches of Pherozeshah Mehta and Surendranath Bannerjee, voicing the aims and aspirations of political India which were hitherto heard only in the Congress pandal or on public platform, were now echoed in the Council Chamber in the presence of the highest officials of the Government. Men like Gopal Krishna Gokhale, Asutosh Mukherjee and Ramkrishna Bhandarkar brought to bear upon the burning questions of the day such a mature knowledge and wealth of details that no government could easily brush them aside.

They achieved little success by way of practical results, but their activities as well as the career of Dadabhai Naoroji who placed the Indian question before the British public, and before the House of Commons when he was elected its member in 1892, roused the political consciousness of India, to an extent unknown before.

Apart from this notable contribution to the political training of the Indian people, the Indian National Congress enhanced the political prestige of India and quickened the sense of national pride in the heart of the Indians, in an indirect way, through the personality, character, patriotism, and high intellectual eminence of the great galaxy of eminent leaders who nurtured this infant institution and brought it safely to an adolescent stage. Men like Dadabhai Naoroji, Surendra Nath Bannerjee, Pherozeshah Mehta, R C Dutta, Lal Mohan Ghose, G K Gokhale, B G Tilak and Madan Mohan Malaviya to mention only a few made a deep impression not only upon all classes and shades of opinion in India but even upon Englishmen.

References

1. *Report of the Indian National Congress*. 1885. p. 69.
2. *Ibid.*, Resolution 1 to 9.
3. *Ibid.*, p. 28.
4. *Ibid.*, p. 28.
5. *Ibid.*, p. Resolution 3.
6. *Parliamentary Debates*, 4th Ser., Vol. III (1892), Col. 94.
7. *Report of the Indian National Congress*, 1886, p. 11.
8. *Ibid.*, p. 99.
9. *Congress Presidential Address 1886*, Vol. I, p. 5.
10. *Report of the Indian National Congress*, 1887, Resolution II, p. 27.
11. *Report of the Indian National Congress*, 1889, Resolution II.
12. *Ibid.*, p. 33.
13. *Congress Presidential Address*, 1889, Vol. I, p. 48.
14. *Report of the Indian National Congress 1886*, Resolution IV, pp. 97-98.
15. *Report of the Indian National Congress 1889*, Resolution II, p. 13.
16. *Ibid.*, p. 18.
17. *Ibid.*, Resolution XIII, p. 83.

18. Bannerjee, SN, *A Nation in Making*, p. 112.
 19. *Report of the Indian National Congress 1891*, p. 83.
 20. "The India Councils Reform Bill", *India*, 30 October 1890.
 21. *Report of Indian National Congress 1890*, Resolution I, p. 14.
 22. *Parliamentary Debates on Indian Affairs*, House of Commons, 1892, 28 March 1892, p. 134,
 23. *Ibid.*, p. 129.
 24. *Ibid.*, pp. 131-32.
 25. *Report of the Indian Statutory Commission*, Vol. I, para 134,
 26. *Report of the Indian National Congress 1892*, Resolution I, p. 27.
 27. *Ibid.*, pp. 26-27.
 28. *Ibid.* p, 27.
 29. *Ibid.* , p. 41.
 30. *Report of the Indian National Congress 1893*, p, 71.
 31. *Report of the Indian National Congress 1894*, Resolution IV.
 32. Alfred Webb, *Presidential Address*, Tenth Congress, Madras, 1894, Vol. I, pp: 160-61.
 33. *Parliamentary Debates on Indian Affairs*, House of Commons, 1892, 28 March, p. 29.
 34. *Report of the Indian National Congress 1894*, Resolution IX, p 110.
 35. *Report of the Indian National Congress 1894*, Resolution IV.
 36. *Presidential Address*, 1898, Vol. I, pp, 339-40.
 37. *Report of the Indian National Congress 1904*, p. 37.
 38. *Report of the Indian National Congress 1905*, p. 87.
 39. *Ibid.*, p. 107.
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Struggle For Better Reforms

"THE year 1904 and the Russo-Japanese War stand as the watershed between the old and the new in the political life of India."¹ The Japanese victory seemed to be the detonator that set a series of political explosions in the oriental world which had been slowly preparing since the Abyssinians crushed the Italians at Adowah. In 1905, Persia roused itself to an ephemeral constitutional regime. Turkey began to experience the stirrings of the Young Turks which regretted in the revolution of 1908. Symptoms of unrest began to agitate Egypt and Algeria. In India, as H P Modi expressed it: "The success of Island Empire of the East has opened up a vista of glorious possibilities. It has shattered the old time belief in the invulnerability of Western might and power. Men gaped with astonishment when they saw a power which had dominated the councils of Europe crumble into dust before the vigorous arm of a nation of patriots. This stirred into activity the East that was slowly awakening from her slumber—what Japan has done India can also do. The wish is often father to the thought and what men wish to believe they accept without critical examination. Thus the success of Japan has created a spirit of emulation in the breast of every Indian Patriot."²

Many of the causes for the restlessness in India were of long standing, and the feeling itself was by no means new. It had been more or less in evidence since Lord Lytton's term,

and even before. The new feature was the numbers involved. The educational system had continued to turn out annually its thousands, a certain percentage of whom invariably were crowded out in the struggle for government positions and in consequence cherished a varying degree of vindictiveness against the government. One of the first manifestations of the change in tone came at the Congress of 1904 when venerable Dadabhai Naoroji said: "The rising generation of Indians may not be able to exercise that patience which we of the passing and past generation have shown,"³ and asserted that a spirit of discontent and dissatisfaction was widely spread among the Indians in India.

The Liberal victory at the general election of 1905, after twenty years of Conservative rule was taken by the official record of the Congress in 1905 to mean the "return of hope and joy" for India. The appointment of John Morley, as the Secretary of State, was taken to be "the surest pledge that the right of despair and discontent was drawing to its close" and that "a new day of rational hopes and just aspirations on the part of the people and of a wise, patient and sympathetic consideration of their claims on the part of Government was about to dawn."⁴ In 1906, Morley was hailed by no other than Surendranath Bannerjee, as a political Guru, for Morley had been known more as an author than as a statesman, more "as the biographer of Cobden and Burke, as the author of *Compromise*" than as the radical politician. "Many of us," Surendranath said, "had, indeed, sat at his feet, in the sense that we had imbibed from his writings those lessons of political wisdom dominated by the higher considerations of expediency, which have their roots in the eternal moralities of things." Thus as a "master figure in the world of thought and action," Morley was welcomed by Surendranath and others "to the seat of the great Akbar, in the full confidence that he would fill it with more than the wisdom, with scarcely less than the beneficence, of the greatest of the Mogal Emperors."⁵

The coming into power of the Liberals, hardly a fortnight after the arrival of the new Viceroy, Lord Minto, in India, in

November 1905, created a novel situation. Commenting on it Morley remarked : "This coincidence between the uneasy stir there and the ascendancy here of parliamentary groups all agreeing strongly in a general temper of reform constituted a serious element in the situation at Simla and Whitehall alike."⁶ Lord Minto perceived the situation and set to work to devise reforms. In his own words : "We heartily recognised the loyalty of the masses of the people of India, and we were not prepared to suppress new but not unnatural aspirations without examination. You cannot sit on a safety-valve no matter how round the boiler may be, some thing had to be done and we decided to increase the powers and expand the scope of the Act 1892."⁷

As the discontent grew stronger and more general, wide divergencies of opinion began to appear. Gradually they coalesced into two types of thought, which came to be characterised as the moderates and extremists. One believed that the best prospects of India lay in a gradual constitutional acquisition of successive privileges from the English Government until ultimately India should become a new self-governing colony of the British Empire. The other was anti-British through and through and sought the entire expulsion of England from India as soon as possible. It was usually preferred that it be without violence, but England must be made to go at any cost.

The "just aspirations on the part of the people" for which Congress most depended on Morley, included the introduction of further reforms in India. Soon after 1892, when the Indian Councils Act was passed, demands had been made by the Congress for "representative institutions of a modified character."⁸ In 1898, the Congress at Madras, in one of its resolutions expressed the desire that the Executive Councils of the provinces of Bombay and Madras should each be enlarged by the inclusion of an Indian member. The importance of such reforms was emphasised by Anand Mohan Bose, the President of the year. According to him, these bodies "shape and guide the whole of the administrative policy of the Government." The Executive Councils were much more important

than the Legislative Councils as they decided "questions of supreme importance to the happiness and well-being of the people."⁹ RC Dutt in his presidential address proposed that three Indian members should have their seats in the Viceroy's Executive Council. For in this way only the Viceroy could have the advantage of hearing the Indian point of view. He also raised the question of the enlargement of the provincial Legislative Councils for according to him, the time had come when 'a fuller scope might be given to the expression of our views and representation of our opinions.'¹⁰

In 1904, under the presidency of Henry Cotton, the Congress went a step further and resolved that at least two members should be sent to the English House of Commons from India; and that both the Supreme and provincial Legislative Councils should be enlarged and given a non-official majority. The Congress, in 1905, met at Banaras at a critical time. Gokhale, the President of the session, ended a vigorous speech by pressing for the reform of the Legislative Councils and for a larger share in the administration and control of the Government by Indians. Regarding the former, he was in favour of raising the proportion of elected members to one half of the total number. He also wished that the budget should be formally passed by the Councils and that members should be allowed to bring forward amendments, a right of veto resting with the President of the Council. Gokhale also advocated the appointment of at least three Indians to the Secretary of State's Council. By resolution of the same Congress, it was proposed that the time had come for a "further expansion and reform of the Supreme and provincial councils," in order to make them "more representative of the people" so that the non-official member might have 'a real voice in the Government of the country.'¹¹ It recommended an increase in the number of non-official and elected members and the right to divide the Councils on financial matters.

But the most ambitious proposal was made from the presidential chair, when Gokhale declared that the goal of the

Congress was that India should be governed in the interest of the Indians themselves and that in the 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."¹² This was not altogether new, for the year before in 1904, Henry Cotton had envisaged "the establishment of a federation of free and separate States, the United States of India," placed on an equal footing with the other "Self-governing Colonies", but at the same time "cemented together under the aegis of Great Britain."¹³ As autonomy was the keynote of England's true relation with her great colonies, it was also to be the keynote of India's destiny.

Neither Cotton nor Gokhale wished to break the country's relation with Great Britain after the goal of the Congress had been achieved. In fact, according to Gokhale "for better, for worse, our destinies are now linked with those of England and the Congress freely recognises whatever advance we seek must be within the Empire itself."¹⁴ The introduction of further reforms in India was also the subject of discussion between Lord Minto and the new Secretary of State for India, both of whom were aware of the Congress as a political party. Soon after his arrival in India, Minto had to send for Gokhale to see that no demonstration took place by the Congress during impending visit of the Prince and Princess of Wales to Calcutta in the last week of December 1905. After his return to England, the Prince of Wales, in his Guildhall speech, emphasised the need for closer and wider sympathy between the government and the governed in India as a moral of his visit. Morley met the Prince personally, had a long talk with him, and was told that the Congress was rapidly becoming a great power. He also met Gokhale who happened to be in England, and wrote to Minto, "it will mainly depend upon ourselves whether the Congress is a power for good or for evil." It was true that some of the persons connected with the Congress were questionable, but this was all the more reason why they should not play "their game by harshness, stiffness and the like."¹⁵

Minto was equally sympathetic towards the Congress and in reply to Morley's letter wrote, "We must recognise them and be friends with the best of them." But he was afraid at the same time, that there was much that was "absolutely disloyal" in the movement and that there was danger for the future. He liked Gokhale and was "very far from saying that he is in sympathy with much of his party literature," but still, Minto thought that Gokhale was playing with "dangerous tools."¹⁶ Minto also thought of a "possible counterpoise to Congress aims" in a Council of Princes or in a Privy Council composed of Native Rulers and a few other big men, to meet once a year for a week or a fortnight at Delhi. In this way, the government would obtain "different ideas from those of Congress, emanating from men already possessing great interest in the good government of India."¹⁷

Morley in reply, wrote : "Fundamental difference between us, I really believe, there is none. Not one whit more than you do I think it desirable or possible, or even conceivable, to adopt English political institutions to the nations who inhabit India." But the "spirit of English institutions" was a different thing and it could not be avoided. "Cast-iron bureaucracy" could not go on for ever. He remarked that everyone warned him of the growth of a new spirit in India. Lawrence, Chirol, Sidney Low, all sang the same song—"You cannot go on governing in the same spirit ; you have got to deal with the Congress party and the Congress principles whatever you may think of them: Be sure that before long the Mohomedans will throw in their lot with the Congress men against you." Morley could not say how likely that might be. But he had no ambition to take part in any grand revolution during his time of responsibility. But a change, if not a revolution, was imminent and although Minto could not say what the change would be or how or when it would become, he was sure that the Congress should be accepted as one of the chief factors in the situation and as such should be recognised, "as a power with which we have to deal and with whose leaders we must reckon."¹⁸

Minto was in full accord with Morley about the need to

introduce reforms but was of the opinion that the initiative should be taken by the Government of India, as it was the government on the spot, and not seem to be taken as a result of instructions from home. In fact, in March 1906, Minto had already discussed in private, with some of the members of his Executive Council, the question of appointing an Indian Member to it. But on being opposed by them he had dropped the idea. In the Indian budget debate at about the same time, Gokhale had also raised the question of reforms in order to conciliate the educated classes and end the disorder in India. "There is but one way in which this conciliation can be secured and that is by associating these classes more and more with the government of their own country." England had committed herself to this policy by solemn pledges in the past. What India needed at that critical moment to save herself was "a government national in spirit, even though it may be foreign in personnel."¹⁹ Morley informed Minto of his intention of expounding "our mysteries to a scanty and listless audience," in other words to parliament. He promised to be cautious in his declaration "so that nobody can charge us with going over bag and baggage to the Congress people."²⁰ On 20 July, in the debate in the House of Commons, Morley declared: "I do not know that I agree with all that Congress desires; but speaking broadly of what I conceive to be at the bottom of the Congress, I do not see why any one who takes a cool and steady view of Indian Government should be frightened."²¹

Extremist View on British Government

Dadabhai Naoroji, the President of the Congress session in 1906, after declaring the goal of the Congress as the attainment of 'swaraj' or self-government, favoured a gradual introduction of self-government in India. There was no demand for an immediate grant, but just for "a beginning made at once towards that end." This was to be achieved, firstly by sending a 'Petition of Rights' to the King-Emperor, to the House of Commons and the House of Lords, and also by sending a deputation of able Congress speakers to England, "to convince the British people" of their claim to "all British

Rights to self-government."²² But the extremists wing of the Congress, especially, was of the opinion that the British Government would not introduce any substantial reforms or delegate powers to Indians. Tilak criticised as impossible and futile, the aim of the Congress of convincing the British electorate of the justice of its claims to self-government. He was also opposed to the Congress demand for more representation, for the appointment of additional members only meant that instead of a few more speeches being printed in the local papers, they would be published in the Government Gazette. Then what could even a majority of Indian members in the Council do? The Viceroy, by his power of veto, would have his own man. In Tilak's opinion, Morley, in spite of his love for India and all his philosophical attitude in his life of Gladstone, would be the first person to grant the Viceroy, the power of veto. Commenting on the presidential address of Dadabhai Naoroji to the Congress in 1906, he said that it was a "message of trust and hopefulness." But it was too much to expect from a man to preach any other method than that which he had been preaching all his life. But Tilak could not understand why Gokhale should follow this path and believe in taking out "more memorials." By the time Gokhale attained the age of Naoroji, he would be a disillusioned and broken-hearted man and sing, "in the strain of the swan."²³

A similar attitude was shown by Bepin Chandra Pal and Aurobindo Ghose. The former was sceptical and could not believe that "England was conscientiously and deliberately working for the political emancipation of India." It was his belief that England would not grant self-government to India until and unless forced to do so. Commenting on Morley's speech in Parliament, Pal said that "the new spirit" (by which he meant the Extremist group in the Congress) refused to accept the position of servitude and subordination for an indefinite period, as offered by Morley to the country, with the ultimate object of gradually paving the way for self-government. The new spirit in India "accepted no other teacher in the art of self-government except self-government."

itself."²⁴ It was impossible to achieve self-government without breaking the connection with Great Britain. The Congress, he thought, was striving to do the impossible. Aurobindo Ghose, though less sceptical, said that he welcomed the reforms as an instalment towards complete self-government. But he would not agree to "petty or illusory concessions which will draw away our inspirations."²⁵

Moderate View

On the other hand, Gokhale in his talks with Morley declared that the ultimate hope of the Congress was to see India "on the footing of a self-governing colony." Morley answered that it would take time but that "for reasonable reforms in your direction, there is now an unexampled chance."²⁶ At the same time he warned Gokhale that the chances of such reforms might be spoilt by the perversity and unreasonableness of some members of the Congress. Gokhale assured him that he would see to this and that he had written to his friends in India in a hopeful note. He like Morley could see that some of his friends were getting impatient. This difference of opinion in the Congress was viewed with alarm by certain members of Parliament, especially by William Wedderburn.

Wedderburn was of the opinion that the Liberal Government had everything to win by following a "courageous policy" and in March 1907, he wrote a letter to Morley in which he expressed his fears regarding the collapse of the Congress belief in liberal principles. Time was passing and there was enough reason to fear that, "unless some overt move were made, the best opportunity for action would be lost."²⁷ Minto had already appointed a committee from the Viceroy's Council under the chairmanship of AT Arundel to consider the question of possible reform. Curzon had also proposed the nomination of a number of ruling chiefs to the Imperial Legislative Council. They were to be known as extraordinary members of the Legislative Councils. Writing to Morley on 5 July 1906, Minto stated: "I have very nearly, on several occasions, suggested to you the possibility of a Native gentleman on my Council, but thought it would be premature to

say anything about it."²⁸ Writing to Morley on 27 February 1907, Minto made some important observations : "The truth is," he said, "that by far the most important factor we have to deal with in the political life of India is not impossible Congress ambitions, but the growing strength of an educated class, perfectly loyal and moderate in its views, which, I think quite justly, considers itself entitled to a greater share in the Government of India." Thus in his opinion if the educated class was conciliated, then much benefit would be derived but "if we do not, we shall drive it into the arms of the Congress leaders."²⁹

Minto was therefore very glad to receive, a few days later, a joint deputation of prominent Congress and Muslim leaders, who were all anxious to put an end to the state of unrest in India. Later, a second deputation visited him. Gokhale, heading the deputation, pressed for increased representation and amendments to the budget. He also asked for two Indian members on the Viceroy's Council and three on the Secretary of State's. The demand seemed reasonable to Minto. He wrote to Morley that Gokhale had also warned him that "the whole younger generation of India is going over to the Extremist side," that they were "quite unreasonable" and were attracted by doctrines preached by the Extremists of "getting rid of British rule." Thus Congress was itself facing a crisis and both the Moderate leaders, Surendranath Bannerjee and Gokhale, tried to avoid the crisis by appealing to the Government, to help them, and nothing could be more helpful than the immediate declaration of reforms which soon followed. In a speech to the Legislative Council on 27 March 1907, Minto announced that the Government of India had on their own initiative taken into consideration the introduction of reforms in India. "A change is rapidly passing over the land" and nothing could be more unfortunate for the country than that the Government of India "should fail to recognise the signs of the times."³⁰

After receiving the replies from the Local Government, the idea of the Imperial Advisory Council was abandoned and that of a Council of Princes substituted. Subsequently, in a

letter to the Secretary of State on 12 August 1908, Minto informed him that his idea was to "cancel the suggestion for advisory councils altogether."³¹ Regarding the enlargement of the Imperial Legislative Council, the Government of India informed the Secretary of State that in the scheme submitted to them by GK Gokhale, "who may be taken to represent the better informed section of Indian publicists," the Government was "assured of standing majority behind it and the head of the Government is further vested with a general veto." Gokhale only asked for "a minority—but a respectable minority of non-official members."³²

The memorandum submitted by Gokhale stated that though the India Councils Act of 1892 had been amply justified by the high average level of work done by elected additional members in the Supreme and Provincial Councils during the last twelve years, he thought that the time had arrived when another step forward should be taken in reforming these councils so as to increase their usefulness. The instalment of reforms which, in his opinion, had become overdue was "a further expansion of these councils with a large proportion of elected members" and "empowering the members to divide the councils on the Budget proposals of the Government which should be carried out only after they have been passed by the Councils."³³

As regards expansion of the Supreme Legislative Council, Gokhale proposed to fix the total number of members of the Council to 80, out of which the number of additional members were to be 21 and the number of seats open to election 14. Thus the Government was assured of a standing majority. As regards the Provincial Councils, a larger measure of expansion was necessary. According to Gokhale, every district in a province should be given the right to send a member to the Legislative Council of that Province. Morley advocated a scheme of a proportional representation, for then minorities would be protected against exclusion by majorities, and all large and important sections of the population should have the opportunity of returning members in proportion to their ratio to the total population.

Declaration of Morley-Minto Reforms

In the meantime, the forthcoming reforms had been made known to the princes and people of India, by the Proclamation of the King, on the occasion of the 50th anniversary of the transfer of the Government of India to the Crown. The Proclamation read by Lord Minto in the Durbar at Jodhpur on 2 November 1908, declared that the time had come when in the judgement of the Viceroy and other counsellors of the King, the principle of representative institutions might be "prudently extended." Morley was most anxious that the reform scheme should be presented to Parliament as soon as possible because "the chance of the Moderates holding their own against Extremists when Congress meets in the last week of December depends on their being able to show that we have our scheme actually ready for Parliament."³⁴

It was not long before the reforms were announced by the Secretary of State on 17 December 1908 in the House of Lords as "the opening of a very important chapter in the history of the relations of Great Britain and India." The delay in the inauguration of the reforms, he explained, was due to the trouble and unrest in India, but he stated, "the Government of India and myself have from the very first beginning of this unsettled state of things never varied in our determination to persevere in the policy of reforms." At the same time, Morley remarked that it should be remembered that "persevering in our plan of reform is not a concession to violence." Discussing the reforms he pointed out that in the provincial Legislative Councils, the official majority would be dispensed with, but in the Viceroy's Legislative Council the official majority was considered essential. This might seem inconsistent but he explained, "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 necessarily up to the establishment of a Parliamentary system in India, I for one, would have nothing at all to do with it."³⁵

First reaction to the Act of 1909

After this announcement by Morley the first reaction of the Congress was one of overwhelming satisfaction. Rash

Behari Ghose, President of the Congress in 1903, declared that India was "on the threshold of a new era. An important chapter has been opened in the history of the relations between Great Britain and India—a chapter of constitutional reform which promises to unite the two countries together in closer bonds than ever." A fair share in the government of the country has been offered to the people. Some people, he said, most probably referring to the Extremists, thought this to be impossible, but it had happened. "The time of the singing birds has come, and the voice of the turtle is heard in our land"...he remarked in joy, for Indians would now be associated in the everyday administration of their affairs. A great step forward had thus been taken "in the grant of representative government for which the Congress had been crying for years."³⁷ He hoped that after some years when the people had outgrown the present system of administration and had proved themselves fit for self-government, an exultant President of the Congress would be able to announce to a united people, the extension to India of the Colonial type of government, "binding our country to the empire, by the golden link of the Crown."³⁷

The chairman of the Reception Committee was equally jubilant and remarked that the reforms had been conceived in a liberal spirit and might be taken as a substantial instalment. Surendranath Bannerjee considered the proposal as "the crowning triumphs of constitutional agitation" and moving a resolution on them declared, "this Congress desires to give expression to the deep and general satisfaction with which the Reform Proposals formulated in Lord Morley's speech have been received throughout the country." For the proposed expansion of the Legislative Councils, the enlargement of their powers and functions, the appointment of Indian members to the Executive Councils, the creation of such councils where they did not exist and the further development of local self-government constituted, in the opinion of the Congress, "a large and liberal instalment of the reforms needed to give the people of this country a substantial share in the management of their affairs and to bring the

administration into closer touch with their wants and feelings." The resolution also placed on record its sense of the high statesmanship which had dictated the action of the government in the matter and tendered its most sincere and grateful thanks to Morley and Minto for the proposals.

At the same session of the Congress, Gokhale moved a resolution of thanks to Hume, Wedderburn, and the British Committee of the Congress. As the reforms announced by Morley were "a partial fruition of the efforts made by the Congress for the last twenty-three years," they must be a source of great satisfaction to Hume, the father and founder of the Congress. William Wedderburn had laboured "for the Indian cause during the last twenty years" and along with other numbers of the British Committee deserved thanks of the Congress on the happy occasion. Discussing the reforms, Gokhale remarked that during the past twenty-three years the most important part of the work of the Congress had been "the energy expended by it on modifying the bureaucratic administration" it might be fairly said that the reforms that had been announced went "a long way to effect the modification."²⁸ Regarding electoral colleges and representation of minorities, Gokhale commented that it was all very well to say that "the end we have in view is absolute unity in the country, union among all different elements." But the existing facts, as they were, had to be faced. There were acute differences in the country and any scheme of representation, which secured to important classes proper representation by means of election of men in whom those classes had confidence, "promotes the true interest of unity in the country."

Describing his impressions of the Congress at Madras in 1908, a former member of Parliament, G B Clark, remarked that "one could not fail to be struck with the warm appreciation accorded to the Secretary of State and to the Viceroy." In fact, there was a general tendency to regard Morley as "the pure fount of reform."²⁹ The same enthusiasm was shown by other important members of the Congress. R C Dutt remarked that the reforms announced by Lord Morley "are:

solid and substantial and are precisely in the direction in which the Indian National Congress had demanded reforms during the last twenty years." In the proposed scheme, the voice of the people would find expression through recognised official channels, the wishes and the opinions of the people would influence and shape the internal administration of the country. Ambica Charan Mazumdar, another ex-president of the Congress, also gave a hearty welcome to the long expected reform scheme. According to him, it was "remarkable" in three of its essential points. The Advisory Councils and the Councils of Notables, both of which were considered by many as dangerous experiments, had been voted by the Secretary of State. Secondly, the expansion and improvement of the Provincial Legislative Councils and lastly, the provision for the appointment of at least one Indian member in the Executive Council of the Governor-General and of the Governors of Madras and Bombay were distinct steps towards future development. At the same time he said that there was a long way between a well-devised scheme and its faithful execution and much depended upon the spirit in which it was received "not simply by the people but by the authorities also."⁴⁰ According to Madan Mohan Malaviya, the proposed reforms were considered to make the second great triumph of the Congress Movement. In his opinion they had been conceived in a truly liberal and praiseworthy spirit and when carried out "would mark the beginning of a new era, full of hope and promise for the future"⁴¹

Changed view about the Reform

With the publication of the Rules and Regulations under the Reform Act, on 15 November 1909, about five weeks before the session, the attitude of the Congress underwent a great change. Of the 60 additional members to the Legislative Council of the Governor-General, only 25 were to be elected representatives. Special provision had been made for the representation of the professional classes, the landholders, the Muslims, European Commerce and Indian Commerce. The first of these interests were to be represented on the Governor-General's Council by the members elected by the

Provincial Legislative Council and by the district Councils and municipal committees in the Central Provinces and on the Provincial Councils by the representatives of the district boards, the municipalities, the corporations of the presidency towns and universities. The others were to be represented upon all the Councils by the members elected by special electorates or nominated under an express provision of the Regulations. Moreover, the qualifications prescribed for electors in the cases of the landholders and the Muslims varied greatly from province to province. This was done as the status and circumstances both of the landholders and of the Muslim community differed widely from province to province and qualifications which would have produced a satisfactory constituency in one case would, in another, have given an unsatisfactory result. The qualifications for candidates with a few exceptions, were the same as those prescribed for voters.

The twenty-fourth session of the Congress took place at Lahore in December 1909. The total number of delegates was only 243, the smallest number attending the Congress after the first session. In this Congress a number of speeches and resolutions condemned the Regulations. The chairman of the Reception Committee remarked that the Reforms must be condemned by all right thinking people of the country, and by friends and well wishers of India, for it had given preference to one community, without regard to the interests of other communities, minorities or majorities. The Regulations, according to him, were unjust and unpolitic and must be soon done away with. Madan Mohan Malaviya, the President of the session, who only a year ago had given his unqualified support to the Reform proposals, was more severe than anyone else, in his criticism of the Regulations. According to him the Reforms had created widespread disappointment and dissatisfaction among all, except in a limited circle of the Muslims. The reason was not far to seek—self government had been the aspiration of the educated class in India, and the Congress had put forward a reform of the Legislative Councils in the forefront of its programmes, for a reform of the Legislature led to all other reforms. India was fortunate in

1906 to find a liberal minded Viceroy and a liberal Secretary of State, and it was thought that the goal was near. At this critical stage the Muslims came on the scene. Until the middle of 1906, the Muslims had not taken much trouble over the question of the Reforms. But they suddenly developed an active interest in politics and the result was the deputation to Lord Minto on 1 October 1906. The Government of India was responsible for this sudden change and the concession given by the Viceroy to their unjustifiable claim was regrettable. Continuing he said: "The Congress unanimously passed a resolution giving expression to the deep and general satisfaction with which the Reform proposals formulated in Lord Morley's Despatch had been received throughout the country, and it tendered its most sincere and grateful thanks to his lordship and to Lord Minto for those proposals. It expressed the confident hope at the same time that the details of the proposed scheme would be worked out in the same liberal spirit in which its main outline had been conceived. This unfortunately has not been done, and a very important part of the scheme has been so modified as to give just grounds of complaint to a large portion of the country."⁴² At the same time, he hoped that the objections urged against the Regulations would be taken early into consideration. This was necessary in order to fulfil one of the most important and avowed objects of the Reforms, namely "the allaying of discontent and the promotion of goodwill between the Government and the people."⁴³

Surendranath Bannerjee introduced a resolution into the Congress in 1909, criticising the Reforms. By it the Congress thanked Morley and Minto for their liberal measure, but at the same time placed on record "its strong sense of disapproval of the creation of separate electorates on the basis of religion," and regretted that the regulations framed under the Act "have not been framed in the same liberal spirit in which Lord Morley's despatch of last year was conceived." The regulations were condemned on several grounds: firstly, "the excessive and unfairly preponderant share of representation given to the followers of one particular religion"; second-

ly for "the unjust, invidious and humiliating distinctions made between Moslem and non-Moslem subjects of his Majesty in the matter of the electorates, the franchise and the qualifications of candidates"; thirdly, for "the wide, arbitrary, and unreasonable disqualifications and restrictions for candidates seeking election to the Councils"; fourthly, for "the general distrust of the educated classes that runs through the whole course of the regulations" and lastly, for "the unsatisfactory composition of the non-official majorities in Provincial Councils rendering them ineffective and unreal for all practical purposes."⁴⁴

In introducing the above resolution, Surendranath Bannerjee remarked that in December 1908, the Congress had accorded to the scheme the unspirited moral support of a great and united community. But their attitude a year later was one of deep and profound dissatisfaction all over India and it was shared by educated Hindus and Muslims alike. The educated Muslims of Bengal had very severely condemned the rules which had been framed to affect their own special electorate. For example, a Muslim scholar of distinction in Bengal, Suhrawardi had written that educated Muslims had been disappointed at the composition of the Muslim electorate and the qualification of the electors which excluded educated Muslims from an effective share in the election. Continuing, Bannerjee said that the Rules and Regulations "have practically wrecked the Reform Scheme as originally conceived."⁴⁵ For the regulations had reduced the educated community into an insignificant minority in the enlarged Councils and had disqualified some of their most important leaders. For example, in Bengal, in the Burdwan and Presidency divisions, the seat and centre of the educated classes, in a council of 48, they were entitled to send only 4 members through the district boards and municipalities. Of these 4 seats, 2 had been taken by the representatives of the landlords. From the same area, the Muslims were represented by 4 and the zamindars by 5 members, over and above the seats that they might get in the general election. The above resolution moved by Bannerjee was supported by various members of the Congress

from different parts of the country. Sayad Hasan remarked that he had always been opposed to separate electorates and to the representation of communities.

Another resolution of the Congress regretted that according to clause 3 of the Indian Councils Bill, under which power was to be given to the Governor-General in Council to create Executive Councils to assist the heads of the government in the United Provinces, the Punjab, Eastern Bengal, Assam and Burma, was not passed and urged that action might be taken at an early date to create executive councils in the above provinces. Still another resolution expressed dissatisfaction at the absence of a Legislative Council for the Central Provinces and Berar and at the exclusion of Berar from taking part in the election of two members of the Imperial Legislative Council by the landholders and members of district and municipal boards of the Central Provinces. A delegate from the Punjab, Sunder Singh Bhatia, criticised the Regulation framed for that province due to several reasons. Firstly, the numerical strength of the Council was inadequate; secondly, the elected element was small; thirdly, the principle of protection of minorities applied in the case of Muslims in other provinces was not applied to non-Muslim minorities in the Punjab; and lastly, the Regulations practically kept the non-Muslims of the Punjab out from the Imperial Council. Commenting on the last point he said that in the Punjab, the Hindus were in a minority as compared with the numerical strength of the Muslims. Although Congress had condemned the institution of separate electorates and the granting of differential and preferential rights to any particular community on the score of religion, it was unfair that Hindus, including Sikhs, in the Punjab, were not treated on a footing of equality with the Muslims in other provinces. Of the elected seats in the Legislative Council of the Punjab, three had gone to the Muslims and one to the Hindus. Therefore, he said that in the Punjab, the principle of protection of the minorities had been applied in the wrong way, for "it is not the minorities that get protection. It is a case of the majorities as it were, swallowing the minorities."⁴⁵

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Thus in the Congress of 1909 a lot of people criticised the reforms, protesting against the excessive representation to one community and the dissensions it would create in every town and village by the distinctions between castes, creeds and races. As one of the members said, "we protest against it because for the first time in the history of British India, the theoretical equality between the Indian subjects of the Crown is being destroyed, and fresh statutory disability is being imposed. We protest against it because it means the partition of the whole of living India, an affair much more serious than the partition of the boundaries of Bengal."⁴⁷

Both Morley and Minto were anxious for the early inauguration of the reforms in order to stop unrest in India and save the Moderates from further embarrassment. From their correspondences it was clear that Congress was regarded by them as a great factor, if not as the only factor, in the political life of the country, and both wished to save it from the influence of Extremists. But Minto had too many cards on the table; he was playing the Moderate against the Extremists and the Muslims against the Moderates, with the result that the Morley-Minto Reforms, which were hailed with great joy by the moderate leaders of the Congress in 1908, were not accorded that welcome a year later after the publication of the Rules and the Regulations. They severely criticised the provisions for the separate electorates for the Muslims. The Reforms thus failed in their object of fulfilling the hopes of the Moderate leaders of the Congress.

Tilak, who believed in subjecting Britain to the greatest possible pressure, had been advocating an all-India boycott of foreign goods. He hoped that such a measure would weaken the British economy while simultaneously strengthening India's self-reliance and her handloom industry. Because of Tilak's efforts on behalf of a foreign boycott—and British charges that he was inciting to revolution—he was imprisoned in 1908. He was not released until 1914. Although Britain's Morley-Minto Reforms followed closely upon Tilak's imprisonment, the changes they proposed allegedly owed their

origin to a memorandum furnished by the moderate Gokhale to the Secretary of State for India, Lord Morley. To add to the irony, the new reforms, which might not have been introduced at all save for the activities of the Extremist Tilak, proved, in certain respects to be actually retrogressive. Even such British statesmen as Edwin S Montague and Lord Chelmsford, later themselves to introduce what they considered still further "reforms", felt it but fair to concede that the Morley-Minto proposals failed to "satisfy Indian opinion". They cautioned that continuance of the new reforms could "lead to a further cleavage between the Indian members and the Government and a further cultivation of criticism unchecked by responsibility."⁴⁸ Whereas Congress leadership was primarily responsible for the positive aspects of the Morley-Minto attempts at reform, for the time being, at any rate, the autocratic nature of the British Government in India remained virtually unaltered. Even as a student in England Jawaharlal Nehru was by no means pleased by the Morley-Minto Reforms.

The Morley reforms of 1909 disappointed, after a very short trial, the hopes which they had raised. British officials had hoped that, in the informed councils, they would have advisory bodies, representative of the more conservative elements in Indian public life, whose goodwill would be enlisted because they were freely consulted, whose advice would be valuable, and whose support would strengthen the hands of the government. They were disappointed. Indian politicians, whether of the moderate or more advanced school, hoped that, in the Councils, they would be able to exercise effective, if indirect, control over the administration. They also were disappointed. The Morley Councils were designed as advisory bodies, and as advisory bodies might have functioned very usefully. They were not designed as parliamentary bodies, and could not usefully function as such, but it was in the light of parliamentary bodies that Indian public opinion persisted in regarding them. From the beginning the non-official members constituted themselves an 'opposition party', the official members, from this point of view, consti-

tuting an equally solid government party. In the Indian Legislative Council, Gokhale the then outstanding figure in Indian public-life, was spoken of as 'leader of the opposition'. Since the will of the 'opposition' could not, and in a parliamentary sense was never intended to prevail, the criticism against all the acts and policy of the government grew steadily less friendly and more irresponsible. The government was placed, in consequence, in a most unenviable position. Far from receiving the constructive advice and the moral support it had looked for, and which would assuredly have made for greater administrative efficiency, it met with little but opposition and obstruction. In challenging the authority of the government, this organised opposition seriously impaired former's efficiency, while, in the efforts which it made to placate its critics, the government became halting and vacillating in its policy.

All this time the national consciousness and the desire for political power were growing rapidly in the minds of educated Indians, and the Councils with their limited opportunities proved to be an insufficient safety valve. While, therefore, inside the Councils there were signs of hardening opposition and weariness which came to sterile efforts, outside the Councils the tide of feeling was rising more quickly. For a short time after their inception the Morley-Minto Reforms threatened to diminish the importance of the Indian National Congress. It seemed as if the Councils where elected members took a share in the business of government must be a more effective instrument of political purposes than mere self-constituted gatherings. But with the disillusionment about the reformed Councils the popular conventions, where speakers were free to attack the government and give vent to their own aspirations untrammelled by rules of business or the prospect of a reply, naturally regained their ascendancy, and the line taken by prominent speakers in them had been to belittle the utility of the Councils, if not to denounce them as a cynical and calculated sham.

But in spite of the criticism the inauguration of the Reforms was, in the words of the Chairman of the Reception Committee of the Congress, in accord with the spirit of the

time, for the East was becoming dissatisfied with the old methods of governments. Even in Afghanistan, there had been a movement for a popular form of government. The attitude of Japan, China, Persia and Turkey in that direction was wellknown. India could not have an archaic form of government and Congress was grateful that their rulers had recognised the need for the change in time. All the same the Congress had reasons to rejoice, for during the short period of seventeen years many of its demands were fulfilled, Indians were admitted into the Council of the Secretary of State, and into the Executive Councils of Governors of Bombay and Madras. The India Councils Act of 1892 had expanded and reformed the Legislative Councils. Further reforms of the Legislative Councils were effected by the India Councils Act of 1909 and non-official majorities were established in the provincial Legislative Councils. Although there were defects in these Regulations, the Congress had nothing to find fault with the statutory recognition of the principles involved. Thus the development of the Indian National Congress from 1892 to 1939 is one of the most important and eventful periods in its history. In 1910, after the completion of its first twenty-five years, the Congress had gained in age and experience, the maturity needed for any great political organisation.

References

1. *Parliamentary Debates*, 4th Ser., Vol. III (1892), Col. 69.
2. Lyall, AC, in Introduction to *Chitrol's Unrest in India*, p. ix.
3. *Bombay Gazette*, 24, December 1904, p. 11 Col. 1.
4. *Report of Indian National Congress 1905*, Introduction p. 3.
5. *Report of the Indian National Congress 1906*, p. 73.
6. Morley, Viscount, *Recollections* (London, 1917), Vol. 111 p. 150.
7. *Ibid.*, p. 150.
8. *Report of the Indian National Congress 1895*, Presidential Address, p. 3.
9. *Report of the Indian National Congress 1898*. Resolution XIV. p. 108.
10. *Ibid.*, p. 21.
11. *Report of the Indian National Congress 1905*, Resolution II, p. 23.
12. *Ibid.*, Presidential Address, p. 13.

13. *Report of the Indian National Congress 1904* p. 37.
14. *Report of the Indian National Congress 1905*, Presidential Address ; p. 13.
15. Morley, *Recollections* (London, 1917), Vol. II, 11 May 1906, p. 171.
16. Minto, Mary Countess of, *India, Morley and Minto*, 28 May 1906, pp. 28-29.
17. *Ibid.*, p. 29-30.
18. Minto, Mary, Countess of, *India, Morley and Minto*, 27 June 1906, p. 31.
19. Gokhale, GK, *Speeches* (Madras, 1909), Budget Speech, March 1906, pp. 187-88.
20. Morley, *Recollections*, Vol. II, 23 June 1906, pp. 174-75.
21. *Parliamentary Debates on Indian Affairs*, House of Commons, 1906, p. 235.
22. *Report of the Indian National Congress 1906*, Presidential Address, p. 28.
23. Tilak, BG, "Our Present Situation", *Two Remarkable Speeches*, p. 14.
24. Pal, BC, *The New Spirit* (Calcutta 1907), p. 236. Speech delivered on 10 October 1906.
25. Ghose, A, *An Open Letter to his Countrymen* (Calcutta, 1909), p. 2.
26. Morley, *Recollections* (London, 1917), Vol II, 2 August 1906, p. 181.
27. Ratcliffe, SK, *Sir William Wedderburn and Indian Reform Movement* (London, 1923), pp. 143-44.
28. Minto, Mary Countess of, *India, Minto and Morley*, p. 97.
29. *Ibid.*, p. 97.
30. *Speeches of the Earl of Minto 1905-1910* (Calcutta, 1911), pp. 124-25.
31. Minto, Mary Countess of, *India, Minto And Morley*, p. 214.
32. *Parliamentary Debates* 345, House of Commons, 1908, *Cmd.* 4426, Letter from the Government of India to the Secretary of State, dated 1 October 1908, para 123.
33. *Cmd.* 4426, Letter from the Government of India to the Secretary of State, dated 1 October 1908, para 1.
34. Morley, *Recollections*, Vol. II, p. 282, writing on 12 November 1908.
35. *Parliamentary Debates on Indian Affairs 1908*, House of Lords, 17 December 1908, pp. 991-92.
36. *Report of the Indian National Congress 1908*, Presidential Address, p. 35.
37. *Ibid.*, p. 35.
38. *Ibid.*, p. 135.
39. Clark, GB, "Impression of the Madras Congress", *The Indian Review*, January 1909, pp. 20-21.
40. Mazumdar, A C, "The Reform Proposal—A Symposium", *The Indian Review*, January 1900, p. 10.

41. Malaviya. M M, "The Reform Proposal," *The Indian Review*, . December 1908, p. 384.
42. *Report of the Indian National Congress 1909*, Presidential Address, . p. 23.
43. Ibid. p. 33.
44. Ibid., Resolution IV. p. 47.
45. Ibid., p. 47.
46. Ibid.. p. 76.
47. Ibid., p. 68.
48. Sitaramayya, Dr Pattabhi, *The History of Indian National Congress: 1885-1935*, Vol. 1, p. 26.

Realisation of Responsible Government

DURING the early activities of the Indian National Congress, the only constitutional change that was made by the British Parliament was the Reforms of 1892—a comparatively small affair. After the first 17 or 18 years of its existence, signs were not wanting to show that an important section of the Congressmen after taking stock of the results of its activities, was not satisfied with the achievement of the Congress or its programme or methods of work. A new school of thought emerged which favoured a more fighting programme and one that would attract the attention of the authorities in India as well as in England. The Indian National Congress at its inception was not intended to be a seditious organisation. Among its founders there were not only Liberal Britishers like A O Hume, George Yule, Charles Bradlaugh, Henry Cotton, William Wedderburn but also loyal Indians like W C Bonnerji, Dadabhai Naoroji and Pherozeshah Mehta. In the early years the resolutions which were passed in the Annual Sessions, were modest, and none of them contemplated the end of the British connection. But as time rolled and as the real character of the British rule became clear to them, they in the interest of the nation, identified themselves with the cause of the millions of India's down-trodden, ill-fed, ill-clothed and oppressed people.

The reaction of the anti-partition agitation which raged in Bengal during 1905-11 had a great impact upon the minds of the younger Congressmen all over the country. In 1906, for the first time, under the Presidentship of Dadabhai Naoroji, the Congress put forth a claim to Swaraj and subsequently an organised movement to boycott British goods was started as a patriotic move against the foreign Government. Naturally, the moderate Congress leaders like Pherozeshah Mehta and Surendranath Bannerjee whose policy was dubbed as "mendicant" by the Extremists, did not like this attitude of the Congress section led by the triumvirate Lal-Bal-Pal. The differences between the "Moderates" and the "Extremists" were basically ideological. The wellknown "Surat Split" in the 23rd Congress held at Surat in December 1907 was the inevitable result of these developments.

The extremists who had walked out of the Congress in 1907 recaptured its reins in 1910. During this interval the Congress was purely a moderate body and its activities were devoid of any remarkable achievements. In good faith the Congress helped the British Government in winning World War I, hoping to obtain "Dominion Status", basing its faith on the War aims of the Allies. But the hopes of the Congress were dashed to the ground and a blow to the injury was provided by the Rowlatt Act, passed on the Sedition Committee's Report, which was passed in 1919. The Jallianwala Bagh massacre had already shaken the faith of Congressmen in the British integrity. At this time when distrust and anger against the British Government was rampant, a frail, gentle, ascetic saint-politician, Mahatma Gandhi, appeared on the Indian political scene. He, through his philosophy of non-violence, non-cooperation and satyagraha, stirred the imagination of the Indian people as a whole—the educated, as well as the dumb and ignorant masses. He gave them honour and self-respect. He virtually picked them up from the dust and made them into human-beings. In him they found their long awaited Messiah.

The First World War (1914-18) brought new elements into the political situation of India. The sense of self-confi-

dence that had surged over the Asian people after the victory of Japan over Russia in 1905, was reinforced by the heroic fighting of the Indian soldiers for the Allies in the war. It was hoped, quite reasonably, that the same principles for which Indians were fighting abroad, viz, freedom and democracy, would also be applied to India. With this purpose in view, Annie Besant and Lokamanya Tilak started, in 1906, the Home Rule League, which was supported by every section of the Indian people—the moderates and the extremists, the Hindus and the Muslims. Not less significant was the rise, during the First World War, of independent force of Indian capitalism which provided, on the one hand, an economic base to Indian nationalism, and on the other, led to the creation of a new class of industrial workers. Henceforth, the working class became a factor to be reckoned with in the progress of the Indian people towards self-rule.

India's timely war-contribution helped to create a favourable opinion in the minds of the British people, which in turn obliged the British Government to reconsider the problem of self-government in India. Keith observes that "... it was not until the services of India in the Great War were realised and the necessity of meeting Indian aspirations was recognised that the necessary steps were taken...to give India the status of a Dominion."¹ Lord Chelmsford, who succeeded Lord Hardinge as Viceroy in April 1916, followed the traditional policy of repression-cum-reforms. The repressive measures, under the Defence of India Act, were pursued in full vigour, and the official terrorism inaugurated by that Act continued in full force throughout the period of war and even after it was over in 1918.

At the same time the authorities, both in India and England, could not ignore the reality of the tense political situation in India. The game of playing the Muslims against the Hindus and of rallying the Moderates against the Extremists had failed, and political India was united as never before. The Home Rule Movement had deeply stirred the people, such as was witnessed only in Bengal during the Swadeshi Movement. The Government had even then found it difficult to

cope with the national awakening although it was mostly confined to Bengal. Urged by all these considerations, the British authorities decided to placate the Indians by a further instalment of reform. But required prolonged correspondence between the Government of India and the Home Government. The appointment of Montague as the successor of Chamberlain was, therefore, very significant, and was hailed with delight by the moderates in India. During the same period Jawaharlal Nehru was elected Secretary of the Home Rule League in Allahabad, and first became a member of the All India Congress Committee. Events abroad continued to have a decisive effect upon the evolution of his political views. Reginald Craddock, the Home Member of the Government of India, summed up the complex political situation: "The position is one of great difficulty, the Moderate leaders can command no support among the vocal classes who are being led at the heels of Tilak and Besant. The great figures among the Moderates have passed away (Gokhale had died in 1915) and so far they have no successors. Home Rule is pressed for not so much as constitutional reform now becoming due, but as the only salvation from innumerable wrongs and grievances under which India is suffering...under cover of constitutional agitation, the minds of the people who read newspapers are being poisoned against the British Government." ¹²

Expectations of Change

As the demand for self-government grew in India, the British Government made various promises and started inquiries in India which occupied the people's attention. Everywhere there was a lively expectation of change. Lord Chelmsford as the Viceroy of India in a response to Lord Sinha's (the Congress President's) request announced in 1915 that the goal of British rule in India was that India should be "an integral part of the British Empire with self-government." Austen Chamberlain, the Secretary of State for India, also stated that it was the intention of the British "to foster a gradual development of free institutions with a view to self-government." His successor Montague made a revolutionary declaration on

20 August 1917, in the House of Commons. He said : "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 realisation of responsible government in India as an integral part of the British Empire."³ It was momentous in the sense that for the first time since the establishment of the British rule, India was considered fit by the British rulers for the realisation of responsible government. This declaration was followed by the Montague-Chelmsford Report, 1918, which became the basis of the Government of India Act, 1919. On 23 December 1919, the King while approving the British policy of 'progressive realisation of responsible government in India', also declared that the Act of 1919 "will take its place among the great historic measures passed by the Parliament of the better government of India and the greater contentment of her people."⁴ These statements also pointed out the truth the British were ever considering to grant India self-government by successive stages in the foreseeable future. After the war was over the British Parliament passed a momentous Act called the Government of India Act 1919. This Act is popularly referred to as the Montague-Chelmsford Reforms.

On the eve of the publication of the Montford Report, the Moderate party led by Surendranath Bannerjee invited a Conference in Calcutta to lend support to it. The publication of the Montford Report on 8 July 1918, was the 'signal of war' between the Moderates and the Extremists. While the Moderates whole-heartedly supported the Report both before and after it was published, the Extremist leaders rejected it in toto. "Montague Scheme" observed Tilak, "is entirely unacceptable." The other leader of the Home Rule Movement, Mrs Basant, wrote in the *New India* : "The scheme is unworthy to be offered by England or to be accepted by India." J.L. Bannerji expressed the general view of the extremist party, when he said that "the reforms were grudging, half-hearted, meagre, inadequate, and hence disappointing and abortive."⁵

Ultimately three different schools of opinion emerged which were also reflected in the Indian National Congress. The Moderates regarded the proposal as progressive and substantial, though susceptible of a great deal of improvement. The Extreme Left group was of opinion that the proposals were "so radically wrong, alike in principle and detail", that "it is impossible to modify and improve it." There was an intermediate group which looked upon the Report as unsatisfactory, but pleaded for material alteration and not total rejection. The actual difference between this group and the Moderates was not very considerable, except in the language of welcome to the authors of the Report and the emphasis laid upon their sincerity and honesty. For, the suggestions made by these two schools for the improvement of the scheme envisaged in the Report did not materially differ from each other. As subsequent events showed, this intermediate group in the Congress was much stronger than the Extremist group and there was no legitimate basis for the fear of the Moderates that the Congress would definitely and summarily reject the Report. But misled by this fear, and due to perhaps other reasons, which are not apparent, the Moderate group in the Congress decided to leave that national organisation, and form a separate party.

Not only were India's Congress leaders unimpressed by the Declaration, but even such a British Conservative as Austen Chamberlain—a member of the India Office in 1917 was moved to say at the time: "After all, we must take into account the changes produced by the war...the consent emphasis laid upon the fact that the Allies are fighting for freedom and nationality...the revolution in Russia, and the way it has been hailed throughout Europe...the effect of all these things on Indian opinion and on our own attitude to Indian questions. What would have seemed a great advance a little time ago, would now satisfy no one and we should, I think, be prepared for bold and radical measures."⁶ When Montagu arrived in India in 1917 he, too, was intent upon doing "something big" and "epoch-making." He set himself "to the task of outlining a new constitution." Yet, despite

his hopes, and the issuing of the Montague Chelmsford Report of 1918 (Lord Chelmsford was Viceroy of India from 1916 to 1922), the fates were to decree otherwise.

As Michael Brecher has noted, although, to the British, the Montague-Chelmsford Report seemed an appropriate introduction to responsible self-government in the Indian sub-continent, "to most Indian Nationalists—it was a paltry concession, for short of the expectations raised by the Montague Declaration." Hence Congress demanding self-government within the Empire, "asserted that India was ready for responsible government, and requested the abandonment of the nation of dyarchy, which would have left the Central government and most vital provincial matters under the exclusive jurisdiction of the existing regime."⁷ It also demanded fiscal autonomy for India and a declaration of Indian rights, while reaffirming the 1916 Lucknow Pact with the Muslim League "as the preferred basis for the composition of the legislatures, federal and provincial."⁸ In other words, "principle of self determination for all peoples, proclaimed by President Wilson in his Fourteen Points,"⁹ has stirred the imagination of the intelligentsia throughout the world.

According to Rajendra Prasad : "The announcement made by the Secretary of State for India on behalf of the British Government in 1917 promising self-government by stages occasioned differences of opinion amongst Indians which became more and more acute as the result of investigations undertaken by the Secretary of State and the Viceroy became known and a Bill which ultimately became the Government of India Act in 1920, took shape and form. During this time of incubation of the Bill the war had ended in a victory for the British, and the feeling grew in India that as the pressure in Europe had relaxed on account of the successful termination of the war for Britain, the British attitude had changed for the worse towards India."¹⁰

The main feature of the system introduced by the Government of India Act, 1919, were as follows:¹¹

1. Dyarchy in the Provinces : Responsible government

in the Provinces was sought to be introduced, without impairing the responsibility of the Governor (through the Governor-General), for the administration of the Province, by resorting to advice known as 'Dyarchy' or dual government. The subjects of administration were to be divided (by rules made under the Act) into two categories—Central and Provincial. The Central subjects were those which were exclusively kept under the control of the Central Government. The Provincial subjects were sub-divided into 'transferred' and 'reserved' subjects. Of the matters assigned to the Provinces, the 'transferred subjects' were to be administered by the Governor with the aid of Ministers responsible to the Legislative Council in which the proportion of elected members was raised to 70 per cent. The foundation of responsible government was thus laid down in the narrow sphere of 'transferred' subjects. The 'reserved' subjects, on the other hand, were to be administered by the Governor and his Executive Council without any responsibility to the Legislature.

2. **Relaxation of Central Control over Provinces :** As stated already, the Rules made under the Government of India Act, 1919, known as the Devolution Rules, made a separation of the subjects of administration into categories—Central and Provincial. Broadly speaking, subjects of all India importance were brought under the category 'Central' while matters primarily relating to the administration of the provinces were classified as 'Provincial'. This meant a relaxation of the previous Central Control over the provinces not only in administrative but also in legislative and financial matters. Even the sources of revenue were divided into two categories so that the Provinces could run the administration with the aid of revenues raised by the Provinces themselves and for this purpose, the provincial budgets were separated from the Government of India and the Provincial Legislature was empowered to present its own budget and levy its own taxes relating to the provincial sources of revenue.

At the same time, this devolution of power to Provinces should not be mistaken for a federal distribution of powers.

Under the Act of 1919, the Provinces got power by way of delegation from the Centre. The Central Legislature, therefore, retained to legislate for the whole of India, relating to any subject, and it was subject to such paramount power of the Central Legislature that the Provincial Legislature got the power "to make laws for the peace and good government of the territories for the time being constituting that province." The control of the Governor-General over Provincial legislation was also retained by laying down that a Provincial Bill, even though assented to by the Governor, would not become law unless assented to also by the Governor-General, and by empowering the Governor to reserve a Bill for the consideration of the Governor-General if it related to matters specified in this behalf by the Rules made under the Act.

3. The Indian Legislature made more representative : No responsibility was, however, introduced at the Centre and the Governor-General-in-Council continued to remain responsible only to the British Parliament through the Secretary of State for India. Nevertheless, the Indian Legislature was made more representative and, for the first time, bicameral. It was to consist of an Upper House, named the Council of State, composed of 60 members of whom 34 were elected, and a Lower House named the Legislative Assembly composed of about 144 members of whom 104 were elected. The powers of both the Houses were equal except that the power to vote supply was given exclusively to the Legislative Assembly. The electorates were, however, arranged on a communal and sectional basis, developing the Morley-Minto device further.

The Governor-General's over-riding powers in respect of Central legislation were retained in the following forms : (i) his prior sanction was required to introduce Bills relating to certain matters ; (ii) he had the power to veto or to reserve for consideration of the Crown any Bill passed by Indian Legislature ; (iii) he had the converse power of certifying any Bill or any grant refused to be passed or made by the Legislature, in which case it would have the same effect as if it was passed or made by the Legislature ; (iv) he could make ordinances, having the force of law for a temporary period, in case of emergency.

Working of the Constitution of 1919

The Constitution came into force in 1920 in an atmosphere rendered tense by the passing of the Rowlatt Act to combat terrorist and anarchist violence, the massacre of Amritsar and martial law in the Punjab, and in the teeth of opposition of the Congress preparing to launch a campaign of passive resistance. Inaugurated under these unpromising circumstances, the Constitution had to withstand the strain of post-war economic conditions at first, and later a severe economic depression. The years from 1921 to 1937 were years of political turmoil with country-wide Civil Disobedience movements in 1921, 1930 and 1932. In retrospect, it appears remarkable that the Constitution functioned at all and was the basis of the country's government from 1921 to 1937.

Dyarchy was introduced in eight Provinces and in Burma in 1921. Except in the Central Provinces and Bengal between 1924 and 1930, it was in continuous operation in all the Provinces throughout the period from 1921 to 1937 when the Government of India Act of 1935 came into force. There were four general elections under the Constitution in the years 1920, 1923, 1926 and 1929-30. There was a progressive increase in the number of voters exercising the right to vote and in the keenness of the contests at elections. As many as 93 members of the legislatures served as Ministers and 121 as Executive Councillors in the period.

In spite of these facts dyarchy is generally pronounced to have been a failure. Though the Constitution worked in a way, it failed in its ultimate purpose. R Coupland writes : "The new Constitution failed to fulfil its author's primary purpose. It did not provide a training in parliamentary responsible government and it did not bring about a subordination of communal allegiance and antagonism to the common public interest."¹² The reasons for these shortcomings are not difficult to discover. Partly these are to be found in the faults of the machinery of government under dyarchy. The most important reasons, however, were the political and economic circumstances.

The Reforms of 1919 were avowedly experimental and transitory and did not satisfy Indian political aspirations. As a result they were opposed by the Indian National Congress which boycotted the elections of 1920. It entered the Legislatures in 1923 only to wreck the scheme of reforms. It became a permanent Opposition to the Government and played that role without the sense of responsibility that characterises a normal parliamentary opposition. The Congress was the only organised and disciplined political party in the country. There was indeed no healthy party system which could work the machinery of responsible government in the British way. Parties outside the Congress were merely splinter groups and only chance combination of a sectional, communal, or personal nature, held together by little more than self-interest and the hope of high office and its prerequisites. Ministers were drawn from such groups. They lacked cohesion since they had no policy conceived in the public interest. Their elected supporters were unreliable and they were necessarily reduced to a dependence on the official bloc for their continuance in office. Under these conditions Ministers could not develop a sense of collective responsibility to the Legislature.

There were also other reasons which initiated against the development of a genuine cabinet system. The financial arrangements under the Constitution were not conducive to the growth of responsibility. Ministers had no initiative in the field of finance and where there is no financial power, a sense of responsibility could hardly develop. Nor were the Ministers in complete control of the departments in their charge, since the Civil Services under them were independent to a great extent and could direct their departments under the Governor's order without reference to the Ministers. Chintamani, who served as a Minister in the United Provinces under the Reforms, has said that the working of the Provincial Constitution was rendered difficult by the attitude of the bureaucracy. The Civil Services did not work the reforms in the spirit in which they should have been worked and were reluctant to abdicate their autocratic powers and serve loyally under popular Ministers. Chintamani writes : "While the Montague Act was not inherently bad and would have

achieved gratifying results in favourable circumstances, actually it failed because of the combined unwisdom of the high Tory bureaucracy and the ultra-radical or semi-revolutionary Congress.¹¹³

At the Centre the Constitution was essentially unworkable. An irresponsible and irremovable executive faced a permanently hostile Legislature. The Legislature had ample opportunities to criticise. Its debates maintained a high level and its proceedings were orderly and decorous. But they were suggestive of the nineteenth rather than the twentieth century. There was an air of unreality about its proceedings, since it had no power. It could influence policy but could not determine the fate of the Government. Its influence was indeed great though it cannot be measured. As a national platform it was superb and opinions and grievances voiced in it could not altogether be disregarded by the government.

The result of the operation of the reforms at the Centre was a weakening of the Government despite the many safeguards to strengthen it. It was brought home that a representative assembly and an irresponsible executive could not go together. It was clear before long that the system must be changed so as to subordinate the executive to the Legislature and to bring about a harmony in their relations which was indispensable to the smooth working of the Government. The working of the Constitution in the Provinces and at the Centre emphasised the fact that there was no half way house between full responsibility and complete autocracy. Any constitution such as that of the Act of 1919 could at best be only transitional. And the period of transition in practice could not be indefinitely lengthened when the people had achieved a higher degree of political consciousness. The Constitution of 1919 failed in the last analysis since India had come of age and her sense of nationhood had sensibly increased and she resented any external control of her affairs which she considered as her birthright to manage for herself.

Shortcomings of the Act

The Reforms of 1919, however, failed to fulfil the aspira-

tions of the people in India, and led to an agitation by the Congress (now under the leadership of Mahatma Gandhi) for 'Swaraj' or 'Self-Government', independent of the British Empire, to be attained through 'Non-cooperation'. The shortcomings of the 1919 system, mainly, were :

(i) Notwithstanding a substantial measure of devolution of power to the Provinces, the structure still remained unitary and centralised "with the Governor-General in Council as the keystone of the whole constitutional edifice, and it is through the Governor-General in Council that the Secretary of State and ultimately, Parliament discharge their responsibilities for the peace, order and good government of India."¹⁴ It was the Governor-General and not the Courts who had the authority to decide whether a particular subject was Central or Provincial. The Provincial Legislature could not without the previous sanction of the Governor-General, take up for consideration any bill relating to a number of subjects.

(ii) The greatest dissatisfaction came from the working of Dyarchy in the provincial sphere. In a large measure, the Governor came to dominate ministerial policy by means of his over-riding financial powers and control over the official block in the Legislature. In practice, scarcely any question of importance could arise without affecting one or more of the reserved departments. The impracticability of a division of the administration into two water-tight compartments was manifested beyond doubt. The main defect of the system from the Indian standpoint was the control of the purse. Finance, being a reserved subject, was placed in charge of a member of the Executive Council and not a minister. It was impossible for any Minister to implement any progressive measure for want of funds and together with this was the further fact that the members of the Indian Civil Service, through whom the Ministers were to implement their policies, were recruited by the Secretary of State and were responsible to him and not the Ministers. Above all was the over-riding power of the Governor who did not act as a constitutional head even with respect to the transferred subjects.

There was no provision for collective responsibility of

ministers to the Provincial Legislature. The ministers were appointed individually, acted as advisers to the Governor and differed from members of the Executive Council only in the fact that they were non-officials. The Governor had the discretion to act otherwise than in accordance with the advice of his Ministers, he could certify a grant refused by the Legislature or a bill rejected by it if it was regarded by him as essential for the due discharge of his responsibilities relating to a reserved subject. It is no wonder, therefore, that the introduction of ministerial government over a part of the Provincial sphere proved ineffective and failed to satisfy Indian aspirations.

We cannot dismiss the Reforms of 1919 as unfruitful merely because they failed in many respects and were transitory. From the point of view of the development of democratic institutions they were indeed of the utmost importance. It distinguished for the first time the provincial subjects from the central subjects and assigned to the Provinces even separate heads of financial resources. It provided for a "devolution" of authority to the Provinces and allowed, in respect of transferred subjects in the Provinces, the principle of ministerial responsibility. Direct election was conceded, and comparatively, a larger electorate participated in the elections. The working of the Act had two-fold results : firstly, it gave Indians, though in a very limited sense, the actual experience of running the government, and, secondly, it allowed to some extent, the common people to participate in the making of the government. A great interest was awakened in democratic government. There was a profound psychological change in the minds of ordinary people to whom government "ceased to be a mystery and became an institution which could be made to answer their needs." The greatest achievement of the period of the Reforms was "the awakening of the political consciousness of the people."¹⁴

References

1. Keith, A B, *A Constitutional History of India*, p. 467.
2. Nanda, BR, *The Nehrus—Motilal and Jawaharlal* (London, 1962), p. 133.

3. *Parliamentary Debates*, House of Commons, 24 August 1917, Col. 1695.
4. Mukherji, P, *The Indian Constitution*, p. 1.
5. Athalye, DV, *Bal Gangadhar Tilak*, pp. 251-52.
6. Nanda, B R, *The Nehrus - Motilal and Jawaharlal* (London, 1962), p. 133.
7. Brown, W Norman, *India, Pakistan, Ceylon* (New York, 1951), p. 168.
8. Brecher Michael, *Nehru : A Political Biography*, p. 6.
9. Sitaramayya, Pattabhi, *The History of the Indian National Congress*, Vol. I, p. 2.
10. *Ibid*, p. 3.
11. *Simon Report*, Vol. I, pp. 122-26.
12. Coupland, R, *India—a Restatement*, p. 121.
13. Chintamani and Masani, *Indials Constitution at Work*, p. 7.
14. *Report of the Joint Parliamentary Committee ; Simon Report*, Vol. I, pp. 232-38.
15. Das, SC, *The Constitution of India*, p. 23.
16. Srinivasan N, *Democratic Government in India*, p. 51.

Constitutional and Political Battle between 1919 and 1935

THE Act of 1919 gave the Indians, for the first time since 1773, an opportunity to take a responsible share, however limited, in the British India administration. The year 1919 is significant for another reason too. It was during this year that Gandhiji appeared on the stage and became a principal actor in the political drama of India. He introduced a new feature, that of a non-violent passive resistance as a political weapon against the military might of the British Empire. At the Nagpur session of the Congress in 1920 Gandhiji moved a resolution that "the Object of the Indian National Congress is the attainment of Swarajya by the people of India by all legitimate and peaceful means."¹ Commenting on this resolution he said that if the British connection was "inconsistent with our national self-respect, then it is our bounden duty to destroy it"² It cannot be denied that the Indian national demand for self-rule was the most important factor that influenced the British attitude towards the Indian problem. He advocated disobedience (*satyagraha*) against the oppressive laws passed in February 1919 by the Central Legislature on the recommendations of the Rowlatt Committee. So there was a great upheaval in the country. Unfortunately, on 13 April 1919, the 'Jallianwala Bagh' tragedy took place at Amritsar in the Punjab.

The rise of nationalism and successful cooperation in the war turned the scale in favour of India. At the end of the war India gained prestige in international affairs : The Indian representatives signed the Peace-Treaty in Paris (1919); Indian representatives were sent to the League of Nations, and Indian representatives participated in the Imperial Conferences of 1921 and 1923. These facts also suggest that the British wanted to give the Indians a share in self government. Lord Sinha while speaking in the House of Lords, pointed out clearly that the political status of India had advanced due to World War I and that the experiences which the Indian delegation had in the above mentioned conferences "had further quickened her sense of national unity and development."³

Rowlatt Act

Although, when Congress met in 1919, it agreed to "co-operate" with the Montague-Chelmsford Reforms, subsequent passage of the repressive Rowlatt Act, and the tragic Amritsar—or Jallianwala Bagh—massacre in the Punjab greatly antagonised nationalists throughout India. During 1920, Britain's exoneration of (British) General Dyer—despite his cruel and unfeeling role at the time of the above massacre—followed, as it was, by the Khilafat Movement, further infuriated Congress to such a degree that, when it met later in the same year, it reversed its previous acceptance of the Montague-Chelmsford Reforms. It was at this point that Gandhiji first persuaded Congress to adopt non-violent, non-cooperation as a method of protesting against British policy.

The Defence of India Act, which provided India's colonial rulers with "wide arbitrary powers", was to lapse after six months of the termination of the war. A case was sought to be made out to justify the enactment of a new law, and with this end in view, the Government appointed an inquiry committee, named the Rowlatt Committee after its chairman, a British judge. The Committee's recommendations announced in January 1919, were interpreted by national leaders as the death-warrant of civil liberties. There was widespread indignation, and Gandhi became the focal point of the cam-

paing against the recommendations. When the recommendations were embodied in a Bill, popularly known as the Rowlatt Bill, and there remained no doubt that it would soon become law, Gandhiji resolved to organise a country-wide protest. A day was appointed for general closing of shops, suspension of all business activity, fasting, prayers and public meetings throughout the country. Both Hindus and Muslims responded to this call. The forces, released by the protest day demonstrations, became uncontrollable, and the "terror-stricken Government met them with firings, killing thousands of people."⁴ Of the Rowlatt Bills, which "sought to arm the executive with special powers to suppress political violence", Mahatma Gandhi wrote that they were, in fact, "designed to rob the people of all freedom." One of the Rowlatt Bills "referred to trial of (anarchical) crimes by a court of three judges and provided no right of appeal. The other Bill provided for a change in the Criminal Law of the land. The former was intended to be a temporary measure while the latter would be permanent and provided for punishment for possession of any seditious document with intent to circulate or publish it. The second Bill was dropped while the first was passed in March 1919.

Non-cooperation Movement

Mahatma Gandhi lived up to the expectations of his people. He not only made India an independent nation but also made it economically, socially and morally stronger. In fact, he cured the nation's own paralysis by rejuvenating its soul by its own efforts. The weapon of moral rearmament which he gave to his people was "Satyagraha". Against the Rowlatt Bills which were nicknamed as "Black Bills" he launched his first All-India Satyagraha Campaign in April 1919. At the Special Session in Calcutta in 1920, Mahatma Gandhi succeeded in prevailing upon the Congress to adopt his non-cooperation programme with its four-fold boycotts for the redress of the Punjab and the Khilafat wrongs and for the attainment of Swaraj. In the 35th session which met at Nagpur in 1920 the Congress placed herself completely under the leadership of Mahatma Gandhi and a countrywide boy-

cott campaign was launched. The response to the movement was phenomenal. There was the surrender of titles by the titleholders, withdrawal of students from educational institutions, suspension of practice by lawyers in the courts and the boycott by prospective Councillors of the council elections under the reforms. There also went on huge bonfires of foreign cloth as a part of the cloth boycott movement. Meetings of popular demonstrations were held everywhere and the Mahatma made his triumphal march throughout the country with Ali Brothers by his side. The country was in the vortex of an agitation like which India had never seen. Non-cooperation progressed from stage to stage under the inspiring leadership of men like C R Das in Bengal, Motilal Nehru in U P, Lala Lajpat Rai in the Punjab and the Patel Brothers in Bombay.

Mahatma Gandhi seemed to be within an inch of success. But the unfortunate outbreak of violence of Chauri-Chaura resulting in the loss of 23 policemen made the leader cry a halt. This decision of Mahatma Gandhi was approved by the Working Committee meeting at Bardoli. The Bardoli retreat created a rift in the Congress camp and gave birth to the rise of the Swaraj Party which believed in the Council Entry programme. After the Prince of Wales' visit to India on 6 February 1921 the Congress Swaraj Party was organised by C R Das and Motilal Nehru. The new constitution which was adopted by the Congress began with the words that "The object of the Indian National Congress is the attainment of Swarajya by the people of India by all legitimate and peaceful means."⁸ These words unmistakably show the spirit of Indian nationalism. It was this spirit, a most dynamic factor that forced the British to quit India peacefully in 1947. A year later Mahatma Gandhi was imprisoned for six years (1922-28), because the British Government thought that he was at the back of the riots and disorder in the country.

Simon Commission

Between 1921 and the meeting of the Round Table Conference in London in 1930, the main battle between the Govern-

ment of India and their chief opposition—the Congress Party—the main constitutional and political battle, was sought out in the Legislative Assembly by way of Resolutions moved by leading members of the Congress Party. Indeed, the one important inquiry into the working of the 1919 Act which was undertaken before the statutory enquiry by the Simon Commission, was that carried out by a Committee appointed by the Viceroy, Lord Reading in 1924, and this was the direct consequence of a resolution moved by Motilal Nehru, the leader of the Congress Party, in the Legislative Assembly. The demand stated in the resolution remained virtually unchanged since that day. In its final shape it runs: "This Assembly recommends to the Governor-General-in-Council to take steps to have the Government of India Act revised with a view to establishing full responsible government in India and for the said purpose (i) to summon at an early date a representative Round Table Conference to recommend, with due regard to the protection of the rights and interests of important minorities, the scheme of a Constitution for India and (ii) after dissolving the Central Legislature to place the said scheme before a newly elected Indian Legislature for its approval and submit the same to the British Parliament to be embodied in a statute." It was carried in the Assembly by a large majority.

Just before the 1927 Madras Congress Session, the Viceroy, Lord Irwin, announced the appointment by the British Parliament of a Royal Commission, headed by John Simon. In 1928, the country was in a political ferment, anxiously waiting for a clarion call from its leaders. The British Government took the initiative and gave the people an outlet for action. Seven uninvited gentlemen from England, under the leadership of John Simon, reached the shores of India, with the avowed purpose of investigating India's fitness for a further instalment of long-promised self-government. The notion that an investigation should take place to see whether India was fit to govern itself, led to serious resistance among Congress leaders. Jawaharlal Nehru was one of the principal organisers of a boycott against the Simon Commission, during a period in which there was a rising tide of nationalism throughout the country.

The Congress, having recently passed a resolution demanding complete independence, could hardly tolerate the British game of cajolery. The 400-million hostile voices of India greeted the Simon Commission with sky-renting shouts of "Simon-go-back". The wrath of the government found vent in wholesale police assaults on the people and the result was that Lala Lajpat Rai lost his life. Nehru himself was the victim of lathis on account of the high-handedness of the police, while he was leading a procession against the Simon Commission. He received two resounding blows on the back and his volunteers were also brutally belaboured with batons and truncheons by the mounted police. When the Simon Commission reached Lucknow Railway Station, a huge crowd had gathered there, displaying black flags.

Motilal Nehru Report

The boycott of the Simon Commission, which constituted a major event in India during 1928, was followed by a second significant development: appointment by an All-Parties Conference of a Committee "to draw up some kind of a constitution for India, dealing especially with communal problems, etc." Headed by Motilal Nehru, the Committee issued its findings, which came to be known as the Motilal Nehru Report. The Report aroused a certain amount of controversy, served not only to stimulate interest in the drafting of a constitution by India's leaders, but also to a series of passionate debates about whether India's goal should be dominion status or complete independence.

Although, at one point, Jawaharlal Nehru worked with Motilal Nehru on the preparation of the "Nehru Report", he ultimately withdrew from the group headed by his father. One of the Committee's major recommendations was acceptance of dominion status, a goal too limited at the time to satisfy Jawaharlal Nehru. Gandhiji, on the other hand, agreed with the "Report" when Motilal Nehru presented it to the Calcutta Congress in 1928. It was at this juncture that Jawaharlal Nehru's political stand became increasingly far

removed not only from that of the Mahatma but also from that of his father, and various other older Congress leaders, all of whom continued to accept dominion status rather than complete independence as their ultimate aim.

John Gunther has recorded a characteristic 'Jawaharlal Nehru incident' of the period. When Motilal Nehru and Gandhiji strongly backed a proposal that Congress should officially adopt the "Nehru Report", Jawaharlal Nehru and his followers were opposed to such a move. Jawaharlal Nehru's side won in a close vote. Upon discovering "that there had been a technical error in the voting", Jawaharlal Nehru, "as secretary of the Congress.....brought this to the attention of the meeting, even though he knew that it would mean overriding his victory and that in the next vote his group would lose." The Motilal Nehru Committee of 1928 stated in its report: "We have made our recommendations on the basis (i) that we are agreed that nothing short of dominion status will satisfy India and (ii) that the form of government to be established in India will be the same and not lower than that of the other self-governing dominions."⁸

It should be noted that by 1928, Muslim demands included "communal provinces", "communal electorates", guarantees of majorities in the Punjab and Bengal, "weightage" for Muslim minorities in other provinces, a reservation of one-third of the seats in the Central Legislature and posts under Government. Further, between the time of the drafting of the Nehru Report and its presentation at a conference in Calcutta, the Muslim League drew up a series of amendments, proposing that under a future Constitution a minimum of one-third of the elected representatives in both Houses of the Central Legislature should be Muslims. Disagreeing with what seemed to it to be an inequitable request by the League, the Nehru Committee ruled that whenever a reservation was to be made for the Muslim minority, it must be in strict proportion to the Muslim population. Since the "Motilal Nehru Constitution" failed to make the separatist concessions demanded by the Muslims, the rift between the Congress and the League widened.

Civil Disobedience Movement

The Calcutta session of the Indian National Congress, held in December 1928, was presided over by Motilal Nehru who, along with Gandhiji, toned down the country's demand of complete independence to dominion status, on the condition that if within a year the demand was not met the demand for complete independence would be revived. The government did not respond satisfactorily. In the meantime, Jawaharlal Nehru was elected President of the Indian National Congress which was scheduled to meet at Lahore in 1929. Nehru made complete independence his battle cry. 26 January was fixed as the demand day for independence. On that day a pledge of independence was taken all over India. The pledge was soon followed by the civil disobedience movement, launched on all-India scale, under the guidance of Mahatma Gandhi. People, irrespective of caste, creed, religion, occupation or sex, fought the non-violent struggle with dynamic vigour, the economic depression precipitated the movement by dragging the whole peasantry into it. The political earthquake shook the government from the bottom. To retrieve lost ground the government held out some ambiguous promises, but Gandhiji already conversant with the unreliability of British promises, stuck to the unconditional acceptance of his demand. Open defiance of the British Laws continued. A no-tax campaign was started. Salt being the most common commodity, used alike by the poor and the rich, became symbol of a mighty challenge to the British authority. People began to prepare indigenous-salt. Mahatma Gandhi himself gave the lead to the Dandi March. The Nehru family displayed amazing courage in this struggle. The Congress was declared an illegal body and its funds were confiscated. The news of Mahatma Gandhi's arrest gave impetus to the people's determination to resist the might of the British bureaucracy. The struggle went on.

Round Table Conferences

"British officialdom, realising the futility of a further approach through an all-British parliamentary commission,

assembled the leading Indian princes and political leaders in London in 1930-32 for three round-table conferences after publication of the report of the Simon commission." Jawaharlal Nehru was in jail when the first Round-Table Conference met in London on 12 November 1930, to discuss possible changes in the manner in which India was to be governed in the future. Since the recent Simon Commission Report had concerned itself merely with changes at the provincial, rather than the central level and Jawaharlal Nehru felt that subsequent deliberations of the London Conference would have but little more significance than the Simon Report, he had virtually no interest in its proceedings. In this view the composition of the group conferring in Britain left much to be desired. It seemed odd and inconsistent to him also that the British should hold its London Conference while simultaneously adopting repressive measures within India, including promulgation of drastic ordinances to suppress the Civil Disobedience Movement.

At first no progress was made (at the 1930 Round-Table Conference), particularly on the vexed issue of communal representation, as the Hindu Mahasabha and Muslim parties clung to their fixed positions. It seemed as if the search for a suitable basis of constitutional reform was doomed to failure. However, at the beginning of January 1931, the deadlock was broken by Tej Badadur Saprú's proposal for responsible self-government in an All-India Federation with appropriate safeguards in the transition period. To the surprise of most, the (Indian) princes indicated a willingness to join such a federation, and British Liberal and Labour spokesmen approved the scheme.

The communal representation had not been resolved, but enough progress had been made to adjourn the proceedings in the hope that the Congress could be induced to abandon civil disobedience and cooperate in the plan. Thus, on 19 January 1931, Prime Minister Ramsay MacDonald declared that the British Government was prepared to recognise the all-important principles of Executive responsibility to the Legislature, except for the safeguards, notably defence, external affairs,

the maintenance of tranquillity in the realm, and the guarantee of financial stability. Exactly one week later, ironically on the first anniversary of the Congress "Independence Day", the Viceroy passed the "burden of decision to the Congress by releasing Mahatma Gandhi and nineteen members of the Working Committee from jail including Jawaharlal Nehru"¹⁰

Gandhi-Irwin Pact

After the failure of the 1930 Round-Table Conference to come to decisions of any consequence and after the Civil Disobedience Movement was in jeopardy, Gandhiji conferred with the Viceroy, Lord Irwin; during February and March, 1931. As a result of the Gandhi-Irwin talks, an agreement was reached to be known as the Delhi Pact. According to the Pact, civil disobedience was to be called off, prisoners released, and salt manufacture permitted on the coast. Congress would attend the next Round-Table Conference in London, but neither independence nor dominion status was assured.

The Delhi Pact, ratified at the Karachi Congress session of March 1931 initially dismayed Nehru: "We should not have agreed to suspension of civil disobedience. It will demoralise our Movement".¹¹ Clause 2 especially disturbed him. Finally, however, he consented to move the resolution accepting the Pact. Clause 2 of the Delhi Pact stated: "As regards constitutional questions, the scope of future discussion is stated, with the assent of his Majesty's Government, to be with the object of considering further the scheme for the constitutional Government of India discussed at the Round-Table Conference. Of the scheme there outlined, Federation is an essential part; so also are Indian responsibility and reservations or safeguards in the interests of India, for such matters as, for instance, defence, external affairs, the position of minorities, the financial credit of India; and the discharge of obligations".¹² The Pact did not work for long. Civil Disobedience was relaunched. The country was once again in trouble.

Communal Award

The Civil Disobedience Movement of 1932-34 was undertaken because Congress demands continued to be ignored by the British Government. The "movement was precipitated... by the arrest of... Mahatma Gandhi on his return from London to India after the Second Round-Table Conference. It passed the beak of its strength towards the end of 1932. Mahatma Gandhi then called on his followers to devote themselves to the removal of untouchability. There followed a period during which civil disobedience was still the policy but no resistance was offered. By stages it was withdrawn."¹⁴

In August 1932, the British introduced constitutional changes in India, entitled the Communal Award, which provided, in part, for a separate electorate for untouchables in the Legislative Council. Gandhiji, profoundly decided to ameliorate the condition of the Harijans, or children of God (his name for India's untouchables), considered creation of such an electorate intolerable. Numerous other Congress leaders were equally outraged by the Award's provisions. Among additional Communal Award provisions objectionable to Congress leaders were the following: Separate communal groups were to vote for seats allotted to Muslims, European and Sikh constituencies. Such voting as well as other similar arrangements, could be altered only after ten years, with the assent of the communities affected. Only qualified electors not included in a Muslim, Sikh, Indian Christian, Anglo-Indian or European constituency, were to be entitled to vote in a general constituency. In other words, the Communal Award went counter to the domestic secular ideals of Congress in multiple fashion. Jawaharlal Nehru described the Communal Award as "merely a problem created by the middle or upper class for the sake of a few seats in the Legislature or appointment in government service or for ministerial positions."¹⁴

Poona Pact

The Poona Pact was soon substituted for the Communal Award. As described by Sitaramayya, leaders of the untouchables had every reason to be grateful, since the "Pact secured

them double the number of the seats granted in...Prime Minister MacDonald's previous Award.. and a measure of representation somewhat in excess of the proportion of their population. The question of referendum at the end of ten years became the subject of a last moment controversy but Gandhiji fixed five years instead of ten if there should be a referendum.. Ultimately it was decided to leave the whole question to be decided by mutual agreement in the future—a formula—approved of as 'excellent' by Mahatma Gandhi... Simultaneously statements were made in England and India... announcing...acceptance of the Poona Agreement." Where upon Gandhiji decided to break his fast. Although his life had been saved for the moment "almost in the same breath in which he had agreed to break his fast, he foreshadowed the certainty of its resumption if the reform of the removal of untouchability was not faithfully achieved within a reasonable period."¹⁵ A minor victory had been won, but one by no means gratifying to Jawaharlal Nehru.

The proposals and findings of the Round-Table Conferences and various committees of the Parliament were introduced as the Government of India Bill, a provisional Constitution for India, issued as a White Paper in 1933. The Committee stated in its published report that "the safest hypothesis on which we can proceed, and the one most in accordance with our constitutional history, is that the future government of India will be successful in proportion as it represents, not a new creation substituted for an old one, but the natural evolution of an existing government and the natural extension of its past tendencies."¹⁶

Developments within the Congress, 1933: A resolution passed at the Calcutta Session of March 21 reaffirmed previous stands adopted on independence, as well as civil disobedience as a legitimate means for attaining the "national goal." Congress further urged: (1) strengthening of the Nationalist Movement; (2) that there be a firm boycott of foreign cloth and British goods; (3) increased use of khadi; (4) that any consideration of a constitution framed for India while its people were victims of barbarous repression should be refused; (5) that Indians should not be duped by Britain's

White Paper constitutional scheme. Congress also reasserted its approval of the resolution on Fundamental Rights passed by the 1931 Karachi Congress Session".¹⁷ The *Indian Annual Register* of 1933 stated that, despite Congress activities and Gandhi's 'fast' the Viceroy had made pronouncement which had indicated that he had not been stampeded away from dominion status as the natural and inevitable goal of the British policy in India. He had not been frightened, apparently, into adjuring the forbidden phrase.

References

1. Bannerji, A C, *Indian Constitutional Documents*, Vol. II, p. 320.
2. Ibid, p. 302.
3. Mukherji, P, *The Indian Constitution*, p. vii.
4. Gopal, Ram, *The Trials of Nehru*, pp. 1-2.
5. Nanda, B R, *The Nehrus—Motilal and Jawaharlal*, p. 157.
6. Chakrabarty, D, and Bhattacharya, C, *Congress in Evolution*, p. 215.
7. Nehru, Jawaharlal, *A Bunch of Old Letters*, p. 61.
8. Philips, C H, *The Evolution of India and Pakistan*, p. 229.
9. Brown, W, Norman, *India, Pakistan, Ceylon*, p. 170.
10. Brecher, Michael, *Nehru : A Political Biography*, p. 167.
11. Brecher, Michael, *Nehru : A Political Biography*, p. 173.
12. Nehru, Jawaharlal, *Toward Freedom*, p. 192.
13. Nehru, Jawaharlal, *The Unity of India*, p. 95.
14. Gwyer, Sir Maurice, and Appadorai, A, *Speeches and Documents of the Indian Constitution*, p. 407.
15. Sitaramayya, P, *The History of the Indian National Congress*, Vol. I, p. 534.
16. Proceedings, Evidence and Records of the Committee Session, 1932-33 in the House of Lords, 79 (1),
17. Rao, M V Ramana, *A Short History of the Indian National Congress*, p. 166.

Road to Federal Government

THE Act of 1935 was an outcome of three Round-Table Conferences of 1930, 1931, and 1932. The Congress was represented through Gandhiji only in the second one. It is obvious then that it did not have substantial influence in framing the structure of the Act. It is true that Gandhiji's claim for the Congress, as the only organisation representing India as a whole, became an apple of discord at the Round-Table Conference. Nevertheless, such a claim may not sound ambitious or arrogant if it is pointed out that the non-Congress Indian delegates to the Round-Table Conference, representing other interests, were not rightly chosen or selected by the people but were Government nominees. On behalf of the Congress, representing the masses of Indian people, Gandhiji demanded clearly that responsible government be fully installed both at the Centre and in the Provinces immediately. Probably this demand was far too much for the British Government to grant. Professor Coupland observes that Gandhiji seemed unwilling or unable to make any suggestions of his own for bringing about a settlement.

It may be mentioned here that Churchill as a Conservative opposition leader seems to have been mainly responsible for the British Government's refusal to include in the New Act any reference to Dominion Status as the ultimate goal for India. In doing so he stuck to the British conservative policy of granting India self-government by degrees. Keith

remarked that "...the omission of any reference to Dominion status, following on the complete silence of the joint committee inevitably caused a painful feeling in India, and annoyance to those supporters of the ministry who realised that its action was certain to be interpreted in India as in some way seeking to arade frank acceptance of Dominion status as the final goal."¹

Inauguration of the Act of 1935

The Government of India Act, 1935 was the most important step taken by the British government to ensure responsible government in India. The novelty of the provisions was in the idea of an all-India federation. Whatever the intention, the British Government, for the first time, devised a scheme for a federation consisting both of the British India and the Indian princely states. The Government of India Bill received Royal assent in August 1935. The British Government decided that Provincial autonomy would be introduced on 1 April 1937 leaving Federation to follow later. The electoral provisions began to operate on 3 July 1936, and the provisions for Provincial autonomy on 1 April 1937.

Main Features of India Act 1935

The man features of the governmental system prescribed by the Act of 1935 were as follows :

Federal and the Provincial Autonomy : While under all the previous Government of India Acts, the Government of India was unitary, the Act of 1935 prescribed a federation, taking the Provinces and the Indian States as units. But it was optional for the Indian States to join the Federation; and since the Rulers of the Indian States never gave their consent, the Federation envisaged by the Act of 1935 never came into being. But though the Part relating to the Federation never took effect, the Part relating to Provincial Autonomy was given effect to on 1 April 1937. The Act divided legislative powers between the Provincial and Central Legislatures, and within its defined sphere, the Provinces were no longer delegates of the Central Government, but were autonomous units of administration. To this extent, the

Government of India assumed the role of a federal government vis-a-vis the Provincial Governments, though the Indian States did not come into the fold to complete the scheme of federation.

Central Government During the Transitional Period

It has already been pointed out that the Provincial part of the Act of 1935 was introduced on 1 April 1937. ending the establishment of the Federation, the Central Government was to operate in accordance with the 'Transitional Provisions', read with the Ninth Schedule of the Act. under the later, certain provisions of the Government of India Act were continued in force, with amendments. The amendments were necessitated by the introduction of Provincial autonomy. Under this system, the Central Executive was the Governor-General-in-Council. The Governor-General and the members of the Council were appointed by the King by warrant under the Royal sign Manual. The number of the members of the Council was not fixed, but three at least of them must have served under the Crown in India for at least ten years and one must have been a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, or a pleader of a high court, of not less than ten years' standing.

The Governor-General had the power to make rules and orders for the more convenient transaction of business in his Executive Council. The Governor-General presided over the Council's meetings. The Governor-General was generally bound by the decisions of the majority of the Council. In case of a tie he or other person presiding had a casting vote. But, the Governor-General could set aside the decision of the majority for the safety, tranquillity, or interests of British India or any part thereof. In September 1939, the Executive of the Governor-General consisted of seven members. Of these, three were Indian and four British.

The Central Legislature, known as the Indian Legislature, was composed of the Governor-General and two chambers—namely, the Council of State and the Legislative Assembly.

The Council of State was composed of not more than sixty members. Of these, thirty-three were elected members and the rest were nominated officials and non-officials. It was laid down in the Government of India Act that the Legislative Assembly was to consist of members nominated or elected in accordance with rules made under the Act. The total number of members provisionally fixed by the Act was one hundred and forty. Still, there was provision for increasing, by rules, the total number so fixed and to vary the proportion that the classes of members bore one to another. At least five-seventh of the members should be elected members and at least one-third of the other members should be non-official members. The Council could sit for five year and the Legislative Assembly for three years. But either house could be dissolved earlier by the Governor-General who could also extend its term. The Legislative Assembly, elected in 1934-35 continued till 1945, when fresh elections were held.

The Legislative Assembly could discuss and vote on demands for grants submitted to it on the recommendation of the Governor-General (a proportion of the expenditure not being subject to the vote of the Indian Legislature). The Governor-General-in-Council had the power to restore any demand refused or reduced by the Assembly if he thought it necessary for the discharge of his responsibilities. Besides, in cases of emergency, he could authorise such expenditure as he considered necessary for the safety or tranquillity of British India or any part thereof.

Similarly, the Governor-General had power to over-ride the Legislature in certain cases. A Bill passed by the Chambers of the Indian Legislature required the assent of the Governor-General. He could give his assent, withhold his assent or reserve the Bill for the Crown. A copy of the Bill, assented to by the Governor-General, was to be sent to the Secretary of State for India and the Crown had the power to disallow it. In cases of emergency, the Governor-General could promulgate Ordinances valid for six months, subject to disallowance by the Crown. Where either Chamber of the Indian Legislature refused to pass a Bill in the form recom-

mended by the Governor-General, the Governor-General might certify that the passage of the Bill was essential for the safety, tranquillity or interest of British India or any part thereof, and, on receiving the signature of the Governor-General, it would become an Act of the Indian Legislature. Every such Act was to be laid before both Houses of Parliament and was not to have effect until assented to by the Crown. The powers conferred by the Act of 1935 on the Federal Legislature would be exercised by the Indian Legislature.

The Governor-General-in-Council and the Governor-General would be under the general control of the Secretary of State for India and would comply with such directions as might be given by the Secretary of State. It had been an accepted principle since the Montague-Chelmsford reforms that the Secretary of State would not ordinarily interfere in Indian administration where the Governor-General-in-Council agreed with the Legislature. Even though the Federation was not established, the Federal Court came into existence and performed such functions in relation to British India as it was required to do under the Act of 1935.

Distribution of Legislative Powers

Though the Indian States did not join the Federation, the federal provisions of the Government of India Act, 1935, were in fact applied as between the Central Government and the Provinces. The division of legislative power between the Centre and the Provinces is of special interest to the reader in view of the fact that the division made in the Constitution between the Union and the States proceeds largely on the same lines. It was not a mere delegation of power by the Centre to the Provinces as by rules made under the Government of India Act, 1919. The Constitution Act of 1935 itself divided the legislative powers between the Central and Provincial Legislatures and, subject to the provisions mentioned below, neither Legislature could transgress the powers assigned to the other.

A three-fold division was made in the Act— (i) There was a Federal List over which the Federal Legislature had exclusive powers of legislation. This list included matters such as external affairs ; currency and coinage, naval, military and air forces. (ii) There was a Provincial List of matters over which the Provincial Legislature had exclusive jurisdiction, eg, Police, Provincial Public Service, Education (iii) There was a concurrent list of matters over which both the Federal and Provincial Legislature had competence, eg, criminal law and procedure ; civil procedure ; marriage and divorce, arbitration. The Federal Legislature had the power to legislate with respect to matters enumerated in the Provincial List if a Proclamation of Emergency was made by the Governor-General. The Federal Legislature could also legislate with respect to a Provincial subject if the Legislature of two or more Provinces desired this in their common interest.

In case of repugnancy in the concurrent field, a Federal law prevailed over a Provincial law to the extent of the repugnancy, but if the Provincial law received the assent of the Governor-General or of His Majesty, having been reserved for their consideration for this purpose, the Provincial law prevailed, notwithstanding such repugnancy. The allocation of residuary power of legislation in the Act was unique. It was not vested in either of the Central or Provincial Legislatures but the Governor-General was empowered to authorise either the Federal or the Provincial Legislature to enact a law with respect to any matter which was not enumerated in the Legislative Lists. It is to be noted that 'Dominion Status', which was promised in 1929, was not conferred by the Government of India Act, 1935.

Congress reaction to the new Constitution, 1935

From the very beginning, the Congress was opposed to both the Federal and the Provincial parts of the scheme of constitutional reforms. When in 1935, the report of the Joint Committee on Indian Constitutional Reform came to the Indian Legislative Assembly for consideration, Bhulabhai Desai (Congress) leader of the Opposition, moved an amendment, recommending to the Governor-General-in-Council to

advise the British Government not to proceed with any legislation based on the said scheme. The amendment was lost. The Congress found the whole scheme objectionable as a denial both of India's right to immediate independence and of the principles of democracy. It was opposed to the proposed Federal scheme because (according to the Congress) vital functions of the Government were excluded from the sphere of responsibility. With defence and external affairs as reserved subjects, added to the special responsibilities and the veto-power of the Governor-General, there remained no responsibility at the Centre. Thus, the Indian people could not control their own external and internal defence, their external relations, their own fiscal policy, their currency and exchange and their day-to-day administration.

The Congress found nothing to choose between the Centre and the Provinces. According to it, under the Provincial scheme, the ministers were placed between the devil and the deep sea, with the Governors with their extraordinary powers on the one side and the protected services on the other. Again, in the Federal structure, there was a juxtaposition of the nominees of the autocratic princes of the Indian States and the democratically elected representatives of the people of British India. Here, again, another point may be noted. In the composition of the Federal Legislature there was a heavy weightage in favour of the autocratic states. The total population of the Indian States was roughly 24 per cent of that of the whole of India. Nevertheless, the Rulers of the States had been given 33 per cent of the seats in the Lower House and 40 per cent of the seats in the Upper House of the Federal Legislature. The Princes were thus placed in a privileged position. This was wholly unacceptable to the Congress.

The Congress leaders repudiated the whole scheme of constitutional reforms embodied in the Act of 1935. It declared that "no constitution which curtails the sovereignty of the people of India and does not recognise their right to shape and control fully their political and economic future can be accepted."² The Congress also pointed out that a constitution acceptable to it must be "based on the independence of

India as a nation and it can only be framed by a Constituent Assembly elected on adult franchise."³ The demand for a Constituent Assembly was put forward by the Congress Working Committee in 1933 and was accepted at its general session in October 1934. The idea of a Constituent Assembly, thus introduced, was repeated at subsequent sessions of the Congress and became one of its most pressing demands.

To understand the thinking of the Congress more clearly, let us turn to the Faizpur session of the Congress. It began on 27 December 1936. In his presidential address Nehru took up national problems and said: "The Government of India Act of 1935, the new Constitution, started at us offensively, this new charter of bondage which has been imposed upon us despite our utter rejection of it, and we are preparing to fight elections under it...we go to the Legislatures not to cooperate with the apparatus of British imperialism, but to combat the Act and seek to end it, and to resist in every way British imperialism in its attempt to strengthen its hold on India and its exploitation of the Indian people. This is the basic policy of the Congress and no Congressman, no candidate for election, must forget this. Whatever we do must be within the four corners of this policy. We are not going to the legislatures to pursue the path of constitutionalism or a barren reformism."⁴

A study of Nehru's address clearly indicates the demands, programme, and the policy of the Congress so far as its relations with the British Government were concerned. He further observed: "...with the effort to fight the Act of 1935, and as a corollary to it, we have to stress our positive demand for a Constituent Assembly elected under adult suffrage. That is the very corner-stone of Congress policy today..."⁵ This, then, was the number one demand of the Congress. Explaining the second demand, the President said: "...Next to this demand for the Constituent Assembly our most important task will be to oppose the federal structure of the Act. Utterly bad as the Act is, there is nothing so bad in it as this Federation and we must exert ourselves to the utmost to break this, and thus end the Act as a whole

...." To infer from this that Congress was totally against the same speech, further on Nehru said clearly that : "We are not against the conception of a federalism. It is likely that a free India may be a federal India, though in any event there must be a great deal of unitary control. But the present federation (according to the Act of 1919) as being thrust upon us is a federation in bondage and under the control politically and socially, of the most backward elements in the country." "

As regards the question of accepting office in the Provinces, Jawaharlal Nehru went on to say : At Lucknow on April 12 at the 49th Congress session I ventured to tell you that, in my opinion, acceptance of office was a negation to our policy of rejection of the Act.... We are not going to the legislatures to cooperate in any way with the Act but to combat it. This limits the field of our decision in regard to offices, and those who incline to acceptance of them must demonstrate that this is the way to non-cooperate with the Act, and to end it...." It is, undoubtedly, true then that the Congress Party rejected the Government of India Act of 1935 because, in its opinion, the Act did not represent the will of the Indian Nation, because it was designed to facilitate and perpetuate the domination and exploitation of the Indians, because it was imposed on India by a non-Indian authority, and because it was accompanied by widespread repression and suppression of civil liberties. Instead, the Congress demanded an Indian Constituent Assembly elected by adult suffrage and having the power to write a new constitution for India. In order to achieve its object the Congress decided to contest the ensuing provincial election, but kept the question of acceptance or rejection of office pending till the results were known.

Though the Congress repudiated the whole Act, it contested the elections in 1937, but on the pledge that it would enter the Legislatures with the purpose of combating the Act. The convention of the newly elected Congress members of Legislatures, that met on 19 and 20 March 1937, laid down that it would be the policy of the Congressmen in the

Legislatures to fight the new constitution and to resist the introduction and working of the Federal part of a directly elected Constituent Assembly.

So far as the Indian States were concerned, their attitude was peculiar. In the earlier period of the Round-Table Conference, the Princes had expressed their readiness to join the Federation provided that certain conditions were fulfilled. While naturally determined to maintain their internal 'sovereignty', they were prepared, and indeed anxious, to share with the British Indian Provinces in directing the common affairs of India. Soon, however, their attitude changed. In spite of the various sorts of special considerations given to the States for persuading them to enter the Federation, they failed in the end to accept these minimum conditions of Union without which a federation was impossible. The course of events went against the establishment of the Federation. With the introduction of Provincial autonomy, the princes were afraid that it would react unfavourably on the internal autonomy of the States.

Many thinkers hold the view that the Congress should have accepted the Federal part. According to D N Bannerjee, the "defects and anomalies"⁹ were bound to disappear in a few years even if the scheme was brought into operation as it was. He holds the view that "the real merit of the Federal scheme...lies in an attempt at realising, perhaps for the first time in the history of this country, the fundamental unity of India as a whole, in spite of its infinite variety of interests, of bringing the territories under the Princes into a closer and more intimate contact with British India for the service of the country."¹⁰

Indeed, it seems that, at a later stage, sometimes in 1938, the Congress had tended towards acceptance of the Federal part. P Sitaramayya says, "there were suspicions slotting about in the air that Gandhi or some of his colleagues had expressed themselves in favour of accepting the Federal part of the Government of India Act (1935) or even entered into a pact with the British to work it."¹¹ The tendency was bitterly condemned by Subhas Chandra Bose who was then

President of the Congress. He even threatened to resign from the Presidentship of the Congress in order to be free to carry on an agitation against the Federal scheme. The question of the acceptance of the Federation got mixed up with the controversy between Subhas Chandra Bose and the right wing of the Congress over the Congress Presidential election. The election was to take place on 29 January 1939. There were three candidates—Maulana Abul Kalam Azad, P Sitaramayya and Subhas Chandra Bose. On 20 January 1939, Maulana Azad withdrew. At the same time, he recommended P Sitaramayya to the delegates. On 21 January 1939, Subhas Chandra Bose issued to the Press a statement to the effect that the Presidential election involved a choice between principles and programmes, and that, in view of the increasing international tension and the prospective fight over the Federation in India, "the year (1939) would be a momentous one"¹² in the history of India. This statement was refuted by a counter-statement by six members of the Congress Working Committee issued from Bardoli on 20 January 1939. The statement said that all the members of Congress Working Committee were equally opposed to the Federation as Subhas Chandra Bose himself. To this Bose rejoined, "it is widely believed that there is a prospect of a compromise on the Federal scheme between the right wing of the Congress and the British Government during the coming year."¹³ He repeated the charge in a positive manner on 27 of January: "Can anybody challenge the fact that a belief is widely held that during the coming year a compromise will be effected between the British Government and the right wing of the Congress? This impression may be erroneous, but it is there all the same and nobody can deny its existence. Not only that. It is generally believed that a prospective list of Ministers for the Federal Cabinet has been already drawn up"¹⁴

When Subhas Chandra Bose was re-elected President of the Congress defeating his rival Pattabhi Sitaramayya, Mahatma Gandhi remarked, the "defeat is more mine than his",¹⁵ since he was "instrumental in inducing Pattabhi not to withdraw his name."¹⁶ Mahatma Gandhi's remark is not a little significant in view of the bitter opposition of Bose to the

Federal scheme of the Government of India Act, 1935. So deep was the cleavage between Bose and the right wing of the Congress that, after the Presidential election, 13 out of the 15 members of the Congress Working Committee resigned on 22 February 1939. Bose ultimately resigned his presidentship as he did not feel equal to the task of forming a Working Committee. So far as the acceptance of the Federation was concerned matters were set at rest by a resolution passed at the Tripuri session of the Congress (1939) declaring its uncompromising opposition to the Federal part of the Act and its determination to resist its imposition.

Important events following implementation of the Act.

In the public session of the Faizpur Congress (1936) it was decided to observe a peaceful hartal all over India on 1 April, 1937, to make the country's protest against the imposition of the new constitution. The general elections were scheduled to be held at the end of January and the beginning of February 1937. The Congress Party decided to contest the first general elections held under the Government of India Act, 1935. The Congress Party secured an absolute⁸ majority in the five provincial legislative assemblies. Nationalism was an exclusive monopoly of the Congress. Such a rising tide of Indian nationalism was one of the most potent factors which compelled Great Britain to make India a self-governing nation and withdraw.

Such an overwhelming election-success was unprecedented in the history of the Congress. The Working Committee that met at Wardha congratulated the nation— "...on its wonderful response to the call of the Congress during the recent elections, demonstrating the adherence of the masses to Congress policy, and their firm determination to combat the new Constitution and end it, and by means of a Constituent Assembly to establish an independent and democratic State and to labour unceasingly as soldiers of Swaraj for the freedom of the motherland and the emancipation to her suffering and exploiting millions."¹⁷ Jawaharlal Nehru also said that "I am perfectly satisfied at turn of events (elections) are taking. We propose to go straight on, and we hope to put an end to this

Constitution before long."¹⁸ Two principles of the Congress policy clearly emerge from this: First, that the Congress would combat the new Constitution and try to end it, and, second, that it would try to "establish an independent democratic state by means of a Constituent Assembly."

The Congress had decided to end the Act and thereby the new Constitution. What was not decided about, for some time at least, was whether it should accept office after the winning of the election or not. Meanwhile, the All India Congress Committee met at Delhi on 18 March 1937. It authorised and permitted the elected Congressmen to go ahead and accept office in the Provincial Legislature provided that the leader of the Congress Party in the Legislature "... is satisfied and is able to state publicly that the Governor will not use his special powers of interference or set aside the advice of ministers in regard to constitutional activities."¹⁹

To interpret this action as an acceptance of the new Constitution would be a mistake for three reasons. First, the All India Congress Committee passed a main resolution on "The New Constitution and Congress Policy" on 18 March 1937. It read, "... the Congress entered these elections with its objective of independence and its total rejection of the New Constitution, and the demand for a Constituent Assembly to frame India's Constitution."²⁰ Secondly, Jawaharlal Nehru addressed the Congress Party convention on 19 March, in Delhi. He reiterated his condemnation of the new Constitution and said: "This constitution must therefore go, lock, stock and barrel...this constitution must be scrapped and must give place to another, framed by a Constituent Assembly and based on the sovereignty of the people."²¹ Thirdly, the convention also declared on 20 March that "the electorate has, in overwhelming measure, set its seal on the Congress objective of independence and the rejection of the New Constitution. The Constitution therefore stands condemned and utterly rejected by the people."²²

Fortunately, by 29 March the Congress Party leaders in Bombay, Madras, the C P, Orissa, the U P and Bihar decided not to join the Provincial Cabinets because they were not

given the required assurances by the Governors. The Governors regretted their inability to grant the assurances on the ground that "it was impossible for the Governors to give any assurance as regards the use of the powers vested in them under the Act." Gandhiji also claimed: "I hold that it would be distinctly discourteous if they (the Governors) interfered with their ministers in matters over which the law gave the latter full control and with which Governors were under no legal obligation to interfere."²³ This may be treated as a new crisis created by the Congress Party to force Great Britain to grant India self government. However, as proposed by Niemeyer and accepted by the House of Commons, Provincial Autonomy came into force on 1 April 1937.

The Congress Party's decision not to join the Provincial cabinets created a constitutional deadlock. Lord Zetland, Secretary of State for India, made a formal statement in the House of Lords on 8 April that "...under Section 52 of the Act, certain obligations are imposed on the Governors to safeguard the legitimate interests of the minorities..." Therefore, "...Governors could not give within the framework of the constitution, the assurance which was asked of them and that Mahatma Gandhi is in error in assuming that they could."²⁴ On the same day, 8 April, C R Attlee (Labour) asked R A Butler, Under Secretary of State for India, if he had any statement to make on the Indian political situation. Butler replied that in each of the six legislatures where the Congress obtained a majority, the Governors took the correct constitutional course by inviting the leader of the majority party to form a Ministry. The Congress refused their invitations because the Governors could not promise then and there that they would not use their special powers conferred upon them by the Act.

Meanwhile, Lord Lothian, one of the members of the Round-Table Conference and the Chairman of the Franchise Committee, directly concerned with the framing of the Act, 1935, wrote a letter on 12 April in reply to Gandhiji's arbitration proposals of 10 April. It read: "...I am inclined to think that the real key to the solution of the Indian consti-

tutional deadlock lies in the recognition that under a system of responsible government the ultimate decision against abuse of power comes to rest with electorate. It is quite clear that ordinarily the Governor has no right under the constitution to interfere with the responsibility of his Ministers. He is bound to act on their advice."²⁵

Once again on 22 April Gandhiji stated that "What I want before Congressmen accept office is the assurance which I still hold is within the power of Governors. The assurance contemplates non-interference and non-dismissal of cabinet."²⁶ To make an official reply the Congress Working Committee met at Allahabad from 26 to 28 April. It passed a resolution on the constitutional deadlock approving the action of the leaders of the Congress Party in the provinces. It criticised statements made by Lord Zetland, and R A Butler, as utterly inadequate to meet the requirements of Congress" and as misleading and misinterpreting the attitude of the Congress.

A ray of hope appeared when Lord Linlithgow, the Viceroy of India, said on 21 June that the three months' experience of the operation of the Constitution had conclusively shown that assurances from the Governors were not essential to the smooth and harmonious working of the constitution. Furthermore he emphasised that "...there is no foundation for any suggestion that a Governor is free, or is entitled, or would have the power to interfere with the day to day administration of a Province outside the limited range of the responsibilities specially confined to him. Finally, he said that, "... Whatever emerges you may count upon me, in face even of bitter disappointment, to strive unstirringly towards the full and final establishment in India of the principles of Parliamentary Government."²⁷ Perhaps Linlithgow's message went a long way in convincing the Congress leaders that it was not easy for the Governors to invoke their special powers guaranteed by the new constitution. When the Congress Working Committee met at Wardha, it permitted Congressmen "...to accept office where they may be invited there-to."²⁸ The Congress leaders in six provinces where they had

a majority, were invited by the respective Governors to form new ministries. The British Government without losing any constitutional ground succeeded in securing at least temporary Congress support. The Congress perhaps lost its argument but not its objective. Thus the constitutional deadlock was solved for the time being.

To assure the fullest cooperation of the new Congress cabinets Jawaharlal Nehru made public the following statement to the Indian people on 20 July 1937: "A change has come over all Provincial Governments and, though this change does not vitally affect the relation of Britain to India, it is right that it should affect all our countrymen, whether they are in Government service or not."²⁹ On 29 October after acceptance of office in the provinces the All India Congress Committee called on Provincial Government and Ministries "...to prevent the imposition of this (proposed) Federation which will do grave injury to India and tighten the hands which hold her in subjection to the imperialist domination and reaction..."³⁰ Despite the seeming change of front, perhaps it can hardly be denied that the official policy of the Congress was for "rejection of the new Act and for non-cooperation in its working."

The Working of Provincial Autonomy, 1937-39

The working of the Act of 1935 showed that, though the Congress had accepted office not exactly with a view to working the constitution according to the spirit of the constitution, the services and the Governors offered cooperation in a manner which tended towards the establishment of healthy conventions of parliamentary government. This cooperation was recognised by the Congress and earned for it the criticism that it was drifting towards constitutionalism. Though the Governors presided over the meetings of the cabinets, they could not set aside ministerial advice without provoking a constitutional crisis. In a case, where the Governor dismissed certain of his ministers who had refused to resign, it brought forth a bitter condemnation from the Congress. As regards the Governor's special powers regarding legislation,

there are only two cases on record, when the Governor of the NWFP vetoed Bills. The Governor's power to legislate by discretionary Ordinance was never used in the Congress Provinces. It was, however, used in Sind in 1939.

Apart from the conventions growing the relations between the Governor and his ministers, the relations between the ministers and their party outside the Legislature also were being regularised. It so happened that, when the Congress High Command agreed to the acceptance of office, it established a central controlling authority to see to ministerial appointments. Again, after the Ministries were formed, a Chief Minister could not dismiss a minister or appoint a new minister without the sanction of the Congress Parliamentary Sub-Committee. It was the Working Committee of the Congress which prepared important declaration of policy, the programme of action being the same for all the Congress Provinces. In the execution of these, the ministers had to consult the Working Committee of the Congress or its Parliamentary Sub-Committee. This control by the party outside the Legislature has been criticised by Coupland as a contravention of the principle of responsible government, for "Ministers were only in form responsible to the majorities of the legislatures elected by the people, in fact, they and the majorities too were responsible to the Working Committee and the Parliamentary Sub-Committee" of the Congress.

This criticism loses much of its force in view of the fact that in India the Congress was a revolutionary organisation. It had accepted offices in order to render what it had considered the obnoxious parts of the constitution unworkable. The party high command had to enforce a uniform policy through the Provincial Ministries. Moreover, the instrument of instructions issued to the Governor would, by itself, help the development of a well-knit party system, for the Governor was instructed to form his Council of Ministers in consultation with the person who was likely to command a stable majority in the Legislature. An all-India party, with a uniform policy for the whole of India and with a strict control over the party members returned to the Legislatures, could meet the circum-

stances better than Provincial parties with local policies and programmes and with no control over the party members elected to the Legislatures. An all India party could counteract the tendencies to parochialism by its all-India policy and programme. By its superintendence and direction, the party could always focus the attention of the members of the Provincial Legislatures on national, in preference to Provincial, needs.

India's Resistance to Federal Scheme

The year 1938 began for the Congress with new resolves. Jawaharlal Nehru the Congress President, declared in his statement of 1 January that "Politically the fight against the proposed Federation and for independence" was the major political problem before India. February (1938) was an eventful month for the Congress. Under the Presidentship of Subhas Chandra Bose, the fifty-first annual session of the Congress met at Vithal Nagar, Haripura, Gujarat, from 19 to 21 February. The attitude of the session is clearly indicated in the policy outlined by its president Subhas Chandra Bose when he said : "My term of office as the Congress President will be devoted to resist this unwanted federal scheme included in the Act of 1935 with all its undemocratic and antinational features, with all the peaceful and legitimate powers, including non-violent, non-co-operation if necessary and to strengthen the country's determination to resist this scheme."³¹

Furthermore, in his presidential address on 19 February he said : "...there is no possibility, in my opinion, of the Congress altering its attitude towards the Federal scheme at any time. On our success in resisting the imposition of Federation by the British Government will depend our immediate political future."³² The Haripura Congress declared through a resolution "its condemnation of the proposed Federal scheme" and called upon the Provincial and Local Congress Committees, the people and the Ministers, to prevent its inauguration. President's statement and the Congress resolution therefore, make it plain that the Congress was there to fight the federal part of the Act of 1935, though it had formed ministries in eight provinces, with a view to strengthen

the nation in its struggle for independence. What the Congress Party claimed was the ending of the Act of 1935, and a new constitution framed by the Indian Constituent Assembly elected on the basis of adult franchise.

To solve the ministerial deadlock the Viceroy released a statement on 22 February, which resulted in a compromise. The Governor-General made it clear that as regards the particular issue of the release of prisoners so far as the Governors were concerned there was no going back on the policy of readiness to examine the individual cases, and the Governors remained ready to agree to release, after examination, where no undue risk in their 'own Province, or in other Provinces, was involved. He said that, "There is no impropriety, whatever may be suggested to the contrary, in their requiring such individual examination, or in their declining without it to accept the advice of their ministers" Furthermore, he observed that his action left "... it open to ministers, in consultation with the Governors, to pursue a policy of release of prisoners and they need anticipate no difficulty now, any more than in the past, in securing the friendly and ready cooperation of Governors in individual examination."³³

The Congress opposed the Federation, because the responsibility that was to be conceded to the Federal Government was wholly inadequate. That is to say, there was dyarchy at the Centre. There were subjects like Finance, Defence and External Affairs which were reserved for the Governor-General, and other subjects were entrusted to Indian hands. The Governor-General might accept the advice of the members of the Executive Council, or he might not. To the Indian people this did not sound like responsible Government. Another point which the Congress did not like was the representation of Indian Princes. It argued that "... the only kind of federation that can be acceptable to the Congress is one in which the States participate as free units enjoying the same measure of democracy and freedom as in the rest of India."³⁴

According to that principle the Congress thought that the Princes should be represented in the Federal Government by

elected members and not by their own nominees. It was the belief of the Congress that nominated representatives were bound to form a reactionary group and act as a brake upon the expression of the democratic theory. The Congress also doubted whether the Princes would ever surrender sufficient sovereignty, especially in fiscal matters, to give reality to the federation. On the other hand it must be pointed out what the President of the Congress had to say. At Lucknow, on 20 November 1938, in a Press interview, Congress President Subhas Chandra Bose remarked : "...Congress is not opposed to the idea of Federation, but to the Federal scheme as envisaged in the Act. Real Federation will provide for association of the people of British India with the subjects of Indian States in the federal machinery of an emancipated India." He was of the opinion that "... Until we (Congress) control the Central Government we shall not be able to attain our objective."³⁵

The position of British Government, with regard to the Federation, was also clarified in no unmistakable terms by Lord Linlithgow, the Crown Representative in India, when he addressed the Associated Chambers of Commerce at Calcutta on 19 December 1938. He said : "Provincial Autonomy and Federation, essentially and intrinsically parts of one another, represent a great decision, all the more significant when outlined against the background of world politics ... in the interests of India as a whole as well as from the point of view of individual units, whether States or Provinces, the ideal embodied in the Act is that best calculated to achieve results of real and permanent value alike to India and to the component parts of the Federation."³⁶ It is made clear then that the British Government was firmly decided to carry out the Government of India Act of 1935.

The Congress was firmly determined to get complete independence from Britain under any circumstances. Congress approved of the federal principle but disagreed with Britain over its method of implementing Federation as embodied in the Act of 1935. On 25 January 1939, Linlithgow, the Viceroy

of India observed that "...he was determined to do all that lay in his power to bring about the inauguration of an All India Federation with the minimum of delay."³⁷ Next day he declared that "the scheme of Federation outlined in the Government of India Act, 1935 afforded the only possible solution of the numerous problems of India."³⁸ This was the British point of view.

The Congress wanted to include the States people in its fight for freedom. It was made clear in the resolution passed by the Tripuri session of the Congress on 12 March 1939. It declared: "The great awakening that is taking place among the people of the State may lead to a relaxation or to a complete removal of the restraint which the Congress has imposed upon itself, thus resulting, in the ever increasing identification of the Congress with the State's people."³⁹ Furthermore, the status of the States in free India was clarified as the resolution went on to say: "... the Congress desired to reiterate that its objective, complete independence, is for the whole of India, inclusive of the States, which are integral parts of India and which cannot be separated and which must have the same measure of political, social, economic and religious freedom as a part of India."⁴⁰

The resolution on "National Demand" moved by Jayaprakash Narayan expressed in emphatic terms that the British Government must recognise the forces of Indian nationalism because: "The Congress has for more than half a century striven for the advancement of the people of India and has represented the urge of the Indian people towards freedom and self expression. During the past twenty years it has engaged itself on behalf of the masses of the country in struggle against British Imperialism, and through the suffering and disciplined sacrifice of the people, it has carried the nation a long way to the independence that is its objective."⁴¹

These words make it clear that the spirit of Indian nationalism was the important factor which the British Government had to consider in solving the Indian problem. Who would doubt, then that the national demand of the Congress was

the withdrawal of the British and a constitution made by the people of India themselves? This national demand for the principle of self-determination was the most important factor which the British could hardly overlook. The Bombay meeting of the All India Congress Committee during June 1939, amended the constitution of the National Congress. Its object, as shown in Article 1, was: "The object of the Indian National Congress is the attainment of Purna Swaraj (Complete Independence) by all legitimate and peaceful means."⁴² It also reflects undoubtedly uncompromising attitude of Indian nationalism.

Federal Scheme Postponed

On 3 September 1939, the British Government declared war against Germany. The Governor-General made it clear that India was at war with Germany and he appealed to the people of India for making their contribution to the side of Human freedom against the rule of force. Before the actual declaration of war, the political horizon had been clouded enough to show that war was near, and preparations for that had been going on from the Government's side. A few months before the war had broken out, Indian troops had been sent out first to Aden and then to Egypt and Singapore. Another significant event was the amendment of the Government of India Act, 1935, so as to give the Central Government powers of direction and control over Provincial Governments. Moreover, the term of the Indian Legislative Assembly had been extended by the Governor-General. Its purpose was, in a word, "to furnish the Central Government, in the event of war, with the executive authority throughout the country."⁴³ The Central Legislature had declared its will that, without consultation with it and without its advice, Indian troops should not be sent abroad. When troops were sent to Aden, the All India Congress Committee expressed its disapproval of the despatch of Indian troops to foreign countries. Troops were sent to Egypt and Singapore without the advice of the Legislature. The action of the Government was defended by

Lord Zetland on the ground that the party leaders in the Central Assembly, including Bhulabhai Desai, the Congress leaders, were confidentially informed of the Government's intention to send troops sometime before they were actually despatched. "It would clearly have been the height of folly," said Lord Zetland, "to give advance notice to the world by means of discussion in the Legislative Assembly in India by our proposed military dispositions."⁴⁴ P Sitaramayya observed : "Did his Lordship imply that this intimation was tantamount to consultation and securing of permission and, when it was obviously not so, was it his Lordship's grievance that these leaders did not raise a howl in the Press or on the platform ? The complaint would not lose its point because political leaders were intimated the movements of Indian troops to places beyond the seas. Surely his lordship could admit that whatever news was broken to the political leaders was conveyed in strict confidence and with the charge of absolute secrecy."⁴⁵ If it was the intention of the Government that the war preparations should not be given publicity, a secret session of the Legislative Assembly could have been summoned. The fact that the Government did not care to consult the Legislature proved only that India was a dependency and nothing else. The Congress Working Committee, at its meetings from 9 to 12 August 1939, strongly resented the decisions of the Government. The Congress Working Committee could not accept those decisions (reference was made also to the extension of the life of the Central Assembly by another year) of the British Government and resolved to dissociate itself from the British Government and to take such steps as were thought to be necessary to give effect to the Congress policy. As a first step to this end, the Committee called upon all Congress members of the Central Legislative Assembly to refrain from attending the next session of the Assembly.

The Congress Working Committee decided not to take any final decision at that stage, so as to allow for the full elucidation

tion of the issues at stake, the real objectives and the position of India at that time and in the future. The Congress Working Committee, therefore, invited the British Government to declare in unequivocal terms that their war aims were in regard to democracy, and how those aims were to apply to India and to be given effect to immediately. The British Government's reply to the demands of the Congress was most disappointing. In a speech in the House of Lords on 26 September 1939, Zetland said that it was natural but unfortunate that the Congress should have chosen this time to reassert its claim towards a fuller form of self-government. He added that the Government would be willing to listen to such demands when the time came. This was not the occasion to put forward claims when they were engaged in a life and death struggle. He agreed that, in India, there was a number of ardent nationalist who had practical experience in administration and that "it would be a calamity if such men were to withdraw from the Governments in the Provinces."⁴⁶

Gandhiji's reply to these on 28 September 1939 is worth mentioning. He said that as a representative body of all Indians, it had asked the British Government for an explanation of its intention. If the British Government was fighting for freedom, it should declare that India's freedom was included in the war aims. India was willing to cooperate in the war efforts, but only as a free nation, and the Congress had a right to know that it could tell the people that, at the end of the war, India would be a fully independent State like England.

The speeches of Zetland stiffened the attitude of the Congress. The All India Congress Committee passed a resolution, demanding that India must be declared independent and that application must be given to this status to the largest possible extent without delay. Later, on 6 November 1939, the Viceroy explained that, in order to associate Indian opinion with the conduct of war, the British Government was ever ready, if certain conditions were secured to expand the

Executive Council of the Governor-General. He pointed out, however, that, because of disagreement between the major communities, the British Government could not expand the Executive Council. Gandhiji remarked: "The Congress has asked for bread and it has got a stone."⁴⁷

The Congress had to decide on its course of action. On 22 October 1939, the Congress Working Committee passed a resolution to the effect that the Viceroy's announcement of 17 October was wholly unsatisfactory, and it called upon the Congress Ministries to resign. It may be recalled in this connection that the Working Committee in its resolution of 12 August 1939, had anticipated such resignation, for, then it had given the hint of dissociating itself from the British Government and of taking, from time to time, such steps as were thought to be necessary. In accordance with the instructions of the Congress Parliamentary Sub-Committee, Provincial Ministries resigned in all Congress Provinces one after another, all within a fortnight—the Madras Ministry being the first to resign on 28 October. On the resignation of the Congress Ministries, the administration of Congress Provinces was taken over by the Governors. The Governors assumed to themselves all the powers hitherto exercised by the Provincial Legislatures and Council of Ministers. The Governors appointed advisers, generally two or three in number, from among senior officials in their Provinces. There was, therefore, no responsible government nor any vestige of Provincial autonomy in a large part even of British India.

The responsibility for the constitutional breakdown is sometimes laid on the Congress. "It was the unavoidable results of the Congress leaders' decision to bring the operation of the existing system to an end,"⁴⁸ writes Coupland. If it be said that it is the duty of the majority party in the legislature to form a Government and that, owing to the resignation of Ministries, the Congress party failed in its duty, in fairness to the Congress it may be replied that it

acted in accordance with the mandates of the people. In its election manifesto the Congress had stated that it should enter the legislatures "not to cooperate in any way with the Act (of 1936) but to combat it and to end it."⁴⁹ Having been elected, they got a mandate from the people, which it was their duty to fulfil. In their resignation, they fulfilled their pledge. "Resignation from office was a great weapon with the Congress, which was as constitutional as it was effective in bringing the Governors round in case of difference."⁵⁰

References

1. Keith, A B, *A Constitutional History of India*, p. 316.
2. Congress Resolution, 12 April 1936.
3. Ibid.
4. Nehru, J, *Toward Freedom*, the autobiography of Jawaharlal Nehru, pp. 422-23.
5. Mitra, Nripendra Nath, *The Indian Annual Register 1935*, p. 226.
6. Nehru, J, *Towards Freedom*, p. 423.
7. Ibid, p. 423.
8. Indian National Congress, *Presidential Address*, 12 April, 49th Session.
9. Banerjee, D N, *Partition or Federation*, pp. 143-44.
10. Ibid.
11. Sitaramayya, P, *The History of Indian National Congress*, Vol. II, p. 109.
12. *Indian Annual Register 1939*, Vol. I, p. 41.
13. Ibid, pp. 41-51.
14. Ibid, p. 43.
15. Ibid, p. 46.
16. Ibid, p. 46.
17. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 40.
18. Ibid, p. 40.
19. All India Congress Committee Resolution, 18 March 1937.
20. Mitra, *Indian Annual Register 1937*, Vol. I, p. 209.
21. Ibid, 209.
22. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 44.
23. Mitra, *Indian Annual Register 1937*, Vol. I, p. 243.
24. *Parliamentary Debates*, House of Lords, 8 April 1937, Col. 104.
25. *The Times* (London), April 12, 1937.
26. Mitra, *Indian Annual Register 1937*, Vol. I, p. 254.
27. *Indian Annual Register 1937*, Vol. I, p. 265.

28. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 51.
29. *Times of India*, 21 July 1937.
30. *Indian Annual Register 1937*, Vol. II, p. 311.
31. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 73.
32. *Indian Annual Register 1938*, Vol. I, p. 345.
33. *Command* 22 February 1938, p. 4. para 8.
34. *The Statesman* (Delhi), 21 November 1938.
35. *Ibid.*
36. The Marguess of Linlithgow, *Speeches and Statements* (New Delhi : The Times of India Press, 1945), p. 153.
37. *The Indian Annual Register 1939*, Vol. I, p. 6.
38. *Ibid*, p, 6,
39. *Ibid*, pp. 336-37,
40. *Ibid*, p. 337.
41. *Ibid*, p. 340.
42. *Ibid*, p. 374.
43. Speech of Lord Zetland, *Parliamentary Debates*, House of Lords, 25 April 1939, Vol. 112.
44. *Parliamentary Debates*, House of Lords (Official Report), 18th October 1939, Vol. 114.
45. Sitaramayya, p, *The History of the Indian National Congress*, Vol, II, p. 140,
46. *Parliamentary Debates*. House of Lords (Official Report), 27 September 1939, Vol. 114,
47. *Indian Annual Register 1939*, Vol. II, p. 393,
48. Coupland, *Indian Politics* (1936-1942), p. 234.
49. Congress Election Manifesto, *Indian Annual Register 1936*, Vol, II, p. 189.
50. Prasad, Rajendra, *Autobiography*, pp. 446-47.

Constitutional Impasse and Congress Movements

On 19 November 1939, Gandhiji wrote that the only way out of the continuing impasse was a Constituent Assembly with reservation of seats for every real minority according to its numerical strength as also separate electorates for the Muslims.¹ On the same day, the Congress Working Committee met at Allahabad and passed a resolution for dealing with the issue of minorities and other interests. The purport of the resolution of the Congress Working Committee was embodied in a circular issued by the General Secretary to all Provincial Congress Committees. Already, in the autumn of 1939, Stafford Cripps had visited India and taken a memorandum from Gandhiji. On 26 October 1939, Stafford recommended a scheme to the House of Commons for the solution of the Indian problem. He said that, true to the ideals of democracy for which the British Government was fighting, the Indian people could be assured that the British Government's objective was self-government for the Indian people. As in the middle of the war, it was not possible for the British Government to devise a new constitution in accordance with the wishes of the Indian people, he recommended, as an immediate step, the following adjustments : First, abandonment on the part of the British Government of the idea of an All-India Federation and dealing with the problem as one for British India alone.

Secondly, election of a new Central Legislative Assembly on the basis of registers for the Provinces. Major parties in

that Legislature were to form a Government which the Viceroy should appoint as his Executive Council. Further, though technically the new Council would not be a Cabinet, the British Government could give an undertaking that the Viceroy would deal with that Executive Council as a Cabinet.² The onus of forming a Government was thus thrown upon the major parties which, moreover, were expected to agree on a possible course of action so that a Cabinet-like Government could function.

Speaking in the House of Lords on 14 December 1939, Lord Zetland repeated the old argument for deferring a settlement of the Indian question. To quote him: "There is the defence of India, there are our obligations to the Princes, and there is the position in India which our people have built up during generations past." There were the minorities also. All these stood in the way of a constitutional settlement.³ Jawaharlal Nehru rejoined that a Constituent Assembly would solve the problems—the difficulties among groups being settled by independent arbitration. Hence forward, the Congress spoke of special interests of minorities as social and cultural but not political. The year 1939 ended in bitter disappointment at the attitude of the British Government.

The Congress Working Committee asked the members of the Central Assembly to indefinitely continue boycott, except for retaining of seats. In early 1940, Britain proposed Dominion Status after the War. In order to solve the constitutional deadlock, Linlithgow, the Viceroy, met the Indian leaders. Speaking at the Orient Club, Bombay on 10 January 1940, Lord Linlithgow had reiterated that the British Government's objective for India was Dominion Status of the Statute of Westminster variety. "He drew attention to the fact that, while the Federal scheme of the Act (of 1935) afforded the swiftest stepping stone towards Dominion Status, His Majesty's Government were only too willing, when the time came, to examine the whole field in consultation with all parties and interests in India; and he further explained that His Majesty's Government were prepared in the mean-

time to expand the Executive Council of the Governor-General by the inclusion of a small number of political leaders.”⁴

Matters did not improve even after Mahatma Gandhi saw the Viceroy on 3 February 1940, at the latter's invitation. The interview was futile as the Viceroy said that “the Federal scheme of the Act, while at present in suspense, afforded the swiftest stepping stone towards Dominion Status, and that its adoption with the consent of all concerned would facilitate a solution of many problems that had to be faced in that connection.” The Viceroy pointed out that the offer, put forward by him in November of the previous year, of the expansion of the Governor-General's Executive Council on the basis, then indicated, remained open. He added, “subject to the consent of the parties attracted His Majesty's Government would be prepared also to open the Federal scheme so as to expedite the achievement of Dominion Status and facilitate a settlement after the war of the issues to which it gave rise.”⁵

Mahatma Gandhi replied that the proposal did not meet the demand of the Congress Party and suggested postponement of further discussion with the object of finding a solution of the difficulties that had arisen. Shortly after this, the Congress adopted a resolution at its Ramgarh session on 20 March 1940. The resolution declared that, as the war was being carried on for imperialist ends, the Congress could not help in the prosecution of the war with men, money or material. It declared that nothing short of complete independence could be acceptable to the people of India. Further, the Indian Constitution must be framed by the Indian people through a Constituent Assembly elected on the basis of adult suffrage. The Constituent Assembly, again, was the proper authority to solve the minority problem. The resolution also emphasised that India's Constitution must be based on independence, democracy and national unity. It disapproved and condemned any attempt at division of India or splitting up its nationhood. It rejected the plea of the interests of the Princes, or of foreign vested interests, to come in the way of India's freedom. Sovereignty of India must belong to the

people—it asserted. As regards its immediate programme of action, it said that as part of its policy of dissociating India from the war, it would launch a campaign of Civil Disobedience as soon as the Congress organisation was fit enough for the purpose, or in case circumstances demanded it. The responsibility for declaring Civil Disobedience would be vested in Gandhiji.

About this time, the Muslim League passed a resolution demanding a partition of the country. 24 March 1940, marked a turning point in the history of India. On that day, the Muslim League, at its Lahore session, passed a resolution demanding the separation of Muslim-majority areas from India and their formation into independent states. Thus ended the first phase of the constitutional deadlock with the prospects of Civil Disobedience looming large in the horizon and the Muslim League's demand for partition.

The Congress Working Committee met at Delhi from 3 to 7 July 1940, and adopted a resolution pairing the demand for a declaration of India's independence with the demand for the establishment of a provisional National Government as a pre-requisite to Congress' throwing full weight in the efforts for the effective organisation of the defence of the country. This resolution was then ratified by the All India Congress Committee at Poona (July 1940).⁶ The Delhi resolution of the Congress definitely meant by 'National Government' a Government composed not of the nominees of the Governor-General, but of persons broadly representing the different elements of the Indian Nation. The Congress had simply wanted the members of the Executive Council of the Governor-General to be representatives of the parties and groups elected to the Central Legislature. The resolution was not acceptable to the League, for, to Jinnah, to participate in the working of the constitution at the Centre would be to give up his two-nation theory. The Central Government had been controlling the Provincial Governments under the Government of India Act (Amendment) 1939, and the Central Legislature had been elected on a unitary basis under the Government of India Act. To participate in its working

would mean leading the Congress to its cherished position. This, Jinnah felt, would go against the interests of the Muslims.

August Offer

Once again to solve the deadlock the Viceroy had talks with the Indian leaders in June 1940. It must be remembered that the war situation had deteriorated at this time and Britain's Cabinet was headed by Churchill. Therefore, Britain wanted India's cooperation very badly in the war. Due to the war situation Britain used more conciliatory tactics towards India. The Congress decided, through its Delhi resolution of 7 July 1940, to participate in Britain's war efforts if India's demand of complete independence was recognised by Britain. This was undoubtedly a new approach of the Congress. It must be remembered that the Congress promised cooperation only if Britain promised in return a national government.

Perhaps due to the deterioration in the war situation and in response to the change in the attitude of the Congress towards the war, Britain announced the 'August Offer' on 8 August 1940.⁷ The Viceroy said that ever since October 1939, it had been the desire of the British Government to expand the Executive Council of the Governor-General but this had not been possible on account of the differences between the major political parties. Though the differences preventing the achievement of Indian national unity still existed, the British Government proposed to expand the Governor-General's Executive Council immediately and to set up a body which would closely associate Indian public opinion with the conduct of the war by the Central Government. The Governor-General had been authorised accordingly by the British Government to invite a certain number of representative Indians to join his Executive Council. As to the position of minorities in relation to any future constitutional scheme, the Viceroy said that full weight would be given to the view of the minorities in any revision of the constitutional plan of 1935 and that the British Government would not contemplate transfer of their responsibilities for the

peace and welfare of India to any system of government whose authority was 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.

As to India's political goal, he referred to the British Government's promise of Dominion Status and added that "free and equal partnership in the British Commonwealth" remained the objective of the British policy in India. The British Government sympathised with the desire that a new Constitution (within the British Commonwealth of Nations) should be built primarily by the Indians themselves. But it would be subject to the due fulfilment of the obligation of the British Government. After the conclusion of the war, a body representative of the principal elements in India's national life was to be set up in order to devise the framework of the new Constitution. Meanwhile, the British Government would welcome and promote, in any way possible, everywhere any practical step that might be taken by representative Indians to reach a basis of friendly agreement, first, upon the form which the post-war representative body should take and the methods by which it should arrive at its conclusions and, secondly, upon the principles and outlines of the Constitution itself.

In explaining the August Offer in the House of Commons on 14 August 1940, Amery said that the constitutional deadlock in India was not so much between the British Government and a considered Indian opinion as between the main elements in India's own national life...the Indian National Congress, the Muslim League and the Indian Princes. It could, therefore, be resolved by multilateral agreement to which the British Government could be only one of the parties. The Viceroy's offer was one of expansion of his Executive Council and the establishment of a War Advisory Council. The enlarged Executive Council would continue to be responsible to the Governor-General and would not be responsible, in the strictly constitutional sense, to the Legislature. In inviting a certain number of 'representative' Indians to join his Council,

the Viceroy would naturally take appropriate steps to ensure that they did, in fact, reflect the opinion of the parties from which they were chosen, but they could not be made dependent on support of the elected members of the Legislature, without changing the whole basis of the Indian Constitution in the middle of the war. If those members were made responsible to the Legislature, it would mean a change which the minorities might not accept. Further, the Viceroy's offer was a step towards Dominion Status. He added that the British Government sympathised with the desire that the new constitutional scheme should be primarily the responsibility of the Indian people and that it wished to see it given the fullest practical expression. He emphasised, however, that such practical expression was subject to the due fulfilment of the obligations which Great Britain's long connection with India had imposed on her. The British Government could not divest itself to those obligations. That was the reason why India could not immediately be given the status of a Dominion.

As regards the number of members of the expanded Executive Council, it would depend on the nature of the response to the Viceroy's offer. The members would hold definite portfolios. They would not, in the strictly constitutional sense, be responsible to the Legislature. They would not be nominees of the parties but they should be representatives of the parties from which they would be selected after discussion and consideration of the names informally submitted.⁸ As the major political parties did not accept the offer, the Governor-General announced the postponement of the expansion of the Executive Council and the establishment of the War Advisory Council.⁹

The August Offer fell far short of the Congress demand. P. Sitaramayya rightly holds the view that there was much that was avoidable repetition.¹⁰ In his Orient Club speech, the Viceroy had spoken of Dominion Status of the Westminster variety, and now he was doing no more than using the expression "free and equal partnership." If free partnership implied the right of secession, there was no reason why a declaration

could not immediately be made to the effect that India would be independent. When the Congress asked for national government, there was offered an expanded Executive Council. Amery has construed the demand for national government to be the demand for responsible government which could not be effected without overhauling the whole constitution during the war. In fact, the Congress demand was that the National Government would be so composed as to command the confidence of all the elected elements of the Legislature. In other words, it wanted power to be transferred to the elected representatives of the people. It wanted the substance of representative government. Along with this, it wanted to establish some conventions of responsible government within the framework of the then existing constitution. A responsible government, in the true sense of the term, presupposes an elected legislature, the cabinet being formed of the leaders of the majority party of the legislature. This would necessitate fresh elections which would not be effected without overhauling the constitution. The Congress did not want a responsible government in the strict sense of the term. The scheme of the expanded Executive Council was not even dyarchy. In one respect, the August Offer was rather obstructive. The Viceroy's statement clearly encouraged the Muslim League and the Princes to put all sorts of obstacles before any constitutional advancement that might be demanded by the Congress. The whole scheme clearly indicated Britain's unwillingness to transfer power. If the British proposals had been made before the fall of France, the Congress might have given thought to them, but, after the unequivocal demand for a declaration of independence, the Viceroy's offer of free and equal partnership was unacceptable to it. So bitter was Congress disappointment that Maulana Azad, who was the President of the Congress, did not see the Viceroy by whom he had been invited for discussions regarding the proposals.¹¹ The resolution passed by the Working Committee at Wardha (18th to 22nd August 1940),¹² indicated the impending storm in the political horizon of India.

The Satyagraha

Gandhiji said that he did not want independence but freedom of speech, ie, freedom to preach "no war" in India. If that demand was rejected, he would start satyagraha. He saw Linlithgow and demanded the freedom to tell the people to refrain from assisting in war efforts. On the rejection of this demand, the Congress Working Committee accepted Gandhiji's plan of campaign and assured him of all co-operation.¹³ The satyagraha or the non-violent Civil Disobedience began on 17 October 1940, under the direction of Gandhiji. He did not want it to be a mass movement. This is why he began the campaign by choosing certain Congressmen who individually and separately offered Satyagraha. The campaign was gradually extended to include ordinary four-anna members.¹⁴ On 26 October 1940, the order of the Viceroy forbade all antiwar propaganda, so Gandhiji suspended his *Hurijan* and other Weeklies indefinitely. This was followed by a number of arrests of the Congress leaders under the Defence of India Rules. However, Britain could not lay aside the rising tide of Indian nationalism. Amery, the Secretary of State for India, expressed that India's future constitution had to be framed by the Indians themselves. Britain showed her faith in democracy and democratic methods. Yet the constitutional deadlock continued as the year 1940 came to a close. Britain was committed to the idea of Dominion Status. The Indian National Congress was committed to the idea of nothing short of complete independence of India.

The year 1941 began with the arrest of Azad, the Congress President, at the Allahabad railway station on 3 January 1941. Five days later he was sentenced to eighteen months' simple imprisonment. Next day, from Wardhaganj, Gandhiji announced the suspension of the Civil Disobedience Campaign on 26 January, the Independence Day. He suggested five points for the 'Independence Pledge': 1. Determination to continue the struggle for 'Purna Swaraj' (i.e., Complete Independence) through non violent action; 2. A reaffirmation of the opposition to British imperialism but love towards all

Englishmen; 3. A declaration of abolition of caste-differences and untouchability; 4. Attainment of communal harmony; and 5. Extensive use of the 'charka' (spinning wheel) and khadi.

In reply to a question in the House of Commons on 21 January, Amery, Secretary of State for India, said: "...There have been no further discussions, and no substantial change in the political situation since my last statement of November..."¹⁵ Two days later in an interview with Alfred Watson, Editor of *Great Britain and the East*, Amery expressed that the real problem was one that only Indians can solve for themselves, and said: "As regards the future it (British policy) has met the widely expressed Indian demand for a constitution framed in accordance with Indian ideas and not dictated by the British Parliament in accordance with the views on British interests..."¹⁶

On Independence Day, Subhash Chandra Bose, a leader of the Congress Left Group, who had been 'on parole' after his hunger strike on 6 December 1940, disappeared mysteriously from his house on Algin Road in Calcutta. He was the leader of the 'Forward Bloc', a revolutionary group which had pledged India's independence, if necessary through violence. He went to Japan and raised a National Army through Japan's cooperation, to liberate India from British subjection. He was called Netaji. Unluckily, he died in a plane crash on Formosa.

While Mahatma Gandhi was conducting the satyagraha campaign, a Non-Party Conference was held at Bombay under the leadership of Tej Bahadur Sapru on 11 March 1941. A resolution was passed, demanding—(1) the reconstruction of the Governor-General's Executive Council in such a manner that it would be composed entirely of non-official Indians drawn from important elements in public life, Finance and Defence also being in charge of Indian members; (2) that the Executive Council should be responsible to the Crown and not to the Legislature while the war was in progress, but was to be treated in regard to all inter-imperial and international matters on the same footing as a Dominion Status within a

specified time limit after the war.¹⁷ Tej Bahadur Sapru saw the Viceroy on 7 April, to explain the Bombay resolution. He held the view that, if the Congress and League agreed to come in, they should be allowed to do so. But, even without them, the Central Government must be reconstituted. Jinnah scoffed at the Bombay Conference as a Dutch Army of all Generals and no soldiers¹⁸

The British Government's attitude to the Bombay resolution was evident from Amery's speech of 22 April 1941, in which he said that the scheme proposed was not a modification of the then existing government but its suppression—a thing beyond the strain and urgency of the war situation. He thought it would also create internal constitutional problems of no little difficulty and raise the still unresolved issues of the constitutional future. He said that, in the absence of an agreement among the different sections of Indians, no constitutional advance was possible for India. Amery then discussed the difficulty that would arise if the reconstructed Executive Council was composed of men politically unsupported. Then objections against it would be much more formidable. He thought, in that case, it would be difficult to persuade Parliament to confer Dominion or Quasi-Dominion powers on such a body.¹⁹

While moving a resolution in the House of Commons to extend the proclamation under Section 93 of the Government of India Act, 1935, for another year, Amery expressed the view that a change in the type of Government during the war was not possible but that there was nothing to prevent the Indians from having discussions among themselves. He stated that (1) the Congress ministries resigned in order to bring about a complete breakdown of the administrative and Parliamentary life of the Provinces (2) Jinnah's growing demand for Pakistan and refusal to accept any other constitution. He said that the most significant symptom of the changed situation was the growing strength of the demand of Pakistan voiced by Jinnah; (3) Viceroy's statement of 8 August was a "revolutionary announcement". It was in fact a recognition in advance of India's status as Dominion; (4) the future constitution and the Constituent Assembly "must be the outcome

of agreement between the principal elements in India's national life"; (5) the Viceroy very reluctantly discontinued his efforts for an expanded council mainly because of the difficulty of reconciling Muslim and Hindu claims for relative position; and (6) the Bombay resolution claiming a reconstructed Viceroy's Executive Council having all unofficial Indians as its members passed through the efforts of Tej Bahadur Sapru would create internal constitutional problems of no little difficulty."²⁰

The sum total of Amery's speech was that unless India is united internally, the British Government was unable to promise any constitutional progress. However, it must be pointed out that Amery repeatedly emphasised that "...the framework of India's future constitution should be devised by Indians themselves and not by this House (ie, the Parliament)..." and "...it is upon Indian statesmen and not upon us that the time-table of future constitutional progress depends."²¹ Sorensen speaking on behalf of the Labour Party said: "As far as we have gone, now is the time to say that at some distant date we may grant Dominion Status. We have never stated, nor I am sure would the Secretary of State for India state today, that he agrees with the suggestion that we should at some distant date concede the right of independence to India."²²

The statement also bears witness to the fact that the British Labour Party outstandingly supported India's case and thereby served as an important factor which contributed towards the final British withdrawal from India. On 25 April 1941, Gandhiji severely criticised what he called Amery's "callousness" and "contemptuous disregard of the situation as it exists in India..." He said that the Secretary of State had "...insulted Indian intelligence by reiterating that Indian political parties have but to agree among themselves and Great Britain will register the will of a United India."²³

Shortly after this as Germany proved her superior strength by attacking Russia about the middle of June 1941, the British Government saw the urgency of securing the whole-hearted support of India by doing something for her. Accordingly,

the Governor General's Executive Council was expanded on 22 July 1941, and the National Defence was established.²⁴ In this expanded Executive Council, eight were Indians and four British. Of the eight Indians, three were Muslims, four Hindus and one Parsi. Most Indians had held high offices before they were appointed to the Executive Council. But they were simply nominees of the Governor-General and were not chosen by any Indian political party. As such, they represented none but themselves. The expanded Executive Council was, therefore, by no means a 'National Government.' The Secretary of State for India described the increase in the proportion of Indians on the Executive Council as, a "change in the spirit, if not in the letter, of the constitution".²⁵ As a matter of fact, it was nothing of the kind. Only certain portfolios were separated or created and entrusted to different hands. Of the two portfolios one was Civil Defence. The department of Civil Defence had nothing to do with military defence. The expansion of the Viceroy's Executive Council and the establishment of the National Defence Council were not received favourably by any of the parties in India.

Furthermore, the Council still remained solely responsible to the Viceroy who had the power to veto any or all acts of the Central Legislature. Thus in the words of Amery: "The powers of Viceroy under the constitution remained unchanged."²⁶ The expansion of the Executive Council failed to terminate the political deadlock between Britain and India because it did not meet the demands of the Indian nationalists. It did not help to improve Indo-British relations. Gandhiji still continued his Civil Disobedience campaign and resolutely denied that this movement was communal or anti-Muslim or anti-English. He also commented on 29 July 1941, that the expansion of the Viceroy's Council, "does not affect the stand taken by the Congress, nor does it meet the Congress demand."²⁷

Trying to defend the Government's case, Amery told the House of Commons, on 1 August 1941, that it was a matter of general acceptance that India should, as soon as it was practi-

cable, attain to Dominion Status or, as he preferred to call it, a free and equal partnership in the British Commonwealth. "Today the major issue is not whether India should govern herself, but how is she to govern herself..", said Amery. Further, it was not a case of the British Government's unwillingness to give self-government to India but of the absence of any willingness among the Indians themselves to agree upon the terms on which they would govern themselves—"either India as a whole or.. as separate units " The whole essence of our policy is to invite, to urge, Indians to come to an agreement", said he.²⁸

On 6 August 1941, a Bill to postpone elections to Provincial Legislature was introduced in the House of Lords. Under the then existing constitutional provisions (Section 61 (2) of the Government of India Act, 1935), the Legislative Assemblies of the Provinces had a maximum life of five years. That period was to expire soon, in 1942. The effect of the Bill was to extend the maximum possible life of those legislative bodies to a period expiring 12 months after the end of the war. The Bill was entirely permissive. The real objective of the British Government behind this Bill was revealed in a speech of Amery in the House of Commons in the course of which he said : "I think it would be little less than farcial, at any rate, so long as that position (the withdrawal of Ministries) continues, if elections were held merely in order to afford an opportunity for ventilating Mahatma Gandhi's policy of negatation, without any prospects of returning to constitutional Government after these elections."²⁹ About this time, Reforms Commissioner Hodson investigated the problems of Constitutional Reform in India. In particular, he examined the possibilities of (1) Composite Cabinets, (2) irremovable Executives, (3) Redistribution of Provinces, not necessarily on a linguistic basis, and (4) a Federation or a Confederation of India as the case might be.³⁰

World events and British attitude to National Demand

On the top of the exasperation caused by the British policy in India came Churchill's explanation of the 'Atlantic Charter'..

In this connection, it may be pointed out that ever since the signing of the Atlantic Charter by President Roosevelt of America and Prime Minister Churchill of Britain on 14-August 1940, there had been an uneasiness in the public mind as to the true implications of that Charter. The Atlantic Charter was the first authoritative statement of British war aims and also a basis on which the USA and Britain fought the Second World War. The Charter had declared that the countries of the Signatories had no aim of territorial aggrandisement, in future, the free will of the people would determine their form of government and they hoped to see established a peace which would enable nations to live in security within their own boundaries and in freedom from war and fear.

In his speech of 9 September 1941, Churchill said that the principles of the Charter (ie, non-aggression, self determination and national security and freedom) applied only to the war-devastated countries of Europe. According to him, it was quite a separate problem from the progressive evolution of self-governing institutions in the regions and peoples owing allegiance to the British Crown. Churchill's statement was disappointing to a degree and caused embarrassment even to friends of the British Government in India. Amery tried to pacify those people by saying that the genuine desire of Britain was to see India find her position, as soon as possible, as a free and equal partner in the British Commonwealth.

In the meantime, the Bill for the postponement of Provincial elections had been given the second and the third readings in the House of Commons; and, in India, the individual satyagraha campaign was continuing. A year of that campaign was completed on 17 October 1941, when began pressures from unattached leaders suggesting the withdrawal of satyagraha. Though pressed for the withdrawal of satyagraha, Gandhiji stuck to his point and desired that Civil Disobedience was to continue, in spite of the release of Civil Disobedience prisoners, as he saw no change of policy on the part of British Government.

The only change that took place in the political situation was that in October 1941, the Deputy Leader and Secretary

of the Congress Assembly Party thought that the Congress members of the Central Assembly might be permitted to attend the Assembly only to retain their seats in the seventh year of its term. Originally, the term was three years but it had been extended from time to time by the Governor-General under Section 63 (D) of the Government of India Act as continued in force (with amendments by the Ninth Schedule to the Government of India Act, 1935). The deadlock remained unresolved.

Conditional Cooperation in the War

When the Congress Working Committee met at Bardoli at the winter residence of Gandhiji from 23 to 30 December to consider her general political situation and to revise, if necessary, its future policy. Jawaharlal Nehru and Maulana Azad said that if the specific demands of the Congress were granted by the British Government it might be advisable for the Congress to make a conditional offer of cooperation in the war efforts. But Gandhiji found it absolutely impossible to suspend Civil Disobedience and was convinced beyond doubt that 'symbolic' satyagraha was necessary more than ever.

However, the Bardoli resolution of the Congress Working Committee was passed to the effect that: "—because the new world situation that has arisen by the development of the war into a world conflict and its approach to India...only a free and independent India can be in a position to undertake the defence of the country on a national basis..The Committee is therefore of the opinion that the Resolution of the All India Congress Committee passed in Bombay on 16 September 1940, holds today and defines Congress policy still."

Explaining the meaning of the Bardoli Resolution, Maulana Azad explained that Gandhiji did not want to carry on Satyagraha on behalf of the Congress but rather on behalf of those Congressmen whom he found to be well up to his standard. This was not to be interpreted as the withdrawal of Gandhiji from the leadership of the Congress. He confirmed the Congress policy of non-violence for Swaraj and said: "Our position is one of non-participation and non-

cooperation in the war effort." Furthermore, he explained that whereas Congress wanted to achieve independence any time and if need be, violently, if need be, by supporting Britain's war efforts in India, Gandhiji's method remained non-violent. From this it must be inferred that the Congress after the release of the civil disobedience prisoners revised its policy towards the war efforts, but Gandhiji remained adamant with regard to his policy of non-violence, non-cooperation towards Britain's war efforts.

In the light of the above discussion, certain conclusions became apparent. The British Government had made up its mind that Dominion Status after the war was its goal for India. With that end in view and due to the impact of war, she was compelled to enlarge the Viceroy's Council and appoint the National Council of Defence. The Viceroy explained that the increased pressure of work in connection with the war led to the enlargement of the Executive Council and the object of the National Defence Council was to associate Indian non-officials, as fully as possible, with the prosecution of war. This was done with a specific purpose of including representatives of the Indian States, of the provinces and of other elements in the Indian national life in its relation to the war effort. It cannot be denied that war was an important factor that helped towards a peaceful solution of the Indian problem.

The Secretary of State for India was of the opinion that the immediate object of the expansion of the Executive Council and the creation of the National Defence Council was not only to increase the efficiency of the government but also to transfer to Indian hands a steadily increasing share in the control of India's destiny. These measures, he believed, marked a change in spirit, if not in letter, of India's constitution. The views of these two important British officials clearly indicate that one of the main considerations for the expansion of the Executive Council and the National Defence Council was war. The war, therefore, was one of the most important factors that finally resulted in the British with-

drawal. These measures also reflect the traditional British faith in democratic process.

Impact of Japanese Invasion

The Congress had made up its mind that it would accept nothing short of Independence. On learning that, it was not to be granted by the British Government, it launched the individual Civil Disobedience campaign as a symbol of non-cooperation. The British Government imprisoned those who participated in the Civil Disobedience Movement but was compelled to release them due to the Japanese invasion. So the war compelled the relaxation of the British policy. That was considered a gain on the Congress side. As regards the cooperation in war effort after Japan's entry into war the Congress was divided. Gandhiji stood for non-violence, non-cooperation with the British both in relation to war efforts and the struggle for the independence of India whereas a majority of the Congress Working Committee and All India Congress Committee members wanted to give conditional cooperation towards war efforts.

Significance of 1942 in Indo-British Relations

The year 1942 saw an important chapter in the history of Indo-British relations. It was a new chapter, for never before had a member of the British Cabinet visited India with the specific goal of a political settlement, on which depended India's future political ties with Great Britain. In the past there had been a few occasions when the Secretary of State and the Viceroy of India either collaborated or worked individually to evolve a satisfying formula with regard to India's political and constitutional set up.

It will be recalled that Mahatma Gandhi had asked the Congress President to relieve him of the responsibility laid upon him by the Bombay resolution of 15 September 1940. The request was granted in a sense because Gandhiji's position was, as stated before, non-violent, non-cooperation with Britain in her war effort and also for the independence struggle of India. This event attracted the attention of some of the British newspapers. The *Manchester Guardian* in its

editorial of 1 January 1942 commented [: "...Gandhi has asked the Working Committee of the Congress to relieve him from his leadership and the Committee has agreed. If, therefore, the Congress has any idea to considering fresh negotiations with the Government it is freed from what was false position."³² The *London Times* in its editorial remarked : "...Whatever objections the Congress may still sustain to cooperate with the Government, or whatever conditions they may seek to attach to a new line of action, they no longer base their policy upon unresisting pacifism, which has been Gandhi's recent reply to the grave menace with which the German and new Japanese aggression has confronted India. To that extent the complication which has always been present while Gandhi led the Congress has been removed. On the British side, there should be certainly ever-readiness to meet half-way all claims which take full account both of the stern realities of the Indian Military situation, and of the British undertaking to open a full share of responsibility to India's political leaders."³³

On 2 January 1942, the *New Statesman and Nation* wrote from London : "...The impact of the war on the Congress and the retirement of Gandhi are events of the greatest interest and significance. We hope that Churchill and Amery will not once again let the opportunity slip by being content to plead the still unresolved conflict between the Hindus and the Muslims"³⁴ The *Spectator* argued that "the acceptance of his (Gandhi's) resignation by the Congress Working Committee showed that the Congress had not closed the door of active cooperation in the war efforts."³⁵ Next day, Maulana Azad, the Congress President, expressed in Bombay : "...The question before him (Gandhiji) was whether we were prepared to take up the position that the Congress would not participate in the present war on the ground of non-violence alone. We found ourselves unable to go so far despite our utmost desire to do so."

In his Bardoli statement of 7 January 1942, Mahatma Gandhi pointed out : "...My being relieved on the direction of the Congress Civil Disobedience does not reduce my

responsibility, but increases its manifold."³⁷ Next day, Maulana Azad again explained that if there was any man in India, or outside, who had interpreted the Bardoli resolution in the sense that Mahatma Gandhi had withdrawn from the Congress leadership, he would say that he knows nothing about Gandhiji or about the Congress. The simple meaning of the Bardoli resolution was that Gandhiji did not want to carry on satyagraha any more on behalf of the Congress. He wanted to carry on satyagraha against war on the ground of non-violence only, and only with those Congressmen whom he found to be well up to his standard.

Speaking before some of the members of the All India Congress Committee, Gandhiji said: "I am a servant of the Congress and I want to serve the Congress in consonance with the principles of truth and non-violence. The Working Committee has decided to cooperate with the Government in the war, if Britain grants Swaraj to India. It is not a fact that the Congress has violated the principle of non-violence, but it has only made a small opening just with a view to shake hands with Britain. Rajaji thinks that all of us should go to war fully armed, but it may not be the opinion of all."³⁸

The All India Congress Committee met at Wardha on 15 and 16 January 1942. Maulana Abul Kalam Azad explained to the members that the reason for Gandhiji's opposition to participate in the war was purely non-violence. Gandhiji was of the opinion that the independence of India was unacceptable to him if it was secured at the cost of non-violence and on the condition that the country should participate in war. Such was not the position of either Maulana Azad or some of the All India Congress Committee members. Therefore, there was disagreement between Gandhiji and some of the All India Congress Committee members. It must be noted that in spite of Gandhiji's difference of opinion it was he who pleaded before the All India Congress Committee members to accept the Bardoli resolution recommended by the Working Committee. For what reasons? In Gandhiji's own words "...The reason is that the resolution reflects the Congress mind. It undoubtedly is a

step backward.. (but)...sometimes a step back is a prelude to a step forward."³⁹

Finally, Jawaharlal Nehru moved it and Rajagopalachari seconded it. The Bardoli resolution as accepted by the All India Congress Committee, on 16 January at Wardha argued that only a free and independent India could be in a position to undertake the defence of the country on a national basis and be of help in the furtherance of the large causes that were emerging from the storm of war. The Committee was, therefore, of the opinion that "the resolution of the All India Congress Committee passed in Bombay on 16 September 1940, holds today and defines Congress policy still."⁴⁰ The position of Working Committee must be seen through its own words. It said: "...The Congress Working Committee have received the following letter (ie, of 30 December 1941) from Gandhiji and recognise the validity of the point he has raised and therefore relieve him of the responsibility laid upon him by the Bombay resolution referred to by Gandhiji. But the Committee assure him that the policy of non-violence adopted under his guidance for the attainment of Swaraj which has proved so successful in leading to mass awakening and otherwise will be adhered to by the Congress... The Committee hopes that Congressmen will render him full assistance in the prosecution of his mission including the offering of civil disobedience..."⁴¹. Two points became clear from the above discussion. One is that though officially relieved of the leadership of the Congress, Gandhiji remained its virtual leader. And the second is that although officially a little altered the Bardoli resolution virtually did not alter the non-violent, non-cooperation policy of the Congress with regard to its participation in the British war effort or its struggle for the independence of India.

Impact of Chiang Kai-shek's visit

The shape of events to come was also, to a certain extent, influenced by the visit of General Chiang Kai-shek of China to India in February 1942. In a message to the people of India, he said: "I sincerely hope and I confidently believe that our ally, Great Britain, without waiting for any demands

on the part of the people of India, will, as speedily as possible give them real political power so that they may be in a position further to develop their spiritual and national strength and thus realise that their participation in the war is not merely aid to the anti aggressor nations for, securing victory, but also a turning point in their struggle for India's freedom. From an objective point of view, I am of the opinion that this would be the wisest policy which will rebound the credit of the British Empire."⁴² Chiang's message to the people of India was virtually an appeal to the British Government to give India independence. This appeal from an ally was not wholly lost on Britain. Possibly also due to American pressure, the British Government saw the necessity of doing something for resolving the Indian deadlock. The result was the Cripps Mission to India.

Cripps Mission

India was depressed and alarmed by the course of the war with Japan because Singapore fell on 15 February and Rangoon on 7 March 1942] At this time Churchill made a statement in the House of Commons on 11 March 1942 (four days after the fall of Rangoon), to the effect that Cripps would go to India. It can hardly be denied that it was also one of the causes which prompted this measure because Churchill clearly stated why he (Cripps) was being sent there. He said: "... We propose to send a member of the War Cabinet (ie, Cripps) to India, to satisfy himself on the spot, by personal consultations that the conclusions upon which we are agreed, and which we believe represent a just and final solution, will achieve their purpose."⁴³

Behind the decision of the War Cabinet, there was also a general feeling in Britain that the Indian deadlock must be resolved. The appeal of Chiang Kai-shek and possibly pressure from the American Government also influenced the decision. The Prime Minister said: "The crisis in the affairs of India arising out of the Japanese advance has made us wish to rally all the forces of India's life, to guard their land from the menace of the invader. In August 1940, a full statement was made about the aims and policy we are pursuing in India.

This amounted, in short, to a promise that, as soon as possible after the war, India should attain Dominion Status, in freedom and equality with this country and the other Dominions, under a constitution to be framed by Indians by agreement among themselves and acceptable to the main elements in Indian national life."⁴⁴

Cripps was assigned the task of finding out whether or not the proposals, on which the British Cabinet had unanimously agreed, would be acceptable to the Indian political parties. Cripps reached New Delhi on 23 March 1942 and the proposals were published on 30 March. During the interval, he interviewed Indian leaders. The draft declaration which he issued on behalf of the British Government, was as follows : "His Majesty's Government, having considered the anxieties expressed in this country and in India as to the fulfilment of the promises made in regard to the future of India, have decided to lay down in precise and clear terms the steps which the proposal shall be taken for the earliest possible realization of self-government in India. The object is the creation of a new Indian Union which shall constitute a Dominion associated with the UK and the other Dominions by a common allegiance to the Crown, but equal aspect of its domestic and external affairs."⁴⁵

According to the proposal, therefore, India would, after the war, become a Dominion with the full right to secede from the British Commonwealth and with the right to enter independently into treaties with any other nation in the world. The new constitution of India would be framed by a Constituent Assembly composed of representatives of the Provinces and the Indian States. The representatives of the Provinces were to be elected by the lower houses of Provincial Legislatures elected after the cessation of hostilities. The representatives of the States would be nominees of their Rulers. The constitution-making body would have as its object the framing of a single constitution for the whole of India. The Provinces were to come together to frame a common constitution. But, if they found that they could not overcome their differences and some provinces were still not satisfied with the constitution, then such provinces could remain out with complete self government.

A treaty was to be concluded between the British Government and the constitution-making body providing for the transfer of power. Such a treaty would make provision for the protection of racial and religious minorities. Without fulfilment of the provisions relating to the Provinces and Minorities, the British Government would not accept or implement the new constitution. 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.

Some new ideas embodied in the Cripps proposals must now be discussed. This is not to be confused with the overall offer, namely, Dominion Status, which was not entirely new. For the first time India's right to become a full-fledged Dominion and secede from the Commonwealth was formally recognised. Secondly, the framing of the new constitution was to be solely in Indian hands. Thirdly, it is also true that the procedure of electing the constitution-making body was a new idea in that it was to be indirect and by the electoral college of the provincial legislature. It was specifically mentioned that it is with the new constitution-making body that His Majesty's Government were to negotiate the signing of a treaty covering "all necessary matters arising out of the complete transfer of responsibility from British to Indian hands." Fourthly, it was also a new idea that a member of the British Cabinet was to personally consult the leaders of the principal sections of the Indian people on Indian political and constitutional problems.

Stafford Cripps left England by air, arriving in Karachi on 22 March and in New Delhi on 23 March 1942. Prior to his arrival, Linlithgow had sent invitation to all the political parties to meet Cripps in New Delhi on 20 March 1942. It is generally accepted that Cripps had a personality that was pleasing, and yet unassuming manners that were informal and

yet impressive, and motives that were sincere. Shortly after his arrival at a Press Conference he said the chief object of the proposals "...is to set out finally and with precision the practical steps which His Majesty's Government propose as the method of fulfilling their past promises of self-government to the Indian people. We believe that a generally acceptable line of a practical action can be laid down now, and thus the main obstacle to India's full cooperation in her own defence will have been removed." He ended his statement saying: "...I believe that the proposals of the War Cabinet will appeal to the Indian leaders since they are the unanimous result of the deliberations of a body of people, who were known in the past to have widely differing outlooks upon the Indian question."⁴⁶

Maulana Abul Kalam Azad, the President of the Congress Party, met Cripps on 25 March and Mahatma Gandhi on 27 March. At the Working Committee convened in Delhi for the negotiations, Azad reported to it the Cripps proposals. It is commonly asserted that Gandhiji described the proposals "a post dated cheque on a bank that was failing."⁴⁷ It was at the Peess Conference of 29 March that he revealed the contents of the document. The next day he broadcast the proposals from the Delhi station of the All India Radio and explained the British plan. He said that the object of the proposals was: "...that the British Government and British people desire the Indian peoples to have full self-government with a constitution as free in every respect as our own in Great Britain or as of any of the great Dominion members of the British Commonwealth of Nations."⁴⁸

As regards the broad outline of the future of Indian Constitution he said: "...The principle on which these proposals are based is that the new constitution should be framed by the elected representatives of the Indian peoples themselves. So we propose that immediately hostilities are ended and a Constitution-making body should be set up consisting of elected representatives from British India, and if the Indian States wish, they too, will be invited to send their representatives to this constitution making body, though if they do, that will

not, of itself, bind them to become members of the Union..."⁴⁹

With reference to the defence of India he quoted the document as discussed earlier. To him "...the most vital and difficult question is that which concerns the interests of the various communities among the Indian peoples."⁵⁰ For them he said "... Our object is to give to the Indian peoples full self-government with complete freedom as to how they will devise and organise their own constitution." Furthermore, he explained that constitution-making body would frame a single constitution for the whole of India (that is of British India together with such of the Indian States as may decide to join in) but if some provinces were still not satisfied with the constitution, then such provinces could go out and "remain out if they wish and just the same degree of self-government and freedom will be available for them as far as the Union itself, that is to say, complete self-government."⁵¹

Then he appealed to the Indian leaders that Britain was now giving the lead that had been asked for and it was in the hands of Indians and Indians only "whether they will accept that lead and so attain their own freedom. If they fail to accept this opportunity the responsibility for that failure must vest with them." As regards the position of the Commander-in-Chief he said: "...the Commander-in-Chief must retain his position as a member of the Executive Council...We have invited the appointment of representative Indian to the War Cabinet and to the Pacific Council of the United Nations—that is one of the ways in which India will have her full say in the counsels of the Commonwealth and of the United Nations as an equal partner."⁵²

Finally, he said that if the proposals were to be rejected by the leaders of Indian opinion, there would be neither the time nor the opportunity to reconsider this matter "till after the war and it would be a bitter blow to the friends of India all over the world."⁵³ Between 23 March and 12 April 1942, Cripps held a number of meetings with top leaders such as Gandhiji, Maulana Azad, Jawaharlal Nehru, Rajagopalachari..

At a Press Conference on 26 March 1942, Cripps had declared that in the War Cabinet plan there was a lot that was adjustable but the fundamental principles were not adjustable. This meant that the proposals were to be accepted in toto or to be rejected in toto. Most of the parties seem to have thought that this was a great limitation.

Congress view on Cripps' Proposals

The Congress Working Committee appreciated that the principle of self determination for the people of India was implicitly recognised in the proposal, but that it related to an uncertain future—"upon the cessation of hostilities". It regreted that this recognition was fettered and certain provisions were introduced which gravely imperilled the development of a free and united nation and the establishment of a democratic state. The constitution-making body would be constituted in such a manner as to include non-representative elements. The democratic element had been shelved so far as the people of the States were concerned. The Congress Working Committee viewed with a grave concern the provision for the partition of India—for, under the plan, it was entirely voluntary on the part of the Provinces and the States to join the Union of India. Any Province or State could remain outside the Indian Union. The acceptance beforehand of the novel principle of non-accession for a Province was a severe blow to the conception of Indian unity and an apple of discord which was likely to generate growing trouble in the provinces, and which might well lead to further difficulties in the way of the Indian States merging themselves in the Indian Union.

Though the Congress Working Committee paid so much attention to the Proposal so far as it related to the distant future, it was much more interested in the immediate future. It found the British War Cabinet's proposals vague and incomplete, so far as the immediate future was concerned. The Working Committee observed: "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 function as a free and independent Government during the pendency of war."⁵⁴ The Committee was, therefore, unable to accept the Cripps proposal.

Moreover, after the first interview of Maulana Azad, the then President of the Congress, with Stafford Cripps, the Congress was under the impression that the new Central Government would function as a Cabinet, and therefore, the Governor-General's relation with his Executive Council would be the same as that of the British Monarch with his Cabinet. But the new picture was not very different from the old—it would just be the Governor-General and his Executive Council with the Governor-General having all his old powers. The Congress had not asked for any legal changes but it had certainly asked for definite assurances and conventions that the new government would function as a free government. By National Government, the Congress meant a Cabinet government with full power.

Failure of the Cripps Mission

The Congress Working Committee issued its resolution on 11 April 1942 though it was sent to Cripps on 2 April 1942. It said that from the Congress point of view "...it is clear that Defence and Cabinet responsibility were the rocks on which Cripps' scheme split."⁵⁵ Cripps' broadcast from Delhi on 11 April prior to his departure from India, made it absolutely definite that he had failed in his mission, for he said, "...the draft declaration which I brought to India on behalf of the War Cabinet has been rejected by your leaders..."⁵⁶ As regards the causes of failure he pointed out two in his broadcast. "...First, an immediate change of the constitution of the Congress, a plan that everyone else has admitted to be wholly impracticable while the War is proceeding; and second, that they (members of the Congress Working Committee) are prepared to enter a true National Government with a Cabinet of Indian leaders untrammelled by any control by the Viceroy or the British Government."⁵⁷

As to the achievement of Cripps Mission the Lord Chancellor, Viscount Simon, said that first of all, it had done more than anything else could do to demonstrate both to Indian opinion and the neutral observers in America and elsewhere, the sincerity of the British purposes. "We know our purpose to be sincere. It is the purpose of helping India to the achievement of her goal of complete self-government."⁵³ Amery said in the House of Commons: "what wrecked the negotiations was the fact that at the last moment Congress put up a demand which was fundamentally inconsistent with the whole principle of the offer made by His Majesty's Government, namely, the demand that without qualification or limitation the whole government of India should put into their hands..."⁵⁴

On 11 April 1942, Stafford Cripps announced at a Press Conference that the British Government's draft Proposal was withdrawn.⁶⁰ Speaking in the House of Commons on 28 April 1942, Cripps tried to justify the Proposal. As to the non-accession of Provinces, he said that the draft declaration was only a 'compromise' between the 'two extreme views' and no more than what the Congress leaders had said. They themselves were prepared "to keep open the issue of Pakistan." Secondly as to the position of the States, Cripps said that the Congress leaders had protested against the States' representatives to the constitution-making body being nominated by the rulers and not elected by the people. He pointed out that representative institutions had not till then developed in the majority of the States. The States had to be dealt with as they were, if they were to be brought into the Constituent Assembly. Cripps' own view was that "the position of complete power asked for by Congress... would leave the matter in an impossible situation." If the Congress view was accepted "the Executive Council once chosen by the Governor-General would not have been responsible to any one but themselves, or in a somewhat loose way perhaps to their political or communal organisations, and there would have been no protection for any of the minorities."⁶¹

For the breakdown of the talks, Stafford Cripps laid all the blame at the door of the Congress. Even just before he declared the breakdown, he had sent a letter to the President of Congress accusing it of the desire to dominate the minorities. The same was repeated in his farewell statement on 11 April, when he said that, "formed within the frame work of the Government of India Act, the National Government would not be removable by the Legislature and the majority would be in a position to dominate large minorities." The Congress found the accusations unfair because it had accepted the idea of a composite Cabinet and had never spoken a word about the number of members that should be allotted to it or the Muslim League in the Executive Council.

Sitaramayya says that the Proposal was made due to American pressure. According to him, it was just a repetition of the August Offer with a provision for partition. It contained matters that sought to pacify all sections of Indian political life and just for that reason pleased none. To please the Congress, there was the provision for granting Dominion Status with the right to secede, and for the Constituent Assembly which would have the right to declare secession at the outset. To satisfy the Muslim League, there was the provision for a possible division of the country. The Princes had the right to send their nominees to the Constituent Assembly but were left free to join or not to join the Indian Union.⁶² For the minorities, there was the provision that the proposed treaty would provide for the protection of racial and religious minorities.

Congress and Failure of the Cripps Mission

The Congress had demanded a united, independent India. The promise of Dominion Status with the right of secession was akin to independence—though in an uncertain future. Again, the Congress had asked for a Constituent Assembly. That also had been promised. There were two things which went against Congress principles. The one was the provision for a possible partition and the other was that the States' people were not given the right to determine their own future. The Congress being much more interested in the immediate

future, had been demanding a National Government. The idea was that all the departments including Defence should be Indianised and the Governor-General's power to exercise his veto should be abolished. This power he had been enjoying under Section 41 (2) of the Government of India Act of 1935. With the abolition of the veto, the Governor-General would act merely as a constitutional head. The Congress had not asked for any legal changes—but only some assurance that the Governor-General would not exercise his veto.

To Stafford Cripps, these changes were far-reaching and hence could not be effected during the war. Defence could not be totally transferred to Indian hands, for it involved a matter of policy which could not be decided by Indians alone. The abolition of the Governor-General's veto, again, would require the abolition of all the provisions of the Government of India Act of 1935, requiring the Governor-General and the Governors to act in their individual judgment or discretion. These changes, according to Stafford Cripps, could not be made during the War. He felt that to make such a change in the Constitution would vitally affect India's foreign relations which were the British Government's concern, or the position of the Commander-in-Chief, or even the Secretary of State's Services which were guaranteed certain rights under the Government of India Act, 1935.

The fact was that the British Government was not willing to transfer power whereas the Congress demanded a real and tangible advance towards complete independence. The position was clearly explained by Sorensen, a member of the British Parliament, who also resented the British Government's attitude. According to him, the Congress demanded an "initial pledge of complete responsibility for the formation of a government. They felt that if they were to have a really responsible central government then, instead of the Viceroy acting as Prime-Minister, they should have their own Prime-Minister and that Prime Minister...should have the responsibility of forming a government at the centre to act during the war period." He added : "Although there may be great risk and dangers attached to it, nevertheless, by taking the

risks and adventuring on that bold course, one could solve the problem, at least temporarily."⁸³

Factors causing Rejection of Cripps' Proposal

Cripps mission to India ended in failure as he left New Delhi for London on 12 April 1942. To make the picture clear, a summary of some possible factors causing Cripps' Proposals to be rejected may now be suggested :

(1) One of the conditions of these proposals was that they were to be accepted "in toto." No political party in India was in a position to do so because they did not offer what the parties had struggled for.

(2) Though Dominion Status was promised, it was to come into existence only "upon the cessation of hostilities" and not in the present. They did not satisfy the political aspirations of the Congress Party. In other words, the so-called Dominion Status was not a declaration of India's independence.

(3) The Congress Party could not accept the principle of non-adherence for the Provinces, as suggested in the Draft Declaration. In other words, national unity was to be maintained by discouraging any division of India.

(4) In addition, Cripps and the Congress Party were not ready to compromise on the question of Defence and the nature of the National Government under the Cabinet.

(5) The Congress demanded that the whole Government of India be put in the Congress hands.

(6) On the other hand, the Muslim League was not ready to accept anything less than Pakistan, ie, the partition of India at any cost and the Muslim right for self-determination.

The Cripps Mission failed as almost all political groups except the Chamber of Princes rejected it. This suggested to the Indian people, to the British people and to the world, the trend of the future Indo-British relations. As regards the results of Cripps mission it has been said that : "...The Cripps Mission had to (1) the stiffening of the attitude of

Mahatma Gandhi and the Congress ; (2) insistence of the demand by Jinnah and the Muslim League for Pakistan ; (3) the dissociation of C Rajagopalachari...from the Congress with a number of his disciples in Madras ; (4) the growth of a sense of frustration in non-Congress political parties."¹⁴

References

1. *Harijan*, 19 November 1939, P. 17.
2. *Parliamentary Debates*, House of Commons, 14 December 1939, Vol. 115.
3. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 154.
4. The speech of Sir Hugh O'Neill, Under-Secretary for India, *Parliamentary Debates*, House of Commons, 18 April 1940, Vol. 359.
5. Communique issued by the Governor-General, 5 February 1940, Item 1.
6. Resolution of All India Congress Committee, July 1940. *Indian Annual Register 1940*, Vol. II, p, 195.
7. *Command*, 6219 (Statement issued with the authority of His Majesty's Government by the Governor-General, 8 August 1940).
8. *Parliamentary Debates*, House of Commons (Official Report), 14 August 1940, Vol. 394.
9. *Command*, 6235, Statement made by the Governor-General to the Indian Legislature, 20 November 1940.
10. Sitaramayya, P, *The History of the Indian National Congress*, Vol II, p 206.
11. *Ibid*, p, 207,
12. *Indian Annual Register 1940*, Vol. II. p, 196,
13. Resolution passed by the Congress Working Committee at Wardha (11th to 13th October, 1940), *Ibid*, p, 222,
14. Coupland, *Indian Politics (1936-1942)*, p, 350.
15. *Indian Annual Register 1941*, Vol. I, p. 31.
16. *Ibid*, p. 31.
17. This was described by Mr Amery. *Parliamentary Debates*, House of Commons (Official Report), 22 April 1941, Vol. 371.
18. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 233.

19. *Parliamentary Debates*, House of Commons (Official Report), 22 April 1941, Vol. 371.
20. *Ibid.*
21. *Indian Annual Register 1941*, Vol. I, p. 315.
22. *Ibid.*, Col. 86.
23. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 237.
24. *Command*, 6293. Announcement issued by the Governor-General on 22 July 1941.
25. *Parliamentary Debates*, House of Commons (Official Report), 1 August 1941, Vol. 373.
26. *Command*, 6293. Announcement issued by the Governor-General on 23 July 1941.
27. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 243.
28. *Parliamentary Debates*, House of Commons (Official Report), 1 August 1941, Vol. 373.
29. *Ibid.*, 11 September 1941, Vol. 374.
30. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 250.
31. *Horizon* February 1942, pp. 23.
32. *Manchester Guardian* (Weekly, London. Liberal), 1 January 1942.
33. *London Times* (London. Independent), 1 January 1942.
34. *New Statesman and Nation* (Weekly, London. Independent),
35. *The Spectator* (Weekly, London) 2 January 1942.
36. *Ibid.*
37. *Harijan*, January 1942, p. 3.
38. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 294.
39. *Harijan*, 25 January 1942, p. 9.
40. *Ibid.*, 1 February 1942, p. 22.
41. *Ibid.*, p. 22.
42. *Indian Annual Register 1941*, Vol. II, p. 379.
43. *Parliamentary Debates*, House of Commons, Vol. 378, Col. 1070.
44. *Ibid.*, 11 March 1942.
45. *Command*, 6350. White Paper on the Lord Privy Seal's Mission to India.
46. *Indian Annual Register 1942*, Vol. I, p. 217 and 219.
47. Coupland, *The Cripps Mission*, Vol. II, p. 279.
48. *Indian Annual Register 1942*, Vol. I, p. 221.
49. *Ibid.*, p. 221.
50. *Ibid.*, p. 222.

51. Ibid, p. 222,
 52. Ibid, p. 223.
 53. Ibid, p. 223.
 54. Resolution of the Congress Working Committee, 10 April 1942.
 55. Sitaramayya, P, *The History of Indian National Congress*, Vol. II, p. 322.
 56. *Command*, 6350, p. 242. (Cripps' broadcast, 11 April 1942),
 51. Ibid, p. 242.
 58. *Parliamentary Debates*, House of Commons, Vol. 122, Col. 755.
 59. Ibid, Vol. 383, Col. 615.
 60. *Indian Annual Register 1942*, Vol. 1, p. 246.
 61. *Parliamentary Debates*, House of Commons (Official Reports), 28 April 1942, Vol. 379.
 62. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 315,
 63. Mr Sorensen's speech—*Parliamentary Debates*, House of Commons (Official Report), 28 April 1942, Vol. 379.
 64. Roy, BPS, *Parliamentary Government in India*, p. 137.
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Country in Turmoil

BEFORE Cripps came with his mission to India, Japan had spread the war in the Pacific and conquered South East Asia. Thus India became a strategic keystone of Allied defence. Perhaps this may have been a blessing in disguise. Indian leaders realised the importance of this situation. So Rajaji demanded a National Front and National Government, which would enable that National Government to go to the people with pride and self-confidence and ask for the people's total war effort. Gandhiji in his article 'That ill-fated proposal' wrote "...Why blame the British for our own limitations? Attainment of independence is an impossibility till we have solved the common tangle.....We will never take it so long as either or both parties think that independence will or can come without any solution of the tangle."¹ In an interview on 15 April, Jinnah said: "...If all parties agree to the Muslim demand for Pakistan or partition and Muslim right for self determination, details to be settled after the war, then we are prepared to any reasonable adjustment with regard to present."²

Rajaji's Recommendation for Pakistan

Rajaji now took a lead in political action. Under his leadership on 23 and 25 April two resolutions, subject to the All India Congress Committee's approval, were passed in a Congress Party meeting of the Madras Legislature. They recommended, firstly, that the Muslim League's claim of Pakistan be recognised, if it persisted at the time of framing the future constitution of India and the Muslim League be

invited to participate in the installation of a National Government at the Centre and secondly, a popular Government formed in Madras to meet the emergency created by the war. Gandhiji and Maulana Azad, both disagreed with him. Azad said: "It greatly astonished and pained me that a man like C Rajagopalachari, in spite of his being a member of the Congress Working Committee, should have adopted such an attitude."³

At this time the Congress Committee met at Allahabad from 27 April to 1 May 1942. Maulana Azad observed that the resolutions passed by the Congress Party of the Madras Legislature under the leadership of Rajaji were at variance with the accepted policy of the Congress. So in his letter to Maulana Azad dated 30 April 1942, Rajaji confessed that "...I should have talked the matter with you and other colleagues of the Working Committee before moving the resolutions..." and continued "—I believe that I should be failing in my duty if I do not endeavour to get people to think and act in the direction which my conviction leads to. I feel that in the public interest I should move the resolutions already notified by Santanam. I desire, therefore, to request you to permit me to resign my place in the Working Committee."⁴

His resignation was accepted regretfully. The All India Congress Committee also met at Allahabad on 29-30 April and 1-2 May. In his presidential address, Maulana Azad remarked that Britain's Draft Declaration denied India power over her own defence because the British Government had no trust in the Indians. Although the Congress attitude towards Rajaji and Cripps was stiffening, Cripps in his broadcast speech from London on 3 May said to the effect: "...The British Government have finally and fully made clear their intention that India should have complete freedom and self-government the moment the war is over and as soon as the Indians can themselves frame a new constitution..."⁵

On 1 May, the All India Congress Committee passed a resolution stressing mainly two points: (a) India could deal with Britain and other nations only on the basis of her independence and (b) that in event of foreign invasion India's wea-

pon would be non-violent non-cooperation. The stiffening of the Congress attitude is clearly indicated in the words of the resolution which read: "...Not only the interest of India but also Britain's safety and world peace and freedom demand that Britain must abandon her hold on India. It is on the basis of independence alone that India can deal with Britain or other nations."⁶

On 1 May 1942, Rajaji's non-official resolution urging the Congress to recognise the Muslim League's claim of Pakistan was opposed by Rajendra Prasad and Jawaharlal Nehru. Rajaji's resolution stated that since "the Muslim League had insisted on the recognition of the right of separation of certain areas from United India, it has become necessary to acknowledge the Muslim League's claim for separation..."⁷ It was defeated by 120 to 15 votes. Rajaji made a statement at a Press Conference in New Delhi, on 4 May 1942, saying that he did not "...believe the present official policy of Congress meets the situation; I must cultivate public opinion. I want a National Front and a National Government, that is the key to my future work."⁸ He discussed his points with Gandhiji. It must be admitted that, at a latter date it was Rajaji who made Gandhiji accept the partition of India as the Muslim League had demanded.

Gandhi's Stiffening Attitude

On 17 May, Gandhiji made an appeal "To every Briton" through the columns of *Harijan*. He said: "...I ask every Briton to support me in my appeal to the British and this very hour to retire from every Asiatic and African possession and at least from India. That step is essential for the safety of the world and for the destruction of Nazism and Facism."⁹ A representative of the *News Chronicle* (London) asked Gandhiji "...You have recently asked the British to withdraw from India. Do you think it possible in the present circumstances for them to withdraw all atonce? To whom are they to entrust the administration."¹⁰ Gandhiji answered: "...Under my proposal they have to leave India in God's hands but in modern parlance to anarchy and that anarchy may lead to

internecine warfare for a time or to unrestrained dacoities. From these a true India will arise in the place of the false one we see..."¹¹ Again, on 7 June Gandhiji in an answer to a friend's letter, wrote that "only under his plan what is contemplated is an orderly withdrawal by the British."¹² Gandhiji hoped that with the complete, final and honest withdrawal of the British Power, the wise Indian leaders would realise their responsibility, forget their differences for the moment and set up a provisional Government out of the material left by the British power. Meanwhile, in an interview in London on 16 June with regard to Gandhiji's insistence on British withdrawal from India, Cripps emphatically declared that "...We are not going to walk out of India right in the middle of the War, though we have no wish remain there for any imperialistic reasons."¹³

Constitutional Concessions

On 2 July 1941, it was announced in London by the India Office that Ramaswami Mudaliar, a member of the Viceroy's Executive Council, and Jam Saheb of Nawanagar, a representative of the Indian Princes, would participate in Britain's War Cabinet and the Pacific War Council in London having the same status as the representatives of the Dominions. At the same time the Viceroy's Council was enlarged to fifteen members. It is also a fact that about a month before this, Aziz-ul-Huq was appointed the new High Commissioner for India in England. Now Malik Feroz Khan Noon was appointed the first Defence Minister in the early extended Viceroy Council. As in the former, expansion of the year of 1941, the purpose of the new expansion was "to associate representative Indian opinion more closely in the conduct of the war to provide for the increasing burden to work within the framework of the present constitution..."

So in the new Council there were eleven non-official Indians, one non official European and three European officials including the Commander-in-Chief. In 1939, the strength of the Council was seven with three Indian Members. In the second expansion of the Council in July 1941, five new port-

folios were created and the Indians were incharge of them. In this latest expansion the Indian majority had been further increased to eleven. This new Council provided for the first time representative for the Sikhs, the Depressed Classes and the non-official European community. Thus it provided for a cross-section of the principal communities and interests in India who had shown themselves ready to cooperate in a War Government within the framework of the Indian constitution according to the 1935 Act. Britain was undoubtedly democratic in recognising India's representation in them; but she was undemocratic in selecting the Indian representatives who were not the direct choice of the Indian people. On the contrary, those Indian representatives were the mouthpiece of the British Government. PN Saprú said in the Council of State that the eleven wise men of the Viceroy's Executive Council were "regarded by us glorified Secretaries. They are imposition from above and not the representatives of the Parties in the country."¹⁴ In any modern democracy such a decision is detestable and worthy of public resistance.

Mass Civil Disobedience

It must be recalled that after the conquest of the Philippines, Singapore, Malaya and Burma, Japan was expecting to invade India and Britain was expecting more Indian cooperation in her war efforts. Rajaji was expecting a national Government and a National Front whereas Gandhiji wanted British withdrawal from India. Jinnah was expecting Pakistan but the Congress, the Hindu Mahasabha, the Sikhs and other groups were expecting a united India. It was in such an atmosphere that the Congress Working Committee met at Wardha from 6 to 14 July. Meanwhile, Jawaharlal Nehru was interviewed by the British and American Press correspondents at Wardha on 8 July 1942 where he stated that the Congress position was very much changed since Stafford Cripps' departure. The Congress was not prepared to accept what it was willing to then. The rank and file felt great relief when the negotiations failed. It would have got the passive approval of the Congress to a settlement with

Stafford Cripps' "but now it is not possible to secure that passive approval."¹⁵

Action through Wardha Resolution

The Congress Working Committee decided to take strong action. It passed a resolution on 14 July 1942, stating "...The abortive Cripps proposals showed in the clearest possible manner that there was no change in the British Government attitude to India."¹⁶ Briefly, the resolution included the following :

1. "that British rule in India must end immediately."
2. "the Congress has studiously pursued a policy of non-embarrassment".
3. "Freedom granted by Britain to India will change the present ill-will against Britain into good will and make India a willing partner in a joint enterprise of securing freedom for nations..."
5. "...a Provisional Government...will later evolve...a Constituent Assembly."
6. "...the stationing of the armed forces of the Allies in India..."
7. "...take no hasty step...that might embarrass the United Nations."¹⁷
8. If the above demands were not considered by the British Government, "...the Congress will then be reluctantly compelled to utilise all the non-violent strength...under the leadership of Gandhiji."¹⁸

The resolution demanded a Provisional Government which would make a scheme for a Constituent Assembly and Britain's immediate withdrawal to facilitate it. And furthermore, if Britain failed to consider these suggestions then the Congress would launch a non-violent struggle on a mass scale. When Gandhiji was asked whether it was the last chance to Britain, he said, "This is an open rebellion of a non-violent character, there is no question of a last chance."¹⁹

Repercussions of the Wardha Resolution

On 17 July, Maulana Azad voiced the opinion that only "immediate declaration of independence and the transfer of

full power to the hands of Indians" would satisfy the Congress. Rajaji advocated formation of a provisional government, representing the Congress and the Muslim League first and then the British withdrawal. On that ground he opposed the Wardha resolution. Gandhiji claimed that if the British withdrew from India first, "it is likely that on their withdrawal a provisional government will be set up and from among present leaders."²⁰

In a leading article addressed to the Indian National Congress, the British Labour newspaper *Daily Herald* remarked: "If you (the Congress) persist in demands included in the Wardha resolution which are at this moment impossible to grant, you will cripple your cause and humble the influence of us who are your proud and faithful advocates"²¹ Next day (21 July 1942), the British Labour Party adopted a resolution appealing to the Indians to arrive at a settlement with the British Government. The cooperative attitude of the British Labour Party was one of the significant factors that finally led to the British withdrawal from India. In a crowded public meeting at Ahmedabad on 26 July, Sardar Patel charged: "Stafford Cripps' visit disillusioned the Congress and drew Mahatma Gandhi to demand the withdrawal of the British power from India."²²

Amery, Secretary of State for India, stated in the House of Commons on 30 July 1942, that the Congress demands were untimely. He mildly threatened by saying: "...His Majesty's Government, while reiterating their resolve to give the fullest opportunity for the attainment by India of complete self-government, cannot but solemnly warn all those who stand behind the policy adumbrated by the Working Committee of Congress that the Government of India (Governor-General and his Council) will not flinch from their duty to take every possible step to meet the situation."²³

Cripps maintained that the British Government pledged to give the fullest opportunity for the attainment of self-government to India after the War, but the granting of complete transfer of power and a new constitution during the

War was next to impossible, and on 4 August he said : "... His Majesty's Government stand firmly by their broad intentions of their offer in the draft declaration which I took with me to India, and that they reiterate their resolve to give the fullest opportunities for the attainment by India of complete self-government."²⁴

Quit India Movement

The Congress Working Committee met in Bombay on 4 and 5 August to reconsider the Wardha Resolution of 14 July 1942. A new resolution was passed on 5 August 1942. It was to be placed before the All India Congress Committee at Bombay which rectified it on 8 August by a large majority. The following were the chief demands of the new resolution popularly known as the "Quit India resolution."

1. Immediate ending of British rule in India and declaration of her independence. It laid: "...the immediate ending of British rule in India is an urgent necessity..."

2. A provisional Government, representative of all important sections of the Indian people "...The Provisional Government will evolve a scheme for a Constituent Assembly and will prepare a constitution for the Government of India." It should be federal one... "Its primary functions must be to defend India and resist aggression with all the armed as well as the non-violent force at its command, together with its Allied powers..."

3. The freedom of India "shall be a symbol of and prelude to this freedom on all other Asiatic nations under foreign domination..."

4. There shall be "a World-Federation of Free nations" and disarmed free nations; and

5. "...the starting of a mass struggle on non-violent lines ...under the leadership of Gandhiji—if the above demands are not met."²⁵

Before the resolution was passed, Azad, in his presidential address, said: "The slogan 'Quit India' means nothing more and nothing less than complete transfer of power to Indian hands."²⁶ Referring to the resolution, Gandhiji said: "We

shall get our freedom by fighting (non-violently). It cannot fall from skies. I know well that Britishers will have to give freedom when we have made sufficient sacrifices and proved our strength. But it must remove hatred for the British from our hearts..."²⁷ The resolution suggested four new ideas: (1) The Provisional Government to defend India armed as well as non-violently; (2) The future constitution of India to be a federal one; (3) Freedom of India to be a symbol and prelude to the freedom of Burma, Malaya, Indo-China, the Dutch Indies, Iran and Iraq; and (4) a World Federation.

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 utilise all the non-violent strength it has gathered during the last twentytwo years of a peaceful struggle. Such a struggle must inevitably 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 All India Congress Committee wished to make it clear "to all concerned that by embarking on a mass struggle" it had "no intention of gaining power for the Congress." And that power, when it came, would belong to the people of India. The Congress was in no hurry to launch the Civil Disobedience movement before making the last attempt at settlement by a talk with the Viceroy and, if necessary, by addressing China and America. Gandhiji himself publicly declared that, before starting the movement, he would write to the Viceroy and wait for his reply. Unfortunately, the opportunity never came.

Britain's Suppressive Measures

The Viceroy responded to this resolution with equal determination. He decided to suppress the Congress movement of "Quit India." The Viceroy announced that the Congress demand of immediate withdrawal of British power was impracticable because it did not represent all the elements in the Indian population. It reminded the Indian people that the British Government's policy was to grant India an opportu-

nity of self-government after the War and that acceptance of Congress demands will be betrayal of the Allies. The Viceroy and his Council, through two Government Orders on 8 August 1942 laid severe restrictions on the Indian Press regarding the publication of news of the Congress Civil Disobedience Campaign. They also asked all correspondents to be registered with the Government and empowered the Provincial Governments to suppress Congress activities.

The Government took the first step on 8 August 1942. All the important members of the All India Congress Committee were arrested and sent to Poona for internment by a special train. Simultaneously, a round-up of important Congressmen took place on an All India basis. Before his arrest, Gandhiji gave his message to the nation. His parting message was: "Every man is free to go to the fullest length under Ahimsa by complete deadlock, strikes and all other non-violent means. Satyagrahis should go out to die and not to live. It is only when individuals go out to seek and face death that the Nation will revive. We shall do or die."

Civil Disobedience and other Opinions

The arrest and detention of the Congress leaders led to the outburst of a mass revolt and mass frenzy, as a result of which communications were dislocated, railway and police stations were burnt and even parallel governments were set up in some places. The Government took strong steps to check the disturbances. In fact, as the Government adopted repressive measures, the people became violent, and the Government took still more drastic steps. The decision to arrest the leaders was followed up by a resolution of the Government of India on 8 August 1942, in which the Government referred to "the dangerous preparation by the Congress Party for unlawful and in some cases, violent activities."²⁹ According to Sitaramayya, the programme of the campaign was not at all worked out by the Congress Working Committee and these charges were made at a time when no Congressman was left outside to answer them. The resolu-

tion of the Government also referred to the Congress demand which, according to it, could not be accepted for the reason that it would plunge the country into confusion and anarchy.

The Viceroy declared the All India Congress Committee and all the Provincial Congress Committees unlawful. So all the Provincial Congress Houses, where the Congress meetings were held, were sealed by the Government. The Government used suppressive measures and machine-gunned people from the air. Perhaps it had no choice. Amery stated in the House of Commons on 8 October 1942 that during the disturbances 845 were killed; 2,024 were wounded of which 60 Government servants (including military and police) were killed and 698 were wounded, but no European British subject was killed.

On the same day, on behalf of the Muslim League, Jinnah appealed to the Muslims not to participate in the disturbances and condemned the Civil Disobedience Campaign because it was aimed "at the point of bayonet." He had said in his press statement in Bombay "... I deeply regret that the Congress has finally declared war and has launched a most dangerous mass movement in spite of numerous warnings and advice from various individuals, parties and organizations in this country..."³¹

On 10 August in his broadcast message to America, Amery said: "...The Quit India Campaign will fail—it must fail, if our common cause is not to suffer irretrievable damage. But the misguided action of the Congress leaders will not affect one way or the other the broad purpose alike of the British Government and of the Government of India that when victory is won, India shall without delay have the fullest opportunity to attain to complete control of her own destiny among the free nations of the British Commonwealth and of world within a constitutional framework of her own devising. That is our pledge to India and to the world. By that pledge we stand..."³²

Following the arrest of the Congress leaders (on 9 and 10 August 1942), Amery broadcast two talks in which he made the Congress responsible for the failure of the Cripps-

Mission. When Parliament met on 10 September 1942, Churchill made a statement. In the course of the statement, he said that the Congress Party had given up the non-violence of 'Gandhi' and had taken to revolutionary methods. He summed up the whole situation in the following words :

"The outstanding fact which has so far emerged from the violent action of the Congress Party has been its non-representative character and powerlessness to throw into confusion the normal peaceful life of India. It is the intension of the Government to give all necessary support to the Viceroy and his Executive in the firm but tempered measures by which they are protecting the life of Indian community and leaving the British and Indian armies free to defend the soil of India against the Japanese."³³

In reply to the debate, on 11 September 1943, Amery said that there could be no chance of success of any negotiations unless there was a "change of heart" on the part of the Congress.³⁴ On 13 February 1943, the Government of India brought out a booklet entitled *Congress Responsibility for the Disturbances, 1942-43*. It blamed Gandhiji and the widespread disturbances following the arrests of August. By quoting extensively from the speeches of Gandhiji's from 19 April 1942 onwards, it wanted to show that Gandhiji's was an "Open rebellion." From his detention camp, Gandhiji replied to the charges brought forward against the Congress and himself in his letter to the Additional Secretary, Home Department, Government of India, dated 15 July 1943. Gandhiji denied the charges, brought counter-charges against the Government and demanded an impartial tribunal for investigation. The Government refused to relent unless the August resolution (demanding the withdrawal of the British power from India) of the Congress was withdrawn. Gandhiji regretted his inability to alter the August resolution.

On 12 August 1942, the British Labour Party and the Trade Union Congress issued an appeal to the effect that Civil Disobedience would seriously injure the hope of India's freedom and suggested that they would see that a free-

India was established when the war was over. Clement Attlee, Deputy Prime Minister, in his Aberdeen speech of 6 September 1942, observed: "...We had made many mistakes in our treatment of the Indian problem, but we had given India more than a century of internal peace and good government and had in the last 25 years made immense progress towards Indian self-government. Further progress was held back by disagreement among Indians and by difficulties of introducing democracy into a country of 300 million people at all stages of civilisation..."³⁵

On 17 December 1942, Linlithgow, the Viceroy in India, addressed the Associated Chambers of Commerce in Calcutta. While analysing the cause of the present deadlock in India he observed: "... We are familiar with the suggestion that the troubles of India are due to Britain's refusal to part with power. I would say exactly, in the country these troubles are due to Britain's expressed readiness to part with power. It is because agreement cannot be reached between the conflicting interests in this country as to who is to take over the responsibility which Britain is only too ready to transfer to Indian hands, but the deadlock has arisen. It is from no reluctance on our (Britain's) part to transfer them." On the last day of the year 1942; Gandhiji wrote a letter from jail to the Viceroy: "The law of Satyagraha knows no defeat. The period is drawing to close, so is my patience"³⁷ He informed the Viceroy that he was planning to "crucify the flesh by fasting." If the Viceroy could "convince me of my error or errors", Gandhiji said, he was prepared to "make ample amends."³⁸

On 26 January 1943, being "Independence Day" the All India Congress Committee issued a nation-wide appeal in the name of the Indian National Congress and the Republic of India. It appealed to the Indian people to (1) pay no taxes or revenues to the British usurpers, (2) boycott law courts, (3) keep no paper-money but deal only by barter, (4) form guerilla bands for self-protection, (5) strike and slacken production in factories, mines etc, (6) leave schools and

colleges to "enroll as soldiers of the revolution", (7) cease business with Englishmen and withdraw deposits from the British and Imperial banks, (8) refuse to work in Government Offices and in police departments, thus refusing "to be used against the national revolution", (9) "destroy the usurper's authority and establish the Republic of India", and (10) take "an oath of allegiance of the republic and vow to rise against the British usurpers on the command of the Congress." The whole programme was to be carried out under the slogan "We do or die."³⁹

Mahatma Gandhi wrote a letter to the Viceroy on 29 January 1945, defending the "Quit India" resolution of 8 Aug., 1942, and declared that: "If then I cannot get soothing for my pain I must resort to the law prescribed for Satyagrahis, (one who practises the "Law of Love") namely, a fast according to capacity. I must commence after the morning breakfast of 8 February a fast for 21 days ending on the morning of 2 March 1943."⁴⁰ In reply, Linlithgow wrote on 5 February 1943 that the Congress and its leaders were undoubtedly "...responsible for the deplorable acts of violence, sabotage and terrorism that have occurred since the Congress Resolution of August 8, 1942. declared a 'mass struggle' in support of its demands .."⁴¹ He regarded Gandhiji's fast as a "form of political blackmail (Himsa)." To this Mahatma Gandhi replied on 7 February 1943, that he would begin his fast on 9 February: "With the clearest possible conscience. Despite your description of it as a form of political blackmail, it is on my part meant to be an appeal to the highest tribunal for justice which I have failed to secure from you."⁴²

During his fast, the Government was pressed for releasing Gandhiji. But it paid no heed to the matter. On 17 February 1943, H P Modi, Aney and Sarkar resigned from the Executive Council of the Governor-General as a protest against the refusal of the Government to release Gandhiji. On 9 and 10 March 1943, there was a leaders conference at Bombay. The Congress issued a statement, signed, among

others, by Tej Bhadur Saprū, M R Jayakar, Bhulabhai Desai and C Rajgopalachari. In that statement, the leaders said that it was high time for both the Government and the Congress to consider their policy. They were convinced that, if Gandhiji was released, he could do his best to give guidance and assistance in the solution of the deadlock. They, therefore, desired that their representative be permitted by the Viceroy to see Gandhiji. A deputation waited on the Governor-General who, however, flatly refused to all of them to contact Gandhiji or the Congress leaders because, he held, there had been no "change of heart" on their part.

On 17 February 1944, Wavell, the new Viceroy of India, delivered his address to joint session of the two Houses of the Central Legislature in New Delhi. Speaking of the 'Cripps Offer' he said : "...The Cripps Offer was an offer to India of full Self-Government, of the right to frame her own constitution, and even of the right, if she so desired to sever her partnership with the British Commonwealth."⁴³ As regard 'Quit India' resolution he observed: "...the demand for release of those leaders who are in detention is an utterly barren one until there is some sign on their part of willingness to co-operate. It needs no consultation with any one or anything that his own conscience for any one of those under detention to decide whether he will withdraw from the 'Quit India' resolution and the policy which had such tragic consequences and will cooperate in the great tasks ahead."⁴⁴

He was of the opinion that: "For the present the Government of the country must continue to be a joint British and Indian affair with the ultimate responsibility still remaining with the British Parliament though it is exercised through a predominant Indian Executive—until it can be transferred to a fresh constitution. But the framing of that future constitution is essentially and properly an Indian responsibility. Until they can agree on its form, the transfer of power cannot be made."⁴⁵

During the months of March and April 1944, almost all major Indian political or other groups and interests, the

British Labour Party and the National Peace Council, except the Muslim League demanded at least two conditions to solve the political deadlock in India. Firstly, an immediate and unconditional release of those political prisoners, mainly of the Congress Party, imprisoned since the August crisis of 1942, and secondly, the formation of a national government. Some of the Congress leaders and workers who were recently released from jail met in a conference at Lucknow on 15 & 16 April 1944. The conference adopted a resolution reiterating its faith in the leadership of Mahatma Gandhi and the Congress Working Committee still behind bars. As regards the stand of the Congress Party with regard to aggression the resolution went on to explain that "the Congress has always stood against all aggression and is committed to the defence of the country under all circumstances."

In view of the medical reports of Gandhiji's health, the Government decided to release him unconditionally. The release took place at 8 A.M. on 6 May 1944. When interviewed on 7 May, at Madras on Gandhiji's release, Rajagopalachari observed: "It would be small mindedness to belittle the nobility of the steps taken by the British Government. Those who commit faults are not always inclined to correct them and when such an event occurs, it would be wrong not to appreciate it in the fullest measure."⁴⁶ On 8 May, Madan Mohan Malviya said from Allahabad that he was greatly relieved to learn "that Gandhiji has been released unconditionally. He ought not to have been arrested at all and the Government have set right a grave act of injustice."⁴⁷

British view on Constitutional and Political deadlock

When Mahatma Gandhi requested the Viceroy (on 21 June 1944) to let him consult the Congress Working Committee to seek a solution to the political deadlock, Lord Wavell refused on the grounds that Gandhiji had reiterated his adherence to the "Quit India", Resolution and so had the Congress. Gandhiji's letter of 17 June 1944, to the Viceroy from Poona said: "I could do little or nothing unless I know the mind of

the Working Committee. I pleaded as a prisoner for permission..."⁴⁸ The Viceroy's reply of 22 June from New Delhi was that 'he could not interview Gandhiji or allow Gandhiji to see the Working Committee because: "...You have recently made public adherence to the "Quit India" resolution, which I am afraid I do not regard as a reasonable or practicable policy for the immediate future..."⁴⁹ Thus neither Gandhiji nor the Viceroy showed any willingness to adopt a new approach to the Indian problem for the time being. In other words both stuck tenaciously to their respective positions. On 20 March 1945, Mahatma Gandhi was interviewed in Bombay. At that time he said: "All talk of the resolution of the present deadlock is useless so long as the Congress Working Committee and other Congress members are in detention."⁵⁰

On 28 May 1945, Attlee, leader of the British Labour Party, gave a pledge of the Labour Party's faith in self-government for India and said: "We cannot give India a constitution, but we will assist India to work out her constitution. I think the Cripps offer remains the most practical method for Indians to decide their own destiny, but the Labour Party is open to consider any other proposals."⁵¹ Obviously, the British Labour Party was concerned about the new constitutional moves for India. Wavell visited London. On 4 June 1945, he returned to India. The purpose of his visit was to discuss with the new British Cabinet ministers the economic and administrative problems arising from the intensification of the war against Japan and the Indian constitutional deadlock. These discussions resulted in a "White Paper" published by His Majesty's Government on 14 June 1945.

British proposals to break Deadlock

The purpose of the White Paper was to break the Indian political deadlock. The White Paper mainly contained the following propositions; [1] "The offer of March 1942, stands in its entirety without change or qualifications." [2] "The Executive Council should be reconstituted" by the Viceroy from among the leaders of Indian political life ..in propor-

tion which would give a balanced representation of the main communities, including equal proportion of Muslims and Hindus"; [3] "In order to pursue this object, the Viceroy will call into conference a number of leading Indian politicians...and put before this conference the proposal...and...invite a list of names"; [4] "the members, who should be chosen from the list by the Viceroy would of course accept the position on the basis that they would whole-heartedly co-operate in supporting and carrying through the War against Japan to its victorious conclusions"; [5] The members of the Executive would be Indians with exception of the Viceroy, and the Commander-in-Chief would retain his office as War Member"; [6] An Indian Member of the Viceroy's Council was to be in charge of External Affairs and "fully accredited representatives shall be appointed for representation of India abroad"; and [7] the relations of the Crown with the Indian States were to be unaffected by the proposals.⁵²

Clarifying the British position he continued to say: "It is not the intention of His Majesty's Government to introduce any change contrary to the wishes of the major Indian communities. But they are willing to make possible some steps forward during the interim period if the leaders of the principal Indian parties are prepared to agree to their suggestions and to cooperate in the successful conclusions of the War against Japan as well as in the reconstruction in India which must follow the final victory."⁵³

On 14 June 1945 Lord Wavell, in line with the White Paper, made a broadcast in India. In his broadcast he said that the new proposals were designed "to ease the present political situation and to advance India towards her goal of full self government"⁵⁴ Unfolding the plan he, first of all, proposed to invite Indian leaders both of Central and Provincial politics to take counsel with him "with a view to the formation of a new Executive more representative or organised political opinion"⁵⁵ Secondly, he said that the new Executive Council representing the main communities would include equal proportions of Hindus and Muslims. It was to be an entirely Indian Council except for Viceroy and the Com-

mandar-in-Chief as War Member. Thirdly, Indian members were to be in charge of External Affairs, Finance and Home Departments. Fourthly, the main task of Executive Council would be "to prosecute the war against Japan ..till Japan is utterly defeated" and "to carry on the government ..until a new permanent constitution can be agreed upon and come into force" and "to consider...the means by which such an agreement can be achieved " Fifthly, as regards the date and venue of the conference, he said: "...it is proposed to assemble the conference on 25th June at Simla." Sixthly, he clearly stated that, if the conference failed, the present system must continue and the proposals must not affect the Indian States. Lastly, he observed that with the Council, "orders have been given for the immediate release of the members of the Working Committee of Congress who are still in detention."⁵⁷

What was new in the new British plan, one may reasonably ask? The answer is for the first time the Department of External Affairs was proposed to be entrusted to an Indian member; for the first time a British High Commissioner in India was to be appointed as was done in other Dominions; for the first time the Finance and Home Members were proposed to be Indians. What was old was that the British Commander-in-Chief "would retain his position as War Member" and the Governor General would retain his veto "but it will of course not be exercised unreasonably."⁵⁸ As provided in the new British plan, on 15 June, Jawaharlal Nehru, Sardar Patel, Acharya Narendra Deo and the Congress President Maulana Azad were released from Ahmednagar Fort jail.

On the same day (15 June 1945) Mahatma Gandhi thought that the Congress Working Committee alone was competent to explain the attitude of the Congress to the new proposals. On 19 June 1945, Vijayalakshmi Pandit informed the Press Conference at San Francisco that "the British Government's proposals to end the political deadlock in India were closely connected with the British election campaign."⁵⁹ On 20 June, Maulana Azad, Congress President, remarked in Calcutta that the Viceroy's proposals were silent on the method of selecting the Executive Council Members.

On 21 June 1945, the Congress Working Committee met in Bombay to discuss the new British plan. In its declaration of 22 June, after discussion, it said: "...in view of the existing circumstances, the committee considered the Viceroy proposals about the Simla Conference, and it was decided that the President and other Congressmen invited be authorised to attend..."⁴⁰ Next day (23 June 1945) Jawaharlal Nehru said that the Wavell Plan was "obviously an interlude, and if I feel that a brief temporary arrangement helps me in any way to attain my goal, I accept it."⁴¹

Simla Conference and future Constitutional Structure

As planned the Conference assembled in Simla on 25 June 1945. All the invitees, except Gandhiji, were present. It began with the Viceroy's speech. Welcoming the participants he said: "...It is not a constitutional settlement, it is not a final solution of India's complex problems that is proposed. Nor does the plan in any way prejudice or prejudge the final issue..."⁴² In conclusion he advised: "You must accept my leadership for the present. Until there is change in constitution, I am responsible to His Majesty's Government for the good and tranquility of India. I ask you to believe in me as a sincere friend of India."⁴³

Then Maulana Azad, Congress President, explaining the Congress position, said that the British plan dealt with purely temporary and interim arrangements but it should not be regarded as a precedent for the permanent arrangement of the future. Secondly, he attached considerable importance to the declaration that the provisional plan was intended as a preliminary step towards the achievement of the cherished goal of independence of India and to facilitate and expedite its achievement. Thirdly, he emphasised that, the Congress Working Committee participated in the Conference with a view to resolving the Indian political deadlock, its decision had to be constitutionally ratified by All India Congress Committee. But since the All India Congress Committee and other Congress Committees were still banned and large num-

ber of Congressmen were still imprisoned by the British Government, it was not possible to do so.

On 26 January 1945, the Leaders Conference at Simla discussed the scope, functions and responsibilities of the Viceroy's Executive. On June 28, the private deliberations of the Congress reached a stage of impasse between the Congress and the Muslim League. Again on 29 June the Conference met "to enable the delegates to carry on further consultations" and to submit lists of names for the Executive Council. It was expected to reassemble on 14 July 1945 in Simla. The Simla Conference failed mainly because Jinnah insisted that unless the Viceroy assured him "that all the Muslim members of the proposed Executive Council will be selected from the Muslim League" he could not send the names on behalf of the Muslim League. So the Viceroy announced "The Conference has therefore failed I wish to make it clear that the responsibility for the failure is mine."⁶⁴

At a press conference at Simla on 14 July 1945, Maulana Azad, Congress President, said;...the position taken by Jinnah was that the Muslim League on behalf of the Muslims should nominate Muslim members in the new Executive Council. The Congress found that such a position would be inconsistent with its basic national character. Khan Sahib, Premier, NWFP observed: "The entire responsibility of the failure of the Simla Conference lay on the obstinate attitude of Jinnah. I do not believe in such conferences as the conferences cannot get you independence."⁶⁵

The Times wrote: "...There will be natural disposition, in spite of Lord Wavell's counsel, to place the blame for the failure on Mr Jinnah and the Muslim League."⁶⁶ The *Daily Telegraph* explained: "As on previous occasions the cause of the deadlock has been the ancient hostility between the Muslims and Hindus. Though the Viceroy laboured tirelessly to produce a more accommodating spirit, Jinnah would not agree even to submit a list of names unless the exclusive right of the Muslim League to speak for the Muslims was accepted in advance."⁶⁷

The News Chronical observed: "The responsibility for the failure of the Simla Conference was not Lord Wavell's. It was Jinnah's and Jinnah's alone. The Muslim League is no more completely representative of Muslim India than Congress is completely representative of Hindu India."⁶⁸ *The Daily Mail* remarked that "Gandhi wrecked the Cripps proposals and Simla was Jinnah's turn. As the leader of the Muslim League he duly wrecked the Wavell proposals..."⁶⁹ *The Observer* stated that "More obvious blame" fell on Jinnah. It may be asserted then, that in general, British opinion, like Indian opinion, indicated that Jinnah's intransigent attitude with regard to the selection of the Muslim members was the major cause of the failure of the Simla Conference.

The British Labour Party

While India was busy with the Simla Conference, Britain was busy with its General Elections. Though Churchill won the War against Germany, (9 May 1944) he lost the General Elections (July 1945). Clement Attlee formed a Labour Government on 27 July 1945. It was the first Labour Government in Britain with a clear majority in the House of Commons. It is important to note that Pethick-Lawrence, a member of the Indian Round Table Conference in 1931, replaced Amery as the Secretary of State for India. The replacement of the Conservative Party (under the leadership of Churchill) by the Labour Party was an important change for India, because as far back as 1909, the Labour Party had sympathised with the freedom movement of India, and the British Labour Party had pledged India its freedom after the war. So India rejoiced at Attlee's victory and Churchill's defeat with high hope that the British Labour Party would now have an opportunity to fulfil its pledge.

Liberal Political and Constitutional Announcements

After the failure of the Simla Conference and the installation of the New British Cabinet, Lord Wavell announced on 21 August 1945: (1) the General Elections to the Central and Provincial Legislatures were to be held as soon as possible; (2) that the life of the Central Assembly would expire on

October 1, 1945; (3) the life of Council of State would be extended to May 1, 1946; (4) the Viceroy would visit London once again to consult His Majesty's Government. According to this announcement, Wavell went to London on 26 August 1945. After his London trip Wavell made a broadcast on 19 September that: "His Majesty's Government are determined to do their utmost to promote in conjunction with the leaders of Indian opinion, the early realization of full self-government in India."⁷¹ He further revealed that it was the intention of the Labour Government "to convene as soon as possible, a constitution-making body",⁷² and "as soon as the results of the Provincial Elections are published, to take steps to bring into being an Executive Council which will have the support of the main Indian parties..."⁷³ Furthermore, he explained that the British Labour Government was "determined to go ahead with the task of bringing India to self-government at the earliest possible date..."⁷⁴

On the same day (19 September 1945) Prime Minister Attlee, in a broadcast on India from London said firstly, that general elections in India will be followed by "positive steps to set up a Constituent Assembly of Indian elected representatives, charged with the task of framing a new constitution"⁷⁵ Secondly, he continued to say, that Wavell was authorised "to undertake preliminary discussions with representatives of the new Provincial Legislature and "to bring into being an Executive Council."⁷⁶ Finally, he said, that the British Government will negotiate treaty with the constitution making body of India.

These two official statements, one of Wavell, Viceroy and Governor-General of India, and the other of Clement Attlee, Prime Minister of Britain, made it abundantly clear that the British Labour Government was determined to stand by its previous pledge and grant India a Constituent Assembly and an early realisation of self-government. It must never be forgotten that it was the British Labour Party that had always shown a very cooperative attitude towards India's struggle for independence.

Congress view on Attlee-Wavell Proposals

The All India Congress Committee met in Bombay on 21 September 1946, after about three years. The last meeting of the All India Congress Committee took place in the same city and on that very spot on 8 August 1942, and had passed the historical 'Quit India' resolution. The All India Congress Committee discussed a number of problems and passed a number of resolutions. One of them dealt with the new British proposals as announced by Prime Minister of Britain and the Viceroy of India. The resolution pointed out that "there is no mention in these broadcasts of the Independence of India. Nothing short of Independence can be acceptable to the Congress and the country...The proposals now made are in the opinion of the All India Congress Committee vague, inadequate and unsatisfactory."⁷⁷

Then it disagreed with the proposals in relation to the elections in the Central and Provincial Legislatures. Finally it declared that in order to demonstrate the will of the people especially on the issue of the immediate transfer of power, "the All India Congress Committee resolves that the forthcoming elections be contested, and directs the Working Committee to take all the necessary steps on their behalf."⁷⁸ Though the Congress was not satisfied with the new British proposals, it resolved to contest the forthcoming elections. The Attlee-Wavell proposals were not well received in India. However, there was hardly any political party or group or interest against the general elections proposed by the new British Officer. Perhaps that was the redeeming feature of the Attlee-Wavell proposals.

References

1. *Harijan*, 19 April 1942, p. 120.
2. *Statesman* (Delhi) 16 April 1942.
3. *Indian Annual Register* 1942, Vol. I, p. 76.
4. *Ibid*, p. 289.
5. *Ibid*, p. 81.
6. *Command*, 6430, Appendix B, pp. 39-40.
7. *Indian Annual Register* 1942, Vol. I, p. 90.

8. Ibid, p. 90.
9. *Harijan*, 17 May 1942, p. 156.
10. Ibid, 28 May 1942, p. 166.
11. Ibid, p. 166.
12. Ibid, 7 June 1942, p. 181.
13. *Indian Annual Register 1942*, Vol. I, p. 34.
14. Ibid, Vol. II, p. 123.
15. Ibid, p. 124.
16. *Harijan*, 19 July 1942, p. 230.
17. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 340, para 1 to 6.
18. Ibid, p. 342.
19. *Times of India* (Delhi), 15 July 1942.
20. *Harijan*, 14 July 1942, p. 188.
21. *Daily Herald* (London), 21 July 1942.
22. *Indian Annual Register 1942*, Vol. II, p. 11.
23. *Parliamentary Debates*, House of Commons, Vol. 382, Col. 674.
24. *Manchester Guardian* (Weekly, London. Liberal), 4 August 1942.
25. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 343—44.
26. *Indian Annual Register 1942*, Vol. II, p. 237.
27. Ibid, p. 243.
28. *Indian Annual Register 1942*, Vol. II, p. 227.
29. *Indian Annual Register 1942*, Vol. I, P. 327.
30. *Parliamentary Debates*, House of Commons, Vol. 383, Col. 1343.
31. *Times of India* (New Delhi), 9 August 1942.
32. *Indian Annual Register 1942*, Vol. II, P. 18.
33. *Parliamentary Debates*, House of Commons (Official Report), 10 September 1942, Vol. 283.
34. Ibid, 11 September 1942.
35. *The Spectator* (Weekly, London Non-Party), 14 August 1942, p. 143.
36. *Indian Annual Register 1942*, Vol. II, p. 342.
37. Ibid, p. 320.
38. Ibid, p. 391.
39. *Statesman* (New Delhi), 27 January 1943.
40. *Parliamentary Debates*, House of Commons, Vol. 386, Col. 597.
41. *Indian Annual Register 1943*, Vol. I, p. 324.
42. Ibid, p. 326.
43. Ibid, 1944, Vol. I, p. 140.
44. Ibid, p. 141.
45. Ibid, p. 141.
46. Ibid, p. 340.
47. Ibid, p. 340.

48. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 618.
 49. *Indian Annual Register 1944*, Vol. II, p. 161.
 50. *Ibid*, 1945, Vol. I, p. 008,
 51. *Ibid*, p. 301.
 52. *Parliamentary Debates*, House of Commons, Vol. 411, Col. 1831, 1835, 1836, 1837.
 53. *Ibid*, Col, 1856.
 54. Banerjee, A C, *Indian Constitutional Documents*, Vol. II, p, 439.
 55. *Indian Annual Register 1945*, Vol. I, p. 247.
 56. Banerjee, A C, *Indian Constitutional Documents*, Vol. II, pp. 440-41.
 57. *Ibid*, p. 440.
 58. *Ibid*, p, 439.
 59. *Indian Annual Register 1945*, Vol, I, p. 73.
 60. *Ibid*, p. 74.
 61. *Ibid*, p. 74.
 62. *Ibid*, p. 249.
 63. *Ibid*, p. 239.
 64. Banerjee, A C, *Indian Constitutional Documents*, Vol. II, p. 444.
 65. *Indian Annual Register 1945*, Vol. II, p. 5.
 66. *The Times* (London), 16 July 1945.
 67. *Daily Telegraph* (London), 18 July 1945.
 68. *The News Chronicle* (London), 16 July 1955.
 69. *The Daily Mail* (London), 16 July 1945.
 70. *The Observer* (London), 16 July 1945.
 71. *Times of India* (New Delhi), 20 September 1945.
 72. *Indian Annual Register 1945*, Vol. II, p. 147.
 73. *Ibid*, p. 149.
 74. *Ibid*, p. 149.
 75. *Ibid*, p. 150.
 76. *Ibid*, p. 150.
 77. *Ibid*, p. 93,
 78. *Ibid*, p. 99.
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Cabinet Mission Plan

On 4 December 1945, Lord Pethick-Lawrence, Secretary of State for India, announced in the House of Lords that the British Government was anxious to remove all misunderstanding in India regarding British policy and was, therefore, arranging for a Parliamentary delegation to go to there under the auspices of the Empire Parliamentary Delegation. He went on to say that the Delegation would meet political leaders and ascertain their views and convey to the people the sincere wish of the British people that India should speedily attain its full freedom in the British Commonwealth. He made it clear, however, that the Delegation would have no authority to commit Britain to any policy.

The year 1946 began with a broadcast of Pethick-Lawrence from London on 1 January. He said : "I want you to realise that myself, the British Government, and, I believe, the whole of the British people earnestly desire to see India rise 'to the free and full status of an equal partner in the British Commonwealth.' We will do our utmost to assist India to attain that position. There is no longer any need for denunciations or organised pressure to secure this end. If there was ever a time when there was cause for that, it is no longer..."¹

He said that the year "1946 will be a crucial year in India's history." The month of January was busy with the arrival in New Delhi of the British Parliamentary delegation on 6 January. It left India for Britain on 8 February after an extensive five-week visit to various parts of the country and after its discussions with various parties of India. In his final press conference he said : "There are deep divisions among you but these divisions disappear in the unity with

which you very rightly demand a measure of self-government. We are all conscious of the fact that India has at last attained political manhood."² So its impression was that party differences disappeared in the unity of the demand for Independence.

Cabinet Mission

On 7 February 1946, Pethick-Lawrence said in London : "This year in the course of the next few months, we hope to make a stride forward and put India in a new position which will mark a milestone in the history of the freedom of the world."³ Now in conjunction with the Viceroy's announcement of 19 September 1945, Attlee made an announcement in the House of Commons on 19 February 1946. He reminded the House that the positive steps outlined by the Viceroy on 17 February included : (1) "Preparatory discussions with the elected representatives of British India, and with the Indian States, in order to secure the widest measure of agreement as to the method of framing a Constitution ; (2) The setting up of a constitution-making body ; and (3) The bringing into being of an Executive Council having the support of the main Indian parties..." Furthermore, he emphasised : "In view of the permanent importance not only to India and to the British Commonwealth but to the peace of the world of a successful outcome of the discussions with the leaders of Indian opinion, His Majesty's Government have decided to send out to India a special mission composed of Cabinet Ministers to seek in association with those leaders on the principles and procedure relating to the constitutional issue."⁴

From this it is plain to see that the object of the Mission was to arrive at an agreement with the Indian leaders on the principles and procedure of granting India self-government. With reference to the proposed visit to India of three British Cabinet Ministers, Nehru said : "Such a group might have to fill in the details of arrangements for independence, but the first requirement was recognition and proclamation of India's right of full independence."⁵ Commenting on the same

subject Maulana Azad, Congress Party President, observed : "I earnestly hope that India's problems will be solved by negotiations and that India will not have to resort to any further struggle to attain her goal of independence."⁶

Within the terms laid down by the cabinet decisions, these ministers would be free to act. On major matters of policy, they were to refer back for Cabinet decision. Anything arising out of these discussions would be the subject of legislation and would have to come before the Parliament. In a debate on the statement of 19 February 1946, held on 15 March 1946, Prime Minister Attlee explained the British Government's policy of sending out the Cabinet Mission. He said that the British Government recognised India's desire for freedom. He pointed to the fact that the war had quickened the pace of the nationalist movement in India. The whole of Asia was resurgent. What happened in India affected the rest of Asia. In India, the nationalist idea had spread right through all sections of the people including some soldiers who had given such wonderful service in the war. That was why he did not want to lay undue stress on the differences between the Indians. He repeated that the Cabinet Mission's objective was to help India attain freedom as speedily and fully as possible and, to that end to set up the machinery for drawing up the constitution of India. He made a remarkable departure from the previous policy of over-emphasising, for thwarting the claims of the majority, the demands of the minorities. He said : "I am well aware, when I speak of India, that I speak of a country containing a congeries of races, religions and languages, and I know well all the difficulties thereby created. But those difficulties can be overcome by Indians. We are very mindful of the rights of minorities and minorities should be able to live free from fear. On the other hand, we cannot allow a minority to place a veto on the advance of the majority."⁷

R A Butler (Conservative) observed : "...India's war record, to which we should all desire to pay our tribute, and the standing of Indian statesmen, which many of us have experienced at first hand on many occasions, necessitate an

early advance towards that goal of self-government to which we are all pledged."⁸ Churchill also admitted that "...These proposals (Cripps Mission 1942) were made by us at a moment when the danger of Japanese invasion threatened India in a terrible manner, and I, personally, was induced to agree to them by the all-compelling war interest, as it seemed, of trying to rally all the forces in India to the defence of their soil against Japanese aggression and all the horrors that would follow therefrom."⁹

Attlee was of the opinion that "India herself must choose what will be her future Constitution, what will be her position in the world...it will be for us to help to make the transition as smooth and easy as possible"¹⁰ Attlee added that, in the changed circumstances when Indians would be framing their own constitution, the then existing administrative arrangements would be improper. He mentioned that, for the very reason, the British Government desired to set up an Interim Government in India. The Viceroy's Executive Council, in acting within the framework of the Ninth Schedule to the Government of India Act 1935, would, he said, be incongruous. On this ground, he continued, the British Government was taking through Parliament a Bill so as to permit the Governor-General of India to reconstruct his Executive Council on a different basis. Attlee also referred to the States and hoped that they would not act as a bar to India's progress.

Thomas Reid (Labour) said that "...there is practically no one in this country now who is opposed to Swaraj and purna Swaraj, if India wants it. Those who tell the Indian people to the contrary are misleading them."¹¹ It appeared that the Labour Government had decided to grant India Independence speedily. It had so decided, because of the rising tide of Indian nationalism and also because of India's meritorious war-record. It was accepted that India's independence was inevitable. The British Government hoped that India would accept the responsibility to govern herself.

Reactions to Aims of the Cabinet Mission

The Congress Working Committee appointed on 15 March

1946, a special Committee consisting of Maulana Azad, Jawaharlal Nehru and Sardar Patel to negotiate with the Mission. Maulana Azad said that Amery's statement had helped to create a desirable atmosphere." Jawaharlal Nehru observed: "We have arrived at a state when no half-measures can be considered, and only discussions based on the acceptance of Indian independence can bear fruit."¹² Mahatma Gandhi was very cheerful about it. But the Muslim League commented less favourably, because Attlee had said that the minority could not be allowed to veto the advance of majority.

The members of the British Cabinet Mission : Pethick-Lawrence, Stafford Cripps and A V Alexander who left England by air on 19 March 1946, arrived at Karachi on the evening of 23 March. Upon their arrival at Karachi, Pethick-Lawrence made a statement. In it he indicated the purpose of visit and remarked : "We have come but with one purpose in view. It is, in conjunction with Wavell, to discuss with the leaders of India and her elected representatives how best to speed the fulfilment of your aspirations to take full control of your own affairs and thus enable us to complete the transfer of responsibility with pride and honour to ourselves." Finally, showing the readiness to stand by the pledges, he observed : "The British Government and the British people desire without reservation to consummate the promises and pledges that have been made and we can assure you that in our negotiations we shall not seek to provide anything that is incompatible in any way to the sovereign dignity of India."¹³

On 26 and 27 March 1946, the Mission first heard the views of the members of the Viceroy's Executive Council. Next, the Mission had about a two-and-half hours conference with eleven Provincial Governors on 28 and 29 March. Cripps met Jinnah on 30 March. On 1 April he and Pethick-Lawrence met Gandhiji. Next day the Mission met many rulers and other party leaders. On 3 April, Maulana Azad and Gandhiji met the Mission separately. Jinnah in his League

presidential address on 7 April 1946, said that firstly: "We cannot accept any proposal which would be, in any way, derogatory to the full sovereignty of Pakistan." Secondly, he pointed out that "...We cannot agree to a single constitution-making body, because it will mean our signing our death-warrant, and we cannot agree to consider any interim arrangement unless the Pakistan scheme is acceptable as a 'sin qua non'."¹⁴ Thirdly, he emphasised: "We will fight for it (Pakistan), if necessary die for it; but take it we must—or we perish."¹⁵

The Cabinet Mission tried to bring about some sort of arrangement between the Congress and the Muslim League. There were two difficulties in the initial stages, one was that there was no agreement between the two parties as to the form of the Constituent Assembly and the composition of the Interim Government; the other was the wide difference of approach between the two parties. The Congress held strongly that the question of the Interim Government should be settled and the Constituent Assembly issue should follow. The Muslim League, on the other hand, was equally firm that, unless the long term question associated with the setting up of the constitution making machinery was settled, it could not discuss the composition of the Interim Government.

The intention of the Cabinet Mission was to set in motion a Constituent Assembly—the machinery whereby a constitution could be settled by the Indians themselves. The Constituent Assembly would, according to the scheme, be elected by the Provincial Legislative Assemblies, adult suffrage having been ruled out as it would involve delay in the making of the new constitution. Seats were allotted to each province in proportion to its population, roughly in the ratio of one to a million. This Provincial allocation of seats was divided between the main communities in each Province in proportion to their population. The representatives allotted to each community in a Province were to be elected by the members of that community in its Legislative Assembly.

On 17 April 1946, Maulana Azad met the members of the Mission. The same day Azad's new formula was published. It included : (1) "Complete independence" ; (2) a "United Nation" ; (3) "one federation composed of fully autonomous units" ; and (4) "two lists of Central subjects, one compulsory and the other optional." To this Liaquat Ali Khan, General Secretary of the Muslim League, replied that Pakistan "is the solution of India's problem and only way in which India can achieve its independence at the earliest." On 18 April Mahatma Gandhi paid a surprise visit to Pethick-Lawrence. Cripps conversed with Nehru and Jinnah on 25 April and with Gandhiji and Maulana Azad on 30 April.

On 27 April 1946, Pethick-Lawrence wrote identical letters to Maulana Azad and Jinnah. In his letters he requested the Congress and the Muslim League to send four negotiators with a view to discussing the possibility of agreement upon a scheme based upon fundamental principles. His letter said that the future constitutional structure of British India was to be as follows : "A Union Government dealing with the following subjects : Foreign Affairs, Defence and Communications. There will be two groups of Provinces, the one of the predominantly Hindu Provinces and the other of the predominantly Muslim Provinces, dealing with all other subjects with the Provinces in the respective groups desire to be dealt with in common. The Provincial Governments will deal with all the subjects and will have all the residuary sovereign rights. It is contemplated that the Indian States will take their appropriate place in this structure on terms to be negotiated with them."¹⁶

To this Maulana Azad replied on 28 April 1946 : "...we (ie, the Congress) consider it wrong to form groups of provinces under the Federal Union and more so on religious or communal basis."¹⁷ Jinnah said that the Muslim League would not accept anything short of Pakistan.¹⁸ A joint conference commenced at Simla on Sunday, 5 May 1946. Maulana Azad, Sardar Patel, Jawaharlal Nehru and Khan Abdul Gaffar Khan (Frontier Gandhi) represented the Con-

gress. On the other hand Jinnah, Liaquat Ali Khan, represented the Muslim League. Though Gandhiji was not officially included in the Congress delegation, he arrived in Simla. The Congress and the Muslim League leaders and the Cabinet members discussed freely the questions of (1) a Union Centre for all India, (2) provincial groupings and their power, and (3) the constitution making body. Between 5 and 12 May they also discussed the problems through correspondence.

On 6 May 1946, Maulana Azad wrote a letter to Pethick-Lawrence. Briefly stated it reminded the delegation that : "...the basic issue before us was that of Indian independence and the consequent withdrawal of the British army from India, for there can be no independence so long as there is a foreign army on Indian soil. We stand for the independence of the whole of India now and not in the distant or near future. Other matters are subsidiary to this end." Secondly, he made it clear that "...we are entirely opposed to any executive or legislative machinery for a group of Provinces or units of the Federation..." Thirdly, he wrote "...we are emphatically of opinion that it is not open to the conference to entertain any suggestions for a division of India..." Finally, he pointed out "...we do not accept the proposal for parity as between groups in regard to the executive or legislature."¹⁹ So the basic demand of the Congress was an independent and United India.

On 8 May 1946, Maulana Azad, Congress President wrote another letter to Pethick-Lawrence. In it he said: "...The only reasonable course appears to us is to have a Constituent Assembly with perfect freedom to draw up its constitution, with certain reservations to protect the rights of minorities. Thus we may agree that any major communal issue must be settled by consent of the parties concerned or, such consent be obtained by arbitration." He disagreed with some of the points as suggested by the delegation and observed that if no agreement between the parties could be reached "...we would suggest that an interim Provincial Government responsible to the elected members of the Central Assembly be framed

atonce and the matters in dispute concerning the Constituent Assembly between the Congress and the League be referred to an independent tribunal."²⁰

The Congress argued for a Unitary and Federal India, the Muslim League for a divided India. There was no agreement between the two. On 12 May 1946, the Cabinet Mission announced that "no use would be served by further discussions, and that, therefore, the Conference should be brought to a conclusion." In a second statement the British delegation added that the failure of the Simla Conference "does not in any way bring to an end the mission which they are charged by His Majesty's Government and the British people."²¹ Never before had the British Government held such a joint conference with specific purpose of uniting Congress and the Muslim League. It must be pointed out that the second Simla Conference failed because the two Indian parties could not agree as regards the future constitutional structure of India. There is no reason to doubt the sincerity of the British Labour Government in general and of the British Cabinet Mission in particular in its purpose of implementing India's independence. On 13 May 1946, Gandhiji said: "The Cabinet Mission have declared their intention to remove British rule from India. I believe it must and will go."²²

After the breakdown of the Simla Conference the members of the Cabinet Mission and the Viceroy had no alternative except to themselves draw up proposals for the immediate constitutional arrangements of India. On 16 May 1946, Prime Minister Attlee read the statement containing the proposals before the House of Commons. This statement, one of the most important documents in the constitutional history of India, contains 24 paragraphs. These may be summarised as follows:

1. Rejection of Pakistan as the Muslim League demanded it on the administrative, economic, military, geographical and statistical basis. Paragraph 11 declared that "We are therefore unable to advise the British Government that the power which at present resides in British hands should

be handed over to two entirely separate sovereign states (of Hindustan and Pakistan).''²³

2. An Indian Union of States and Provinces dealing with foreign affairs, defence and communications, the power being vested in the provinces; (3) the representatives to the constitution making body to be elected from the members of the Provincial Legislatures on (proportional) population basis, and, and by a negotiating committee of the Native States; (4) the advisory committee to report to the Union Constituent Assembly "the list of fundamental rights, clauses for protecting minorities, and a scheme for the administration of tribal and excluded areas; (5) the Viceroy to request "the provincial legislatures to proceed with the election of their representatives and the States to set up a negotiating committee; (6) a treaty between the Union Constituent Assembly and the United Kingdom to facilitate the transfer of power;²⁵ (7) "An interim government having the support of the major political parties."²⁶ In the final paragraph (24) the members of the Cabinet Mission and the Viceroy said that "...We, therefore, now lay before you proposals which...will enable you to attain your independence in the shortest time and with the least danger of internal disturbance and conflict."²⁷ Furthermore, it warned that "the alternative would, therefore, be a grave danger of violence, chaos and even civil war."²⁸

These proposals make it abundantly clear that the British Government rejected Pakistan, granted India Union Constitution, provided for a Constituent Assembly] and an interim government. These proposals were unique because for the first time in the history of Indo-British relations the British Government had officially recognised and recommended India's right of complete, direct and immediate independence. The Congress Working Committee at its meeting on 24 May 1946, found a difference between the objectives of the Congress and the British proposals. It passed a resolution pointing out certain matters on which the Congress did not agree with the Missions's proposals and gave its own interpretation to various parts of the proposals. As regards the Congress

objectives the resolution stated : "These objectives are independence for India, a strong though limited, central authority, full autonomy for the provinces, the establishment of a democratic structure in the Centre and in the units, the guarantee of the fundamental rights of each individual so that he may have full and equal opportunities of growth, and further that each community should have opportunity to live the life of its choice within the larger framework."²⁹ It wanted the Constituent Assembly to be considered as a sovereign body with the final authority for drawing up a constitution and giving effect to it.

On 26 May 1946, Gandhiji wrote in his *Harijan* "...After four days of searching examination of the State paper issued by the Cabinet Mission and the Viceroy on behalf of the British Government, my conviction abides that it is the best document the British could have produced in the circumstances."³⁰ On 28 May, Khan Abdul Gaffar Khan, popularly known as 'Frontier Gandhi' and a member of the Congress Working Committee, said that "...I think the Cabinet Mission have made an honest attempt to solve India's political problem. The British proposals are the best under the present circumstances."³¹ On 31 May the Cabinet Mission left for England.

On 16 June 1946, the Viceroy and the Cabinet Mission released a joint statement which declared that "It is indeed urgently necessary that a strong and representative interim government should be set up."³² The Viceroy, therefore, invited the following to be members of the proposed interim government: Sardar Baldeo Singh (Sikh Akali), N P Engineer (Press Community), Jagjivan Ram (Scheduled Castes), Jawaharlal Nehru (Congress), M A Jinnah (Muslim League), Liaquat Ali Khan (Muslim League), H K Mehtab (Congress), John Mathai (Indian Christians), Mohammad Ismail Khan (Muslim League), Khawja Nazimudin (Muslim League), C Rajagopalachari, Rajendra Prasad, Sardar Vallabhbhai Patel (Congress).

Furthermore, it said that "should this proposal be accepted the Viceroy will aim at inaugurating the new government

about the 26th June, 1946. Even if the Congress or the Muslim League declined to join, it stated clearly that "it is the intention of the Viceroy to proceed with the formation of an interim government which will be as representative as possible of those willing to accept the statement of 16 May 1946." It also directed the Provincial Governors "to summon the Provincial Legislative Assemblies forthwith to proceed with the elections necessary for the setting up of the constitution-making machinery."³³

On 25 June 1946, Maulana Azad wrote to the Viceroy that the Congress Working Committee reluctantly had come to the conclusion "that they are unable to assist you" in forming a Provisional Government as proposed in your statement of 16th May, 1946."³⁴ As regards the long term proposals of the formation and functioning of the Constituent Assembly, Maulana Azad said in his letter: "We accept your proposals and prepared to work them with a view to achieve our objectives..."³⁵ This point of view was also clearly stated in the resolution of the Congress Working Committee on 25 June 1946. It said it could not accept the proposal because "... In the formation of a Provincial or other Government, Congress can never give up the national character or accept an artificial and unjust parity, or agree to a veto of a communal group." However, it "decided that the Congress should join the proposed Constituent Assembly with a view to forming the constitution of a free, united and democratic India."³⁶ Both the Congress and the Muslim League accepted the long term proposals as regards the formation and functions of the Constituent Assembly in particular. But whereas the Muslim League accepted the short term proposals as regards interim national government, the Congress turned it down.

The All India Congress Committee met in Bombay on 6 and 7 July 1946. Commending the resolution to the house for its acceptance, Maulana Azad remarked: "The Cabinet Mission's proposals also have once and for all times cleared all doubts about the question of the division of India. The proposals have made it clear beyond a shadow of doubt that India shall remain an undivided single unit with a strong Cen-

tral Government composed of the federating units.”³⁷ Making a plea for its acceptance, Gandhiji said : “The Constituent Assembly proposed (of the Cabinet Mission) is to enable us to make the British quit India. I, therefore, feel that we should accept the Constituent Assembly scheme in spite of its defects, as we are competent to remedy the defects. I know it is a British sponsored scheme, but have not the British openly stated that they have done this with an open mind and without any reservation to enable Indians to frame their own constitution for a free and independent India.”³⁸ The All India Congress Committee ratified the Working Committee’s Delhi resolution of 26 June 1946, accepting the British Cabinet Mission’s long term constitutional proposals on 7 July 1946, but rejected an interim Indian Government by 204 votes to 51. It installed Jawaharlal Nehru as President of the Congress.

On 18 July 1946, in the House of Lords, Pethick-Lawrence gave the review of the Cabinet Mission’s work in India. He explained the Congress had rejected the Interim Government because “the Muslim League would never accept the appointment of any Muslim by the Viceroy other than a Muslim League. This became a major issue... The Congress had always insisted on the national character of their organisation...as opposed to communal characters.”³⁹ Simultaneously, (on 8 July 1946) the House of Commons heard a review statement of Stafford Cripps who pointed out that the Congress had rejected the interim government because of Jinnah’s utterance that, “The Muslim League would never accept the nomination by you (the Viceroy) other than the Muslim League.” It is, therefore, clear from the above that Jinnah’s intransigent attitude on the question of parity led the Congress to reject the Interim Government.

Prelude to Partition

The Viceroy reopened the negotiations on 22 July 1946, for the formation of an Interim Government. Letter containing the Viceroy’s proposals were sent to the Congress (President Nehru) and the Muslim League (President Jinnah). The proposals were as follows : (a) The Interim Government was to

consist of fourteen members. (b) Six members (including one scheduled caste representative) were to be nominated by the Congress. Five members were to be nominated by the Viceroy. One of them was to be a Sikh. It would not be open to either the Congress or the Muslim League to object to the names submitted by the other party provided they were accepted by the Viceroy. (c) 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 Muslim League would each have an equitable share of the most important portfolios. (d) As regards the status of the Interim Government, the Viceroy was sure His Majesty's Government would treat the new Interim Government with the same close consultation and consideration as a Dominion Government. Moreover, His Majesty's Government had already said that it would give the Interim Government the greatest possible freedom in the exercise of the day-to-day administration of the country. The Viceroy would welcome a convention, "if freely offered by the Congress" that major communal issues could only be decided by the assent of both the major parties.

Interim Government

The Congress Working Committee met at Wardha from 8 to 13 August 1946, under the presidentship of Jawaharlal Nehru. It passed a resolution on 10 August 1946 which said, firstly: "The Committee wish to make it clear that while they did not approve of all the proposals contained in this statement, they accepted the scheme in its entirety." Secondly it sought "the largest measure of cooperation in drawing up a constitution of free India, allowing the greatest measure of freedom and protection for all just claims and interests..."⁴⁰ On 12 August 1946, the Viceroy issued a communique from New Delhi: "His Excellency the Viceroy, with the approval of His Majesty's Government, had invited the President of the Congress to make proposals for the immediate formation of an Interim Government, and the President of the Congress has accepted the invitation. Jawaharlal Nehru will shortly

visit New Delhi to discuss his proposals with his Excellency the Viceroy."⁴¹

On 13 August, Nehru, therefore, wrote a letter to Jinnah from Wardha. He informed Jinnah about the Viceroy's invitation to him (Nehru) as Congress President and wrote: "...I have accepted this invitation. I feel that my first step should be to approach you and seek your cooperation in the formation of a coalition provisional Government. It is naturally our desire to have as representative a government as possible."⁴² Jinnah enquired if this invitation meant that the Viceroy had commissioned Nehru to form the Executive Council of the Governor-General and had already agreed to accept and act upon his advice and proceed to constitute his Executive Council accordingly. Jinnah added that, if this was the case, he would not accept this position.

Jawaharlal Nehru explained that the Executive Council as such had not been mentioned and that the Interim Government would have the greatest possible freedom in day-to-day administration. Nehru regretted Jinnah's inability to accept the position. As it appeared to him he hoped that on fuller consideration he (Jinnah) would revise his decision. He also pointed out that a "Coalition Provisional Government" was likely to solve the Hindu-Muslim problem. He met Jinnah on 15 August 1946, but there was no agreement between them. From his talk with Nehru, Jinnah concluded that the Viceroy would be the constitutional Governor-General shorn of his power of veto and that Nehru would be forming not the Executive Council under the then constitution but a provisional National Government responsible to the Legislative Assembly where the proportion of the Congress to the League was 3:1. Jinnah felt that, under such circumstances, he could not accept the proposal because, after that, there would be nothing to talk about the Muslim League's demand and its goal of Pakistan.

The Viceroy and Jawaharlal Nehru had preliminary conversations during 17 and 18 August 1946, on the formation of the Interim Indian Government. On 24 August, Wavell officially announced the resignation of the "Care-taker" Govern-

ment officials. He also approved the appointment of an Interim Government proposed by the Congress Party. The Interim Government, the Viceroy said, would take office on 2 September 1946. On 24 August, broadcasting from the Delhi station of All India Radio, Wavell announced: "... Let me state clearly the offer of the Interim Government which has been made is still open to the Muslim League. They can propose to me five names for places in the Government, of 14, of which six will be representatives of the minorities. Provided these names are acceptable to me and approved by His Majesty's Government they will be included in the Government, which will at once be formed."⁴³ Thus his broadcast emphasised the necessity of forming an Interim Government and the Constituent Assembly through the cooperation of Muslim League. Commenting on the broadcast, Jinnah said on 26 August 1946 that "the Viceroy's broadcast has stuck a severe blow to Muslim League and Muslims of India...the only solution of India's problem is division of India into Pakistan and Hindustan."⁴⁴

So on 2 September 1946, Jawaharlal Nehru formed the Interim Government without Muslim League. Nehru was made the Vice-President and the Viceroy acted as President of the Interim Government. The Interim Government included the following persons—Jawaharlal Nehru, Sardar Vallabhbhai Patel, Rajendra Prasad, Asaf Ali, C Rajagopalachari, Sarat Chandra Bose, John Mathai, Sardar Baldeo Singh, Shafaat Ahmad Khan, Jagjivan Ram, Syed Ali Zahir and CH Bhabha. Nehru declared that the Interim Government "proposed to function as a corporate whole, as a Cabinet." He said the aim of the Interim Government was to achieve India's complete independence. On 7 September 1946, in his broadcast as Vice-President of the Interim Government, he said: "The Interim National Government is part of a larger scheme which includes the Constituent Assembly, which will meet soon to give shape to the Constitution for a free and independent India. It is because of this exception of an early realisation of full independence that we have entered this Government, and we propose to function so progressively to achieve that

independence in action both in our domestic affairs and our foreign relations." As regards Indo-British relations, he said that "In spite of our past history of conflict, we hope that an independent India will have friendly cooperative relations with England and the countries of the British Commonwealth."⁴⁵

Muslim League and the Interim Government

On 13 October 1946, Jinnah wrote to the Viceroy, saying "it would be fatal to leave the entire field of administration of the Central Government in the hands of the Congress", therefore "...We have decided to nominate five members to the Interim Government on behalf of the Muslim League."⁴⁶ Accordingly, on 15 October, the Viceroy announced the nomination of five members by the Muslim League to the Interim Government. In the evening broadcast of 25 October, Wavell said: "With the formation of the coalition Government, India has taken another great stride forward on the road of freedom. It is my desire and hope that all elements in the Government shall work together in harmony, both in dealing with the present pressing problems of India and in furthering the formation of a new constitution, which will enable the British Government to complete the transfer of power to India."⁴⁷

Though the Muslim League joined the Interim Government, it did not really want to make it function on the basis of joint responsibility, which the Congress intended to make the working principle of the new Government. Jinnah was reported to have told the representatives of the foreign press in New Delhi that he did not consider the new Central Government either as Cabinet or as a Coalition Government. As such, the question of joint responsibility did not arise. To him, it was just the Executive Council of the Governor-General under the Government of India Act and Nehru was merely the Vice-President of the Council. He added that "the Interim Government should not be allowed to do anything, administratively or by convention which would in any way prejudice or militate against the problem of the future constitution of India."⁴⁸ The League abhorred the idea of collective responsibility so much that the League members of the

Interim Government did not accept Nehru's invitation to join the other members in daily meetings. They joined the others only when the Viceroy called a meeting of the Executive Council. Thus, the new Interim Government was a house divided against itself. Moreover, the cooperation of the Muslim League in the coming Constituent Assembly was not at all assured. In any case, the circumstances were not propitious for the Constituent Assembly that was going to meet and begin its work.

London Conference

In order to avert threatened breakdown of the Coalition Interim Government and in view of the Muslim League's boycott of the Constituent Assembly, the British Cabinet invited the Viceroy on 26 November 1946, to fly, along with two Congress, two Muslim League and one Sikh representative, to London to discuss the basis of the proposed meeting of the Constituent Assembly. After an interview, on 26 November, Jawaharlal Nehru wrote a letter to the Viceroy and said: "I need hardly say that we are grateful to His Majesty's Government for their invitation, but we feel we cannot, at this stage, go to London. We would be agreeable to consultations with the representatives of the British Government in India..." Furthermore, giving his reasons for declining the offer he wrote: "...Our leaving India now would mean that at the insistence of the League, the Cabinet Mission's plan is going to be abandoned or substantially varied and that we are parties to it. It would mean giving in to the League's intransigence and incitement to violence and this would have disastrous consequences."

On 27 November, the Viceroy received a cable from Pethick-Lawrence, Secretary of State for India, with a request to convey to Jawaharlal Nehru: "...The object of our talks would be to ensure a successful meeting of the Constituent Assembly on December 9, 1946. There is no intention of abandoning either decision of the Assembly to meet or the plan put forward by the Cabinet Delegation. It is our desire to see that this is implemented in full and not any desire to

abandon or alter it that has prompted us to ask you and your colleagues to come to London." The cable ended with the words : "We ask you to help in this way to make rapid and smooth progress towards the goal of Indian freedom, an objective which we share wholeheartedly with the people of India."⁴⁹ On 27 November, the House of Commons and the House of Lords heard the announcements about the proposed London Conference. Arthur Henderson, the Under Secretary of State for India, announced in the House of Commons and Pethick-Lawrence, Secretary of State for India, in the House of Lords that "...The purpose of the proposed discussions in London is to endeavour to reach a common understanding between the two major parties on the basis of which the work of the Constituent Assembly can proceed with the cooperation of all parties..."⁵⁰

On 28 November, the Viceroy conveyed Nehru's message to the Secretary of State through a cable. Nehru's message was that since "in the event of different interpretations, matter should be referred to the Federal Court" and because "the first session of the Constituent Assembly will deal with matters of procedure and appointment of committees and of the great difficulty in leaving India at present, we feel our visit to London now would serve no useful purpose." Nehru's message concluded "...but if in spite of this or because you wish to consider other matters you desire us to come, we shall endeavour to do so. But we shall have to return by December 9, 1946 in time for the Constituent Assembly."⁵¹

The Secretary of State cabled his answer to the Viceroy on 28 November to convey to Nehru that "...We feel that a visit by you before Constituent Assembly meets would be of great value and we appreciate your willingness to meet us in this matter. Arrangement will be made to enable you to return by December 9, 1946. The British Prime Minister Attlee (Labour) sent a personal message to Nehru on 29 November 1946 and assured him that the British proposals would not be modified. Jawaharlal Nehru accepted the invitation to go to London. Attlee's message to Nehru

infuriated Jinnah. He informed Attlee telegraphically that "unless it is open to us to discuss the whole situation it will be no use my going to London." Attlee replied on 30 November: "I trust that you will come to London. Your refusal to come to London must be based on misunderstanding of my telegrams to Nehru. There is nothing in it to prejudice full consideration of all points of view."⁵²

So on 1 December, the Viceroy Wavell, Nehru, Jinnah, Liaquat Ali, Baldeo Singh left Karachi for London. After their arrival in London on 3 December 1945 they were engaged in a series of talks and conferences with the British Labour Government till 6 December. The next day Nehru and Baldeo Singh left London for Delhi. The London Conference failed because the Congress on the one hand, and the Muslim League and the British Cabinet on the other, could not agree that the decisions of the provincial sections should be by a simple majority vote. Pethick-Lawrence made a statement in the House of Lords, on 11 December on the failure of the London Conference. He said: "It was mainly in the hope of resolving the difference of view on this matter that the British Government invited the Indian representatives to come to London...but I regret to say that upto the present we have not succeeded in resolving this difficulty." He emphasised that British legal advice confirmed the view that the Cabinet Mission and the Muslim League held the correct interpretation in maintaining that "voting in sections should be by a majority vote"

From this it is clear that the London Conference was unsuccessful primarily because the Congress Party could not accept the British and the Muslim League's view that the procedure of voting in the Provincial sections or groups should be by a majority. The Congress rejected such a procedure because of its convictions that the Provinces had the right to select their groups as well as to frame their constitutions. The British delegation disagreed mainly because the intention of the Cabinet Mission was that "while an individual province might be outvoted in a Provincial Section, its freedom would be safeguarded by the right to opt out of a group after the new constitution had been framed."⁵³

Churchill, the Opposition leader, arguing that the transfer of power must be based on agreement between the Indian parties, said : "...There was and still is a general measure of consent here and throughout the land to the final transference of power from the House of Commons into Indian hands, but that transference, if it is to take, must be based upon agreement and cooperation of the principal masses and forces among the Indian people."⁶⁴ Secondly, he pointed out the 'cardinal error' of the British Labour Government that they invited only the Congress to form the Interim Government on 12 August. In conclusion he suggested "three proverbial choices before the British Parliament." The first was "to proceed with ruthless logic to quit India regardless of what may happen there." The second was "...partition of India between the two different races." And the third was "...an impartial administration responsible to parliament shall be set up to maintain the fundamental guarantees of life, liberty and pursuit of happiness."⁶⁵

Favourable British opinions

Woodrow Wyatt (Labour) disagreed with Churchill that Britain should prolong her stay in India till an agreement between the parties was found, and argued : "We must say clearly and equivocally to India that, on a certain fixed date, we are going to leave India with our troops, with our officials, and with any British residents who wish to go with us. We must announce that date before the administrative machinery has completely crumpled in our hands. That date, I would suggest, certainly not be more than 12 months ahead. We cannot allow British troops to be dragged into either side in a civil war."⁶⁶ On 13 December 1946, John Anderson (Conservative) said : "...one British community democratically organised and ruled could not in fact indefinitely hold in subjection another Indian community ripe for self government. An attempt would, I suggest, involve a challenge to the basis of the British community's own authority. That is the broad truth to which I would subscribe."⁶⁷

The debate reveals the fact that the cardinal presupposi-

tion of the British Conservative Party as regards the solution of the Indian constitutional problem was agreement between the major and the minor political parties. The British Labour Party did not deny it, but its presupposition was also that a minority should not be allowed to veto a majority. It can hardly be denied that behind the presupposition of both these British political parties lay the traditional British faith in democracy and democratic procedures. It was this faith that was one of the responsible factors for bringing a peaceful transfer of British power from India.

References :

1. *Indian Annual Register 1946* Vol. I, p. 27.
2. *Times of India* (New Delhi), February 9, 1946.
3. *Indian Annual Register 1946*, Vol. I, p. 35.
4. *Parliamentary Debates*, House of Commons, Vol. 419, Col. 964.
5. *Indian Annual Register 1946*, Vol. I, p. 38.
6. *Ibid*, p. 39.
7. *Parliamentary Debates*, House of Commons (Official Report), 15 March 1946, Vol. 420.
8. *Ibid*, Col. 1414.
9. *Ibid*, Vol. 422, Col. 2121.
10. *Ibid*, Vol. 420, Col. 1421.
11. *Ibid*, Col. 1448.
12. *The Statesman* (New Delhi) 16 March 1946.
13. Ashraf Mohammad, *Cabinet Mission and After*, p. 3.
14. *Indian Annual Register 1946*, Vol. I, p. 192.
15. *The Statesman*, 8 April, 1946.
16. *Command 6829*, No. 1, p. 3.
17. *Indian Annual Register 1946*, Vol. 1, p. 133.
18. *Ibid*, p. 174.
19. *Ibid*, p. 135.
20. *Ibid*, pp. 136-39.
21. *Ibid*, p. 55.
22. *Ibid*, p. 54.
23. *Parliamentary Debates*, House of Commons, Vol. 422, Col. 2113.
24. *Ibid*, Col. 2118.
25. *Command 6821*, p. 7, para 21.
26. *Ibid*, para 23.
27. *Indian Annual Register 1946*, Vol. I, p. 149.
28. *Parliamentary Debates*, House of Commons, Vol. 422, Col. 2120.
29. *Command 6835*, p. 9 (b) and II Resolution passed by the Congress Working Committee on 24 May 1946.
30. *Harifan*, May 26, 1946.

31. *Indian Annual Register* 1946, Vol. I, p. 59.
 32. *Command* 6861, No. 21, p. 15.
 33. *Command* 6861, p. 16, para 7.
 34. *Ibid*, 6821, No. 3I, p. 24. Azad's letter to the Viceroy dated 25 June 1946.
 35. *Ibid*.
 36. *Indian Annual Register* 1946, Vol. I, p. 176.
 37. *Ibid*, Vol. II, p. 132.
 38. *Ibid*, p. 132.
 39. *Ibid*, Vol. I, p. 250.
 40. *Ibid*, p. 105-6.
 41. *Ibid*, p. 221.
 42. *Ibid*, p. 105.
 43. *Times of India* (New Delhi), 25 August 1946.
 44. *Statesman* (New Delhi), 27 August 1946.
 45. *Times of India* (New Delhi), 8 September 1946.
 46. *Indian Annual Register* 1946, Vol. II, p. 274.
 47. *Times of India* (New Delhi), 26 October 1946.
 48. *Indian Annual Register* 1946, Vol. II, p. 275.
 49. *Indian Annual Register* 1946, Vol. II, p. 299.
 50. *Parliamentary Debates*, Vol. 430, Col. 1615.
 51. *Indian Annual Register* 1946, Vol. II, p. 300.
 52. *Ibid*, p. 300.
 53. *Ibid*, p. 303.
 54. *Ibid*, p. 303.
 55. *Ibid*, p. 337.
 56. *Ibid*, p. 310.
 57. *Ibid*, p. 313.
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Achievements of Indian National Congress

THE career of the Constituent Assembly began in somewhat embarrassing circumstances. The Cabinet Mission sent by the British Government found that its attempt to evolve a constitution agreeable to all sections in India had failed, and that led to the framing of a scheme by the Mission which was in the nature of a recommendation which the Mission felt would be acceptable to the two major political parties. In pursuance of it, therefore, elections to the Constituent Assembly were held. Many Muslim League candidates emerged victorious. The Congress won an overwhelming majority.

As scheduled, the first Constituent Assembly of India opened at 11 a.m. on Monday 9 December 1946 in Delhi with an inaugural address by Sachchidananda Sinha, a distinguished lawyer and the provisional president. Out of 389 scheduled representatives in the August Assembly, 205 representatives were actually present from eleven provinces. The Muslim League members, 73 in number, were conspicuously absent, because according to their resolution of 29 July they had boycotted the Constituent Assembly. The party having the largest number of representatives was the Indian National Congress.

It is true that this Assembly was neither sovereign nor fully representative. It wasn't sovereign because the British Parliament hadn't really approved it and wasn't fully representative because neither the representatives of Muslim League nor that of Indian Princely states participated in the deliberations. On

the third day (11 December) of the Assembly, Rajendra Prasad, Food and Agriculture Member, Interim Government, was unanimously elected as the permanent President of the Constituent Assembly. In his speech, after occupying the presidential chair, he, emphasising the self-determining powers of the Assembly, observed : "...I am aware that this Assembly has been born with certain limitations placed on it from its birth inspite of these limitations, the Assembly is a self-governing and self-determining, independent body in whose proceedings no authority can interfere and whose decisions no one outside can upset, alter or modify..."¹

On 13 December 1946, Jawaharlal Nehru moved a resolution on 'Declaration of Objectives' proclaiming India as an "Independent Sovereign Republic". On 22 December, the Congress Working Committee issued a lengthy statement from Delhi on the British Government's pronouncement of 6 December. Its most relevant and appropriate portion read: "...While the Congress has always been willing to agree to reference to the Federal Court, any reference now, when none of the other parties (ie, Britain and the Muslim League) are prepared to join it or accept it, and one of them (ie, Muslim League) does not even accept the basis of the scheme, becomes totally uncalled for and unbecoming, and unsuited to the dignity of either of the Congress or the Federal Court. By their repeated statements, British statesmen have ruled this out..."²

The subject was taken up again in an emergency meeting of the All India Congress Committee. After a long debate on the interpretation of 6 December of the Cabinet Mission, it adopted a resolution. In its last paragraph, accepting the interpretation of the British Cabinet of even date, it said "...The All India Congress Committee is anxious that the Constituent Assembly should proceed with the work of framing a constitution for India with the good will of all parties concerned and, with a view to removing the difficulties that have arisen owing to varying interpretations of the British Government in regard to the procedure to be followed in the sections." Nevertheless, it also mentioned, "...It must be

clearly understood, however, that this must not involve any compulsion of a province and that the right of the Sikhs in the Punjab should not be jeopardised. In the event of any attempt and such compulsion, a province or part of a province has the right to take such action as may be deemed necessary in order to give effect to the wishes of the people concerned.”³

It is on record that the Congress Party, after a good deal of heart-searching, accepted, as it were constitutionally, the interpretation of the British Cabinet. Such acceptance by the Congress Party meant now that it was compulsory for a province to join the group in which it was placed by the British Cabinet on 16 May 1946, and that the decisions in a section must be taken by a simple majority vote of the representatives. However, it must be recalled that according to the said statement, any province could, after the general elections, elect to come out of the group in which it was placed by the British Cabinet. It can hardly be denied that the intention of the Congress Party in accepting the grouping plan according to the British Cabinet was to accommodate the Muslim League in the Constituent Assembly, which was scheduled to meet in its second session on 20 January.

On 31 January 1947, All India Muslim League adopted a resolution dealing with the Indian constitutional problem. In the opinion of the Muslim League the Congress acceptance on 6 January of the grouping plan according to the British Cabinet was dishonest; that the Congress trespassed the authority with regard to the Constituent Assembly; that the British Government should declare the failure of the constitutional plan of the British Cabinet; that the Constituent Assembly being *ultra vires* must be dissolved; and that it was meaningless for the Muslim League to meet and reconsider it. In the end the Muslim League refused to join the Constituent Assembly.

The Times, London, criticised the Muslim League's resolution and stated: "The League's Karachi attack on the Cabinet Mission's plan and on the very existence of the Constituent Assembly was a tactical error in spite of the undoubted provo-

cation amply furnished by the Congress Party."⁴ It suggested that it was for the good of India that the Muslim League members of the Interim Government should remain there and, as a symbol of their party, work in framing the new Constitution. On 15 February 1947, Sardar Patel, Home Member, stated in an interview that because of the Karachi resolution, the Congress Party would either refuse to allow the Muslim League members in the Interim Government under "present conditions" or withdraw itself from the Viceroy's Cabinet. He added that the "Congress members of the Interim Government have asked His Majesty's Government either to require the Muslim League to share in drafting a new Constitution, or to leave the Cabinet, unless the Muslim League gets out, we will go out."⁵

Next day, 16 February while delivering the convocation address of the Aligarh University, Liaquat Ali, Finance Member, and General Secretary of the Muslim League, observed "...We Muslims want to live in this sub-continent as an independent and self respecting people and are in no way interested in or prepared to submit to a change of masters. We shall give our life as a nation in our own way. This can be possible only if we have a free and independent state of our own and that is Pakistan."⁶ The British Cabinet met on 18 February and discussed the issue at stake, that the position of Muslim League in the Viceroy's Cabinet was untenable if it continuously absented itself from the Constituent Assembly.

Transfer of Power

On 20 February 1947, on behalf of the British Labour Government, Prime Minister Attlee presented a "White Paper" to the House of Commons on the constitutional future of India. Announcing that the British Labour Government intended to transfer power into the responsible Indian hands not later than June 1948, he observed firstly: "It has long been the policy of successive (mainly Conservative but also Labour) British Governments to work towards the realization of self-government in India...In the constitutional field the Acts of 1919 and 1935 (under Conservative Government) passed by the British Parliament, each represen-

ted a substantial transfer of political power. In 1940, the Coalition Government (headed by Conservative Prime Minister) recognised the principle that Indians should themselves frame a new constitution for a fully autonomous India, and in the offer of 1942 (under the Conservative Government), they invited them to set up a Constituent Assembly for this purpose as soon as the War was over..."⁷

The Labour Prime Minister continued "...His Majesty's Government desire to hand over their responsibility to authorities established by a Constitution approved by all parties in India, in accordance with the Cabinet Mission's plan, but unfortunately there is at present no clear prospect that such a constitution and such authorities will emerge.. 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..." It must be carefully noted that this was the first occasion in the history of the British Government and Indo-British relations that the British Government categorically and officially announced a deadline for the British withdrawal from India. It must not be forgotten that it was no other than the British Labour Government which had the courage and privilege to do so.

Finally, Attlee expressed, on behalf of the British people, "...their good will and good wishes towards the people of India as they go forward to this final stage in their achievement of self government. It will be the wish of everyone in these islands that notwithstanding Constitutional changes, the association of the British and Indian peoples should not be brought to an end, and they will wish to continue to do all that is in their power to further the well-being of India." After reading the 'White Paper', he also announced the appointment of Admiral Viscount Mountbatten as the Viceroy of India in succession of Lord Wavell. Attlee said that Lord Mountbatten "...will be entrusted with the task of transferring to Indian hands the responsibility for the Government of British India in the manner that will best ensure:

the future happiness and prosperity of India. The change of office will take place during March 1947."⁸

Jawaharlal Nehru described the British Government's decision as "a wise and courageous one" and as "removing all misconception and suspicion". He appealed to the Muslim League to enter the Constituent Assembly so that the transfer of power might take place smoothly and rapidly. A daily newspaper described the British statement as "epoch-making" and as "an historic decision which will finally end the Indo-British conflict in a manner worthy of civilised nations."⁹ Many other dailies echoed similar sentiments.

On 5 March, Stafford Cripps moved the resolution in the House of Commons "that this House takes note of the statement of India made on February 20, 1947 by the Prime Minister and approves the policy set out therein." In this he pointed out that even before the war, in the years preceding the Act of 1935 the tempo of advance towards self-government had accelerated and a very marked forward step was taken with the setting up of democratic self-government in the provinces under the provisions of that Act...¹⁰ Furthermore, he said that the statement of 1940 as well as the offer of 1942 "quickened this process of transfer of power", "and the substance of the offer of 1940 was recapitulated by the then Prime Minister" (Churchill, Conservative) in his statement (to the House) of 11 March 1942, when he announced the going of a mission to India. Continuing, he pointed out that although in 1940 it was still assumed that self-government would be granted within the Commonwealth "in 1942 with the full acquiescence of the Cabinet it was publicly stated that the Indian people were entitled to elect to go out of the Commonwealth if they so desired..."

Explaining the purpose of the statement of 20 February he proceeded "We took the view that the fixing of a definite term (June 1948), during which (time) they must either come to agreement to set up a United Independent Government for all India or else break up the country into smaller and weaker units, should provide the strongest inducement to them to sink the differences and to act together." Finally, he said,

"We have now made abundantly and inescapably clear that we intended by June 1948 to withdraw our control of India in favour of that freedom which Indians of all communities have persistently demanded." In winding up the debate, Attlee, the British Labour Prime Minister, observed: "...Any one who has read the lives of the great men who built up our rule in India and did so much to make Indian unity will know that all of them looked to the fulfilment of our mission in India of placing the responsibility for their own lives in Indian hands."¹⁰

On 6 March, the Congress Party Working Committee began its meeting at Delhi under the presidentship of Acharya Kripalani and passed a resolution on 8 March on Prime Minister Attlee's declaration of 20 February. Firstly, welcoming the announcement, it said that "the Working Committee welcome the declaration made on behalf of the British Government of their definite intention to transfer power finally by a date not later than June 1948 and to take steps to that end in advance" Secondly, it requested that the transfer of power should be preceded "by the recognition in practice of the Interim Government as a Dominion Government." Thirdly, it suggested that "there can or should be no compulsion in the making of a constitution for India." Fourthly, earnestly, it called upon all parties and groups to "cooperate peacefully and democratically in the making of a Constitution." Finally, it invited "the All India Muslim League to nominate representatives to meet representatives of the Congress in order to consider the situation that has arisen and to devise means to meet it" and showed concern for the Sikhs and other minorities to safeguard their interests." Obviously, the Congress Party had good reasons to welcome the announcement of the British Labour Prime Minister.

Now according to Prime Minister Attlee, the new Viceroy, Mountbatten, arrived in India on 22 March 1947. The next day was observed by Muslim League as "Pak Day." On 27 March Jinnah said: "I am fighting for Pakistan, whi

means I am fighting for freedom of India. I am fighting for Pakistan because it is the only solution for solving the problem and the other ideal of a United India and a rule based on Parliamentary system of Government is vain dream and an impossibility. India is neither a country nor a nation, but is a score of nations."¹²

On 31 March, Gandhiji arrived in New Delhi and until 4 April met the Viceroy five times to discuss the Indian problem. On 5 March, Jinnah met the Viceroy and Gandhiji began his 24 hour fast "for the sake of vindicating Swaraj through Hindu-Muslim Unity." On 10 April after the evening prayer meeting, Gandhiji reiterated his faith in the good intentions of the British Labour Government and the Viceroy, Lord Mountbatten, and remarked that "the British Government are sincere and the Viceroy has come with a good and sincere heart."

On 12 April, Rajendra Prasad referred to the Muslim League's demand for partition of India and observed : "If as desired, we have but to divide our country, we have also to consider the question of dividing those areas where Hindus are in a minority, as we have to divide Bengal and the Punjab."¹³ Speaking at the Jallianwallah Bagh Day in Delhi on 13 April, Jawaharlal Nehru said : " ..Time has now come when we should decide one way or the other. The urgency of the time requires that responsible persons of various political parties should sit round a table and make a final decision — We do not want to compel any province or portion of the country to join Pakistan or Hindustan. If parts of Bengal and the Punjab want to separate, no one can compel them the other way."¹⁴

On 18 May, Lord Mountbatten left Delhi for London. On 23 May he secured the approval of the British Labour Government to the new plan for transfer of power. On 29 May he left London for Delhi. The Conference of Indian leaders assembled at the Viceroy's House on 3 June and discussed the plan for about two hours. The new British

plan was accepted by the representatives of the Congress, the Muslim League and the Sikhs. On 3 June, the British Labour Government's new plan of procedure for the transfer of power to Indian hands was announced.

The plan virtually facilitated the partition of India into two independent dominions of India and Pakistan, and that the British Labour Government was bent upon cooperating fully to transform India's dream of independence into a reality. Jawaharlal Nehru, Vice-President of Interim Government (Member of the Congress Working Committee), in his broadcast to the nation of 3 June, endorsing the plan, observed "...It is with no joy in my heart that I commend these proposals to you, though I have no doubt in my mind that this is the right course. 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 wish is painful for any of us to contemplate. Nevertheless, I am convinced that our present decision is the right one even from the larger viewpoint."¹⁶

Sardar Baldeo Singh (Defence Member and leader of the Sikh Community) in his broadcast said : "...The plan that has now been announced is not a compromise. I prefer to call it a settlement. It does not please everybody, but it is certainly something worth-while. Let us take it as that."¹⁶ A newspaper commented that the British Plan was "...most impartial and carefully thought out plan devised for the quickest and most peaceful transfer of power...the main thing about the new plan which must appeal universally to the people of India is that it has been accepted by the Congress, the Muslim League and the Sikhs. This hope of agreement among conflicting parties should itself commend the plan to the people."¹⁷

An emergency meeting of AICC was held at the Constitution House in Delhi to consider the new British Labour Government plan, under the presidentship of Acharya Kripalani. It passed a resolution by 157 votes to 29 on 15 June, which reads "...the All India Congress Committee

accepts the proposals embodied in the announcement of 3 June 1947, which have laid down a procedure for ascertaining the will of the people concerned. The proposals of 3 June 1947, are likely to lead to the secession of some parts of the country from India." Nehru speaking on the resolution again emphasised that "It must be realised that it is not possible to coerce unwilling parts to remain in the Indian domain."¹⁸ Sardar Patel said that India had to choose between "partition or complete balkanisation and anarchy." Gandhiji philosophically commented that, though he had previously opposed Pakistan, "sometimes certain decisions, however, unpalatable they may be, have to be taken." So the Congress Party accepted the new British Plan as a necessary evil because for over sixty years the Congress had consistently and courageously upheld the idea of the unity of India and had laboured for the realisation of a free, united and Independent India.

Indian Independence Act

It was by the Plan of 3 June that the principle of partition of the country was accepted and accordingly, the British Parliament, passed the Indian Independence Act in July 1947, creating the two Dominions of India and Pakistan. The new Act substituted certain new provisions, from the previous ones contained in the Government of India Act of 1935. Powers hitherto exercised by the British Parliament, and the Government in British India would be transferred to the two new dominions, also on 15 August 1947. In the 1947 Independence Act "the territories of the Dominions were defined, with appropriate qualifications for the areas about to determine their choice by referendum or by vote of their legislature. Each Dominion was to be headed by a Governor-General, but it was expressly stipulated that one person might serve in a dual capacity, in the hope that Mountbatten would be acceptable to both. The absence of a legally constituted Parliament in either of the proposed Dominions was overcome by giving both Constituent Assemblies the dual status and function of legislature and constitution making body.

The 1935 Government of India Act and its accompanying Orders-in-Council would remain in force (pending alteration or the drafting of new constitutions by the successor authorities), subject to the removal of the reserved and special powers vested in the Governor-General and the provincial Governors. All laws in force in British India on 15 August 1947 would remain in force until amended by the new Dominion legislatures. There was also a provision for continuity in the terms of employment of members of the Services.

Two provisions of the Act gave rise to vigorous controversy, even before the formal transfer of power: the Governor-Generalship and the constitutional future of the princely states. The Congress proposed Mountbatten as Governor-General of the Dominion of India, undoubtedly on the assumption that the League would do likewise. To the consternation of many, Jinnah decided to occupy that post in Pakistan. In reality it made little difference to the power pyramid in Pakistan during the first year, for Jinnah remained the dominant personality until his death in September 1948. "The Muslim League accepted the implied doctrine of freedom of action for the Princes, probably because the few States on the Pakistani side of the borders would have no real choice. Moreover, the exercise of such freedom by some of the large princely States in India, notably Hyderabad, would imperil the territorial integrity and stability of Pakistan's more powerful neighbour. For precisely opposite reasons the Congress rejected the British Government's interpretation of Paramountcy and declared that it would resist territorial fragmentation."

The All India Congress Committee approved Nehru's strong line by stating that it could not 'admit the right of any state in India to declare its independence and to live in isolation from the rest of India.' The Viceroy, too, was acutely conscious of the constitutional vacuum created by the Indian Independence Act and the danger of Balkanization. He readily agreed to the establishment of a Ministry of States early in July. On 25 July he addressed the Princes in an

effort to persuade them to accede to one or the other Dominions, depending upon their geographical position and the communal composition of their population. His speech was a resounding success. By the time power was finally transferred, all but three princely States had signified their intention of doing so. Yet the three holding out—Kashmir, Hyderabad and Junagadh—were to cause bitterness and dislocation of such a magnitude that the achievement was overlooked.

Within the Interim Government tension continued. The Congress members insisted on the necessity of maintaining the normal administrative functions of a Central Government; the League members blocked every decision of substance. Early in July 1947, Nehru was on the verge of resignation over this issue. As soon as the Independence Act received Royal assent, on 18 July 1947, Mountbatten solved the problem by splitting the Interim Government into two provisional administrations for the successor states. In the Punjab communal conflict increased as the day of partition approached...Friction was further intensified by uncertainty over the boundaries.

By default the Indian Independence Act seemed to give the Princes freedom to accede to India or to Pakistan, or to become independent. The vagueness involved with respect to this problem presented difficulties that might well have led to instability and fragmentation. This threat was especially grave for India because all but a dozen of the over five hundred princely states were contiguous to Indian territory. Thus any uncertainty was bound to contribute to the dangerous tension between the two Dominions from the very day of their formation. In particular it was partly responsible for the tragic conflict over Kashmir which was to succeed in poisoning Indo-Pakistani relations after partition.

Certain Changes

In pursuance of the Indian Independence Act, the Government of India Act 1935, was amended by Adaptation Orders, both in India and Pakistan. The following were the main

results (a) Abolition of the Sovereignty and Responsibility of the British Parliament—By the Government of India Act, 1858 the Government of India was transferred from the East India Company to the Crown. By this Act, the British Parliament became the direct guardian of India, and the office of the Secretary of State for India was created for the administration of Indian affairs, for which the Secretary of State was to be responsible to Parliament. Notwithstanding gradual relaxation of the control, the Governor-General of India and the Provincial Governors remained substantially under the direct control of the Secretary of State until the Indian Independence Act, 1947, so that—"in constitutional theory, the Government of India is a subordinate official Government under His Majesty's Government."

Indian Independence Act altered this constitutional position, root and branch. It declared that with effect from 15 August 1947, India ceased to be a Dependency and the suzerainty of the British Crown over Indian States and the treaty relations with tribal areas also lapsed from that date. The responsibility of the British Government and Parliament for the administration of India having ceased, the office of the Secretary of State for India was abolished.

(b) The Crown no longer to be the source of authority—So long as India remained a Dependency of the British Crown the Government of India was carried on in the name of His Majesty. Under the Act of 1935, the Crown came into further prominence owing to the scheme of the Act being federal and all the units of the federation, including the Provinces, drew their authority direct from the Crown. But under the Independence Act, 1947, no unit in the two Dominions of India and Pakistan had to derive its authority from the British.

(c) The Governor-General and Provincial Governors to act as constitutional heads—The Governor-Generals of two Dominions became the constitutional heads of the two new Dominions as in the case of the other Dominions. This was

in fact, a necessary corollary from "Dominion States" which had been denied to India by the Government of India Act, 1935, but conceded by the Independence Act of 1947.

According to the adaptations under the Independence Act, there was no longer any Executive Council as under the Act of 1919 or 'counsellors' as envisaged by the Act of 1935. The Governor-General of the Provincial Governor was to act on the advice of a Council of Ministers having the confidence of the Dominion Legislature or the Provincial Legislature, as the case might be. The words "in his discretion", "acting in his direction" and "individual judgment" were effaced from the Government of India Act 1935, wherever they occurred, with the result that there was now no sphere in which these constitutional heads could act without or against the wishes of the Ministers. Similarly, the powers of the Governor-General to require Governors to discharge certain functions as his agents were deleted from the Act.

The Governor-General and the Governors lost extraordinary powers of legislation so as to compete with the Legislature, by passing Acts, proclamations and Ordinances for ordinary legislative purposes, and also the power of certification. The Governor's power to suspend the Provincial constitution was taken away. The Crown also lost its right to veto and so the Governor-General could not reserve any bill for the signification of His Majesty's pleasure.

(d) The Central Legislature of India, composed of the Legislative Assembly and the Council of State, ceased to exist on 14 August 1947. From the 'appointed day' and until the Constituent Assemblies of two Dominions were able to frame their new Constitutions and new Legislatures were constituted thereunder—it was the Constituent Assembly itself, which was to function also as the Central Legislature of the Dominion to which it belonged. In other words, the Constituent Assembly of either Dominion (until it desired otherwise), was to have a dual function, constituent as well as legislative. The sovereignty of the Dominion Legis-

lature was complete and no sanction of the Governor-General would henceforth be required to legislate on any matter, and there was to be no repugnancy by contravention of any imperial law.

Independence and Partition

Early 1947 was a period of upheaval and transition in India. Liberation from foreign rule seemed more nearly attainable than ever before, yet innumerable crucial questions remained unanswered. Among them: how to make Congress more effective, so that it might help transform the lives of India's downtrodden millions in at least somewhat satisfying fashion. How to avoid both communal violence and partition? How to build a modern united, democratic socialist, secular state?

In March 1947, Lord Mountbatten became the last Viceroy of India. He was to play a most sympathetic and effective role during the period of the final transfer of power. 15 August 1947 marked the momentous birth of Independent India. Freedom gave rise to an enormous release of energy, a cultural renaissance, an improvement in the standard of living. Nevertheless, the problems to be solved at times seemed to loom quite as large as the gains achieved. Once partition became what seemed to be an irreversible reality, it served to intensify rather than lessen communal tensions. Incidents of violence, involving Muslims, Hindus and Sikhs, increased in a narrowing fashion. Whereas Muslim League leaders were exultant at the creation of Pakistan, in the eyes of Congress leaders the bifurcation of the Indian subcontinent remained a major disaster, even after being regretfully accepted.

Gandhi's choice of Nehru

Gandhiji's consistent preference of Nehru as a leader; first of the Congress, then of free India, inevitably, helped to make him one of the country's foremost political figures. Gandhiji had long contended that Jawaharlal would be by far the most idealistic, progressive champion of the well being of the

people. Yet, had the nation's youth, as well as the most politically aware sections of the populace as a whole, not agreed with his judgment, even his advocacy of Nehru could not possibly have had the impact that it did. Thus, with the approach of independence, Nehru was naturally named India's first Prime Minister.

Sardar Patel, whose role in the Congress had long been highly significant, became the first Home Minister, as also the Deputy Prime Minister. Patel was not only an outstanding administrator and organiser, but his success in achieving the peaceful integration of India's nearly six hundred princely States—with the Princes' own acquiescence—well may be considered one of the most remarkable occurrences in modern Indian history. Although Sardar Patel was far more conservative than Nehru, the two men complemented one another—in spite of their periodic divergences of opinion. During 1947, Nehru began to assume an increasingly important role, not only on the Indian scene, but on that of Asia in general. Despite the many disagreements even his closest colleagues had with Mahatma Gandhi over the years, the Mahatma had set so high a standard, that he remained the symbolic focus of the Indian independence movement, even while refusing to hold any official position.

It long since had become a habit for Congress's most powerful members to ask Gandhiji for advice and by and large, to take it. It was difficult, therefore, to forego the privilege of continuing to do so. By 1946, however, the Mahatma had removed himself from the centre in an attempt through his exemplary way of life and his calming influence—to quell the seemingly never-ending surge of communal atrocities that occurred. He continued to remain away from New Delhi in order to continue with his demanding task.

Nehru's early 1947 letters to, and writings about Gandhiji—as well as his other statements of the period reveal his continuing attachment to the Mahatma, in contrast to his growing misgivings about Congress. The pressure of work

increased in conjunction with the potential transfer of power. There were other manifold causes for the deep anguish suffered at the time, even though independence was about to be attained. During 1947, not only partition and the intensified two-way flow of refugees, but the tragedy of Kashmir and other related problems served to counterbalance the tremendous joy experienced at the gaining of freedom.

Sovereign Constituent Assembly of India

With independence, the Constituent Assembly emerged not only as a sovereign body but at the same time a truly representative body. Since the Congress alone had captured almost all the seats in the Constituent Assembly and Muslim League had abstained from attending its meeting, Winston Churchill had expressed the view that it represented only one major community in India or it was a body of Hindus or caste Hindus. But as a matter of fact, out of a total of 296 members who were to take part in the meeting, 210 members attended. These 210 Members consisted of 155 Hindus out of a total of 160, 30 Scheduled Caste representatives out of a total of 33, all the 5 Sikhs, 6 Indian Christians out of a total of 7, all the 5 representatives of Backward Tribes, all 3 Anglo-Indians, all 3 Parsis and 4 Muslims out of 80.

Therefore, it is clear from the figures quoted that, with the exception of the representatives of the Muslim League, every community in India was represented in the Assembly. So to describe the Assembly as representing "only one major community in India" or as "a body of Hindus" or "a meeting of Caste Hindus" is a complete travesty of facts. It is true that the Constituent Assembly of India was dominated by the Congress Party. But the Congress was anxious to see that all sections and all interests of people were represented. They were conscious of the seriousness of the problem of constitution-making and hence wanted that all men of real ability should be taken in.

Henceforth, the Constituent Assembly emerged as a fully representative body. But it may be argued that the Mem-

bers of the Assembly were not directly elected by the people on the basis of adult suffrage and that fifty per cent of the State representatives were nominees of the Princes. But the urgency of the situation demanded the immediate formation of the Constituent Assembly and the provision for direct election might have delayed its sitting by at least a year. Moreover, there would have been no great change in the composition of the Constituent Assembly as such and the Congress would have captured the same number of seats as is apparent from the subsequent election to the Indian Parliament. It was also expedient to allot fifty per cent of the seats earmarked for the states to the nominees of Princes as otherwise the Princes would not agree to join the Constituent Assembly.

Thus the Constituent Assembly became really a representative body and all its important committees also represented various groups and interests. The Union Constitution Committee, the Union Powers Committee, the Provincial Constitution Committee and the Committee on Fundamental Rights consisted not only of Congress members but also of the States' representatives and of other minor groups. The Advisory Committee on Fundamental Rights consisted of seven members of the Scheduled Castes, six Sikhs, four Indian Christians, three Anglo-Indians, three Parsis, three representatives of the Excluded and Partially Excluded areas and a representative of the tribes of Assam, besides other members. At the top of all was the Drafting Committee consisting of seven members and B R Ambedkar, who had so long been in opposition to the Congress, was appointed Chairman. A representative of the Muslim League was also included in the Drafting Committee. The Drafting Committee was elected unanimously.

Thus the Constituent Assembly was really a representative body and its various committees also represented various groups and interests. Congress, the majority party, was actually working large-heartedly and its activities were not based on party considerations in the making of the Constitution of India.

References

1. *Indian Annual Register 1946*, Vol. II, p. 325.
2. *Ibid*, p. 129.
3. Sitaramayya, P, *The History of the Indian National Congress*, Vol. II, p. 822.
4. *The Times* (London), 12 February 1947.
5. *Indian Annual Register 1947*, Vol. I, p. 36.
6. *Ibid*, p. 36,
7. *House of Commons Debates*, 20 February 1947, Col. 1398.
8. *Ibid*, Col, 1398.
9. *Hindustan Times* (New Delhi), 23 February 1947.
10. *Ibid*, p. 160.
11. *Ibid*, p. 182.
12. *Ibid*, p. 50.
13. *Ibid*, p. 56.
14. *Ibid*, p. 56.
15. *Ibid*, p. 252.
16. *Ibid*, p. 254.
17. *Hindustan Times* (New Delhi), 4 June 1947.
18. *The Hindu* (Madras), 16 June 1947.

Making of the Constitution

Every constitution has a philosophy of its own. For the one underlying ours we must go back into the historic Objectives Resolution of Jawaharlal Nehru which was adopted by the Constituent Assembly on 22 January 1947 and which inspired the shaping of the Constitution through all its subsequent stages. It is pertinent for our purpose to read this Objectives Resolution. This is how it goes: (1) This Constituent Assembly declares its firm and solemn resolve to proclaim India an Independent Sovereign Republic and to draw up for her future governance a Constitution; (2) Wherein the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India, as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India shall be a Union of them all; and (3) Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the constitution, shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and (4) Wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of Government, are derived from the people; and (5) Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, ex-

pression, belief, faith, worship, vocation, association and action subject to law and public morality; and (6) Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and (7) Wherein shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilised nations; and (8) This ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and welfare of mankind.

The Statement of Objectives (The Preamble)

In the words of Jawaharlal Nehru, the aforesaid Resolution was something more than a resolution. "It is a declaration, a firm resolve, a pledge, an undertaking and for all of us a dedication." It will be seen that the ideal embodied in the above resolution is faithfully reflected in the Preamble to the Constitution. The Preamble is a short statement, but its solemn significance cannot be overrated :

"WE, THE PEOPLE OF INDIA, proclaims the Preamble, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to 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 twenty-sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

Combining the ideals of political, social and economic democracy with that of equality and fraternity, the Preamble Gandhiji described as "the India of My Dreams", namely, "... India in which the poorest shall feel that it is their country in whose making they have an effective voice; India in

which all communities shall live in perfect harmony."¹ Jawaharlal Nehru observed : "Words are magic things often enough but even the magic of words sometimes cannot convey the magic of the human spirit and of a nation's spirit. And so it cannot be said that this resolution at all conveys the passion that lies in the hearts and minds of the Indian people today."²

The fundamentals of the Indian Constitution have been laid down in resolution on Declaration of Objectives, moved by Nehru in the Constituent Assembly and passed by all standing. As the mover himself explained, "in building we must note with care each brick that we use. But before that we must have a plan of the structure we wish to erect. This resolution is not a part of the constitution that we are going to draw up and it must not be looked upon as such. It steers in between two extremes of saying too much and too little, and lays down only certain fundamentals which I believe no group, no party and hardly any individual in India can dispute."³ In the opinion of B R Ambedkar, the resolution "would act as a sort of directive to the Constituent Assembly."⁴ While N Gopalaswamy Ayyangar described it as a resolution "which must preface everything substantial that we propose to do in this Assembly."⁵ The people in general welcomed it as a Magna Carta or Charter of Freedom which they could use in vindication of their rights and liberties. It was commended more than once even in the British Parliament. A V Alexander, replying to debates, declared: "I give as much faith to this pledge as I would to one made here in my own country."⁶ Arthur Henderson said that it was a Charter of Fundamental Rights of which country might be proud.

The most important fact about the Objectives Resolution is that it proclaims, as established, the long cherished goal of India's independence. It is just and proper that the fathers of the Indian Constitution paid their first attention to the declaration of India's independent, sovereign status.

Nature of the Constitution

The framers of the Indian Constitution favoured for this country the 'devolutional' type of federation. In her long history, except for a brief period subsequent to the Act of 1935, India had never been a federal State. But the vast area, the large population, linguistic, religious and cultural diversities and the clamour of the people for local autonomy—all led the framers to decide in favour of a federal structure. The problem of the Constitution makers, in devising the federal structure of the Indian Republic, was to balance the forces of unity with those of diversity; to balance the powers of the Centre with the rights of the provinces. Their ultimate decision in favour of a "Union of India", with a strong Central Government, was not instantaneous, but was a natural conclusion of a historical process.

In the beginning, under the Cabinet Mission Plan, the framers contemplated a weak centre, but later, with the change in circumstances, they made the centre strong. A correct description of the nature of the Indian federation was given by Ambedkar while presenting draft Constitution to the Constituent Assembly. "It establishes", he said, "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. 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 the one is coordinated with that of the other."⁷ The framers provided in the Constitution itself for the division of powers between the Union and the States in legislative, administrative and financial spheres. In all these spheres they were influenced by the corresponding provisions of the Act of 1935.

The fathers of Indian Constitution intended to make the federation a flexible one, and tried to avoid both rigidity and legalism. They added new ways of overcoming the rigidity and legalism "which are special to it and which are not to be

found elsewhere."⁸ They empowered, for example, parliament to legislate even on subjects in the State List both in normal and abnormal times. They provided for an easier method of amendment of the Constitution. "I challenge," Ambedkar said, "any of the critics of the Constitution to prove that any Constituent Assembly anywhere in the world has, in the circumstances in which this country finds itself, provided such a facile procedure of the amendment of the Constitution,"⁹ Yet another feature of the Indian federation is its unitary tendencies. The desire of the framers to have uniformity in basic matters results in the formation of a single citizenship, a single judiciary, uniform fundamental laws and common All India services.

It is not to be denied that the framers of the Constitution made, rather deliberately, the Central Government strong and powerful. The States were given autonomy in their own sphere. The Supreme Court as the custodian of the Constitution, was to see that the Union and the States operated within their own sphere; but whenever national interest was involved, the framers expressly provided for supremacy of the Union. We may conclude, in the words of K. Santhanam, that "the Indian federation is a genuine federation."¹⁰ It is true that it is flexible enough and can be turned into a unitary state to meet a national emergency, but in normal times it remains a federation in which "the attributes of statehood are shared between the Centre and the local state."¹¹

Fundamental Rights

The Preamble of the Indian Constitution promised to secure to all its citizens: "Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity." Therefore, it was essential to provide a chapter on Fundamental Rights in the Constitution of India. The first demand for fundamental rights was, however, made by the Indian National Congress at its special session held at Bombay on 29 August 1918 under the

Presidentship of Hasan Imam. It accepted the Montague proposals subject to a Declaration of Rights of the people of India. They were all political rights demanded with a view to having some positive safeguard against the tyranny of the British rule in India. Naturally, the demand was not accepted by the British Government. As far back as 1928, the Nehru Committee had declared that "the basis of the Constitution must be a declaration of Fundamental Rights."¹² The Sapru Committee (1945) supported the demand of the Congress and recommended in its report the inclusion of these rights in the Constitution. The Cabinet Mission (1946) saw things in their true perspective and recommended the creation of an Advisory Board to formulate, among other things, the rights of the people. Accordingly, an Advisory Committee was constituted which appointed a sub-committee, under the chairmanship of J B Kripalani to report on Fundamental Rights. On the basis of the report of this sub-committee, the Advisory Committee prepared the Interim Report on Fundamental Rights which it submitted to the Constituent Assembly on 23 April 1947.

Thus the provisions concerning fundamental rights, as they emerged in the Constitution of India, passed through different stages. In the formulation of these rights, the framers were no doubt, influenced by the similar provisions of other constitutions, but they did not ignore the actualities of the Indian conditions. In the course of framing the constitution, certain basic changes were made in the nature of these rights on the basis of the experience of their working in some other constitutions, and on account of the changed situation in the country as well. In the ultimate analysis, they tried to balance the rights of the individual with the needs of an infant Republic and an under-developed community. These Fundamental Rights were divided into the following heads: (1) Rights of Equality (2) Rights to Freedom, (3) Right against Exploitation, (4) Rights relating to religion, (5) Culture and Educational rights, (6) Right to property, and (7) Right to Constitutional remedies.

Right to Equality

Influenced mainly by the English Common Law, the framers provided for both 'equality before law' and 'equal protection of the laws' for every person within the territory of India. They were unanimous as to the importance of the provision. 'Equality before law' has been interpreted by the Courts to mean that all persons in similar circumstances shall be treated alike both in privileges conferred and liabilities imposed. The term 'equality before the law' is borrowed from the Irish Constitution. The term 'equal protection of the laws' is borrowed from the US Constitution. Both the phrases aim at establishing Rule of Law in India promising 'equality of status and of opportunity' as embodied in the Preamble of the Constitution. It is significant that equality before the Law is guaranteed to all persons, whether citizens or aliens.

The curse of social disabilities that prevailed in Indian society for so long a period, rather than any influence from outside, prompted the framers to provide in the Constitution for prohibition of discrimination both in the social sphere and in matters of public employment. They wanted to wipe out all the differences amongst the citizens on grounds of religion, race, caste, sex and place of birth or any of them. The Advisory Committee had, therefore, recommended that the State should not make any discrimination on grounds of religion, race, caste or sex. K T Shah suggested that as special provisions could be made for women and children so also for Scheduled Castes or backward tribes. Ambedkar, however, explained that the amendment might have just the opposite effect and the Scheduled Caste or backward tribes might be segregated thereby from the general public.

The Advisory Committee provided for equality of opportunity for all citizens in matters of public employment. No citizen was to be discriminated against in matters of public employment on grounds only of religion, race, caste, sex, descent, place of birth or any of them. Having laid down this general principle, it made an exception for that section of society which was "not adequately represented in the public

services." The State could legislate to protect the interests of such a section of the community in a way it thought proper. The principle of reservation of seats for backward classes in matters of public employment was criticised by several members as wrong and unnecessary. Such a principle, if pursued to its logical end, HN Kunzru said, was not helpful at all for the integration of the different communities which was so badly needed for the survival of the country. He, however, was not opposed to help those communities in this respect who were not in a position to stand on their own feet. If reservation of posts in services was needed to this end, it would be better, he suggested, to prescribe a time limit, say of ten years, and its operation in that period should be reviewed as in the case of reservations in State Legislatures. But Ambedkar, Chairman of the Drafting Committee, did not agree with the view expressed by H N Kunzru.

Article 17 abolishes untouchability and its practice in any form is made an offence punishable under the law. A strong public opinion had been created in its favour as early as 1921 by Mahatma Gandhi. He had observed: "Swaraj is a meaningless term, if we desire to keep one fifth of India under perpetual subjection and deliberately deny to them the fruits of national culture."¹³ Therefore, it was recommended by the Advisory Committee as Clause 6 of the report.¹⁴ The Constituent Assembly adopted it without much debate. Since the Constitution has come into being, a considerable improvement has certainly been made in this respect, though it cannot be said that the problem of untouchability has been fully solved. Social evils cannot be legislated out of existence. Legislation only helps to hasten the process. The abolition of untouchability indirectly confers the right of equality in the social sphere, thereby extending it to other spheres as well.

In their zeal for a radical application of the principle of democratic equality, the makers of Indian Constitution abolished all titles and tried to remove all artificial distinctions among members of the same society. Govind Das wanted that all titles conferred in the past should be abolished. M R

Masani suggested the following amendment: "No title shall be conferred by the Union. No citizen of the Union shall accept any title from any foreign state. No person holding any office of profit or trust under the state shall, without the consent of the Union Government, accept any present, emoluments, or office of any kind from any foreign state."¹⁵ The House accepted the amendment.

Right to Freedom

The framers, with memories fresh from the days of the National Movement when the foreign rulers violated even the minimum of individual rights to freedom on flimsy grounds, showed their genuine concern in guaranteeing these rights to individuals. They could not, however, ignore the security of the newly independent State and the interests of the community. In the Constitution, they tried to balance the individuals' love of the liberty and the security of the State. The Interim Report on Fundamental Rights provided, subject to certain general restrictions like public order, morality or the existence of a grave emergency, for the liberties of the individual: freedom of speech and expression; right to assemble peaceably and without arms; right to form associations or unions; right to move freely throughout the Union; right to reside or settle in any part of the nation; to acquire property, and to follow any occupation, trade business or profession.

In spite of these unfettered rights granted to the citizens, the Muslim community could not be appeased and the country had to be partitioned. Moreover, the partition of the country aggravated communal tension and subversive activities of some of the native states threatened the security of the newly won independence. It was, therefore, desirable to put restraints on these rights. Damodar Swarup Seth criticised that the rights guaranteed in Article 13 were cancelled by that very section and placed at the mercy of the legislature. Even the executive could suspend these rights during emergency. He, therefore, suggested that fundamental rights ought to be placed absolutely outside the jurisdiction not only of the

legislature but also of the executive. K T Shah also lamented that what was given by one right hand was taken away by 'three or four or five left hands.' On the other hand Govind Das supported these limitations as the country had been passing through an abnormal situation. In view of these persistent criticisms the Drafting Committee had to accept a few amendments, though rejected at the first instance.

Right against Exploitation

The Draft Committee recommended Articles 17 and 18. One prohibited traffic in human beings and forced labour in any form. But an exception was made for the imposition of a compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class. No child below the age of fourteen years was to be employed in any hazardous employment. These provisions were incorporated, without any substantive changes, in the Draft Constitution and then, in the Constitution of India. These were the demands of the liberal intellectuals of India since the days of Raja Rammohun Roy.

Right to Freedom of Religion

The Advisory Committee on Fundamental Rights recommended that all persons were equally entitled to freedom of conscience, and the right freely to profess and propagate religious subject to public order, morality or health. But the wearing and carrying of *kripans* were deemed to be included in the profession of the Sikh religion. Moreover, the above rights were not to include any economic, financial, political or other secular activities that might be associated with religious practices. Further, the freedom of religious practice guaranteed was not to debar the state from enactment laws for the purpose of social welfare and freedom. But no express provision had been made for opening all the temples to the Harijans, a subject most dear to Gandhiji. Therefore, at the suggestion of K M Munshi a suitable provision was made to that effect. The House adopted the recommendation. Thus we find Gandhian influence in this chapter.

The enactment of the rights relating to religion amply demonstrates the spirit of tolerance and compromise amongst

the members of the Constituent Assembly. The establishment of a secular state in India was not the Western concept of secularism. It was not a ban on religion and religious practices as were done in Kemalist Turkey. It was rather a concept of tolerance in religion. Jaya Prakash Narayan was of the opinion that the Western concept of secularism should be adopted. He suggested that 'no religious institution shall be used for political purposes and no political organisation shall be based on religion'. Though the suggestion had merit, it was not adopted. Moreover, though majority members of the Constituent Assembly were Hindus, they did not declare Hinduism as the state religion. It was done at a time when religion had divided the country and emotions and sentiments were running high.

Cultural and Educational Rights

India, with its vast population and large area, has been the citadel not only of various religions but also of different cultures and languages. The framers of the Constitution took upon themselves to protect, like the religious freedom of the people, the cultural and linguistic interests of minorities as a matter of fundamental right; though, while doing so, they could not ignore the interests of the country as a whole. Clause 18 of the Interim Report on Fundamental Rights assured the minorities in every unit, the right to preserve its language, script and culture. There was to be no discrimination against any minority on grounds of religion, community or language in regard to admission into State educational institutions; nor was any religious instruction to be compulsorily imposed on them. The minorities were given the right to establish and administer educational institutions in any Unit and the State was not to discriminate against any such institution as managed by them.

The framers were rather anxious to make these rights binding on all units. But later on, largely due to the partition of the country, India became a Union with a strong Central Government. It was, therefore, natural that 'units' gave place to "the territory of India." Moreover, the parti

tion of the country also brought a change in the concept of 'minority'. The leaders of the minorities themselves realised that it was not in their interest to maintain the old attitudes and old demands. A very important point was emphasised by Z H Lari in the Constituent Assembly that primary education should be conducted in the mother tongue of the people. This was supported by no less a person than H N Kunzru who requested the Assembly to consider the matter "in a spirit of justice, toleration and generosity."¹⁶ Even Ambedkar was not opposed to it. "If primary education," Ambedkar observed, "is to be of any service and is to be reality it will have to be given in the mother tongue of the child."¹⁷ The State was not to discriminate on grounds of language, though it could impose reasonable restrictions of a regulatory character to maintain the standard of education. The State could not discriminate in granting aid to any educational institution on the ground that it was being managed by a minority.

Right to Property

The right to property was a very controversial issue in the Constituent Assembly. To develop India's economy as well as to establish a stable political order it was essential to determine the rights of the individual to property and the duty of the State to enter the economic field and acquire private property for public purposes and general welfare. Therefore, the Advisory Committee on Fundamental Rights recommended that no property was to be taken unless the law provided for the payment of compensation for the property taken and specified the principles on which and the manner in which the compensation was to be determined.

There were two schools of thought : one held that as property was a changing concept, the right relating to it should be left to the unfettered discretion of Parliament; but the other felt that it was essential for the democratic society which the Constitution wanted to secure for India, to treat the right to private property as a fundamental right. In the long run, a compromise formula was evolved. The State was allowed to take over private property by the authority of law, but it

could do so only for a public purpose and after payment of compensation. Raja Jagannath Baksh Singh demanded that the compensation must be just. Thereby, he wanted that the final power of fixing the just compensation should be in the hands of the judiciary and not in the Parliament. On the other hand, Ajit Prasad Jain opposed the idea of compensation as it would stand in the way of large scale social and economic reforms.

Sardar Vallabhbhai Patel, however, explained that the recommendation of the Advisory Committee was a middle course. Compensation was to be given as fixed by the representatives of the people, i.e., the Parliament. Therefore, all the amendments were withdrawn and the recommended clause was adopted.

Jaya Prakash Narayan suggested that the payment of compensation should be made optional. However, Jawaharlal Nehru had made it clear that within limits no judge and no supreme court could make itself a third chamber. No supreme court and no judiciary could stand in judgment over the sovereign will of Parliament which represented the will of the entire community. Thus the House turned down all amendments regarding the principle of compensation and the Parliament was allowed to determine it by law. Thus the right to property was granted without being influenced by the propertied interest of the country. The sovereignty of the people was well recognised and the judiciary was not allowed to work as a third chamber. The lengthy process of litigation was thus avoided in the interest of vital social legislations and 'just' compensation was not allowed. Though socialism was not the declared goal, private ownership of property was also not given an absolute protection. Thus decisions were being taken to come to a common understanding and not simply by majority votes.

Right to Constitutional Remedies

The Declaration of Fundamental Rights in the Indian Constitution would have remained a pious declaration if the remedy to enforce these rights was not provided for. Without

such a remedy these rights might well have been, what Ambedkar called, "glittering generalities" without any binding effect on the State. The importance of this article as such, was quite realised in the Constituent Assembly, and the majority of the members agreed that "It is the very soul of the constitution and the very heart of it."¹⁸ The Advisory Committee recommended that the citizens should have the right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part. The Supreme Court was also given power to issue directions in the nature of the writs of habeas corpus, mandamus, prohibition, quo-warranto and certiorari appropriate to the right guaranteed in this part of the constitution. However, the right to these remedies was to be suspended in cases of rebellion or invasion or other grave emergency."¹⁹

The framers of the Constitution were, without any doubt, genuine in their desire to guarantee to the people certain fundamental rights. The individual was to enjoy these rights not in a Hobesian State of Nature, but as a member of an ordered society. While granting these rights to individuals, they did not forget the need of progress and stability of the society and the State. The Constitution of India has provided ample scope to the State to discharge its positive responsibilities for the welfare of the society. The framers reposed their confidence more in the legislature than in the judiciary. Having accepted a parliamentary system of government, they could not but concede an upper hand to the legislature. Though the fundamental rights were also a check upon the Legislature, the latter must not be checked from discharging its functions as assigned to it by the constitution. Nevertheless the Executive in India was made stronger and the sovereignty of Parliament was duly maintained.

Directive Principles of State Policy

The Fundamental Rights Sub-Committee had recommended that the list of fundamental rights should be prepared in two parts, the first part consisting of rights enforceable by appropriate legal process and the second consisting of directive principles of social policy, which, though "not enforceable in

courts" were nevertheless to be regarded as "fundamental in the governance of the country."²⁰ The Nehru Committee Report, 1928, recommended among other things, free elementary education, the maintenance and improvement of labour, economic conditions and the maintenance of health. The Karachi Resolution of the Indian National Congress on Fundamental Rights provided also for the organisation of economic life on "the principle of justice" and "to safeguard the interests of industrial workers."²¹ Jawaharlal Nehru, while moving the Objectives Resolution in the Constituent Assembly, spoke of the content of economic democracy and went on to emphasise "the promise of food and opportunity for all."²² Moreover, the Gandhian philosophy also influenced the framers of the Constitution in giving the final shape to these directives.

But members of the Constituent Assembly questioned the utility of the recommendation of the Advisory Committee on Fundamental Rights. B Das was of the opinion that these pious wishes should find no place in the constitution. PS Deshmukh characterised it to be exceptionally perfunctory. But Sardar Patel cut short the debate by pointing out that these recommendations merely laid down certain administrative objectives. HV Kamath also recommended that title be rechristened as 'Fundamental Principle of State Policy'. Members were of the opinion that these rights should not be mere directives but should be made fundamental and hence justiciable in a court of law. But Ananthasayanam Ayyangar pointed out practical difficulties in making these rights justiciable. BR Ambedkar pointed out that though the title was 'Directive Principles of State Policy', it had been clearly indicated in the Draft Article 29 that it was nevertheless fundamental in the governance of the country.

There had been a strong section in the country, which, inspired by the teachings of Mahatma Gandhi, favoured the idea of having villages as units in the administrative structure, and thus wanted to erect the structure of Indian democracy on the basis of villages as self-sufficient units. Ambedkar criticised the Indian villages in the Assembly as "sink of localism, a den

of ignorance, narrow-mindedness and communalism.”²³ There was a violent reaction. Members not only criticised Ambedkar for having such an uncharitable view of Indian villages but demanded that villages should be recognised as the basic unit of the Indian Republic. It was, therefore, a great relief to them when K Santhanam moved an amendment, on 22 November 1948, for the organisation of village Panchayats as “units of self-government.” It was welcomed by the whole House and was embodied in the Constitution.²⁴

The economic salvation of the country, Gandhiji thought was possible by the development and protection of cottage industries. To make the country economically strong, it was necessary to make the villages self-sufficient units, which was possible only through the promotion of small-scale industries in the rural areas. Moreover, the lingering remembrance of the days of swadeshi movement provided an incentive to members of the Assembly to favour the inclusion of such a provision in the Constitution. It was a concession to the Gandhian ideals, but it was also due to the realisation of the fact that for the immediate mitigation of poverty, it would be a helpful factor. The real aim of the framers was to make India a modern industrial nation.

‘Prohibition’ was yet another ideal for which Gandhiji had stood. The omission of the Drafting Committee to make any reference to it was made good by an amendment moved by Professor Saxena on the floor of the Assembly on 24 November 1948. Despite criticism to the contrary by members like Khardekar and Jaipal Singh, it was ably defended on grounds both of economy and efficiency, and was accepted by the house to be embodied in the Constitution.²⁵ To ensure a better administration of justice, it was accepted that there should be separation of the judiciary from the executive. In the pre-independence era, the Congress had pleaded for such a separation. The Directive Principles of State Policy by providing for the socio-economic rights of the people, manifested the socialistic ideals of the framers of the Indian Constitution.

Some of the Gandhian programmes were included, as for

example, organisation of village panchayats as effective units of self-government, promotion of cottage industries in the rural areas, protection and uplift of the Scheduled Castes and tribes, prohibition and protection from slaughter of cows. These provisions are universal in character based on the consensus of opinion of the Indian mass. The State also aimed at adequate means of livelihood for all citizens, distribution of material resources of the nation in the common good, avoidance of the concentration of wealth and means of production to common detriment, equal pay for equal work to both men and women, protection of workers especially children. Provisions are made for free compulsory education, uniform civil code for the whole country, separation of executive and judiciary, promotion of international peace, security and justice. India has provided a receptive soil to all foreign ideas with whom she has come in contact. The process of Indianisation of foreign ideas still goes on. The Directive Principles of State Policy is a good example.

Welfare State

Reflecting the basic orientation and desires of most leaders of modern India, and mindful of the Preamble to the Objectives Resolution of December 1946, the framers of the Constitution incorporated many provisions designed to make India a welfare State. The basic aims of a welfare State were clearly foreshadowed in the Preamble to the Constitution and in virtually all of Part IV of the Constitution, containing the Directive Principles of State Policy. Article 36 states: "The State shall strive to promote the welfare of the people by securing and protecting as effectively as may be a social order in which, justice, social, economic and political, shall inform all the institutions of the national life." Most of the prominent leaders have been and are professed socialists, although it is often difficult to determine exactly what socialism means to them. Gandhiji's economic and social views could hardly be subsumed under the term "socialism", although there were undoubtedly many socialist elements in his creed. Jawaharlal Nehru regarded himself a socialist for many years. He was obviously influenced by Marxist views,

but at the same time he did not identify himself as a Marxist and often attacked communism and the communists. Only a few staunch conservatives, notably Sardar Patel and C Rajagopalachari, have had much influence in the inner circles of the Congress Party. It is perhaps suggestive, however, that Gandhiji had frequent associations with Birla, one of India's leading "capitalists, and that there has always been a conservative wing in the Congress Party.

Even most of the so-called conservatives profess support for socialism in one form or another. A common statement in almost all circles in India—sometimes, it is true, made with tongue in cheek—is: "We are all socialists now," Dominant Indian opinion is opposed to capitalism and the "acquisitive society" and is unabashedly in favour of a welfare state. This goal has been clearly stated on innumerable occasions. One of the best known statements was made in a resolution adopted by the Congress Party at its annual session at Avadi in January 1955. In order to realise the object of the Congress and to further the objectives stated in the Preamble and Directive Principles of State Policy of the Constitution of India, planning should take place with a view to the establishment of a socialistic pattern of society, where the principal means of production are under social ownership or control, production is progressively speeded up and there is equitable distribution of the national wealth. In subsequent years the Congress reaffirmed the Avadi resolution and endorsed specific suggestions for implementing it. The word "socialists" is usually used instead of "socialistic." At its annual session at Indore in January 1957, the Congress amended its constitution to read that the object of the Congress is the "establishment in India by peaceful and legitimate means of a Socialist Cooperative Commonwealth."

There were seven vital decisions regarding the basic nature of the Indian State: that India should be a "sovereign democratic republic", to use the language of the Preamble to the Constitution, with a parliamentary system, a federal structure, a written constitution, associated with the Common-

wealth and dedicated to the conceptions of secularism and of the welfare state. All of these decisions were made with so little debate and discussion that they may almost be regarded as assumptions rather than decisions. It is nevertheless remarkable that there should have been so marked a political consensus on questions which are inherently so controversial and which affected sensitive areas of India's political and social anatomy.

Secular State

In a country inhabited by people with such diverse religious background and beliefs, in which religious factors were interwoven with historical experience to a degree hardly equalled in any other part of the world, it was necessary for the framers of the Constitution to face squarely the question of the role of religion in the new republic. The answer was unequivocal: "India shall be a secular state, in which every citizen has the right to practice his own faith, and has the same political and social rights as every other citizen, but a state which is neutral in matters of religion and is not organised along religious lines.

Jawaharlal Nehru had been a leading champion of the concept of the secular state. Indeed, the creation of India as a secular state may in time come to be accepted as "one of his greatest achievements", to quote Chester Bowles.²⁶ Jawaharlal Nehru had a great aversion to the intrusion of religious factors into politics, and was especially concerned with transforming his country from "a caste ridden society", in which communalism constitutes a major threat to all the values that he cherished to "a national State which includes people of all religions and shades of opinion and is essentially secular as a state."²⁷ "Religion is all right", he said: "when applied to ethics and morals, but it is not good when mixed up with politics."²⁸

This statement seems to be in direct contrast to the views of Mahatma Gandhi, whom Nehru himself once described as "essentially a man of religion, a Hindu to the innermost depths of his being."²⁹ In a famous passage in his *Autobio-*

graphy, Gandhiji wrote: "I can say without the slightest hesitation, and yet in all humility, that those who say that religion has nothing to do with politics do not know what religion means."³⁰ Gandhi and Nehru, the master and the disciple, approached the problem of the relation between religion and politics from very different angles, but essentially their positions were not so far apart as far as the nature of the Indian state was concerned.

Gandhiji, a deeply religious man saw merit and truth in all religions, and he "felt that any form of political association based exclusively on adherence to a particular religion was worse than undemocratic."³¹ Nehru, who professed himself to be an agnostic, said that "I have no desire to interfere with any person's belief;"³² but he objected strongly to any efforts to perpetuate "a complete structure of society... by giving it religious sanction and authority."³³ and he desired a State which "protects all religions, but does not favour one at the expense of others and does not itself adopt any religion as the state religion."³⁴ Hence it is easy to understand why both Gandhi and Nehru, though perhaps for different reasons, were so strongly opposed to the whole idea of partition, and why Nehru referred to the decision of the Constituent Assembly in Kashmir in November 1953, to make Pakistan an Islamic Republic as "a medieval conception,... totally opposed to any democratic conception."³⁵

Jawaharlal Nehru insisted that free India should be a non-communal, secular state. He boasted of the fact that "Our Constitution is based on this secular conception and gives freedom to all religions."³⁶ While the word "Secular" does not appear in the Constitution, the principles of secularism are embodied in it, especially in many Articles in part III, dealing with fundamental rights, and in Article 325, which provided for 'one general electoral roll for every territorial constituency', thus abolishing the separate communal electorate which had existed ever since the Morley-Minto Reform of 1907.

"The Government of a country like India", Nehru declared on another occasion, "with many religions that have

secured great and devoted followings for generations, can never function satisfactorily in the modern age except on a secular basis."³⁷ It is difficult to determine to what extent the people of India have truly accepted the idea of a secular state. As Ambedkar, India's most famous "untouchable", declared in the debate on the Draft Constitution in the Constituent Assembly: "The religious conception in this country are so vast that they cover every aspect of life from birth to death. There is nothing which is not religious."³⁸

National Language

Most members of the Constituent Assembly were of the view that a provision about the national language should form an essential part of the Constitution, to secure national solidarity. When the Constituent Assembly fixed the period of fifteen years for replacing English by Hindi for official purposes of the Union, it was hoped that, under Article 351, the Union should immediately embark upon a definite and concerted drive promoting and developing Hindi and that the universities, following the lead of the Constituent Assembly would immediately accept Hindi as the medium of instruction, which would progressively replace English by Hindi. If there was one individual who had devoted his whole life to the development of a national medium, it was Purshottam Das Tandon. The adoption of that part of the Constitution dealing with the official language was really a fulfillment of Tandon's life-work.

Constitution and Emergencies

The Constitution makers were aware that after the termination of the Second World War, the age of the cold war had begun and there was constant fear of conflict between the two giant powers the USSR and the United States. Science and technology were also making breathtaking progress and the atomic age had begun. They were, therefore, apprehensive of the fact that an external threat, either of a military or of an ideological character, may have to be faced by India; and so they were anxious to provide for emergency powers which would enable the Union Government to put the whole of the

country on a war-footing and enable it to face any possible danger.

The Constitution-makers had, soon after India became free and Pakistan became a separate nation, witnessed the orgy of violence which disturbed both countries and they were determined to see that internal commotion or disturbance should not be allowed to overtake the country or any part of it. That is why they thought it was necessary to provide for emergency powers to deal with situations which may arise not merely as a result of an external threat or aggression but also of internal disturbance. It is as a result of these two paramount considerations that Part XVIII was drafted to deal with Emergency problems.

There are three distinct types of situations which this part deals with. Article 352 (1) provides that if the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened' whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect. This is a Proclamation of Emergency. It is provided that this Proclamation can be revoked by a subsequent Proclamation, and shall be laid before each House of Parliament and shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament. Proclamation of Emergency may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.

Two things are quite clear. A Proclamation of Emergency can be issued either after the Emergency has arisen or it may be issued when there is imminent danger thereof. In regard to both these conditions, the satisfaction of the President is decisive. In other words, it is not necessary that the President should wait for the Emergency actually to arise before he issues the Proclamation; imminence of the danger of an emergency also authorises him to act. It must, however, be born in mind that the imminence of danger of an

emergency must be real imminence and not a delayed or remote imminence. It is not a mere possibility or even a reasonable possibility that some time in the future an emergency might arise which justifies the issuance or continuance of the Proclamation; it is actual imminence of the danger that justifies it. Since the President has been given wide powers to issue a Proclamation of Emergency, the Union Cabinet must scrupulously bear in mind the requirements of the Article and must advise the President to act in such a manner as would be consistent with the spirit and letter of Clause (3).

Emergency Provisions contain very drastic provisions curtailing the fundamental rights of the citizens in one case and the rights and privileges of the State Legislatures and State Governments in other cases. The object of these provisions clearly is to safeguard the integrity and unity of and the rule of law in India and not to allow any emergency to effect them. That, in short, is the nature of the Emergency Provisions made by the Constitution-makers in Part XVIII.

Foreign Policy

Well before 1947, however, a kind of Indian foreign policy did emerge in the Indian National Congress, the spear-head of the freedom movement. One of the first resolutions passed by the Congress at its first annual session in 1885 was a protest against the annexation of Upper Burma. In 1904 the Congress protested against a expedition to Tibet, on the ground that it was "but part of a general forward policy, which... threatens to involve India in foreign entanglement"²⁹. Until the end of the First World War, the Congress took relatively little interest in questions of foreign policy and generally supported the British position on such issues. Immediately after the war the Congress began to take a more active and independent line in foreign as well as in domestic policies. Resolution after resolution expressed opposition to imperialism and especially to European rule, sympathy with peoples struggling to be free, hatred of war, desire for peace, and antipathy towards foreign entanglements.

In 1926 the Congress authorised the All India Congress

Committee to establish a foreign department. Jawaharlal Nehru became head of this department and the chief spokesman of the Congress in the field of foreign affairs. Thus for a generation he had been the voice of India in foreign policy; in fact, he had established a record in this field which unequaled by any other democratic statesman. The fact should be remembered, for it helps to explain India's remarkable consistency in foreign policy and it is a reminder that, as Nehru himself stated in 1955: "Our foreign policy is not a sudden-growth, but a natural outcome of our thinking for many years past."²¹

Before the outbreak of the Second World War the Congress strongly dissociated itself from British policy. A resolution of the Working Committee in August 1939 declared: "The past policy of the British Government, as well as the recent developments, demonstrate abundantly that this Government does not stand for freedom and democracy and may at any time betray these ideals. India cannot associate herself with such a Government or be asked to give her resources for democratic freedom which is denied to her and which is likely to be betrayed."

This policy was carried to the point of almost complete non-cooperation during the war. After the war, Congress resolutions welcomed the emergence of the United Nations, deplored the position allotted to the smaller nations, lent moral support to freedom movements everywhere, particularly in Asia, and deprecated the politics of the atom bomb which "has brought to a crisis the immoral and self-destructive elements of the present day political, economic and spiritual structure of the world." Indian spokesmen, including Gandhiji, Nehru, and Sarojini Naidu, took a prominent part in the First Asian Resolution Conference, held in New Delhi in April 1947. In a sense this was a precursor to the conference on Indonesia which was held in New Delhi in January 1949, on the invitation of the Government of India and to the important Asian-African Conference at Bandung in April 1955, which was sponsored by the "Colombo Powers"

including India. These meetings marked the growing role of Asian countries in world affairs. The idea is one which Nehru often expressed. In this crisis in the world history" he declared at the Asian Relations Conference, "Asia will necessarily play a vital role. The countries of Asia can no longer be used as pawns by others; they are bound to have their own policies in world affairs."

Even before they assumed the responsibilities of independence, India's spokesman had chartered the broad outlines of the foreign policies which India has followed with little deviation since 1947. "The main objectives" of India's foreign policy, stated Nehru in an address at Columbia University in October 1949, are the pursuit of peace, not through an alignment with major power or group of powers but through an independent approach to each controversial or disputed issue, the liberation of subject people, the maintenance of freedom, both national and individual, the elimination of racial discrimination and elimination of disease and ignorance, which affect the greater part of world population.

The resolution of the Indian National Congress on "Foreign Policy" passed on 19 December 1948, stated that the achievement of independence brought new responsibilities to India in international affairs. The foreign policy of India "must necessarily be based on the principles that have guided the Congress in past years." These principles were the promotion of world peace, the freedom of all nations, racial equality and the ending of imperialism and colonialism. In particular, the Congress was interested in the freedom of the nations and peoples of Asia and Africa. With a view to advance the cause of world peace, India had associated herself with the UN. It should be the constant aim of the foreign policy of India to maintain friendly and cooperative relations with all nations and to avoid entanglement in military or similar alliances which divide up the world into rival groups, thus endangering the peace of the world.

In connection with the existence of some foreign posses-

sions in India, the Congress said that they had no place in a free India. It hoped that the transfer would be brought about by peaceful methods. The Congress regretted that the South African Government still continued to treat Indians living there in disregard of the principles laid down in the Charter of the UN and expressed its sympathy with the sufferers. In the years from 1946 to 1950, most leading members of the Constituent Assembly had great faith in the future of the United Nations as an instrument of peace, it was therefore, given a place of pride among the matters in respect of which Parliament would have the exclusive right to make laws. Nehru out of his abiding faith referred the Kashmir dispute to the United Nations, with the deplorable results with which we are too familiar.

External sovereignty of India, as things stood, was therefore, reduced to the power to frame its own foreign policy; to choose its allies; to develop and exploit its resources for its own benefit, and to defend its frontiers against aggression with whatever resources it commands. In this connection, it would be interesting to discover where sovereignty rested juristically and factually in our Constitution. The Union Government is not sovereign, because it derives its powers only from the Constitution. Parliament and the State Legislatures are not sovereign; legislation can be struck down by the Supreme Court. The Supreme Court is not sovereign, though it can declare the Acts of Parliament and State Legislatures unconstitutional, for it also derives its powers from the Constitution. The States in India are not sovereign, the residuary powers are with the Union, as also the express power of altering their boundaries. Parliament has the power of superseding the legislature and Government of a state in an emergency. The Constitution is, therefore, sovereign, but only in a juristic sense. Its sovereignty, however, could only be maintained if it were treated as sacrosanct. Then only the people will get acclimatised to carry on their political, social and economic activities within its framework. Sovereignty in a democratic country like India theoretically, vests in the people; in fact, however, it is exercised by the dominant group of leading politicians, who

can successfully exploit the collective forces operating in the Central and State Legislatures which have power to amend the Constitution.

India and the Commonwealth

Many persons in India felt that India should sever all ties with the former ruling power. The decisions of the leaders of the Congress Party to join the Commonwealth surprised many, in India and abroad, for Nehru and the other Congress spokesmen had often indicated that an independent India would break away completely from the nation which had governed it for so long. Since both India and the other members of the Commonwealth wished to find some way to continue the Commonwealth tie after the Indian Republic was established, a formula was agreed upon at a special meeting of the Commonwealth Prime Ministers, held in London in late April 1949. This formula was announced in an historic declaration: "The Government of India have informed the other Governments of the intention of the Indian people that under the new constitution which is about to be adopted India shall become a sovereign independent Republic. The Government of India have, however, declared and affirmed India's desire to continue her full membership of the Commonwealth of Nations and her acceptance of the King as the symbol of the free association of its independent member nations and as such the head of the Commonwealth."

There was some criticism inside India of the decision that the Republic of India should remain within the Commonwealth. "Britain's past relations with India, her imperialism and power politics and the racial discrimination practised in the Dominions, were urged against India's association with the Commonwealth. It was pointed out that there were no affinities of race or religion or of language and culture between India and the white members of the Commonwealth to make such association natural and that the decision showed a lack of faith on the part of India in her strength and destiny"⁴¹ It is difficult to evaluate the intensity of those views in India. They are frequently expressed in the Press and on the

public platform. They were most clearly evident at the time of the Suez crisis of 1956, when Indians so strongly disapproved of the British military action in Egypt and many questions were raised regarding the wisdom of a continuing association with the Western power which would act in such a manner. Even before the Suez crisis "almost every single opposition party in the country was against India's Commonwealth connection—a phenomenon probably unique in the entire Commonwealth."⁴²

New Constitution

The new Constitution came into force on 26 January 1950. Elections for the Union Parliament and the State Legislatures under it on the basis of adult suffrage were held in early 1952. Responsible governments in term of new Constitution took office both in the Union and in the States soon after the elections. It is an achievement to have framed the Constitution and successfully brought it into force in the short period that had elapsed since the transfer of power, amidst the disorders that followed in the wake of the partition of the country and the different problems which the government had to face. The country was equipped with the forms of a democratic government. It was set on the road leading to the welfare state to be achieved by peaceful and constitutional methods. The progress of the country in the constitutional sphere since August 1947 has indeed been truly remarkable. For this result the country owes a deep debt and gratitude to the Indian National Congress and its great leaders.

The Constitution, as it emerged from the Constituent Assembly, provided for the establishment of a Union with a composite form of government in which parliamentary democracy was to function within a framework having several circumscribing factors. Our constitutional structure has many features of a federation, particularly the division of the legislative spheres between the Centre and the States. It followed the mode provided by the Government of India Act, 1935, though with important modifications restricting the autonomy of the States. The most vital principle underlying our Constitution was that the Union was the national Government of

India, based on the organic unity of all its citizens, to which all citizens in the country were directly related, not only by common allegiance, but by Fundamental Rights vested in each one of them, with the right directly to approach the Supreme Court for their enforcement. The constituent units have no vestige of sovereignty, they are the creation of the Constitution. Parliament has the power to admit and form new states. In substance, therefore, Parliament has an effective legislative control over the whole country. To quote Alladi, "though country and the people may be divided into different states for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source."

References

1. Gandhi, M K, *India of my Dreams*, pp. 9-10.
2. *Constituent Assembly Debates*, Official Report, 13/ December 1946, pp. 57-58.
3. *Ibid*, p. 59.
4. *Ibid*, 17 September 1946, p. 99.
5. *Ibid*, 18 December 1946, p. 121.
6. *Parliamentary Debates*, House of Commons (Official Report), 6 March 1947, p. 682.
7. *Constituent Assembly Debates*, Vol. VII, p. 33.
8. *Ibid*, p. 35.
9. *Ibid*, p. 36.
10. Santhanam, K, *Federation Relations*, in *Aspects of Indian Constitution* (2nd Edition), Chap. 13.
11. Alexandrowitz, C H, *Constitutional Development in India*, p. 168.
12. *The Nehru Committee Report 1928*.
13. Gandhi, M K, *Young India*, 25 May 1921.
14. *Constituent Assembly Debates*, Vol. III, 29 April 1947, p. 419.
15. *Ibid*, 30 April 1947, p. 440.
16. *Ibid*, Vol. VII, 1 December 1948, p. 913.
17. *Ibid*, p. 900.
18. *Ibid*, p. 953.
19. *Ibid*, Vol. III, 2 May 1947, p. 521.
20. *Ibid*, Vol. V, No. 11, pp. 357-76.
21. Sitaramayya, P, *The History of the Indian National Congress*, Vol. I, pp. 463-64.
22. *India's Charter of Freedom* (C A Publication), pp. 18-19.
23. *Constituent Assembly Debates*, Vol. VII, November 19, 1948.
24. Article 4.
25. Article 47.
26. Chester Bowles, *Ambassador's Report* (New York, 1956), p. 134.

27. Speech at Aligarh in 1948, quoted in Donald B. Smith, *Nehru and Democracy*, p. 147.
28. Speech in Lok Sabha, 17 September 1953.
29. Jawaharlal Nehru, *The Discovery of India*, p. 365.
30. M. K. Gandhi, *An Autobiography*, 2nd Edition, p. 615.
31. Smith and Donald, *Nehru and Democracy*, p. 155.
32. Nehru, Circular to the Pradesh Congress Committees, August 1954.
33. Jawaharlal Nehru, *Glimpses of World History*, p. 736.
34. *The Hindu* (Madras), 17 July 1951, p. 4.
35. *Ibid*, 16 November 1953, p. 1.
36. Nehru, Circular to the Pradesh Congress Committees, August 1954.
37. *The Hindu*, 13 September 1950, p. 9.
38. *Constituent Assembly Debates*, Vol. VII, p. 781.
39. Rajkumar N. V., *The Backgrounds of India's Foreign Policy*, p. 37.
40. Address at the annual session of the Congress Party in Madras in January 1955.
41. Srinivasan, N., *Democratic Government in India*, p. 154.
42. Rajan, M. S. "India and Commonwealth", *India Quarterly*, January-March 1960, p. 47.

Parliamentary Institutions in Indian Republic

ABOUT a decade before the transfer of power on 15 August 1947 the constitutional framework in India was a makeshift arrangement with the provincial autonomy under the 1935 Constitution operating within a set-up at the centre, based on the relevant provisions of the Government of India Act, 1919. The Central Legislature was constituted in accordance with the provisions of the Government of India Act, 1935. Legislature could not exercise real control over the executive. It consisted of two houses, the Council of State and the Legislative Assembly. The Legislative Assembly had 145 members including 41 nominated members of whom 26 were officials. The Governor-General appointed the President of the Council of State. The Legislative Assembly elected its President subject to the approval of the Governor-General. The Governor-General in Council was the authority to make rules relating to the composition of the Legislative Assembly and the Council of State. The Governor-General in Council also made rules governing the transaction of business in the two chambers. The Government of India Act, 1935 contained several provisions imposing restrictions of various kinds on the powers of the Legislature. The Legislative Assembly had no powers on 'non-votable' items which included defence and external affairs.

Under the framework of the Government of India Act, 1935, it was for the first time that the provision was made for a Central Legislature to which the executive would be partially

responsible. The area of control of the Legislature over the executive was severely limited. It was like a dyarchy in the centre, with a considerable portion of the field of administration of the Central Government reserved for the Governor-General acting "in his discretion" (ie, outside the area of ministerial responsibility). The Governor-General was answerable to the Secretary of State for India and through him to the Government and Parliament of the United Kingdom. The discretionary powers of the Governor-General extended to defence and external affairs. The control over wide and important areas of Central Administration was outside the purview of the Federal Ministry and the Legislature. It was only in matters where the Governor-General had to act on the advice of his Ministers that they were responsible to the Legislature. The federal scheme, the federal executive and legislative machinery provided by the Act of 1935 never came into operation. The Legislature could not claim to be in consonance with ideas of a fully democratic elected body. The structure and composition of the legislative institutions provided in the previous enactment did not furnish any satisfactory basis on which the Legislatures of Independent India under the new constitution, could be devised; and the Constituent Assembly had therefore to give thought to this matter without any guidance from the past.

On 17 March 1947, B N Rao, the Constitutional Adviser, invited opinions on various matters relating to the Union Legislature. The next stage in the evolution of the Constitution was the memorandum of the Union Constitution prepared by B N Rao for the use of the Union Constitution Committee. This memorandum envisaged a Parliament of the Union consisting of the President and two Houses. The Union Constitution Committee considered the following proposals on 9 June 1947:

1. That the two chambers should be named the Council of States and the House of the People, these names indicating the manner in which each chamber would be constituted;
2. the House of the People, consisting of 400 to 500 members

would be directly elected by adult franchise from territorial constituencies ;

3. the Council of States would have 250 members;
4. the Vice-President of India would be ex-officio a member of the Council of States and its Charman; if a member was elected Vice-President he would vacate his seat;
5. the two chambers would, except in respect of Money Bills, have equal powers and deadlocks would be resolved by joint meetings;
6. Money Bill would originate in the House of the People and the power of the other House would be limited to making suggestions for amendment, which the House of the People could accept or reject;
7. the life of the House of the People would be four years. The Council of States would not be liable for dissolution, one third of its members retiring every two years.

These recommendations were incorporated in the report of the Union Constitution Committee presented to the Constituent Assembly on 21 July 1947. In this report the committee also suggested the name "National Assembly" as a composite designation for the Parliament of the Union. These provisions were considered by the Constituent Assembly on 28 July. There was a considerable volume of opinion against having a second chamber and several members thought that a second chamber might prove to be a "clog in the wheel of progress", involving expense and adding nothing to the efficiency of work. Replying to this criticism, Gopalaswami Ayyanger pointed out that the need for second chambers had been felt practically all over the world wherever there were federations.

The Constituent Assembly agreed that there should be two chambers of the Legislature and adopted the Report of the Union Constitution Committee. The provisions made in the Draft for the composition of the House of the People laid down that it would consist of not more than 500 members representing the territories of the Federation, directly chosen by the voters on the basis of adult suffrage in territorial consti-

fluencies delimited by or under Acts of the Federal Parliament. Seats were to be reserved for the Scheduled Castes and the Tribes. The President was authorised to nominate not more than two Anglo-Indians if he considered that this community was not adequately represented.

The Draft Constitution incorporated the decision of the Constituent Assembly that the Council of States would be a permanent body not subject to dissolution, with one-third of its members retiring every two years. The life of the House of the People was laid down as four years unless it was dissolved earlier. The President was given power to summon, prorogue and to send messages to both the Houses; and it was made obligatory that each House should be summoned at least once every year. The power to dissolve the House of the People also vested in the President. All ministers would have right to address either House, but they can not vote unless they were members of the House. The Vice President of India was to be Chairman of the Council of State. Provision was made for an elected Deputy Chairman to perform the duties of the Chairman when the latter was absent or when he was performing the duties of the President; for an elected Speaker and Deputy Speaker for the House of the People; for prohibiting simultaneous membership of both Houses; for disqualifications for membership for the privileges and immunities of members and for their salaries and allowances.

The Draft also included provisions regarding legislative procedure, procedure financial matters and a general procedure for the conduct of business. No Bill could be submitted for the President's assent unless it had been passed in identical form by both Houses. Except in the case of Money Bills, both Houses enjoyed equal powers; and difference between the two Houses were to be settled by a majority vote in a joint sitting of both Houses convened by the President. The general principle approved by the Constituent Assembly was that financial control over the executive would be exercised by the House of the People. Accordingly, the Draft provided that Money Bills could originate only in that House. The powers

of the Council of State in the case of Money Bills were restricted to making suggestions for amendment. If these suggestions were not accepted by the House of the People, or if the Council of State did not return a Bill within thirty days with its suggestions for amendment, the Bill would be "deemed to have been passed by both Houses in the form in which it was passed by the House of the People" and submitted to the President for his assent. When a Bill was submitted to the President for assent, he could declare that he assented to it, or withhold his assent or return it to the Parliament for reconsideration; but a Money Bill could not be so returned.

The Drafting Committee considered these provisions in detail in its meetings held between November 1947 and January 1948. In the meantime, B N Rao visited the United States of America, Ireland and Britain to study the working of the constitutions of these countries; and had discussions with a number of eminent persons, including President Truman, jurists in the USA. President de Valera and others in Ireland. President Truman suggested that India should not copy the provision in the Constitution of the United States for mid-term elections, as the election of a majority of the party opposing the President was likely to create administrative difficulties; he also suggested that India might well copy the provisions of the American constitution for an indissoluble Senate, one-third of which was renewable every two years. B N Rao was able to tell him that the Indian Draft Constitution had already made the President's term of office nearly the same as that of the House of the People; and that it provided for a permanent Upper House not subject to dissolution, with one third of the members retiring periodically.

President Valera told Rao that functional representation in the Irish Senate had given trouble and suggested its revision. He also commented that a four-year life for the House of the People was too short. Under the Parliamentary system of government, Ministers required at least one year at the beginning of their term to acquaint themselves with the details of administration, and the last year of the term was occupied with preparations for the next general elections. Valera,

therefore, suggested a term of not less than five years. The Drafting Committee considered all these suggestions and made some changes both in form and content in the Draft Constitution submitted to it by the Constitutional Adviser.

Two important changes were introduced by the committee. The term of the House of the People was extended to five years; and the committee provided that each House of Parliament should meet atleast once every six months.

The committee expressed its opinion accepting the experience of de Valera in Ireland that in a 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 in preparing for the next general election. Another change worth mentioning is that, while the Draft prepared by the Constitutional Adviser had an elaborate enumeration of all the circumstances which would disqualify a person from being a member, the Drafting Committee adopted the simple but equally comprehensive formula that a person would be disqualified for being chosen as, and for being a member of either House of Parliament :

- (1) if he had an office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder;
- (2) if he was of unsound mind and stood so declared by a competent court;
- (3) if he was an undischarged insolvent;
- (4) if he was under any acknowledgement of allegiance or adherence to a Foreign Power, or was subject or a citizen of a Foreign Power, and
- (5) if he was disqualified by or under any law made by Parliament. For the purposes of the article a person who held the office of a Minister under the Government of India or the Government of any State would not incur the disqualification arising out of the fact that he was holding an office of profit.

Begum Aizaz Rasul wanted the Union Legislature to be called the Indian National Congress.¹ Her plea was that the Indian National Congress was a movement rather than a party and that it represented the nation's urge to freedom. If this name was adopted it would convey to the world the ideals and principles for which the Congress stood. Ananthasayanam Ayyangar said that the adoption of this title might well prove to be the death-knell of the Congress, as the Congress would no longer be able to function as a political party and fight its way against the various reactionary political parties.² The Assembly did not accept the suggestion.

Mahavir Tyagi and Mahboob Ali Baig moved amendments to provide that the elected seats in the Council of States should be filled by the method of proportional representation by the single transferable vote. Ambedkar accepted this proposal and it was approved by the Assembly.³ So far as the constitution of the House of the People was concerned, the important issue which was raised before the Assembly was an amendment by Kazi Syed Karimuddin, that election to the House of the People should be by the system of proportional representation with multi-member constituencies by means of the cumulative vote. Proportional representation was supported by KT Shah and some others, though they suggested the single transferable vote instead of the cumulative vote.

In support of his plea for proportional representation Karimuddin urged that "the one pervading evil of democracy is the tyranny of the majority that succeeds in carrying elections and depriving the minorities of their just share of representation."⁴ If proportional representation was guaranteed, the reservation of seats which at that time had been agreed upon for important minorities could go and without any sacrifice of democratic principles proportional representation could afford protection to communal minorities and without any spirit of communalism, representatives of political and communal minorities could be elected. HJ Khandekar, a representative of the Scheduled Castes, opposed the proposal on the ground that proportional representation and cumulative voting were only devices motivated by a desire to se-

cure separate communal electorates by indirect means. Ananthasayanam Ayyangar thought that it would be impossible for illiterate voters to exercise their votes properly if proportional representation was adopted. Ambedkar also opposed it on the ground that this method of election presupposed literacy on a large scale and it would not be practicable in a country like India where literacy was perhaps the smallest in the world. The amendment was negatived by the Assembly.

While providing for a life of five years for the House of the People, unless sooner dissolved, the Drafting Committee gave power to the President during an emergency to extend the life of the House by a year at a time. An amendment was proposed that this power should be vested in Parliament and not in the President. Ambedkar himself moved an amendment taking this power away from the President and conferring it on Parliament. This was accepted. The Drafting Committee proposed an amendment for laying down qualifications for membership of Parliament. An article moved by Ambedkar in this matter provided that in order to be qualified for being chosen as a member of Parliament, a person should be a citizen of India, not less than 25 years old in the case of the House of the People and 35 for the Council of State (this latter requirement was reduced to 30 years) and should fulfil such other qualifications as might be prescribed in a law made by Parliament. The Assembly accepted the amendment.

The provision regarding the language to be used in Parliament was not taken up for consideration until as late as 17 September 1949. The language issue has always been a very controversial one and the question of the language to be used in Parliament was postponed until a decision had been reached on the general issue of language. It was decided on 15 September 1949. According to the decision of the Constituent Assembly the official language of the Union was to be Hindi in a Devanagari script, but for a period of fifteen years English was to continue to be used for all official purposes of the Union for which it was being used before the commencement of the Constitution. Even after the lapse of this period

it would be open to Parliament to provide by law for the continued use of English for such purposes as might be specified in the law.

Inauguration of the Constitution of India on 26 January 1950 created the Indian Parliament. The responsibility of the executive to the legislature came to ensure fulfilment of the democratic ideal of self-government. The function of Parliament has been legislation and that of the Cabinet governance. Though Parliament and the Cabinet have distinct functions, yet they are interrelated. The Constitution of India embodies the salient features of Parliamentary system of Government. The Union Parliament consisting of the President and the two Houses enjoys clear supermacy. The Council of Ministers drawn from both Houses is collectively responsible to the Lower House, ensuring thereby close cooperation between the Union executive and Parliament.

The President of India⁵ like his British and Irish counterpart and unlike the President of the United States is an integral part of the national legislature. The framers of the Indian Constitution thus preferred the British to the American Congressional pattern. Since the executive power in a parliamentary democracy is co-extensive with legislative powers, the President as the executive head has been made a constituent part of the Indian Parliament⁶. Alladi and Gopalaswami, like the Constitutional Adviser, recommended that the President and two Houses taken together should be called Parliament. Being bicameral in composition, Indian Parliament follows the practice and pattern prevailing in modern federations, and the two Houses are known as Lok Sabha (House of People) and Rajya Sabha (Council of State). On 14 May 19'4, the speaker Mavalankar, announced that the House of the People would thereafter be known as 'Lok Sabha.'⁷ Similarly, on 23 August 1954, the Chairman of the Upper House announced a similar decision changing the name of the Council of State to 'Rajya Sabha'.⁸

The President has a share in the composition of both Houses of Parliament, though it an insignificant share. He

can nominate to Lok Sabha not more than two Anglo-Indians. He can also nominate twelve persons to Rajya Sabha having special knowledge or practical experience in Literature, Science, Arts and Social Service. So far, nominations made by the President have been on 'aid and advice' of the Council of Ministers. The President has a decisive role to play in determining the qualifications of the MPs.⁹ His decision shall be final. But the President acts according to the opinion expressed by the Election Commission.¹⁰

A tenure of five years for the elective popular chamber has been the common feature in countries following the British political tradition. The gap between the two elections may be less than five years also, if the House is dissolved earlier. Indian Lok Sabha could continue for a term of six years¹¹ unless dissolved earlier by the President.¹² But the five years term of Lok Sabha has been restored by the 44th constitutional amendment. The second Lok Sabha was dissolved by President Rajendra Prasad on 31 March 1962, when it had not completed the full term of five years. Lok Sabha, also, may perpetuate its own longevity by 'Parliament by Law', while a Proclamation of Emergency is in operation, for a period not exceeding one year as in 1976 and not exceeding in any case a period of six months after the Proclamation of Emergency has ceased to operate. Though Proclamation of Article 352 was in operation throughout the country from 26 October 1962, till 10 January 1968, the Fourth General Elections were held in February 1967 without any difficulty whatsoever. The Sixth General Election was held similarly in March 1977, when double national emergency was in operation. The sixth Lok Sabha was dissolved by the President Neelam Sanjiva Reddy on 22 August 1979 and the Seventh General Elections were held on 3rd and 6th January 1980.

The strength of Lok Sabha has been raised from 524 to 547; 525 to be elected from the States, 20 from the States, 20 from Union Territories and two nominated Anglo-Indians. A decision to this effect was taken by the Union Cabinet on the basis of a recommendation by the Election Commission.

following the last census. The Constitution (Thirty-first Amendment) Act, 1973 amends Article 81 of the constitution, which prescribed the strength of Lok Sabha "as not more than 500." The new 22nd State, Sikkim, got one seat in Lok Sabha under the 36th Amendment. The members of Lok Sabha are elected from territorial constituencies on the basis of universal suffrage. In the United Kingdom the voting age was lowered from 21 to 18 during the 1970 election there. This kind of demand was also raised in India in 1980. Neither in India nor in Britain, voting is compulsory, and one of the problems for candidates is to ensure that those who support their aims and policies actually record their votes on the polling day. The government is formed by the party holding the majority of seats in the Lok Sabha.

The President enjoys powers to summon and prorogue the sessions of Parliament or any of its Houses.¹³ In actual practice, the decision for summoning and proroguing the Parliament is taken by the Prime Minister, the Speaker and the Leader of the Opposition, the summons being issued by the Secretary. A session begins with summons and ends with prorogation. The President has the constitutional responsibility to see that six months shall not intervene between the last meeting of one session and the first meeting of the next session. The President may summon both the Houses simultaneously or separately on two different dates. When Lok Sabha is dissolved, Rajya Sabha may be summoned. Normally after the General Elections both the Houses meet in order that the President shall address them and inform them the cause of their summons. Then the second session may not be held simultaneously. It will depend on the volume of work pending or available for disposal.

KT Shah suggested in the Constituent Assembly that the power of summoning the Houses of Parliament should vest in the Speaker of Lok Sabha and in the Chairman or Deputy Chairman of Rajya Sabha if the President failed to summon in ordinary times or may not summon at all during the

operation of emergency. Ambedkar pointed out that if the President failed to perform an obligation imposed on him by the Constitution and refused to summon Parliament, that would be violation of the Constitution and the President could be punished by the procedure of impeachment.¹⁴

If there is a deadlock between the two Houses, the President may summon a joint sitting of both the Houses to consider the Bill other than Money Bills.¹⁵ If an ordinary Bill is rejected by one House, or delayed by Rajya Sabha for more than six months, or if the two Houses cannot agree on any amendment, then the President may summon a joint sitting. Since the voting at such a meeting is by simple majority and as the Lower House is more than twice as large as Rajya Sabha, the latter has in effect no more than a delaying power of six months and its voice can after that be overruled. Money Bills, on the other hand, must be introduced in the Lok Sabha alone. Rajya Sabha may make recommendations within fourteen days, and these may not be accepted by the Lok Sabha. It is obligatory for the President to summon a joint sitting of both Houses of Parliament in case of disagreement. The President's refusal to accept the Prime Minister's advice to summon may amount to violation of the Constitution also.

The Power of the President to summon, prorogue or dissolve Lok Sabha may be exercised by the Prime Minister in actual practice. A suggestion was made in the Constituent Assembly that to guard against arbitrary advice by the Prime Minister for the dissolution of Lok Sabha, it might be enacted that, in case, the Prime Minister desired the dissolution of the House earlier than the completion of the normal term of five years as provided in the Constitution, he should record the reasons thereof in writing. The suggestion was not accepted by Ambedkar.

The President like other heads of Parliamentary forms of government may dissolve Lok Sabha, but Rajya Sabha¹⁶ is not subject to dissolution being the permanent federal chamber. He may dissolve the Lok Sabha, probably when

he is convinced of the impossibility of an alternative Government. In a parliamentary democracy, dissolution of the popular chamber on the advice of the Prime Minister may be justifiable. President is likely to exercise the power on the advice of the Prime Minister.

The President is empowered to address both Houses assembled together. He shall address the first session of each year and the first session after each general election. It is interesting to note that when the President addresses both the Houses assembled together, no one presides.¹⁷ During the President's address, the Speaker sits with the President. The regular session of the House starts after the President's address which provides the members with an opportunity to give expression to their views on the policy of the Government at the commencement of the session and such discussion is likely to be of great help to the Government in pursuing its policy relating to the administration of the affairs of the Union. President's address is prepared by the Prime Minister. The President may suggest certain changes or make certain alterations, if he so desires. The discussion takes place on a motion of thanks moved by a member and seconded by another. At the end, the Prime Minister replies to the debate on President's Address.

The President is an essential part of Parliament. No Bill can be an Act unless and until it receives his assent. When a Bill, after being passed by both Houses of Parliament, is presented to the President, the President shall be entitled to take any one of the following three steps :

- (1) the President may declare his assent to the Bill ; or
- (2) he may declare that he withholds his assent to the Bill ; and
- (3) Finally, he may, in case of Bills other than Money Bills, return the same for reconsideration of the Houses, with or without a message. He may request the Houses to reconsider the desirability of introducing any such amendment as the President may recommend in his message. When a Bill is so returned, the Houses

are obliged to reconsider the Bill accordingly. If the Bill is passed again by both the Houses with or without amendments, the President shall not withhold his assent therefrom.

Under Article 368, a constitutional amendment requires the assent of the President. The constituent power being vested in Parliament, there is no separate body to amend the Constitution. There is no provision either which can prevent the Constitution from being amended. But the Supreme Court in 1969, in the case of *Golaknath and others Vs. the State of Punjab*, held that the Parliament cannot abridge Fundamental Rights. In April 1973, in the case of *Keshavananda Bharati Vs. Union of India*, the Supreme Court held that Parliament cannot change the basic structure of the Constitution. According to the ruling the following could be regarded as basic elements of the Constitution :

- (1) The Supremacy of the Constitution,
- (2) republican and democratic form of government and sovereignty of the country,
- (3) secular and Federal structure of the Constitution,
- (4) demarcation of power between the Legislature, Executive and judiciary,
- (5) The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a Welfare State, and
- (6) the Unity and integrity of the nation. The 42nd and 44th Amendments put a heavier burden of responsibility on the Parliament to exercise the wide powers which it has been empowered to exercise,

During the recess of Parliament, the President becomes the Parliament of the country by exercising the power to promulgate Ordinances. If at any time, when both Houses of Parliament are not in session, circumstances warrant immediate action, the President is empowered to promulgate Ordinances which have the same force and effect as Acts of Parliament but are of temporary duration. Every such Ordinance ceases to

operate at the expiration of six weeks from the reassembly of Parliament, unless withdrawn earlier by the President or disapproved by the Parliament. If the legislation is intended to be permanent or to have a longer life, the Ordinance must be replaced by a regular legislation by the Parliament. A suggestion was once made by some members of Lok Sabha to set up a Parliamentary Committee which might be consulted prior to the promulgation of an Ordinance or which might review an Ordinance already issued. In fact, the Constitution has given complete power of supervision to the Parliament either to approve or to disapprove any action of the President and to censure the Government in this regard.

The President and members of the Lok Sabha are elected for a period of five years. Lok Sabha is renewed at regular intervals which may or may not coincide with the time of renewal of the State Legislatures. Thus, the term of office of the President is independent of the terms of his electors. In view of this, he may have to work with a Parliament which did not participate in his election. He may also belong to a party or coalition of parties that no longer commanded majority in Parliament. Similarly, the President and the Cabinet may belong to different political parties. In such a situation, a President elected by the outgoing Parliament and Assemblies might be impeached by the newly elected Parliament for violation of the Constitution. Though the elected MLAs and MPs constitute the electoral college for the election of the President, the Union Parliament alone is competent to impeach the President of India. A Vice President may be removed from office by a resolution of the Rajya Sabha passed by a majority of all the then members and agreed to by the Lok Sabha.¹⁸ A Judge of the Supreme Court¹⁹ or the High Courts²⁰ can not be removed from office except by an order of the President passed after an address by each House of Parliament supported by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on ground of proved misbehaviour or incapacity.

Parliament has a role to play in matters relating to the succession to the Presidency. Regarding contingencies, not provided for in the Constitution, Parliament has been empowered to make the necessary legal provisions and constitutional arrangements.²¹ In 1969, when President Zakir Husain died in office, the Parliament passed the President (Discharge of functions) Act 1969 by setting down the line of succession to the Presidency. After the Vice-President, the Chief Justice and other Justices of the Supreme Court in order of their seniority are potential successors and beneficiaries according to the enactment.

The Constitution prescribes some limitations on the powers of the President by granting certain over-riding functions to Parliament, thus creating a balance between the executive and legislative organs. Parliament has a decisive voice with reference to the executive power of the Union.²² The President cannot withhold his assent to a Bill returned by him to the House with a message requesting them to reconsider the Bill, if the Bill is passed again by the Houses with or without amendment and presented to the President for his assent. Parliament may, by law, determine the qualifications and manner of selection of members for appointment to the Finance Commission, which is constituted by the President. The President cannot declare any State to be a 'foreign state' except under the provision of any law made by Parliament for that purpose.²³ The relationship between the President and Parliament may be described as one of mutual check for creating a balance in the operation of the parliamentary and constitutional structure in the Indian democracy.

PRESIDENT

The institution of presidency was created by the Constituent Assembly for the first time in Indian history. Being indirectly elected by the method of single transferable vote, it was supposed to be representative of the sovereign people. The majority in the Constituent Assembly belonged to the Congress which wanted to see all sections and interests represented. The Constitution Committee made President the

head of the Indian Federation and Jawaharlal Nehru wanted to make the position of the President as "one of great authority and dignity."²⁴ The Constitution Committee disapproved of the principle of election of the President by Universal Adult Franchise. The President was not intended to exercise any real political power. The Constitution Committee recommended that the President should be elected by an electoral college consisting of :

- (a) The members of both Houses of Parliament, and
- (b) the elected members of the Lower House of Legislatures of the States. The Committee restricted the eligibility for re-election to 'only once', but the Constituent Assembly did not agree and accepted the recommendations of the Constitution Committee with regard to the removal of the President by the procedure of impeachment 'for violation of the constitution'.

In introducing the Draft Constitution in the Assembly on 4, November 1948, Ambedkar, Chairman of the Drafting Committee said :

"In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the form of government prevalent in America and the form of government proposed under the Draft Constitution. The American form of government is called the Presidential system of government. What the Draft Constitution proposed is the Parliamentary system. The two are fundamentally different. Under the Presidential system of America, the President is the Chief head of the executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the king under the English Constitution. He is the head of the State but not of the executive. He represents the nation but does not rule the nation. He is the symbol of the nation. His

place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known. Under the American Constitution the President has under him Secretaries in charge of different departments. In like manner the President of the Indian Union will have under him ministers in charge of different departments of administration. Here again there is a fundamental difference between the two. The President of the United States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor can he do anything without their advice. The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so, so long as his Ministers command a majority in Parliament. The Presidential system of America is based upon the separation of the executive and the legislature, so that the President and his Secretaries can not be members of the Congress. The Draft Constitution does not recognise this doctrine. The Ministers under the Indian Union are members of Parliament. Only members of Parliament can become Ministers. Ministers have the same rights as other members of Parliament namely, that they can sit in Parliament, take part in debates and vote in its proceedings. Both systems of government are of course democratic and the choice between the two is not very easy. A democratic executive must satisfy two conditions :

- (1) it must be a stable executive, and
- (2) it must be a responsible executive.

Unfortunately it has not been possible so far to devise a system which can ensure both in equal degree. You can have a system which can give you more stability but less responsibility or you can have a system which gives you more responsibility but less stability. The American and the Swiss systems give more stability but less responsibility.

The British system on the other hand gives you more responsibility but less stability. The reason for this is obvious. The American executive is a non Parliamentary executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary executive which means that it is dependent upon a majority in Parliament. Being a non-Parliamentary executive the Congress of the United States can not dismiss the executive. A Parliamentary Government must resign the moment it loses the confidence of a majority of the members of Parliament.

Looking at it from the point of view of responsibility, a non-Parliamentary executive, being independent of Parliament, tends to be less responsible to the legislature, while a Parliamentary executive, being more dependent upon a majority in Parliament, becomes more responsible. The Parliamentary system differs from a non-Parliamentary system inasmuch as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, such as the one that exists in the United States of America, the assessment of the responsibility of the executive is periodic. It takes place once in two years. It is done by the electorate. In England where the Parliamentary system prevails, the assessment of responsibility of the executive is both daily and periodic. The daily assessment is done by members of Parliament, through questions, resolutions, no-confidence motions, adjournment motions and debates on Addresses. Periodic assessment is done by the electorate at the time of election which may take place every five years or earlier. The daily assessment of responsibility which is not available under the American system is, it is felt, far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of executive has preferred more responsibility to more stability.²²⁵

A parliamentary form of government with an elected Head of State was instituted by the Constitution. The President is to act as the integrating factor functioning as Head of the "Union of States". Indian Presidency appears to be a unique political institution. The President is the dignified part of the Constitution. He, being the first citizen and Chief of State, appears to be the constitutional and titular head. In the Constituent Assembly the constitution makers were divided in their opinion regarding powers of the President. In the Constituent Assembly, T T Krishnamachari said :

"It has been mentioned that one of the chief defects of this Constitution is that we have not anywhere mentioned that the President is a constitutional head and the future of the President's powers is, therefore, doubtful. The position of the President in a responsible government is not the same as the position of a President under a representative Government like America and that is a mistake that a number of people in the House have been making, when they said that the President will be an autocrat, and no one appears to realise that the President has to act on the advice of the Prime Minister. So far as the relationship of the President with the Cabinet is concerned, I must say that we have, so to say, completely copied the system of responsible government that is functioning in Britain today; we have made no deviation from it and the deviations that we have, are only such as are necessary because our Constitution is federal in structure."²⁶

During the discussion in the Constituent Assembly, Rajendra Prasad remarked :

"We have had to reconcile the position of 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. Then, we come to the Ministers. They are, of course, responsible to the Legislature and tender advice to the President who is bound to act according to that advice. Although there are no

specific provisions, so far as I 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 a result of this very healthy convention will become a constitutional President in all matters."²⁷

It is clear that, for the exercise of his functions, there should be a Council of Ministers with the Prime Minister as the head to aid and advice the President. Now the question arises whether the President is always bound by the advice of the Council? Ambedkar remarked: "The President of the Indian Union will be generally bound by the advice of the Council of Ministers. He can do nothing contrary to their advice nor can he do anything without their advice." According to him, if the President did not act in this way it would amount to a violation of the Constitution for which he could be impeached.

The maximum that he is allowed under the Constitution is influence, not power. The President has a right to expect that he will be informed of all important matters of State; he has the right and the duty to encourage the Council of Ministers if he approves of their decision and not warn them if he thinks they were wrong. The encouragement and warning of the President as the Head of State and, as one above party normally receive due consideration at the hands of the Council of Ministers. The President of India occupies a two-fold position in the governance of the country. He is the head of the Union in whom the executive power is vested. He is also the head of the States of India and as such, he is the embodiment of sovereignty. He is not merely the head of the civil authority, he is also the Supreme Commander of defence forces.

The Ministers hold office during "the pleasure of President" and the Council of Ministers shall be collectively res-

possible to the House of the people. The constitutional position appears to be that the President has normally to act on the advice tendered by the Council of Ministers. But under our Constitution it is not correct to say that the Presidency is a mere figurehead bound to put his seal on every thing that emanates from the Ministry. B N Rao has observed : "Acting on Ministerial advice does not necessarily mean immediate acceptance of the Ministry's first thought."

The President, so far, has been functioning as the constitutional Head of the State. In 1951, Rajendra Prasad was personally opposed to the Hindu Code Bill. On 18 September 1951, he wrote a letter to the Prime Minister Nehru expressing his desire to act on his independent judgment in matters of giving assent to Bills, sending messages to the Parliament and returning Bills to it for reconsideration. On this subject the Attorney-General M C Setalvad remarked that the President was required to act in all matters with the aid and advice of the Council of Ministers. He observed that sovereignty lay with the people and Parliament and the Council of Ministers, being the elected representatives of the people, the power vested with the Council of Ministers and not with the President. A K Ayyar observed that the position of the President was like that of the Constitutional Monarch of England. He could not act without reference to the advice of his ministers. It would be unconstitutional for the President not to seek or not to be guided by the advice of ministers. The President had no independent constitutional powers.

M K Munshi argued that the President is the guardian of the Constitution, and represents the people of India, whereas the members of the Council of Ministers represent only the majority party in the Parliament. It is the Presidential authority that keeps the country and the people constitutionally bound together. He expressed that the President is under no legal obligation to accept the aid and advice of the Council of Ministers. Subba Rao, ex-Chief Justice of India, pleaded that the President is to act in two different

capacities. First, he has the role of a titular head in the large area of administration. Secondly, he is expected to act as a mediator in cases of conflict between the States and the Centre. The conflict between the President and the cabinet is only theoretical for, if the President acts judiciously, he should be able to convince the cabinet by his arguments or be convinced by them. The Constituent Assembly was of the view that the President is a formal or constitutional head of the executive and that the real powers are vested in the Council of Ministers.

From the commencement of the Constitution till 1967, the Congress Party enjoyed a comfortable majority in Parliament, and it was a period of stable government. Under the charismatic leadership of Nehru, there was little room for the President to exercise any real power of political significance. It may not always be possible to avoid a constitutional crisis emanating from functional clashes between the President and the Prime Minister, President V V Giri on his retirement observed: "I personally feel that there should be specific powers spelt out for the President so as to enable him to play his role more effectively. The best thing would be to combine the offices of the President and the Prime Minister. He may, in that case, no more continue to function as the constitutional Head of the State."

Some times there are proposals to change the form of Government from Parliamentary to Presidential. The primary aim with which parliamentary government was inaugurated was to secure stability with responsibility. BR Ambedkar stood for these ideals. It is necessary to have a system in which the executive will derive its authority from the people. The proposal for a change-over from the existing system is an extremely costly experiment. Adoption of such an electoral system would transform the form of government from Parliamentary to Presidential and thwart the intentions of the founding fathers. The Indian political system can hardly withstand such revolutionary transformation. Institutional changes within the framework of the constitutional structure are, of course, welcome since the parliamentary system is a

very viable one. Constitutions, after all are not rigid but flexible. They are changeable and not static. Politics is dynamic and in politics there are no ultimate solutions and no ultimate opinions.

In dignity and status the office of the President is unquestionably the most pre-eminent. His status and functions are neither exclusively like those of the British King nor of the American President, although the Indian Constitution incorporates important features from the constitutions of both the countries. "The Constitution, therefore, wants to create neither a real executive nor a mere figurehead but a head that 'neither reigns nor governs' but would still have 'great authority and dignity', it wants to create a great figurehead."²⁰ After the passage of the 42nd Amendment to the Constitution, Article 74 of the Constitution was submitted with the following words: "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with the advice." It is clear that even before the passing of the 42nd Amendment, the position of the President was that of a mere constitutional head.

On 20 August 1979, following the Charan Singh Ministry's resignation, President Sanjiva Reddy heard conflicting viewpoints on the constitutional validity of the advice tendered to him by the outgoing Government to dissolve the Lok Sabha and order fresh elections. The President asked the Prime Minister to satisfy him if the coalition Government was entitled to recommend dissolution of the Lok Sabha which had refused to face for the purpose of seeking a confidence vote. Charan Singh and Law Minister S N Kacker forcefully argued that the President had no choice but to accept the advice of his Council of Ministers under Article 74 of the Constitution. Former Law Minister Shanti Bhushan argued that the President should reject outright the advice tendered by a Council of Ministers which had not enjoyed the confidence of the Lok Sabha at any time.

Charan Singh said his Government's view was that the President was bound by the advice given by the cabinet and the Constitution was very clear on this point. The Prime Minister sought to refresh the Presidents' memory about a case in Andhra Pradesh in 1954 when Reddy was the Deputy Chief Minister in Prakasam's Cabinet. At that time the Governor had accepted the recommendation of the Chief Minister to dissolve the Assembly even though he had lost a majority in the House. Law Minister S N Kacker quoted a precedent where the queen had ordered mid-term election after accepting the advice of the out-going Prime Minister James Callaghan under similar circumstances on 29 March 1979. Kacker advised the President that both on grounds of law and propriety he was bound to follow the advice of Prime Minister and his Council of Ministers to dissolve the House and order fresh elections even though the existing Government had resigned without proving its majority in the Lok Sabha. He contended that after the 42nd Amendment of Article 74, the President can act only on the aid and advice of the Council of Ministers. The 45th Amendment permits the President to ask the Council of Ministers to reconsider a decision. But after such recommendation the President must abide by the advice. Hence the proviso to Article 74 is the outer limit of the President's discretion which at the most allows him to return a decision for recommendation only.

The Law Minister has argued that the President can get out of the mandatory command of Article 74 only on two grounds—that the present Government is not a Council of Ministers or that it is a Constitutional Council but its advice regarding dissolution of Lok Sabha is not binding. It would be absurd for the President to say that the existing Government was not a Council of Ministers envisaged by the Constitution, as that would mean that even after the President had sworn in the Government all its acts in the 24 days of functioning were illegal. Moreover, the Constitution does not envisage a contingent or a caretaker Prime Minister. The President can not stand on the second ground also. Unlike

the Jammu and Kashmir constitution, Article 74 makes no exceptions whatsoever as to any advice from the Council of Ministers which would not be binding on the President. The only other argument taken against the binding nature of the Government's advice to dissolve the House was that it never faced the Lok Sabha and gained its confidence.

The principal architect of the Indian Constitution, BR Amedkar had spelt out the role of the President in the event of a Prime Minister recommending dissolution of the Lok Sabha. It was not obligatory for him to comply with the Prime Minister's advice. When the issue was raised by KT Shah in the Constituent Assembly, Law Minister Ambedkar who had piloted the Constitution, over-ruled his suggestion that the Prime Minister should record the reasons for dissolving the House. Referring to the practice in the United Kingdom, Ambedkar had said "in the same way, the President of the Indian Union will test the feelings of the House, whether the House agrees that there should be dissolution or whether the House agrees that the affairs should be carried on with some other leader without dissolution. If he finds that the feeling was that there was no other alternative except dissolution, he would as a constitutional President undoubtedly accept the advice of the Prime Minister to dissolve the House. Therefore, it seems to me that the insistence upon having a document in writing stating the reasons why the Prime Minister wanted a dissolution of the House, seems to be useless and not worth the paper on which it is written. There are other ways for the President to test the feelings of the House and to find out whether the Prime Minister was asking for dissolution of the House for bonafide reasons or for purely party purposes. I think we could trust the President to make a correct decision between the party leaders and the House as a whole."

Chandra Shekhar told President Sanjiva Reddy that it was not necessary for him to abide by the advice of the Prime Minister without completing the process which had been initiated by the President himself while inviting Charan

Singh to form the Government. Reddy agreed with Chandra Shekhar that he was not bound by the advice of the Charan Singh government. But he is believed to have told Chandra Shekhar that it was his "prerogative" to dissolve the House if his assessment showed that no stable and viable Government could be formed.

Triloki Singh, veteran parliamentarian and a constitutional expert, said that unsolicited advice tendered by an outgoing Prime Minister after his resignation "is no advice in the eyes of the law." He said the simple question was whether the Prime Minister, who had resigned, had the power to advise the President after submitting his resignation unless asked for to do so. The Indian Constitution is based upon the British model and it was a well-known practice, sanctified by long usages, that as soon as the Prime Minister resigned he lost the right to advice. It was also a practice that if the King sought advice of the outgoing Prime Minister he was bound to act according to it. Admittedly, in the then case the resignation was submitted along with the advice to dissolve the Lok Sabha. Illustrating his point further he said that in 1923, Bonar Law resigned from the Prime Ministership of the United Kingdom. The conservatives who were in majority wanted Curzon, a peer to become the Prime Minister. But since 1902 a convention had been established that no peer would be appointed Prime Minister. Bonar Law while submitting his resignation also wanted to advise the King to call upon Curzon to form the Government. The King knew what the advice would be. Bonar Law was with the King for about 40 minutes but the King did not ask for his advice as to whom he should call upon to form the Government. Unsolicited, Bonar Law could not give any advice. As soon as he left, the King sent for Baldwin, who was the next man in the Conservative Party, and asked him to form the Government, which he did. This example alone should be enough to show that the advice tendered by the outgoing Prime Minister after the resignation, unsolicited is no advice in the eyes of law.

K Hanumanthaiah, former Union Minister and Chairman of the Administrative Reforms Commission, said that the President was not a rubber stamp in the hands of the Prime Minister or the Council of Ministers as per the Constitution and he was necessarily to act in his discretion on a question like mid term poll. Quoting Article 83 and 80 of the Constitution, Hanumanthaiah said that the President had his own powers to protect and defend the Constitution. His principal function was to run the Government. If no party was in a position to form a stable government the only way left for the President was to order an election, and if the opinion of the Ministry coincides with his view, it was so much the better. Nittoor Srinivasa Rao, former Chief Justice of the Karnataka High Court, opined that considering the fact that the Charan Singh Ministry had no majority support, the President was not bound to accept his advice.

On 22 August 1979 President Sanjiva Reddy dissolved the Lok Sabha and ordered fresh elections to resolve the political crisis which arose following the resignation of Charan Singh government. The notification was issued under Article 85 of the Indian Constitution. The Presidential action dissolving the Lok Sabha, ordering mid-term poll and appointing the caretaker Government did not find many supporters. Noted jurist MC Chagla said that overwhelming legal opinion was that the President was not bound by the advice of Charan Singh. NA Palkhiwala described the President's decision to dissolve the Lok Sabha as unjustified to the point of constitutional impropriety. Constitutional propriety dictated that the President should have acceded to the request of the leader of Opposition to form a Government. He remarked that short-lived Ministries formed by a minority party in Parliament are not unknown to several democracies, including the mature democracies like Great Britain, France, Germany, Italy and Portugal.

The overwhelming legal opinion on the President's decision to dissolve the Lok Sabha in exercise of his powers under Article 85 (2) (b) is that his decision is valid, cannot be

called into question in a court of law and no impeachment proceedings can be initiated on its basis. YS Chitala felt that the President was entitled under the Constitution to make his own assessment and come to a decision.¹⁰ Indian Constitution debars any person or party from going to a court of law to challenge the President's decision. The President is not answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purported to be done by him in the exercise and performance of those powers and duties.¹⁰

President Sanjiva Reddy himself made it known that he wanted to go down in history as an unusual President, not for him but for the self effacement of Rajendra Prasad or the lofty intellectualism of Radhakrishnan or the humility of Zakir Hussain or the predictable conformity of Fakhruddin Ali Ahmad. Reddy did not hide his nostalgia for the world of politics. He did not mind annoying the Prime Minister and his colleagues. To him Rashtrapati Bhawan was not a hallowed retreat but a suffocating prison. It is a myth that whatever the President of India does is solely based on the letter of the Constitution. In abnormal times (like August 1979) the President's task becomes very complicated, particularly when there are no ready-made conventions or precedents for every new situation. Reddy himself recognised the need for subjective assessment. The Union Law Minister, SN Kacker said that the advice tendered by the Council of Ministers headed by Charan Singh for dissolution of the Lok Sabha was binding on the President under Article 74 of the Constitution. The Constitution did not contemplate the functioning by the President without existence of a Council of Ministers. In the Parliamentary and Cabinet form of Government, the advice tendered by the Prime Minister and his Council of Ministers was binding on the President. This was the unwritten constitutional convention prevailing in Britain. Article 74 of the Indian Constitution before the 42nd Amendment read as under:

"There shall be a Council of Ministers with the Prime Minister as the head to aid and advice the President."

By the 42nd Amendment the words "who shall in the exercise of his functions, act in accordance with such advice" were added. By the 4th Amendment Act a proviso was added to Article 74 (1) which reads :

"Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration."

The only right conceded to the President after these amendments was a right to ask the Council of Ministers to reconsider its advice. The President's discretion in regard to the advice tendered by the Prime Minister did not extend any more than what is stated in the proviso to Article 74 (1).

PRIME MINISTER

The Prime Minister of India occupies a position of great power and authority and plays an important role in national politics and policy making. He is responsible for the outcome of the nation's political, economic and social values; is the Head of the Government and the Chief executive of administration; and the leader of the party in power. The position and power of the Prime Minister is related to the personality of a premier. The Indian Constitution makers had many alternatives : the U S Presidential system; the Swiss elected executive; and the British Parliamentary system, but adopted the Parliamentary system. B R Ambedkar preferred parliamentary system because it was a responsible form of Government. The Prime Minister derives exceptional and peculiar authority from the legislature. Sardar Patel thought that the Prime Minister was first among equals and a coordinator. As Prime Minister, Nehru asked for 'liberty of direction' and 'freedom to act when and how he chooses' to perform his roles of a coordinator and supervisor of ministers. In 1969, when there was a political crisis in the Congress party, it appeared that there was disagreement on fundamental questions like the relations between the Prime Minister and the President, the Prime Minister and his cabinet and between the Prime Minister and the Party President.

The Constitution of India provides that "the Prime Minister shall be appointed by the President."³¹ But the Prime Minister has to be the leader of the Lok Sabha. It is the business of the majority party in the Lok Sabha to decide upon the choice of a leader to head the government. In practice there is hardly any discretion given to the President in the appointment of a Prime Minister. When the party position is fluid and no party singly or in coalition is in a clear majority, the President may have to use his discretion. No President so far had a problem in the matter of appointing a Prime Minister.

The issue of India's first Prime Ministership was decided (without contest) in favour of Jawaharlal Nehru in May 1946 when he was elected President of the Indian National Congress. On 12 August 1946, Nehru was invited to form an Interim Government in his capacity as the President of the Congress. After independence he was sworn in as the Prime Minister. General elections in 1952, 1957, and 1962 provided further opportunity to the people to affirm their faith in Jawaharlal Nehru.

After Nehru's death (on 27 May 1964), the Congress Parliamentary Party was not in a clear position about his immediate successor. The Emergency Committee of the cabinet decided to recommend to the President that Gulzarilal Nanda, the senior-most member of the cabinet, be appointed Prime Minister. During that short period (27 May 1964—9 June 1964) Gulzarilal Nanda was designated Prime Minister because there is no office of an acting Prime Minister. The Congress Working Committee authorised its president, Kamaraj, to hold consultations with members of the Committee, State Chief Ministers and Members of the Parliament and give advice to the Parliamentary Party after finding out a consensus. The role of the organisational wing of the Congress Party in the selection of the leader of the Government was very important; Consensus was in favour of Lal Bahadur Shastri who took over as Prime Minister on 9 June 1964. The leadership wanted to solve the crisis created by Nehru's death by avoiding elections and hence, they evolved

the 'consensus' formula. Party leaders wanted to preserve and maintain the unity of the party at all costs, and they were governed by national considerations in the election of Shastri.

But Lal Bahadur Shastri prematurely died on 10 January 1966. This time, even without formal recommendation of the cabinet, the President swore in Gulzarilal Nanda within hours of the former's death. Nanda was again the senior-most minister in the Cabinet, and there was a precedent to guide the President. Though formally responsible for the election of the Prime Minister of India, the members of Lok Sabha do not enjoy freedom to choose their leader. The prime movers were the Congress President, its Working Committee and the Chief Ministers. Congress politics from the beginning indicated preference for unanimity and selection through consensus, rather than through open voting for the important offices. The supporters of Morarji Desai wanted that the Parliamentary Party should be free of the dictates of the Working Committee. Desai failed to get premiership. It was evidenced by the number of votes marshalled by him that the party leaders did not like him. The main complaint against him was that he was too tough and could not be expected to be a pliable instrument in their hands in the power politics. Indira Gandhi was preferred because she was softer than Desai. It is well known that Mrs Gandhi had a better secular image than Desai.

The Congress split in 1969, reducing Mrs Gandhi to the position of a minority Prime Minister. The Mid-term Parliamentary poll gave her a spectacular victory, her party scoring 352 out of a total of 518 seats in the Lok Sabha. The election results were held as having confirmed and endorsed her leadership. On 18 March 1971, she was unanimously elected as the leader of the Congress Parliamentary Party and as such, the Prime Minister.

When the Prime Minister has to be elected, not only the members of the majority party in the Lok Sabha but also those of the Rajya Sabha participate in the election. In

January 1966, Mrs Gandhi secured 355 out of a total number of 524 members of the Congress Parliamentary Party. It was not clear how many Rajya Sabha or Lok Sabha votes were in her favour and it was difficult to find out whether she had absolute votes of the Lok Sabha. It is suggested that in such cases the Lok Sabha should have greater say. Another important point is whether the Prime Minister must belong to the Lok Sabha at the time of his election to the post or not. In January 1956, Mrs Gandhi was the member of the Rajya Sabha when she was appointed Prime Minister. Actually, the Prime Minister must come from the Lok Sabha because the Council of Ministers is collectively responsible to it. At present the practice is that the Prime Minister should be normally a member elected to the Lok Sabha. Mrs Gandhi therefore got herself elected to the Lok Sabha in the General Elections held in February 1967.

President and the Prime Minister

The Indian Constitution vests the executive power of the Union in the President.³² There is a Council of Ministers with the Prime Minister at its head to aid and advise the President in the exercise of his functions. The President can also consult the Election Commission, the Chief Justice of India and the Governor of a state. He is authorised to appoint the Prime Minister, and is expected to carry out his constitutional responsibilities on the aid and advice of the Council of Ministers which is responsible to Parliament. According to Ambedkar the President is 'a figurehead' and he can not act without the advice of his ministers. But the Constitution has not laid down in clear terms that the President is bound to accept the advice of the Council of Ministers.

Ambedkar had mentioned that the President of India will have no functions, but two prerogatives to appoint the Prime Minister and to dissolve the Parliament. It has been seen that no President since independence has had a significant role to play in the appointment of the Prime Minister except a limited one played by Radhakrishnan in the appointment of Gulzari Lal Nanda for an interim period. On the

other hand, the Prime Minister had a prominent role in the selection of the President. Jawaharlal Nehru was of the opinion that the Presidency was a position of 'dignity' and not of 'decision making'. He was largely governed by this attitude in dealing with the Presidents. Relationship between the Prime Minister and the President during Nehru's period served as a precedent for the holders of the respective offices and a convention seems to grow that the President is to play a constitutional role and that he is to act in consultation with the Prime Minister and his cabinet on all issues. But some times it is felt that the President should have powers to interfere to protect the Constitution and see to it that the cabinet had the confidence of Parliament, to see that the ministry is not arbitrarily flouting the wishes of the people. In the event of a Council of Ministers losing the confidence of the House or being bent upon subverting the Constitution, the President should have powers to step in and see that the nation does not suffer.

The Indian Constitution lays down that the cabinet ministers shall hold office at the pleasure of the President. The cabinet is responsible to the Lok Sabha. The Prime Minister will resign after a no confidence motion has been passed against him in the House. The President may be competent to dismiss a Prime Minister who lost the confidence of the House. The general understanding is that this right of dismissal has by now become atrophied by its disuse in the United Kingdom. The Indian President also did not have any occasion to exercise this right.

The question of dissolution of Parliament has also been discussed widely. It is asked whether the President is obliged to accept the advice of the Council of Ministers with regard to the dissolution of Parliament in all circumstances or whether he could refuse the request. English constitutional authorities have unanimously regarded dissolution of Parliament as a prerogative of the king. In India, with a written Constitution, one-party dominated system, defection and a low moral among legislators, the Prime Minister's right to dissolve the House has been questioned by many. Dissolution

of Parliament in India in 1970 raised various issues. At the first instance, it was asked by the Prime Minister of a minority Government. Some thought that the President should have explored other avenues of forming an alternative government before granting the request or alternatively he should have dismissed the cabinet the moment it had become a minority Government. This type of suggestion seemed to be based in many cases on a categorisation of three types of Prime Ministers and the laws of dissolution pertaining thereto.³³

- (i) A Prime Minister who, while commanding substantial support in the House, requests a dissolution of the House has a right to get it. But in that case he would hardly wish for dissolution.
- (ii) A Prime Minister who is reduced to a minority because of defections should have the right to demand dissolution.
- (iii) A Prime Minister who heads a minority or a coalition government should not be granted dissolution without giving a fair chance to other parties and groups to form an alternative government either singlehanded or in coalition with others.

It is suggested that the decision should depend on the President's assessment of another party's ability to form singly or jointly a stable government. The country should not be put to the turmoil and expense of a parliamentary election if it could be avoided. In the Governor's Annual Conference of 1968, some persons had held that the recommendation of a Chief Minister who headed a single-party Government should have greater weight than that of the leader of a coalition government.³⁴

The relationship between the President and the Prime Minister has so far been governed by the principles of Parliamentary government. There has been some confusion because of misreading of the nature of the Indian Presidency and the nature of the executive. K V Rao thought that we had the strongest Presidential executive in the world.³⁵ There is no clear-cut definition of the relationship between the two in

the Constitution. Some writers have depicted situations in which the balance will tilt in favour of the President to the extent that he will cease to play a mere constitutional role. The Indian Presidents so far have been aware of the limited role that the country expects of them. They knew that it is not the President but the Prime Minister who is responsible for running the government. They also appreciated the suggestion that the President should not figure as a subject of controversy. V V Giri observed : "The President does not function in competition with his Council of Ministers. Even when he expresses his view publicly on matters of common concern some times vital to the functioning of our democracy, he does not do so to embarrass the government 'ut to strengthen its hands in dealing with them."

Prime Minister and the Ministers

The Indian Constitution explicitly states that ministers "shall be appointed by the President on the advice of the Prime Minister."³⁶ The Constituent Assembly for sometime discussed the suggestion of the election of the Council of Ministers by the National Assembly by a system of proportional representation. Nehru argued that he could not think of anything more conducive to creating a feeble ministry and a feeble government than this business of electing them by proportional representation. Overwhelming opinion of the House favoured the the grant of full freedom to the Prime Minister in the selection of his team. The right of formation of the Council of Ministers is the Prime Minister's. The exercise of this right provides him wide scope for patronage in a society where desire for office is strong.

The Prime Minister of India, howsoever powerful, is limited by the compulsions of geography, religion, caste and community besides political and personal pulls and pressures, in the formation of his government. Though no such restriction was imposed by the Constitution on the Prime Minister in the formation of the cabinet, such considerations always formed part of the Prime Minister's thinking and choice in the selection of ministers. Generally, Prime Ministers are limited by two obvious factors in their choice; he

has to confine his appointments to men of his own party, and to those who are members of Parliament. The provision of appointing non-parliamentary members for a period of six months has been inserted in the Constitution to give the Prime Minister certain latitude if he thought the inclusion of outsiders necessary and unavoidable.

The Prime Minister of India has to work under certain compulsions in the selection of ministers, though they have generally been able to overcome some of them. While designating a minister, the Prime Minister has to balance the personality, the weight of the particular office and also his standing in the party. He has to look to conflicting claims and to absorb various pressures. Often, senior ministers are sensitive about change in their portfolios. "The Ministers hold office during the pleasure of the President" and "the Council of Ministers shall be collectively responsible to the House of the people"³⁷ It is interpreted to mean that individual ministers are liable to be removed on the advice of the Prime Minister, though he himself can be removed by the President only on the evidence of a loss of confidence in his government in the House. The Administrative Reforms Commission recommended that a minister should be held accountable :

- (a) when he fails to formulate policy in respect of a major problem or when the policy formulated is found erroneous or suffers from a major weakness ;
- (b) when he neglects to pay personal attention on important issues other than that of policy where such attention is expected of him or wrongly handles such issues ;
- (c) when there is a general or major mismanagement or maladministration in his department/ministry ; and
- (d) when he commits some act of impropriety.

The Prime Minister holds the key to the functioning of the cabinet. He dominates the cabinet because he is able to control its operations. He calls and presides over the meetings. His role as Chairman of the cabinet is of signifi-

cance. He can influence cabinet decisions which are made by consensus more often than by voting. It is for him to sum up the sense of the meeting and declare the consensus. The Prime Minister, as a coordinator of all departments, has a pre-eminent position in the cabinet.

The Prime Minister and the cabinet function with the help of committees and organisations like the Cabinet Secretariate and the Prime Minister's Secretariate. Cabinet committees are decision making bodies. The Prime Minister is generally Chairman of important committees and directs decision making. His Secretariate has come to act as the bridge between the top civil servants and the ministers. The Prime Minister as the Head of the Government has special responsibilities in certain spheres such as foreign policy, defence, finance, home and economic affairs. Internal peace and security is the Prime Minister's concern. He has a big role to play in the preparation of legislative and general policies of the government.

The powers of the Indian Prime Minister have grown in recent years. One view may be that the Prime Minister has assumed powers not intended by the framers of the Constitution. Another, that the growth of powers has gone beyond the assumptions of the British model. The Constituent Assembly conceived of the Prime Minister as the Head of the Cabinet and as one through whom the principle of 'collective responsibility' was to be enforced. He was to be the leader of his government and the party to which he belonged.

The President of the Union is constitutionally empowered to 'appoint' the Prime Minister but in practice it is not so. The President has influence but no powers. His role is limited to advice and admonition. His voice does not carry weight in the decision making process. It is the Prime Minister who determines policy decisions and the broad manner by which they are to be executed. His power to appoint various governmental and political functionaries is exercised in the name of the government. The Prime Minister's power consists in being able to influence the

the cabinet either by persuading it or by making it politically imperative for it to endorse his decisions and policies.

The Prime Minister being the national symbol to the masses, is not generally the creature of the party. He is the leader. He represents the consensus of the party, Parliament and the People. The Prime Minister controls the party in power, but the constitutional processes and institutions act as checks on the office of the Prime Minister. A Prime Minister may like to retain all powers but institutions like judiciary, public opinion and the Parliament put checks on him. The Prime Minister holds the key of the great machine which only he can operate.

References

1. *Constituent Assembly Debates*, Vol. VII, p. 1196.
2. *Ibid*, p. 1198.
3. *Constituent Assembly Debates* ; Vol. VII, pp. 1216 and 1231.
4. *Ibid*, p. 1236.
5. Article 79, Draft Art. 66.
6. Art. 53 (1), Art. 73 (1) and Art. 79 of the Indian Constitution.
7. Lok Sabha Debates, II, 14 May 1954.
8. Rajya Sabha Debates II, 23 August 1954.
9. Article 102 of the Indian Constitution.
10. Election Commission Vs. Venkata, AIR, 1953, S.C.R. 1144.
11. Article 83 (2), the 42nd Amendment, 1976.
12. Article 85 (2) (b) of the Indian Constitution.
13. Article 85 of the Indian Constitution.
14. *Constituent Assembly Debates*, Vol. VIII, pp. 98-99.
15. Article 108 (1) of the Indian Constitution.
16. Article 85 (2) (b) of the Indian Constitution.
17. Article 87 (1) of the Indian Constitution.
18. Article 67 (b) of the Indian Constitution.
19. Article 218.
20. Article 124 (4)
21. Article 70.
22. Article 53 (3) (b).
23. Article 367 (3).
24. *Constituent Assembly Debates*, Vol. IV, p. 734.
25. *Constituent Assembly Debates*, Vol. VII, pp. 32-33.
26. *Constituent Assembly Debates* Vol. X, p. 956.
27. *Constituent Assembly Debates*, Vol. XI, p. 988.
28. Rao, KV : *Parliamentary Democracy of India*, pp. 27-29, Calcutta, 1965.

29. *The Hindustan Times*, New Delhi, 24th August, 1979.
 30. Article 361 of the Indian Constitution.
 31. Article 75 (1).
 32. Article 53.
 33. HM Jain : 'Right of Dissolution', *Mainstream*, Vol. VIII, 17 January 1970, p. 17.
 34. *The Statesman*, Calcutta, 15 December 1969.
 35. KV Rao : *Parliamentary Democracy*, p. 38.
 36. Article 74.
 37. Article 75 (2) and (3).
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Constitutional Amendments

THE question of revising the Constitution has come up several times due to unstable political situation in the country. The Congress Party which enjoyed its hegemony at the Centre and most of the States for twenty five years lost it after the fourth general elections. The last split in the Congress Party was another disintegrating factor. It is apprehended that political instability may bring major disaster to the nation. To end this instability a number of people recommended abolition of the parliamentary system to be replaced by a Presidential form of government. It has also been suggested that an amendment be made in the Constitution to give more autonomy to the States and make them less dependent on the Centre. It is desired that the Fundamental Rights, especially rights to property, be curtailed so that the country may go ahead to the goal of socialism without confronting obstruction by the Judiciary and the vested interests.

In the Constituent Assembly only a small minority supported the adoption of the presidential form of government, as prevalent in the United States. One member argued in favour of Swiss form of government which would ensure stability in the nation. K M Munshi observed : "The Parliamentary system produces a stronger government, for (a) members of the Executive and Legislature are overlapping, and (b) the heads of government control the Legislature.¹ Alladi Krishnaswami pointed out that than "an infant democracy in India cannot afford to take the risk of perpetual cleavage, feud or threatend conflict between the Legislature and the Executive."²

Parliamentary Government in the United Kingdom has succeeded because there are two parties having well-established conventions governing various norms. India has reverted from a dominant party system to a multiple-party system. Coalition governments are inevitable under the present circumstances of political uncertainty. Presidential form of government in India may lead to sharp cleavages between the Executive and the Legislature, harming the basic values we cherish in a democracy. Without making any basic change in the Constitution certain reforms can be introduced in the existing system :

1. The number of Cabinet Ministers both at the central and state level and number of legislators in the Parliament and State Legislatures be restricted.
2. Second chambers in States which have outlived their utility should be abolished.
3. At the time of general elections all the political parties contesting elections should declare the names of their leaders for the Prime Ministership as was done in 1980.
4. Electoral law should be reformed. A member of a legislature after election on a party ticket on defection will have to vacate his seat and contest it again as member of the new party he chooses to join.

Another important issue is the demand for amending the constitutional provisions relating to the Centre State relations. Ambedkar said the Constitution 'avoided the tight mould of federation' in which the American Constitution was caught, and could be "both unitary as well as federal according to requirements of time and circumstances." The framers of the Constitution described India as 'Union of States' and did not mention the word 'federation' anywhere. The problem of Centre-State relations acquired new dimensions after the fourth general elections due to changed party complexion in the States like West Bengal, Kerala, Tamil Nadu, Orissa, U P and Bihar. With the assumption of power by diverse political parties, divergences arose on account of the differing political ideologies and programmes.

Another demand is that the Governors' role should be redefined so that he may act like a constitutional head of the state and not as an agent of the Centre. The Governor has to discharge two-fold functions viz, 'as a part of the state apparatus and at the same time as a link with centre'. The Governor's role as the constitutional head of the State came into conflict with his role as agent of the Centre keeping watch on the administration of the State on behalf of the centre and sending periodical reports on his own.

Another important demand is to restore to Parliament the right to amend the Constitution so as to abridge fundamental rights which it is unable to do so now due to a decision of the Supreme Court, *Golak Nath Versus the State of Punjab* (27.2 1967) that Parliament did have the power to abridge or take away fundamental rights. It is necessary that the Parliament should show due deference to the judiciary and not proceed to curtail its powers of review, nor should the Executive endeavour to impair the independence and impartiality of the Court. Each branch should operate within democratic norms and should develop better awareness of social goals and objectives and respect for Human Rights and freedom. The power of amendment contained in the Constitution was a safety valve which provided for stable growth and made violent revolutions more or less unnecessary.

Framers of the Indian Constitution wanted to prevent the Constitution from becoming so rigid as to permit no changes at all and at the same time to enable it to protect itself from the caprices of a transient majority. They did not like the constitutional provisions to be changed by ordinary legislative procedure because they regarded it superior to the legislature. At the same time it is also clear that a Constitution based on the ideals prevalent in a particular period must be able to reflect the new ideas as and when they replace the prevailing ones. Those who oppose any enlargement of the amending power of Parliament point out to the large number of amendments carried out in a brief period of thirty years. It is high time, therefore, that a detailed examination of the

amending provisions and the amendments done so far should be made to consider whether these provisions require a re-drafting, and whether the charge of too many amendments in too short a time is valid.

There can be four methods by which a Constitution can be amended:

- (i) by a special convention,
- (ii) by the people through referendum,
- (iii) by a majority of all units of a federal state, and
- (iv) by the ordinary legislature acting under certain restrictions.³

The Indian Constitution combines the last two methods and at the same time authorises the Parliament to amend some provisions by a simple majority. There are three formal methods according to which the Indian Constitution can be amended :

- (a) amendment by simple majority of the Parliament ;
- (b) amendment by special majority of the Parliament; and
- (c) amendment by special majority of the Parliament with ratification by at least one-half of the States.

There are some ambiguities in the proviso requiring ratification of certain amendments by one-half of the States. It is not clear whether such a Bill has to be submitted necessarily to all the States or it is enough if it is ratified by the requisite number of States. It is also not clear if there should be some time-limit of ratification. It seems reasonable that all the State legislatures should have opportunity to express views. It is also not clear whether ratification should be by the legislative assemblies of the States or by both the Houses of States having bi-cameral legislatures. The Constitution does not give the States any role in the initiation of amendments. States as federal units should be allowed to initiate amendments when it seems necessary to them.

It is unfortunate that a controversy over the supremacy of the Parliament and the Supreme Court has been allowed to develop. Parliament and the Supreme Court have defined powers under a Constitution which is superior to both. However, the Court may interpret the provisions of the Constitu-

tion, which has to charge in a growing and developing society reflecting the new ideas and the changing social order. A refusal to allow changes in the Constitution will only strengthen the argument that it is not suitable for a developing society. The problem is not conflict between the legislature and the judiciary but how to rightly adjust the principles of rule of law with the principles of a democratic welfare State. M Hidayatullah observed: "The choice before us in whether we regard the welfare State so necessary that we may give up a little of the rule of law or we regard the rule of law so essential that we must sacrifice our desire for a welfare State."⁴ The Indian Constitution should be so revised that it will permit the Parliament and the State legislatures to make changes which may be necessary but at the same time it should be able to prevent them from amending it merely for the sake of convenience.

Emergency Provisions

All constitutions, both ancient and modern, provide for an emergency. The conditions prevailing at the time of framing the constitutions have an important bearing upon the formulation of emergency provisions. The partition of India in 1947 let loose the communal conflict with the flight of millions from their home, something unparallel in human history. Disintegrating forces were the dangers for the establishment and maintenance of democracy in India. There was also a great deterioration in the economic situation. To preserve the existing order in any country, constitutional system is to provide for emergency action. These situations can be broadly classified under three heads :

- (1) External aggression or war, internal revolt or disturbance, internal dissensions or disputes and strifes ;
- (2) breakdown of a constitutional machinery through political or party deadlocks ; and
- (3) threat to the financial stability or credit of the country or any part thereof.

The object of emergency provisions is to preserve the integrity of the Constitution itself. The emergency provisions

provide the necessary flexibility to the Constitution to protect it from a breakdown. During emergency the country would function as a unitary state. That helps the government to meet the problems of law and order. The emergency provisions strengthen the working of a federal government. The President of India as the Head of the Federal State is armed with emergency powers so that he may protect the federal structure. Emergency is a situation which threatens peace, order or good government of the country.

The emergency can be proclaimed by the President of India through the issue of a proclamation. He has to deliver the goods during the operation of the emergency, and perform his role as executive head of the State and as the inter-state coordinator. The President proclaims the emergency and the Parliament determines its duration. The State Governors enjoy no such powers. The power to proclaim emergency is given to such a person who can take firm and quick decision. Judiciary is not given this power as it is responsible for administration of justice. As regards proclamation, the executive enjoys a special position. In parliamentary democracies, it is exercised by the constitutional head of the state on the aid and advice of the Council of Ministers. The courts have no power to question the validity of any such proclamation. The Union has the duty to ensure that the government of a state is carried on in accordance with the provisions of the Constitution.⁸

In India, emergency powers are exercised by mutual cooperation between the legislature and the executive. Parliament is very powerful but it is not always in session. The President can issue a Proclamation of Emergency but it can not continue beyond a period of two months without the approval of the Parliament. If the Lok Sabha is dissolved, the proclamation is to be laid before the Rajya Sabha within two months and it must be laid before Lok Sabha within one month of its meeting after the elections. The Parliament can reject the proclamation. Time limit is the constitutional check upon the free exercise of emergency powers. A proclamation of emergency can be revoked by a subsequent procla-

mation. Its tensure can be extended by Parliament alone.* The issue of another proclamation is not barred by the Constitution.

The first national emergency was proclaimed in October 1962 on the occasion of the Chinese aggression. It continued to be in operation from the 26 October 1962 to 10 January 1968. The Proclamation of the President was approved by both the Houses of Parliament on 13 and 14 November 1962. During the Pakistani aggression in 1965, another proclamation was still in operation. The second proclamation was made on 4 December 1971 due to the 14-day Indo-Pak War.

On 25 June 1975, while the above proclamation was still in operation a state of national emergency was declared under Article 352 of the Constitution on account of threat to the Security of State because of internal disturbances. The opposition parties had worked out a grand design to dislodge Indira Gandhi and her government from power in view of Allahabad High Court Judgment. It was alleged that in the name of democracy it had been sought to negate the very functioning of democracy. The emergency was lifted on 20 March 1977 by the acting President BD Jatti on the advice of the out-going government. India lived under double national emergency from 25 June 1975 to 20 March 1977.

42nd Amendment

The Constitution (Forty fourth Amendment) Bill 1976, which was later renumbered as the Constitution (Forty second Amendment) Act 1976 was introduced in the Lok Sabha on 1 September 1976. Incorporating most of the recommendations of the Swaran Singh Committee, the Bill was debated and passed at a special session of Parliament. The Lok Sabha passed it on 2 November and the Rajya Sabha on 11 November 1976. The constitutional requirement of ratification by more than half the number of States was completed on 7 December on which date the Assam and Manipur legislatures unanimously endorsed it. The Bill received the President's assent on 18 December 1976.

The 'important features' of the Bill were summed up as follows by Law Minister Gokhale while commending it for consideration :

"That it seeks to reassert once for all the supremacy of Parliament and its plenary powers to amend any provision in the constitution.

"That it seeks to give precedence to the Directive Principles over all Fundamental Rights and to make the Directive Principles unenforceable.

"That it does not in any way seek to supersede the rights of the minority communities granted under specific provision in the constitution.

"That it does not in any way seek to alter the federal character of the Union as is clear from the fact that the present Bill is required to be ratified by the State Legislatures.

"That it does not seek to take away from the Supreme Court the right of judicial review of the amendment.

"That it seeks for the first time to incorporate in the Preamble the words socialism and secularism.

"That it seeks for the first time to write into the statute duties of the citizen."

According to the statement of objects the 44th Amendment was intended to remove the difficulties 'which had arisen in achieving the objective of socio-economic revolution which could end poverty, ignorance, disease and inequality of opportunity.' The Supreme Court in the *Keshavananda Bharti* Judgment ruled that the right to property is not a part of the 'basic structure' of the Constitution. It was demanded that the right to property be taken out from the chapter on Fundamental Rights.

A petition asking the Government to postpone consideration of the Bill was submitted to the President on 25 October 1976. It was felt that matters of such vital importance should not be decided in haste without the widest possible public debate in the country. On 27 October 1976, Prime Minister Indira Gandhi told the Lok Sabha that the Parliament had the 'unfettered, unqualified and unabridgeable

right' to make changes in the Constitution. She saw no need for a new Constituent Assembly. Indira Gandhi recalled that the issue had been settled even at the time of drafting the Constitution. At that time, she said, Ambedkar had explained that the Constituent Assembly itself had been elected on a limited franchise. Parliament elected on adult franchise 'cannot be said to have lesser power', she argued and characterised the term 'basic structure' of the Constitution as an invention of the judges and commended the Bill as a cure for the 'ills of a political system.'

The Lok Sabha debate began on 25 October and ended with the passing of it on 2 November 1976. The Bill, which was introduced as the 44th, was actually passed as the 42nd Amendment Bill. The Bill as passed by the Lok Sabha and sent to the Rajya Sabha which debated it between 4 and 11 November 1976 and returned it to Lok Sabha without accepting any amendment.

The 42nd Amendment changed the Constitution in some important areas. First, the Preamble was amended: originally India was 'a sovereign democratic republic', now it became 'sovereign socialist, secular democratic republic'. Secondly, the government armed itself with special powers for dealing with 'anti national activities'. Thirdly, the fundamental rights became subordinate to 'directive principles' and the citizens' fundamental duties were prescribed. Fourthly, Article 368 was amended so as to put the amending power of Parliament beyond the reach of the judiciary, so that 'the will of the people should prevail'. Fifthly, it was laid down that the central laws can be declared unconstitutional only by the Supreme Court and the State laws by the respective High Courts, and for invalidating a law two-thirds majority of the Constitution Bench would be necessary. Sixthly, the High Courts' power of issuing writs at the instance of an individual 'for any other purpose' has been taken away, and now for the issuance of a writ by a High Court, it is necessary to establish an 'injury of a substantial nature by reason of the contravention of any other provision

of the Constitution or any provision of any enactment or ordinance.' Seventhly, 'education' from the State list was transferred to the concurrent List. Eighthly, it was made explicit that the President of India in all matters has to act on the aid and advice of his Council of Ministers.

A mini-Constitution had been passed by the Fifth Parliament, which had two-thirds majority of the Congress Party. The Sixth Lok Sabha was equally committed to the people to abrogate the 42nd Amendment. The Janata Party contested the election on the specific issue of the abrogation of 42nd Amendment and on the promise that what happened during the internal emergency will not be repeated. Thus the Sixth Lok Sabha equally had a mandate of the people to amend the Constitution.

44th Amendment

On 30 April the President gave his assent to the 44th Amendment Bill restoring to the Constitution, to a great extent, what it had lost during the emergency. The 44th Amendment Bill had been passed by the Lok Sabha and with some modifications by the Rajya Sabha. After ratification by as many as 14 State Assemblies it was sent to the President. The amendment sought in effect to undo the damage done by the 42nd Amendment and to deprive the executive of possible avenues of cutting into democratic content of the Constitution. Now it will not be easy for a Government at the Centre to clamp emergency on the country on flimsy grounds and take away the liberties of the people.

A greater protection has been given to the Fundamental Rights which suffered instant blow with the imposition of the emergency. The Press has been given back its right to fully report Parliamentary proceedings. Parliament was restored its five-year term and the judiciary given back the prestige and powers it lost during the emergency. With the 44th Amendment becoming part of the statute book, right to property has ceased to be a fundamental right and becomes only a legal right. For this, Article 19 has been amended and Article 31 deleted. It has, however, been ensured that

this would not affect the right of minorities to establish and administer educational institutes of their choice. Similarly, the rights of persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value has been ensured. Property has, however, been given express recognition as a legal right to ensure that no person will be deprived of his or her property except in accordance with law.

The Amendment provides adequate safeguards against the misuse of executive power as was witnessed during the emergency. Hereafter, the Fundamental Rights, including those of life and liberty granted to citizens by the Constitution will not be taken away sweepingly by a transient majority. To ensure that emergency power is properly exercised and not abused, it has been provided that a proclamation of emergency can be issued only when the Security of a state or any part of its territory is threatened by war or external aggression or by armed rebellion. Internal disturbance not amounting to armed rebellion would not be a ground for the issue of an emergency proclamation.

It is provided that as emergency can be proclaimed only on the basis of written advice tendered to the President by the Cabinet so as to ensure that a proclamation is issued only after due consideration. As a proclamation of emergency virtually has the effect of amending the Constitution it has been provided that the proclamation would have to be approved by both the Houses of Parliament by the same majority which was necessary to amend it and such approval would have to be given within a period of one month. Any such proclamation would be in force only for a period of six months and can be continued only by further resolutions passed by the same majority. The proclamation would also cease to be in operation if a resolution disapproving the continuance of the emergency proclamation is passed by the Lok Sabha. Ten percent or more of the members of the Lok Sabha can requisition a special meeting for considering a resolution for disapproving the proclamation.

The citizen's right to life and liberty has been placed on a secure footing in that power to suspend the right to move the court for the enforcement of a fundamental right can not be exercised in respect of the fundamental right to life and liberty. This safeguard is intended to work as a further check against the misuse of emergency provisions. The right to liberty has been further strengthened by the provision that a law for preventive detention cannot authorise, in any case, detention for more than two months, unless an advisory board has reported that there is sufficient cause for such detention. The chairman of such an advisory board will necessarily be a sitting judge of a High Court. The board will be constituted in accordance with the recommendation of the Chief Justice of the concerned High Court.

The provision regarding the breakdown of the constitutional machinery in the States has been amended to provide that a proclamation issued under Article 356 would be in force only for a period of six months in the first instance. It can not, however, exceed one year ordinarily. Even when the 44th Amendment became law, not all that the Constitution lost during the emergency could be restored. The Rajya Sabha, where the Government continued to be in a minority, struck down five important clauses in the 44th Amendment Bill. These clauses related to : (i) the provision of referendum for changing the basic features of the Constitution ; (ii) setting up administrative tribunals for settling the grievances of Government employees, (iii) definition of socialism and secularism in the Preamble of the Constitution; (iv) supremacy of fundamental rights over the Directive Principles of State Policy, and (v) transfer of education from the Concurrent List to the State List.

According to Justice Sikri of the Supreme Court the basic structure of the Constitution comprised (1) the supremacy of the Constitution, (2) the republican and democratic form of Government, (3) separation of powers between the legislature, executive and the judiciary (4) secular character, (5) the federal character of the Constitution and (6) freedom and dignity of the individual which was supreme.

The Assemblies of the following 14 States ratified the 44th Amendment : Assam, Andhra Pradesh, Bihar, Haryana, Manipur, West Bengal, Sikkim, Tamilnadu, Himachal Pradesh, Maharashtra, Nagaland, Orissa, Madhya Pradesh and Karnataka. Under the law such constitutional amendments are to be ratified by atleast half of the States.

Judicial Reviews

Judicial Review is the power of a court to inquire whether a law, executive order or other official action conflicts with the Constitution and, if the court decides that it does, to declare it unconstitutional. The Constitution of India is federal. It is the supreme law of the country. The Supreme Court and the High Courts see that no government oversteps its authority. Judicial review is one of the essential conditions of federalism. The courts in a federal Constitution are very rightly regarded as the guardian of the constitution and protector of the rights of individuals. The Constitution divides the legislative powers between the Union Parliament and the States Legislatures. Articles 246, 248, 249 and 250 of the Constitution respectively deal with : subject matter of laws made by Parliament and by the Legislatures of states; residuary powers of Parliament; power of Parliament to legislate with respect to a matter in the State List in the national interest, and power of Parliament to legislate with respect to any matter in the State List. In addition to these, Articles 251 and 254 provide for inconsistency between laws made by Parliament and laws made by state legislatures.

Judicial review is the authority of the courts to declare null and void acts of the legislative and executive branches of government held to be in conflict with the Constitution. It is sometimes called judicial veto, because the Courts have the power to say 'No.'. A less accurate designation is judicial supremacy. In simple terms it is the method of examining laws and action in the light of their constitutionality. The Union and State legislatures are supreme in their respective fields, but the Constitution has put upon the legislatures cer-

tain specified restrictions. It does not recognise the absolute supremacy of the court over the legislative authority in all respects for outside the restricted field of constitutional limitations, our Parliament and the State legislatures are supreme in their legislative fields.⁷

So far as the fundamental right to property is concerned, the Supreme Court judgment in the 1967 *Golak Nath* case is important. Chief Justice Subba Rao observed that wiping out property right by amending the Constitution amounted by implication to a revolution. The judgment enunciated the doctrine that the fundamental rights were 'immutable' and 'beyond the reach of Parliament'. The remedy suggested by the Court was the convening of a Constituent Assembly under an Act of Parliament. The Supreme Court has been given power to interpret the constitutional provisions. It interprets the same according to the intention of the framers of the Constitution. The Supreme Court is also a protector of the rights of citizens. Any person alleging an infringement of this fundamental right can move the Supreme Court directly without going to any other court.⁸

In the famous *Golak Nath V/s State of Punjab* case the importance of judicial review was established in respect of fundamental rights and their amendment by parliamentary legislation. Since Parliament was considered to have no power to take away or curtail any of the fundamental rights, even, if it became necessary to do so for giving effect to the Directive Principles of State Policy and for the attainment of the objectives set out in the Preamble to the Constitution, it therefore, amended Article 368 and Article 13. The 24th Amendment provided that Parliament is competent to amend the Constitution, including Fundamental Rights. In the *Bank Nationalisation* case 1970, the Supreme Court held that the Constitution guaranteed right to compensation. In the same case, the court had also held that a law which sought to acquire or requisition property for a public purpose should also satisfy the requirements of Article 19 (1). The 25th Amendment surmounted the difficulties placed in the way of giving effect to the Directive Principles of State Policy by the afore-

said interpretation. The Amendment substituted the word 'amount' for 'compensation'.

These two amendments were challenged before the Supreme Court in the case. *Kesavananda Bharti V/s State of Kerala*. The following arguments were advanced :

- (1) If 'constitutional law' was not covered by the term 'law', the integrity of India and the unity of the nation' referred to in the preamble would be directly at a stake. The Fundamental Rights could be amended so to make them applicable to certain part of India, and not to others, to certain communities of India, and not to others.
- (2) Parliament cannot arrogate to itself the power to alter or destroy essential features of the Constitution.
- (3) Parliament cannot abridge or destroy basic human rights and fundamental freedom which were reserved by the people for themselves when they gave to themselves the Constitution.
- (4) Parliament cannot do indirectly what it was enjoined by the Constitution not to do directly.

The Supreme Court by a majority upheld the validity of the 24th Amendment. It gave plenary power to Parliament to amend any provision of the Constitution including Fundamental Rights, but the Supreme Court held that Parliament, in exercise of its amending power under article 368, could not destroy the 'basic structure' of the Constitution. It still left open for the judiciary to review the constitutionality of any amendment in the light of the basic structure of the Constitution.

Referendum

Referendum is a democratic device designed to give the people a chance to express their opinion with regard to a governmental policy or a proposed legislation before it becomes effective. Referendum is most often used in connection with constitutional matters. The use of referendum in connection with ordinary legislation is part of the constitutional practice of some states. In India, while framing the Constitution, after Independence, the Constituent Assembly gave consi der-

able, thought to the question whether they should incorporate a provision for holding referenda in case of amendment. The majority was of the opinion that will not be suitable to Indian conditions. The vast size of the country, its teeming population and the low literacy level must have dissuaded them from providing for this device in the Constitution.

However, referendum was resorted to in India in January 1967 to settle the future status of Goa, Daman and Diu whether the people of these territories wanted to merge with Maharashtra or chose to remain a Union Territory. The people decided in favour of remaining a Union Territory a majority of 54.2 per cent voted in favour of it in the referendum. The people in India have come to the decision that it is desirable to have obligatory referendum on important amendments to the Constitution. The 42nd Amendment which curtailed the freedom of the individual alerted the political leaders to the inherent danger involved in giving unrestricted power to the legislatures. The 43rd Amendment Bill introduced in the Lok Sabha on 15 May 1979 provided for a referendum on any proposal for amendment of the basic features of the Constitution. The four basic features are: Secular or democratic character; fundamental rights; free and fair elections on the basis of adult suffrage and; independence of the judiciary. These basic features could be amended only if they are approved by the people by a majority of votes at a referendum in which at least 51 per cent of the electorate participated. But the Rajya Sabha rejected the referendum clause.

References

1. Constituent Assembly Debates, Vol. VII, p. 984.
2. Constituent Assembly Debates, Vol. VII, p. 985-86.
3. Strong, C F, *Modern Political Constitutions*, London, 1963, p. 152.
4. *Indian Journal of Political Science*, October-December, 1970, p. 401.
5. Article 385.
6. Clause (1) of Article 356.
7. Article 132 and 133 (2).
8. Article 132.

Revision of the Constitution

A Constitution is a dynamic document. It should grow with a nation and suit the changing needs and circumstances of the people. A Constitution as such can not have any claim to permanence, nor should, because, it has been working ever since, claim absolute sanctity. It has been rightly remarked that a Constitution is not a metaphysical abstraction, it is a concrete instrument provided for regulating power-relationship of the individual with his government. So the needs of the individual and the society necessitates changes in the Constitution. It is drafted at a particular time and by a particular set of people and so it has to be adopted to the varying situations and the temper of time. Even a carefully considered and widely discussed decision is subject to certain inherent limitations. Moreover, one generation can not bound down the coming generation.

India adopted its working constitution on 1 November 1949. It came into force on 26 January 1950. It is a unique combination of the flexibility and rigidity. India is a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary features. In fact, the founding fathers of the Constitution deliberately made the Centre powerful so as to enable it to withstand any onslaught from the fissiparous and centrifugal forces in the light of the historical experience.

The problem of revision of the Constitution has been voiced vociferously due to unstable political trends emerging after the March 1977 general elections. Unlike the past no party today (1980) can claim exclusively to represent the

entire people of India. Therefore the politics of consensus has become the need of the hour. As things stand today no amendment to the Constitution is possible without a prior agreement among the political parties. To end the administrative instability a number of people have suggested the abolition of parliamentary system of government in favour of the Presidential system which would impart stability and continuity to administration.

On the question of the form of government, opinion in the Constituent Assembly was at first divided. Only a small minority supported the adoption of the presidential system of government as prevalent in the United States. One member argued in favour of the Swiss form of Collegiate Executive which would ensure stability and responsibility at the same time. The overwhelming majority was in favour of the cabinet system which was strongly pleaded by KM Munshi. "The Parliamentary system produces a stronger government, for (a) members of the Executive and Legislature are overlapping, and (b) the heads of government control the Legislature."¹ Alladi Krishnaswami pointed out the special difficulties in the working of the Presidential system. According to him "an infant democracy cannot afford, under modern conditions to take the risk of perpetual cleavage, feud or conflict or threatend conflict between the Legislative and the Executive."²

India was to have a President superimposed on the Parliamentary system of the British type. So far as the Constitution is concerned, there is no mandatory provision to compel the President to act according to the advice of the ministers, and there is no provision, corresponding to the English rule, requiring the President to act only under the counter-signature of a minister. The President himself is authorised to make rules as to how his orders and instruments are to be authenticated.³ He is bound to assert his powers to maintain stability of government (as he has done during a very great political and constitutional crisis in July-August 1979), as he has taken an oath 'to protect and preserve the Constitution.'

Parliamentary system in England has succeeded because there are two parties in that country and because they have well-established conventions governing parliamentary norms. India has reverted from a dominant party system to a multiple-party system. Coalition cabinets are inevitable under the present circumstances of political change. Presidential form of government in India may lead to sharp cleavages between the Executive and the Legislature. Without making any basic change in our constitutional fabric we can introduce much needed reforms in our system. Firstly, we should restrict the number of cabinet ministers both at the central and state level and also restrict the number of legislators in the Union Parliament and State Legislatures. Secondly, we should abolish the second chambers in states which have outlived their utility. At the time of general elections, the name of Prime Ministerial candidates should be declared by the various political parties. It is very essential to reform the electoral law. A member of a legislature after election on a party ticket on defection will have to vacate his seat in the legislature and contest it again as member of the new party he chooses to join.

There is a great demand for amending the constitutional provision relating to Centre-State relations. The framers of the Indian Constitution wanted to sustain and strengthen the unity of India. The Constitution, said Ambedkar, 'avoided the tight mould of federation' in which the American Constitution was caught, and could be 'both unitary as well as federal according to the requirements of time and circumstances.' NG Ayyangar explained that 'we should make the Centre in this country as strong as possible consistent with having a fairly wide range of subjects to the provinces in which they would have the utmost freedom to order things as they liked.' The framers of the Constitution described India as 'Union of States' and did not mention the word 'federation' anywhere. The Union Government was conferred broad powers in the Union and concurrent lists. Residuary powers were vested in the Centre. Larger powers were given to the Centre to enable it 'to meet the needs and to withstand the pressure of times.'

Because of the predominant position of the Centre, many parties and State Governments have been demanding revision of the Constitution to restore its federal balance. In spite of centre-oriented provisions in the Constitution the relations between the centre and the units were smooth during the first two decades. This was largely due to a number of factors, viz (1) Dominant majority of the Congress Party in the Union and the States from 1950 till 1967; (2) charismatic personality of Jawaharlal Nehru who served as Prime Minister till 1964; (3) Planning machinery which integrated the entire economy of the country under central leadership. The problem of Centre-State relations acquired new dimensions after the fourth general elections due to changed party complexion in the States. With the assumption of power by diverse political parties, divergencies arose on account of the differing political ideologies and programmes.

In the executive sphere the Governor is made subordinate to the President. The Union Government has the right of issuing general instructions and directions in certain cases to the states and can utilise machinery for the administration of the Union law in others.⁴ It has become essential that Governor's role should be redefined so that he may act like a constitutional head of the state and not as an agent of the Centre. The Governor's office in the past has been used as a gift in the hands of the ruling party at the Centre. The Governor in fact has to discharge two fold functions, viz, 'as a part of the state apparatus and, at the same time, as a link with the centre.' The Governor's role as the constitutional head of the state came into conflict with his role as agent of the Centre keeping watch on the administration on its behalf and sending periodical reports on his own. The state governments demand that the Governor should play the role of a mere ceremonial head and the Centre required him to act as its agent in the state and difference in the political affiliation between the states and centre aggravated the conflict in these two roles out of proportion. There is a criticism against the Governors that they act as tools of the ruling party at the Centre and not as an impartial link between the Centre and

the states. The Administrative Reforms Commission Report insists that the post of Governor should not be treated as sinecure and a systematic and careful search should be made 'to locate the best men.' The term of the Governor should not go beyond five years and no person who is appointed Governor should take part in politics after his retirement.

Till 27 February 1967, Parliament enjoyed enviable authority to amend the Constitution. The Supreme Court in the case of *Golaknath vs State of Punjab* delivered an epoch-making decision restricting the powers of the Parliament. A demand is insistently being made for amendment for the Constitution to restore to Parliament the right to amend the Constitution so as to abridge fundamental rights. Legislatures in our country, overconscious of their power, are showing undue haste in bringing in legislation tempering with cherished rights of the citizens for implementing election pledges and courts are paralysing their efforts by holding them null and void. This is followed by Parliamentary action in the form of constitutional amendments reversing the decisions of the courts. It appears that Parliament and the Supreme Court have not paid due deference to one another in some ways. Such tensions and conflicts between the two coordinate branches of the Government are the growing pains of a democratic society in transition. It is necessary that the Parliament should not proceed to curtail the powers of judicial review of the judiciary. Each branch should operate within democratic norms and develop better awareness of social goals and objectives and respect for human rights and freedom. Justice Subba Rao has expressed the fear that if "Parliament has the power to take away fundamental rights a time might come when we would gradually pass under a totalitarian rule."

There has been a good deal of speculation on the question of right to property. Justice M Hidayatullah once observed: "Our Constitution accepted the theory that right to property is a fundamental right. In my opinion it was an error to place it in that category... of all the fundamental rights it is the weakest." This observation ultimately

became true and the right to property under the Constitution was not only amended several times, but finally it has been repealed by the 45th Constitutional Amendment Bill. The removal of the right to property from the chapter on Fundamental Rights has created uncertainty and posed a few problems. For example, what will be its effect on a citizen's right to reside and settle in any part of India? Will it not effect private incentive in the mixed economy? What will happen if a State passed a law preventing those who are not 'sons of the soil' from holding property in the State? The implications of these questions and a few more which may crop up in future should be legally examined and studied. The case of Assam is a pointer in that direction.

The basic soundness of the political system in India lies in the maintenance of (a) the sovereignty and integrity of the Indian Union; (b) the supremacy of the Constitution over the ordinary law; (c) the secular character of the State; (d) subservience of the Directive Principles of State Policy to Fundamental Rights of the citizens; (e) democratic structure within the constitutional framework of a limited government; (f) the federal form of government; (g) the parliamentary system of government; (h) free and fair elections; (i) independent character of the judiciary. The 42nd Amendment twisted the Constitution by bringing in many far-reaching changes like (a) establishing primacy of Directive Principles of State Policy over Fundamental Rights; (b) imposing restrictions on the Fundamental Rights of the citizens; (c) making the President a rubber stamp thereby requiring from him to exercise his functions with the advice of the Council of Ministers; (d) depriving the Supreme Court of its power over Judicial Review on the constitutional amendments; (e) making the Centre all powerful thereby doing away with the balance created by the founding fathers of the Constitution.

According to the 42nd Amendment a state could be under President's rule for three years continuously. It could continue for another eighteen months without any parliamentary approval. But under the 44th Amendment the President's rule will be only for the year. This can be extended only with

the consent of the election commission. The 42nd Amendment checkmated the judiciary on many points. The 44th Amendment tried to remove them. For instance, the provision requiring the Supreme Court and the High Courts to have a two-third majority for declaring any legislation invalid has been removed. The jurisdiction of the High Court to issue writs in the nature of habeas corpus cannot be suspended. Citizens can now challenge the proclamation of emergency in a court of law. It has been laid down that the power to move the court for the enforcement of Fundamental Rights to life and liberty cannot be suspended even during emergency.

The 44th Amendment although welcome, is not enough. The insertion of several more checks are essential to prevent the possible misuse of emergency powers. These are :

1. Before a declaration of emergency comes into force, it must be referred by the government to a council of constitutional experts or judges, and only if this body approves should it come into force.
2. During the period the proclamation of emergency is in operation neither Lok Sabha be dissolved nor members of Parliament be prevented from attending sessions.
3. Parliament should automatically meet as soon as the emergency proclamation comes into force.
4. The proclamation of emergency must be approved by each House of Parliament by a majority of total membership and a two-thirds majority of those present and voting.
5. Provision should be made for a periodic review of the proclamation of emergency.
6. All laws (including constitutional amendments) enacted or amended during the emergency should be examined as regards their utility to meet the situation.

Many other welcome changes are also introduced. Duration of the Lok Sabha and State Legislatures are restored to five years. Special election appeal for Prime Minister and others are deleted. Central armed forces cannot be used in states without the consent of the state government. Freedom of the press cannot be strangled. Internal disturbances not

amounting to an armed rebellion would not be a ground for proclaiming emergency. Again emergency can be proclaimed only on the basis of written advice tendered to the President by the cabinet. Satisfaction of the President will not be a ground for emergency. We regard the 44th Amendment as a blue print of the Constitution. But certain good provisions of the 42nd Amendment have been ignored. For example, absence of administrative tribunal, bringing agriculture and education in the state list, introduction of preventive detention are some of the provisions which are the defects of this Amendment.

The 44th Amendment defines the basic features of the Constitution. Problems about defining basic features are so after 'Kesavananda Bharati V/s State of Kerala' (1973) case. The amendment decided the issue for ever.

The basic features are :

- (a) Secularism and democracy.
- (b) Fundamental Rights.
- (c) Fair elections based on adult franchise.
- (d) Independence of judiciary.

Will it be proper to limit the Constitution by defining basic features and making them unchangeable ? Right to property has been amended today, other fundamental rights may require amendment tomorrow. It will denude Parliament. Any measure which seeks to limit the basic features of the Constitution will have to be subjected to a referendum. But can we overlook the defects of referendum particularly when we introduce it to illiterate Indian masses ?

The 42nd Amendment reduced the State autonomy. It only gave powers in the hands of the central executive and made the executive the judge of its own acts. It empowered the Parliament to extend its life. It deprived the judiciary of its vital powers including the power to examine the validity of the amendment itself. It did not put any limitation on the constitutional powers of the Parliament. The court could no longer remain the protector of individual freedom and guardian of the Constitution. The 43rd Amendment has un-

done some of the distortions of the previous amendment and restored to judiciary its lost glory. The Supreme Court and the High Courts have been restored their original power to determine the constitutional validity of the Central and the State laws by simple majority.

R Ramakrishnan Nair, Professor of Political Science, Kerala University is of the opinion that the Constitution needs a thorough revision by a Constituent Assembly specially constituted with three fourth members directly elected and one fourth nominated, giving adequate representation to the various interests. He has suggested the following changes in the new Constitution :

1. India must be a quasi-unitary state instead of a quasi-federal one.
2. States must be abolished ; Governorship ; Assembly and Ministries must go along with them.
3. Districts—constituted to satisfy sub-nationalistic, administrative and geographical necessities—should be the units of the Indian state. Maximum autonomy should be given to the districts, and for each one of them should be a District Commissioner and a District Council, both directly elected for a period of five years. The relation between the two could be on the model of the relation between the American President and the Congress. Any deadlock must be solved by themselves and no outside intervention be made possible. Panchayats and other local bodies should be units of the district and they should have maximum autonomy.
4. There can be five regional councils to deal with inter-district matters.
5. Powers of the Central Government must be reduced to the barest minimum.
6. Offices of the President and Prime Minister of India must rotate regionally.
7. Right to work should be made fundamental and the destruction of public property must be treated as high treason.

8. The system of inheritance of property must be done away with. The dependents of the deceased must be looked after by the State.

9. Education must be declared an essential service, and should be made compulsory to all non-adults, i.e., till the age of eighteen when a person becomes a voter. Social service, military training, wearing of uniform and common dining must be made compulsory for the students.

10. The entire legal system must be examined and be simplified.

V V Giri, the late President, suggested that there should be a Presidium consisting of elected members of the Lok Sabha, in place of the present Council of Ministers. The advantage envisaged in the scheme is that the Presidium will be a national government, which should be able to ensure stability and economic uplift for the poverty stricken masses. But such a government will not be a national Government in the true sense, it will be a coalition government suffering from its inherent defects. It will be a weak government and its performance will be poor. It will encourage the growth of minor political parties and the demand for the system of proportional representation. The working of such a government will also be different from that of a cabinet.

So far as the suggestions for a change in the State Government are concerned, they include, the division of the country into four or five zones, each zone to be administered by an elected governor with the assistance of secretaries chosen from among the members of the State legislatures; and each zone will have four unicameral legislatures. The suggestion will lead to the adoption of a modified form of the presidential type of government. Such a government will not work. Other suggestions include: (i) alterations in the system of government, e.g., indirect election for the Lok Sabha, which will encourage the growth of minor parties and the demand for the system of proportional representation; (ii) lowering of the voting age to 18—years this may be accepted; (iii) the government should meet the election expenses of the candi-

dates—this deserves favourable consideration ; (iv) the division of the country into four or five zones will reopen the question of reorganisation of states. In our view, national government can be formed under the present Constitution and it would be easier to obtain consensus for such a proposal than the proposed scheme of reforms. The original Constitution is the best document under the present circumstances. The 42nd Amendment slightly changed its shape, but the proper shape and balance will be restored by the 43rd and 44th amendments.

Even after the 44th Amendment, not all that the Constitution lost through the 42nd Amendment will be restored. The Rajya Sabha struck down five key clauses in the 44th Amendment and in the process retained what was incorporated through the 42nd Amendment. These clauses relate to provision (i) for referendum and changing the basic features of the Constitution ; (ii) setting up of administrative tribunals for settling grievances of government officials ; (iii) definition of socialism and secularism in the Preamble of the Constitution ; (iv) supremacy of Fundamental Rights over the Directive Principles ; and (v) transfer of Education from the concurrent list to the State list.

However, after the 44th Amendment, it will not be possible to declare an emergency in the event of mere 'internal disturbances' in the country. The expression 'internal disturbances' has been substituted by 'armed rebellion'. Under Article 362 of the Constitution, a proclamation of emergency can be issued only when the security of the country is threatened by an armed rebellion or war or external aggression. Internal disturbance not amounting to an armed rebellion, would not be a ground for the proclamation of emergency. Preventive detention clauses, however, remain part of the statute, although the 44th Amendment provides for some safeguards against their misuse. Article 22 restricts the maximum period to three months for which a person may be detained without obtaining the opinion of an advisory board. This maximum period is sought to be reduced to

two months. The 44th Amendment gives protection to publication of proceedings of Parliament, restore to the judiciary many a power it lost due to the 42nd Amendment. The right to property ceases to be a fundamental right and will become only a legal right. For this purpose Article 19 has been amended and Article 31 deleted. It restores the five-year term of Parliament and state legislatures, and gives back to the Supreme Court the authority to decide any matter concerning the election of the President or the Vice President. Election petitions against any Member of Parliament, even if he or she is a Minister or Prime Minister, will now go before the concerned High Court for a decision. The 39th Amendment deprived the courts the power to deal with election petitions against the President, the Vice President, the Speaker of the Lok Sabha and the Prime Minister.

In the 44th Amendment it is provided that an emergency can be proclaimed only on the basis of a written advice tendered to the President by the cabinet so as to ensure that a proclamation is issued only after due and careful consideration. As a proclamation of emergency virtually has the effect of amending the Constitution, it has been provided that it would have to be approved by both Houses of Parliament by the same majority which is necessary to amend the Constitution and such approval would have to be given within one month. Any such proclamation would be in force only for six months and can be continued only by further resolution passed by the same majority. The proclamation would also cease to be in operation if a resolution disapproving continuance of the emergency proclamation is passed by the Lok Sabha. Ten percent or more of the members of the Lok Sabha can requisition a special meeting for considering a resolution for disapproving the proclamation.

The citizens' right to life and liberty has been placed on a secure footing in that the power to suspend the right to move the court for the enforcement of a fundamental right cannot be exercised in respect of the right to life and liberty. This safeguard is intended to work as a further check against.

misuse of the emergency provisions. The right to liberty has been further strengthened by the provision that a law for preventive detention cannot authorise in any case, detention for a longer period than two months unless an advisory board has reported that there is sufficient cause for such detention. The chairman of such an advisory board will necessarily be a sitting judge of the appropriate High Court and the board will be constituted in accordance with the Chief Justice of that High Court. The provision regarding the breakdown of the constitutional machinery in the states has been amended to provide that a proclamation issued under Article 356 would be in force only for six months in the first instance. It cannot, however, exceed one year ordinarily.

Proposals to provide for a referendum in Article 368 in respect of amendments of important aspects of the Constitution to delete part XIV (A) relating to administrative tribunals and tribunals for other matters in place of High Courts, to omit Article 31 (C) in order to restore the primacy of fundamental rights over the Directive Principles of State Policy, to amend Article 366 in order to explain the significance of the expression 'Secular and Socialist' as used in the Preamble and to restore Education and Forest in the State List as it obtained before Constitution (42nd amendment) Act, were rejected by the Rajya Sabha and reapproved by the Lok Sabha before the Bill was sent to the States for ratification by their legislatures.

After the passage of the 42nd Amendment Act, the position was that fundamental rights had virtually ceased to be available to the people for challenging any arbitrary legislation. Even after the 45th Amendment Bill, the position will remain the same, unless the Supreme Court decides that the fundamental rights are a part of the structure of the Constitution and cannot be violated by any constitutional amendment. Indian Parliament has not done anything to secure the peoples' fundamental rights from encroachment either by future constitutional amendments or even by

ordinary legislation. The fundamental rights of the people can even now be curtailed or abrogated by ordinary legislation, whether by Parliament or the State legislatures. The provision of preventive detention still remains in the Constitution and even the right of the detenu to receive the grounds of his detention and to have his case examined by an advisory board can be suspended during the period of an emergency. The attempt made in the 45th Amendment Bill to define what features constituted the basic structure of the Constitution and to make these features incapable of amendment except on the sanction of a popular referendum, have now been given up.

References

1. Constituent Assembly Debates ; Vol. VII, p. 984.
2. Ibid, pp. 985-6.
3. Article 77 (2).
4. Articles 256 and 257.

General Observations

HAVING traced the evolution of Indian National Congress from its inception in 1885 till its emergence as the dominant political party in independent India, three main features come into focus : (1) from 1885 to about 1907, the objective of Congress was not independence but cooperation with the British and mild pressure on the foreign rulers to give greater political representation to Indians. In these years the Congress was under the control of Western-educated moderates ; (2) from about 1907 until the end of World War I, the Congress was split between the moderates and the more extreme and militant elements, led by Bal Gangadhar Tilak, Aurobindo Ghose, Bipin Chandra Pal and Lala Lajpat Rai. Tilak and his associates raised the cry of Swaraj and Swadeshi, advocated resistance to the British instead of cooperation with them, and took recourse to the ancient Hindu past for ideology and inspiration. The extremists introduced a new vigour in the nationalist movements, and attracted a large following, which the moderates could never manipulate. With the death of Gokhale in 1915 and of Tilak in 1920, new forces entered the Indian scene, entry of Mahatma Gandhi into the political life of the country, after a long sojourn in South Africa; (3) the beginning of Gandhian period. Under the influence of Mahatma Gandhi the Congress adopted new techniques of non-violence, non-cooperation which gave a new kind of militancy to the national movement and brought it nearer the masses. The new militancy was reflected in various civil disobedience campaigns and in the non-cooperation of the Congress with the British during the period of World War II, because the British would not grant immadia-

tely the demands for Swaraj, which by the late thirties had come to mean complete independence.

With better organisation, more widespread popular support, and the magic influence of Mahatma Gandhi, the Congress became a truly national movement. As long as it was the main organisation for independence, it could include in its rank people of very diverse backgrounds and interests, and it could function as an umbrella without serious political indigestion. There were, however, marked divergencies within the top leadership. In the Gandhian era a kind of right wing and left wing split developed. The right wing was led by more conservatively inclined Congressmen, such as Motilal Nehru and Sardar Patel, while the left wing was led by younger spokesmen of such diverse viewpoints as Subhas Chandra Bose and Jawaharlal Nehru. Above all these divergent groupings and the individuals involved was Mahatma Gandhi, a kind of super-leader who was at times not even officially a member of the Congress. But his views were *suigeneris*, not easily categorised as either left or right wing. In some respects, Gandhi was more conservative than the conservatives, and in many ways more radical than most radicals. Thus, it was not surprising that, as Robert Crane has written : "From the time of the first Civil Disobedience Campaign the internal history of the Congress was the reconciliation of a multitude of special interests and different points of view."¹

After independence the Congress had to play a very different role. It ceased to be a national movement, unifying omnibus organisation which could embrace almost any Indian who wanted his country to be free, and became, instead, a political party, which was at the same time the government of independent India and a social and propaganda agency. This inevitably meant that it could no longer command the support of many of its former followers, and that its internal divisions and factions could no longer be sublimated in the interest of the national struggle. Even after August 1947, however, it retained some of its former mystique and influence. It was still the party of Mahatma

Gandhi and of Nehru, the organisation that had led India to freedom and still tried to be all things to all men. Mahatma Gandhi suggested that since its main objective had been achieved the Congress should disband itself and reform itself into a Lok Sevak Sangh, a kind of social service organisation. He did not think that it should continue "as a propaganda vehicle and Parliamentary machine."

His advice, of course, was not followed and his assassination soon after independence, removed from the scene the most unifying influence. Many former members of the Congress left, either individually or in groups; some were expelled, or were forced out by changes in the Congress policy. With Mahatma Gandhi's death, Nehru emerged as clearly the leading figure on the stage. Only Sardar Patel, much more conservatively inclined, could hold his own with Nehru, who dominated the party, the government and Indian political life, generally. As long as Sardar Patel was alive, Nehru had a top co-worker with great administrative ability and an iron will. Although the two men disagreed on many points they complemented each other too effectively to lead to a final parting of the ways. In any event, Gandhi's death made their co-operation for the governance of the new nation all the more necessary. Since Sardar Patel's death in 1951 no one of equal stature has emerged, either to challenge or to buttress Nehru's role. The death of Nehru in 1964 was a blow to the Congress party. He had been the unquestioned leader not only of the Congress but also the nation. Referring to a suggestion that the Congress having achieved its goal, should dissolve, Nehru said: "The Congress organisation should maintain an elaborate machinery to collect statistics on matters of public interest and thus facilitate the work of the Government. The Congress must thereafter serve a two-fold purpose. Firstly, it should voice the popular will and, secondly, it should remove misunderstandings in the public mind created by interested parties."²

For sixty years Congress laboured for the freedom of India. During this long span of years its history has been

the history of the Indian people. From a small beginning, it grew into a movement carrying the message of freedom to the masses. From these masses it gained power and strength and developed into a mighty organisation. From generation to generation it dedicated itself to the sacred cause of serving the nation. By service and sacrifice it enshrined itself in the hearts of our people by its refusal to submit to any dishonour to the nation, it built up a powerful movement of resistance to foreign rule.

Freedom was won, but at what cost? The country was partitioned. Indian blood flowed incessantly for months before and after the country became free. Fratricidal war of an unprecedented nature was fought on the borders of the two States, India and Pakistan. There was a tremendous exodus of people across the new frontiers. The loss of life and property involved in these colossal migrations was incalculable. While these problems had to be faced, there was the need to build up the nation which the foreign rulers left in a state of political confusion and economic chaos. The Congress became the inheritor of all these problems. Its leaders, who became the successors of the departed Government, had to find solutions. The Congress had, therefore, to undertake the mighty task of bringing order where there was chaos, of bringing peace and security where there was danger and disturbance, and build up a nation which had been reduced to ruin by two centuries of ruthless exploitation.

As the time of independence approached there was no doubt that the new Indian state would be a democracy, in form if not in spirit. Most Indian leaders, for more than a century, had been steeped in the principles of nineteenth century liberal democracy and of twentieth-century socialist democracy. To a certain extent some of these leaders such as Subhas Chandra Bose and even Gandhiji himself looked elsewhere for the principles on which the future Indian state should be founded, but they would not fashion alternative principles which gained widespread acceptance or even understanding. Undoubtedly, Indian leaders were conditioned to favour parliamentary democracy because of their close asso-

ciations with the British who over the centuries had evolved the most successful example of this form of government.

From the British, educated Indians learned the principles of parliamentary democracy, even though in India, Britain seldom practised this or any other form of democracy. In fact, almost to the last, prominent Englishmen denied that they considered a parliamentary system either suited to or desirable for India. This was, however, not the prevailing opinion. As the date for independence approached, it was generally assumed, by both Indians and Englishmen, that India would adopt the parliamentary system, and this decision was, in a sense, made long before British and Indian spokesmen turned to the task of drafting the outlines of the new state. Since then its wisdom has seldom been seriously questioned. This is all the more remarkable since the suitability of parliamentary democracy for Asian countries is being questioned in many quarters, by the Asian leaders and by the foreign students of government alike, and since India's two largest neighbours—Burma temporarily and Pakistan for what seem to be a permanent abandonment—deliberately turned away from parliamentary democracy and announced that it is unsuited to their needs and aspirations. While Parliamentary democracy has been under attack in many quarters, and has broken down in several Asian countries, the leaders of India have repeatedly reaffirmed their dedication to it.

The next question was : What type of democratic Constitution must India have ? It had to be remembered that 'no constitution should make a sudden break with the past or ignore the special circumstances of the country'. And yet Nehru often said : "We have to discard from the past ruthlessly anything which made us backward and weak. We must learn from the Western countries what gave them their strength, discipline and scientific advancement and at all costs we must maintain secular ideals of state and work unitedly."¹ The democratic constitution best suited to India and India's aspirations had to be based on Western experience with due regard for India's past and her special needs.

Since independence was won through the struggle carried on by the Indian National Congress, this organisation had to shoulder the responsibility of running the Government of free India. Having assumed the authority and responsibility of governing the country, the Congress had to lay down a policy which should be pursued by its representatives in the government. So it rested on the Congress to define this policy. The Constituent Assembly formed at the time of the transfer of authority from the British, though it contained members from other parties and sections representing varied interests, mainly it was the Congress that had a dominating voice in framing the Constitution for new India. Naturally, the ideology of the Congress came to be reflected in the Constitution when it finally emerged. The Congress could not divest itself of the responsibility of framing a constitution which would be consistent with the pledges it had made to the people while carrying on the fight for freedom. When the people supported the Congress in its fight against the British, they did so on the basis of the promises made by the Congress. When, on this support, the Congress won freedom for the country, it could not forget promises made.

It would be profitable to recall what these promises were, to know how these were fulfilled after freedom was won and the Congress assumed power. One of the most important charters drawn up by the Congress, during the struggle for freedom, was in the nature of a resolution passed by it at the Karachi Session of the Congress in 1931. This contained a list of Fundamental Rights to which the Indian people were entitled. Apart from this, in the course of its history since Mahatma Gandhi took up the leadership of the Congress in 1921, the Congress passed resolution which contained the basic concepts which would be implemented by the Congress in running the administration of the country. These concepts include economic self sufficiency, employment for all, elimination of disparities in income, right to the tillers of soil, abolition of privilege as symbolized in the zamindari system, bringing all parts of the land under a uniform administration

by the abolition of princely states, providing equal opportunities to all without distinction of class, caste, religion or sex, providing education to all, and liquidating poverty and disease.

The Government would be run on democratic lines by establishing adult franchise and an independent Election Commission, by providing for a free press, for freedom of speech and assembly. Abolition of untouchability, progressive introduction of prohibition, institution of an independent judiciary, spread of the cooperative system, control by the state of principal means of production and regulation of the system of distribution, raising the wealth of the nation and the per capita income of the people, would all bring about social justice and the increasing welfare of the people. The Congress wanted to establish a welfare state. The assurances given by the Congress in these and other respects were inscribed in the Constitution. The Congress wanted to establish democracy and socialism in the country; or, to put it in other words, the establishment of a socialist state through a democratic apparatus.

The Congress has, besides trying to establish a democratic state, felt it necessary that to achieve this object it must weld the country into a nation. This was the more difficult aim, for, in our country we have a number of languages, a number of castes and a number of religions. Then, we have different layers of society represented by birth and economic position. These classes and communities, these religions and languages have constituted divisive forces accentuated by centuries of foreign rule. The foreign rulers were interested in encouraging these divisive, subversive, separatist forces for their own preservation.

While the freedom struggle was going on, Mahatma Gandhi attempted in a more or less successful way to weld all communities and castes and religions and a feeling of nationalism was inspired for the common purpose of achieving freedom. The emergence of a spirit of nationalism, in however mitigated a form, became an asset, on which, when

freedom was won, the Congress was enabled to build up the nation, through providing equal opportunities to all, and taking measures for bringing about social justice to all people and also by raising or working for raising the economic level of the people and assuring them that national wealth was to be shared equitably by all the people.

The socialist pattern of society which the Congress, through its Government, has been trying to establish and the feeling of participation in the Government by the people through the establishment of democratic institutions, have made it possible for a nation arising out of the welter of social confusion and outmoded concepts which we have inherited from the past. The Congress with its ideology geared to a democratic socialist state, has been working for the progress and prosperity of the people. By promoting a spirit of unity and a sense of oneness among the people and by making them realise that regional loyalties do not help them to grow or prosper in the highly technological and scientific age like the present, the Congress has been able to infuse a spirit of nationalism. The prevalence of fissiparousness is a negation of growth. The Congress has been fighting this tendency, to let the nation achieve an all round progress.

Although India has been one country, historically it may really never be one state in the accepted modern sense of the term. Only after independence for the first time we were able to bring the entire country under the unified control of one Central Government. A country of this type cannot easily be of a monolithic structure. That is why the Government of India Act of 1935 contemplated a Federal form of Government. The constitution makers took the best elements from various world constitutions and gave us a federal one because that was the only way to accommodate the diversities.

A strong Centre was a historic necessity and remains so even today. One can recall that the main problem at the time of independence was the integration of hundreds of princely states with the rest of India, and the formation of a Government whose writ would run through the entire length

and breadth of the country. The numerous princely states were adsorbed and integrated into the Union of India. This remarkable achievement within a short period of time, did credit to the Government and to the rulers of the states concerned. Similar problems in other countries had led to violent struggles and major conflicts. Here, in India, according to our own way, the great leaders solved it peacefully and amicably.

In the face of unfavourable conditions at home and abroad, India's achievements since independence have indeed been impressive. The new nation survived many crises, and the people have a developing sense of national unity and a growing confidence that their country can face with equanimity whatever vital issues may be encountered. Step by step major obstacles have been overcome and the democratic structure has been strengthened. Within two years after independence most Indian states, in or contiguous to those portions of British India which were to be a part of the Union of India, were integrated in various ways into the Union, thus averting what might have been a serious or even fatal handicap to the unity of the emerging nation.

Work begun promptly on the drafting of a constitution. After extensive discussions on the proposed draft in the Constituent Assembly and throughout the country, the constitution went into effect on 26 January 1950, and India thereupon became a republic. As soon as preparations could be made following the adoption of the constitution, India held its first nation-wide general elections in 1951-52, and thereafter the parliamentary institutions began to function on a more normal basis. The constitutional system that emerged was patterned heavily after Western, especially British models, but it has been adopted quite successfully to India's needs and environment, and the precedents that were established in the first years of democratic government augur well for the present and the future.

The Constitution commences with a declaration of fundamental rights, and directive principles of state policy. Time has shown that these rights have considerable substance. The

Right to Equality, along with Cultural and Educational Rights, have been weapons which minorities and underprivileged groups have learnt to use with effect. The 'business' part of the Constitution began by entrusting the Executive to the President and a council of ministers. The President was endowed with vast residual powers, but it was clearly intended that sovereignty should vest in Parliament. Parliament and the State Legislatures elect the President; and Parliament alone can amend the Constitution. A judiciary is established as an independent branch of government: its independence is jealously guarded; judges may be removed by an elaborate (and probably unworkable) procedure.

Underneath the central government stand the states, reproducing, in Governor-Cabinet-Legislative Assembly the pattern of President-Cabinet-Parliament. The function of the Centre and of the states are distinguished by three lists, set out in the Constitution : a Union List, a state List, and a Concurrent List of subjects for which both Parliament and State Legislatures may assume responsibility. 'The executive power of every state shall be so exercised as to ensure compliance with the laws made by the Parliament and the executive power of the Union shall extend to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose'. All this seems to afford proof that the Central Government has a reserve of power over the State.

Constitutional experts have argued that India is not a federal but a 'quasi-federal' government. When the Constituent Assembly completed its task, many members believed that they had created a centralised machine. Contrary to the tenets of Mahatma Gandhi, one member declared : The first and foremost advice which he (Gandhiji) gave...was that the constitutional structure of this country ought to be broad-based and pyramid-like. It should be built from the bottom and should taper right upto the top. . What has been done is just the reverse. Some students of government, Indian and foreign, describe India as a quasi-federal state, and some even regard it as more unitary than

federal. G N Joshi, a leading authority on the Indian Constitution, holds that "the Union is not strictly a federal polity but a quasi-federal polity with some vital and important elements of unitariness.... It is designed to work as a federal government in normal times, but as a unitary government in times of emergency."⁴

Experience since independence has given further evidence of the central role. With Jawaharlal Nehru as the unquestioned leader of the country, and with Congress Party in a virtually unchallenged position at the Centre, if less so in some of the states, the powers of the Central Government have been augmented by the extraordinary role of a single leader and a single party. Moreover, the overall initiative and control in the fields of economic planning and development, social reform, and fiscal administration, not to mention the usual dominance, of the Centre in foreign policy, defence and communications, in a state dedicated to "the socialist pattern of society" have greatly enhanced the power and prestige of the Centre. During the debates on the Draft Constitution in the Constituent Assembly, Ambedkar, who was chairman of the Drafting committee, declared that the States of the Union of India "are as sovereign in their field which is left to them by the Constitution as the Centre in the field which is assigned to it."⁵ This statement seems rather misleading, in view of the extraordinary power given to the Centre in the Constitution and the dominant role of the centre in the years since the Constitution went into effect.

The Constitution is a secular one but it respects all religions prevalent in India and gives full scope for their functioning. Every attempt must be made to ensure that these assurances are carried out and no minority is made to suffer because it is either a religious or linguistic minority. Secularism does not mean lack of faith but protection of all faiths and the encouragement of spiritual and moral values. The political revolution was largely completed on the establishment of the Republic of India. But, full achievement can only come when there is a real emotional integration of the

people of India. To that end, efforts will continue to be directed, so that the feeling of separateness, whether communal or provincial or due to caste distinctions, is ended. We realise fully the dangers of communalism and have struggled against them throughout Congress history. The recent past has demonstrated that the feeling of provincial separateness is still strong and has to be combated. Caste is an evil which has weakened our society, introduced innumerable fissiparous tendencies and resulted in the suppression and humiliation of large numbers of people. The Congress is entirely opposed to this system, as it is opposed to everything that creates divisions and inequality.

The Constitution of India has the distinction of being the most lengthy and detailed constitutional document the world has so far produced. This extraordinary bulk of the Constitution is due to several reasons : The framers sought to incorporate the accumulated experience gathered from the working of all the known constitutions and to avoid all defects and loopholes that might be anticipated in the light of those constitutions. It was also felt that the smooth working of an infant democracy might be jeopardised unless the Constitution mentioned in detail things which were left in other constitutions to ordinary legislation. The lessons drawn from the political history of India which induced the framers of the Constitution to give it a unitary bias, also prompted them to make detailed provisions "regarding the distribution of powers and functions between the Union and the States in all aspects of their administrative and other activities,"⁹ and also with regards to inter-state relations, coordination and adjudication of disputes among the states.

The Constitution ensures adaptability by prescribing a variety of modes in which its original text may be changed or supplemented. The combination of theory of 'fundamental law' and the theory of Parliamentary sovereignty is the result of the liberal philosophy of the framers of the Indian Constitution which has been so adequately expressed by Jawaharlal Nehru : "While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in cons-

tutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop the nation's growth, the growth of a living, vital, organic people . . . In any event, we could not make this. Constitution so rigid that it cannot be adopted to changing conditions. When the world is in turmoil and we are passing through a very swift period of transition, what we may not be wholly capable tomorrow."⁷

Among the top-ranking leaders of the Congress, Jawaharlal Nehru played an important role. He moved the Objectives Resolution and was the Chairman of the Union Constitution Committee. For apparently insoluble problems, he always had a way out. He moved the compromise resolution dealing with the right to property and Article 31 of the Constitution which had been the subject of a protracted debate. With this skill for finding the right word, he was often of great assistance in giving the most appropriate form to several of the Articles. Gandhi made India free from foreign rule but Nehru was the creator of India's secular Constitution and the founding father of parliamentary democracy in India. To create a genuine Parliament through a General Election by 220 million registered voters free from any occasion for serious complaint by any political party, is an impressive feat.

In forming his first Cabinet, Nehru was naturally concerned to reward the faithful stalwarts of the Congress; but he was not insensitive to the need to include other national figures, so as to give his cabinet an 'all India' flavour. Of the first cabinet, the majority belonged to the Congress old guard, but notable outsiders included the minister of Finance, John Mathai, a Christian with an academic background; Ambedker, the Untouchables' leader (Law); and Baldeo Singh (Defence), the Sikh ex-Unionist. The solitary Muslim representative was Maulana Abul Kalam Azad (Education). Nehru sought intellectual companionship among Westernised intellectuals who were associated with politics, but were not party politicians. The influence exercised by these friends was mainly intangible and indirect. They included Radha-

krishnan, the Oxford philosopher, later elected President of India, Krishna Menon and Rajkumari Amrit Kaur.

Another important influence on the Assembly was that of Sardar Vallabhbhai Patel. He was the Chairman of several important committees, such as the Fundamental Rights and Minorities Committee and the States Committee. Some of the members of the minority communities, who served on the Minorities Committee, found his appreciation of their sensibilities surprisingly acute and sympathetic. The right to propagate religion, which some members wanted to be adopted, in the form adopted, on account of Sardar Patel's keenness to leave the minorities in no doubt as to the freedom guaranteed to them. Sardar Patel was a doer, a great administrator; he made a magnificent job of the integration of more than 600 princely states with India. And the doer in him was not produced by the West but by mother India.

A great feature of the Constituent Assembly was its cosmopolitan character. Although the Congress Party could have nominated its own men to almost every seat in the Assembly and appointed only its members to the Committees, the spirit that animated them was the most generous, tolerant and high minded. "It was a unique victory which was achieved by the unique method taught by the Father of the Nation—Mahatma Gandhi—and it is up to us to preserve and protect the independence that we have won and to make it really bear fruit for the man in the street."⁸ These were the concluding words of the President of the Constituent Assembly, Rājendra Prasad, at its closing session on Saturday, 26 November 1949.

Briefly stated, the Constitution of India makes India a democratic secular state with what is essentially a parliamentary system and a federal structure. In practice, no doubt, this generalisation must be qualified in many ways. Perhaps it would be more accurate to say that in India democracy is the goal rather than the reality—in other words, that India is a democracy-in-being and that the prospects for the successful evolution of democratic institutions are still unknown. The leaders of India, and most of all Nehru

himself, were dedicated to the concept of the secular state, but there are strong communal forces in the country pulling in a different direction. Although India has essentially a parliamentary system, patterned, as Jawaharlal Nehru himself stated, 'largely after the British model, with necessary variations', some of the "variations" such as the emergency powers of the President and the role of the Supreme Court, suggest a strange blending of Parliamentary and non-parliamentary forms.

Views have been expressed by some regarding the suitability in the prevailing conditions of the Presidential system of government as it is in vogue in France. Any such proposal which would entail major amendments of the Constitution can be entertained only after deeper reflections and consideration of the various pros and cons. It also needs to be emphasised that not every encounter with a difficulty should make us think of amending the Constitution. A Constitution is different from the ordinary statutes which are designed to meet the fugitive exigencies of the hour. The statutes can be amended when the exigencies change. A Constitution states, or ought to state, not rules for the passing hour but principles for an expanding future. This does not however mean that there is something absolute about the Constitution. A Constitution is the vehicle of the life in a nation. If real and serious difficulties arise in its working the power of amendment is there to remove those difficulties.

The French System

Under the French constitution of 1958 which ushered in the Fifth Republic, the President of France acquired vast executive powers. Being elected for seven years, they were capable of giving France much greater governmental stability. At the same time France, unlike the United States, does not have purely a presidential regime, for, alongside the President of the Republic, there is also a Prime Minister and his cabinet who are responsible to the National Assembly. The National Assembly can overthrow the government but not the President.

It is not easy to give a nomenclature to the French regime. It can not be called presidential because the Government is responsible to Parliament. This is in marked contrast to the rigid separation of powers between the executive and legislative branches which are characteristics of classical presidential form of government. Yet the powerful and independent position of the President makes it difficult to call it a parliamentary regime. One of the significant features of the 1958 constitution is to greatly increase the power of the executive and to diminish the role of the Parliament. Another change is a shift within the executive towards the President.

A very radical change was brought about in the constitution under the Fifth Republic. The President of the Republic is still elected for the traditional term of seven years but it is by an enlarged electoral college. The college comprises the members of Parliament, the members of the General Councils of the Departments of France (country like local units of Government) and the Assemblies of the overseas territories. In addition, the college includes representatives from the elected municipal councils according to a complicated scale.

The French President appoints the Prime Minister and terminates his functions. On the proposal of the Prime Minister, the President appoints the other ministers of the Government. The President also presides over the meetings of the Cabinet. A very important power that is now vested in the President under Article 12 of the French constitution is that of dissolution of the Parliament which is normally elected for a period of five years. Under the French Constitution of 1958, the President is free to dissolve the National Assembly if he deems it fit except that he cannot do so within a year following the election after a dissolution. It is necessary before he dissolves the National Assembly that he must consult the Premier and the presiding officers of the two houses. The President is however not bound by their advice and is free to disregard the same.

The French President has the customary powers of appointment of high military and civilian officials. He is also

commander-in-chief of the armed forces. The President has now also a right to communicate with the two Houses of Parliament by means of messages. These messages cannot be immediately debated. The President is empowered to call Parliament into special sessions for that purpose. He is also vested with the right of pardon. Article 16 of the Constitution deals with a situation of emergency. The article provides that when the institutions of the French Republic and the independence of the nation or the integrity of its territory or the fulfilment of its international obligations are threatened in a grave and imminent manner and when the regular functioning of the constitutional authorities is interrupted, the President of the Republic shall take those measures which the circumstances demand after official consultation with the Prime Minister and the presiding officers of the Houses of Parliament as well as the Constitutional Council. Under Article 19 of the Constitution the acts of the President of the French Republic shall be countersigned by the Prime Minister and if circumstances warrant by an appropriate departmental minister. No such counter-signatures are needed when the President resorts to referendum or dissolution or adopts emergency powers. All this makes the position of the French President extremely formidable.

Under the 1958 French Constitution the President of the Republic appoints the Prime Minister and upon the latter's proposal the other members of the cabinet. No further confirmation by Parliament is required. However, the Government is responsible to Parliament and can be overthrown by a vote of censure or vote of no confidence. Sometimes the Prime Minister after deliberations by the cabinet may demand a vote of confidence from the National Assembly. If the National Assembly rejects the demand, the Government is forced to resign. The National Assembly may also take the initiative in bringing down the Government by means of a motion of censure. This, however, is not an easy affair. At least one-tenth of the members of the National Assembly must sign a motion to that effect and a vote can take place only after the lapse of 48 hours. A motion of censure is

considered passed only if an absolute majority of all the members of the Assembly vote for it. Otherwise the motion is deemed rejected. If the motion of censure is rejected, its signatories can not introduce another motion in the course of the same session.

The advantages of the Presidential system are that the Cabinet is not responsible to Parliament. The Ministers have not to look backward all the time to see what following they have and whether they are secure in their jobs. Their sole business is to attend to administration and good government. India is committed by its Constitution to have a democratic republic. A democracy can take different forms. The Founding Fathers for historical and other reasons adopted the Parliamentary form. But this is a basic feature of the Constitution. Parliament can alter it so long as democracy is not imperilled or undermined. But we have not been following the British pattern in all its features.

In Britain, Parliament is sovereign and there is no right of judicial review. The judges there can not pronounce upon the validity of any law passed by Parliament. They have to accept it and judicially interpret it and give effect to it. In India, the position is quite different. Parliament is not sovereign. The judges have the right to adjudicate upon the validity of any legislation passed by Parliament or the legislatures and set it aside if it contravenes any provision of the Constitution including Fundamental Rights. The Chapter on Fundamental Rights corresponds to the American Constitution where judges have the right to judicial review as the Indian judges. Further, certain powers are reserved to the State upon which Parliament can not impinge. Indian Constitution officially described as Union of States has marked similarities to the American constitution which is a federation. Indian Constitution is really a semi-quasi federal.

Let us compare the two systems : the British Parliamentary system and the American Presidential system. It is important to note that both are democratic constitutions. Britain is a small and united country with a strong central government.

The Prime Minister of England is much more powerful than the American President. If the Prime Minister's party is in majority he practically rules the country. Some writers have observed that, behind the facade of cabinet, the Prime Minister is all powerful with no judicial restraint and only the sobering thought of having to face the electorate at the next elections.

In America, the Constitution is one of checks and balances. The President, though not responsible to the Congress, has his powers strictly circumscribed by the constitution. Congress plays a preponderating role in the legislation and the judiciary maintain a powerful vigil over the observance of fundamental rights enshrined in the constitution. Even for any important appointment, the President has to get the clearance of the Senate, its consent and advice. The States also are most jealous of their rights and resent any encroachment by the Federal Government. The basic difference is that the President is not responsible to Congress. The members of the cabinet are not members of the Legislature and the President cannot be removed from office except at the end of his term of four years unless—which is a rare occurrence—he is impeached and removed from office. In Britain, the Cabinet is responsible to Parliament and it must have its confidence if it is to continue in office.

In India, we have the Parliamentary form of government since independence. It is important to remember that Indian National Congress ruled the whole country upto 1977. No alternative party was there to replace it. It is essential for this form of government to function to have strong opposition so that the Government is kept on its toes, knowing that the opposition party is waiting for the electorate to change it and put it in power. Now in the present Indian political system, importance of a responsible opposition is realised. Constitutional amendements have given a status and position to the leader of the opposition and also facilities on the media to express his views to the public. Independent judiciary and free press are the priceless assets, that Indian Constitution has provided. The parliamentary system seems to be getting

well set in India. The main merit of the Parliamentary system is that it provides for harmonious cooperation between the two organs of the Government which is responsible for the greater effectiveness of this system when contrasted with the presidential type prevalent in the United States.

It is not difficult to show that the Presidential form of government is less democratic, both actually and potentially, than the cabinet form of government. The instance of USA should not make us blind to that fact. If the Presidential system has succeeded in the United States, the reason is the unusually sturdy individualism of the average American citizen. The American President, moreover, has to deal with the completely short term problems of an economically developed society. Once the President is elected and installed in office he (under the Presidential system) is answerable to no one during his term of four years. He can be removed only by the cumbrous and impracticable method of impeachment. Under the American constitution, removal of the President by impeachment requires the concurrence of a two-thirds majority in the Senate. The Cabinet system, despite its defects, provided for a relatively greater answerability of those in power. The Cabinet must retain the confidence of the Legislature; not so the President.

The President, unlike a Prime Minister, is the sole repository of all the executive power of the Central Government. He does not share that power with his Cabinet colleagues. If democracy implies the diffusion and decentralisation of power, the Presidential form of government, which concentrates all executive power in the hands of one person, is relatively more undemocratic than the Cabinet system. The American Presidency has been rightly described by some writers as 'elected kingship'. Democracy is very different from kingship, elected or otherwise. Democracy abhors concentration of power.

What is most objectionable about the Presidential form of government is the motive as well as the opportunity that it would provide to a President in a developing country, like India for establishing a dictatorial regime. The motive would

be provided by the natural desire of a President to continue in power. His desire to do so would be strengthened by the nature of the problems he has to tackle. A very rosy picture can be painted about the immense improvement which would be seen in the Indian political system if we go in for the Presidential form of government. No convinced democrat should be taken in by this alluring picture, which really depicts the merits of an efficient autocracy over an immature and, therefore, inefficient democracy.

It is argued that the Parliamentary system is failing to secure in India for what it was adopted for. However, it is not being argued that a presidential system would necessarily achieve all that it may be adopted for. It is believed that India needs today is a strong executive, secure, stable, effective and responsive (if not responsible on a day-to-day basis) to public opinion. What India needs is the separation of functions if not the separation of powers. Above all, India needs coordination between the executive and the legislative organs of government.

Justice M C Mahajan, a former Chief Justice of the Supreme Court of India, is notable amongst those who advocate the American model of a Presidential system for India, while a former President of India, V V Giri, came out with a suggestion that a Presidium be elected by the Parliament to run the government. What has become very important is the issue of a proper balance between the organs of the government, especially between the judiciary and the Parliament. In this context, it needs to be considered afresh whether the phrase, enshrined in the Constitution of the United States of America, 'the due process of law', is of greater value for Indian democracy than the one that already finds place in the Constitution of India, namely, "the procedure established by law."

The constitution-framers of India maintained an absolute silence about the nature of the party system they envisaged for the country. Framers of constitutions who opt for parliamentary democracy must provide for the creation of a party system whereby the elected parliamentarians must arrange,

themselves in two sets inside the parliament. Such a political system works best through a two-party system. In her very short history of thirty years of parliamentary democracy India has had a taste of both these consequences. Between 1967 and 1972, a vast area of the country was struck by political instability, as many states did not have in their legislature a party that could command the loyalty of the majority of the legislators. India did work rather well for quite some time with parliamentary democracy through its 'Congress system'. One hopes sooner or later a two-party system will take root in India.

One may fear that a system of two parties may not help reflect the wide variety of attitudes and interests prevailing in a large country like India. Such fears can be dispelled easily. First, in a formally regulated two-party system, as happens in countries where circumstances have produced a two-party system, each of the two parties would take care to subsume within their fold all manner of interests and pressures. Secondly, it is not enough to echo interests in public forums; what is more important, indeed, is to aggregate various interests in a way that helps policy formulation in public bodies and satisfies the wide spectrum of interests and opinions among the people. Thirdly, aggregation of interests is an ineluctable democratic process and has to be undergone in any democratic society, regardless of the number of parties. In a multi-party state, where interests are not aggregated in party forms, this vital process has got to be gone through in the legislative forums.

In 1972, K Santhanam proposed some measures for the regulation of political parties : It is of the fundamental importance that some order and integrity should be imposed on political parties. The fundamental right of freedom of political organisation should not be tampered with but this does not mean that the parliament has no power to ensure that the political parties conform to simple rules of morality, honesty and efficiency. There can be no objection to registration of political parties, insistence on maintenance of member-

ship rules, and proper accounts annually audited. There should also be no objection to proper procedures of admission and dismissal of members and for setting up candidates in elections and the obligation of such candidates to be loyal to the party subject to the right of resignation from the party after proper notice and surrender of benefits secured through the party.

It is necessary to launch a new system which is suited to the changing conditions in India. The Indian political system needs a new constitution either by major modifications of the present constitution or by convening a new Constituent Assembly and producing a new framework. The new system should be more democratic, more socially purposive and more institutionalised. One of the great weaknesses of the present political system is that, below the State level, the political structure becomes more fluid. There should be directly elected council at the district level. In order to make such structure truly democratic—one in which the people can actively participate—it will be essential to split the large state into smaller States and large districts into smaller districts. Such a structure should be 'represented' at higher levels too. At all the three levels (centre, State and district) the legislatures should enjoy supremacy—not only vis-a-vis the judiciary but also vis-a-vis the executive. In order to fulfil this goal there should be decentralised character of political parties having all committees elected. It shall be most essential for this that in all the elections including the most local ones, members of only recognised political parties can participate. Political parties should work closely with a correspondingly decentralised structure of government.

A constitution, Assembly members realised, could not by itself make a new India, but they intended it to light the way. The Constitution was to foster the achievement of many goals. The Constituent Assembly was able to draft a Constitution that was both a declaration of social intent and an intricate administrative blueprint because of the extraordinary sense of unity among the members. The successful working of the Constitution has been attributed by some observers

largely or entirely to the favourable conditions that have existed from 1950 to the present day. Those who argue that certain circumstances conspired to allow the Constitution to work well are referring to India's possession at independence of the three factors necessary for the stability of a new state : a charismatic leadership, a mass party, and a well trained bureaucracy. Nehru and other leading figures, with their popularity and gift statesmanship, have given India direction, and have in themselves been a point of focus for the nation. The Constitution has worked partly because the leaders know where they were going and the mass of the people were reasonably content to follow them. The mass party, with its generally accepted set of goals, its spirit of cooperative endeavour, and its discipline—which in great part flowed from loyalty to the leaders—not only made more widespread the national sense of purpose, but held the nation together. The power and magnetism of the Congress high command, and the discipline it enforced, have assured the effective working of the federal system. The bureaucracy, both during the framing period and under the Constitution, has kept the machinery of government going.

References

1. Robert I Crane, "Leadership of the Congress Party", *Leadership and Political Institutions in India*, p. 181.
2. *The Hindu*, 14 August 1947, p. 6.
3. Speech by Pandit Nehru quoted in *Indian News Bulletin*, 20 June 1950, p. 1.
4. Joshi, G N, *The Constitution of India*, p. 32.
5. *Constituent Assembly Debates*, Vol. VIII, p. 736.
6. Prasad, Dr Rajendra, *Constituent Assembly Debates*, Vol. X, p. 891.
7. Basu, Durga Das, *Introduction to the Constitution of India*, p. 30.
8. Wasi, *President Prasad, A Biography*, p. 176.

Bibliography

ORIGINAL SOURCES

Unpublished Records :

Private Papers (Masofilms)
Dufferin Papers
Lord Curzon Papers
Hamilton Papers
Minto II Papers
Morley Papers
Gokhale Papers
Gandhi Papers
Jaikar Papers

Papers Related to Acts

Munshi Private Papers

Private Papers of Dr Rajendra Prasad

Published Original Sources :

Original Records of Government of India
Commands

Parliamentary Papers

House of Lords Debates

House of Commons Debates

Constituent Assembly Debates

Dictionary of National Biography

Year Books and Times of India Dictionary

Indian Annual Registers

Collections of the Congress Resolutions

Proceedings of the Annual Sessions of the Indian National Congress

Presidential Addresses

General Secretaries Annual Reports

Congress Bulletins

AICC Circulars

Indian Round Table Conference Proceedings

Indian Statutory Commission Report
Draft Constitution of the Union of India
The Constitution of India, 1950
White Papers on the Indian States, 1950

SECONDARY SOURCES

Books :

- Alexandrowicz, CH, **Constitutional Development in India** (Oxford University Press, 1957)
 Aiyanger, N Rajagopala, **The Government of India Act, 1935**, Madras.
 Ambedkar, BR, **Pakistan or Partition of India** (Bombay, 1946)
 Appadorai, A, **Dyarchy in Theory and Practice**.
 Ayyar. AK, **The Constitution and Fundamental Rights** (Madras, 1952)
 Azad, Maulana Abul Kalam, **India Wins Freedom** (Bombay, 1959)
 Banerjee, AC, **Indian Constitutional Documents** (Calcutta, 1961), 4 Volumes.
 —, **The Making of the Indian Constitution** (Calcutta, 1948)
 —, **The Constituent Assembly of India** (Calcutta, 1947)
 Basu, Durga Das, **Introduction to the Constitution of India**.
 —, **Commentary on the Constitution of India** (Calcutta, 1955)
 Banerjee, DN, **The Draft Constitution of India** (Calcutta, 1949)
 —, **Fundamental Rights** (Calcutta, 1962)
 Banerjee, SN, **A Nation in the Making** (London, 1925)
 Besant, AW, **The Birth of New India** (Madras, 1917)
 —, **India, Bond or Free** (Madras, 1926)
 Brecher, M, **Nehru, A Political Biography** (London 1959)
 Bose, SC, **The Indian Struggle** (Calcutta, 1948)
 Besant Annie, **How India Wrought For Freedom**.
 Chintamani, CY, **Indian Politics Since Mutiny**.
 Coupland, R, **The Constitutional Problem in India** (London, 1944)

—, **Indian Politics.**

Diwakar, RR, **Satyagraha.**

Dutta, RP, **India Today** (London, 1947)

Fisher, FB, **India's Silent Revolution.**

Fisher, L, **The Life of Mahatma Gandhi.**

Gadgil, DR, **Some Observations on the Draft Constitution** (Poona, 1948)

—, **Federating India** (Poona, 1945)

Gandhi, MK, **Communal Unity** (Ahmedabad, 1949)

—, **India of My Dreams** (Ahmedabad, 1949)

—, **Correspondence with the Governor-General.**

—, **Jinnah Talks.**

Ghosh, PC, **Indian National Congress** (Calcutta, 1960)

Gledhill, Alan, **Republic of India** (London, 1951)

—, **Fundamental Rights in India** (London, 1955)

Gopal, Ram, **The Trials of Nehru.**

Gunther, John, **Inside Asia.**

Hingorani, AT, **Mahatma Gandhi** (Karachi, 1947)

Jennings, Sir Ivor, **Some Characteristics of the Indian Constitution** (Oxford University Press, 1951)

Jinnah, MA, **Some Secret Speeches and Writings.**

Katju KN, **Joint and Separate Electorates** (Allahabad, 1932)

Keith, AB, **The Constitutional History of India** (Allahabad, 1961)

Kirpalani, JB, **Gandhian Thought** (Bombay, 1961)

Krishnamurti, YG, **Constituent Assembly and the Indian Federation.**

Latthe, AB, **Problem of Indian States** (Poona, 1936)

Linlithgow, Marquis of, **Speeches and Statements (1936-43)** (New Delhi, 1945)

Lohia, R, **Guilty Men of India's Partition** (Allahabad, 1960)

Lumby, EWR, **Transfer of Power in India** (London, 1954)

Luthera, VP, **Concept of Secular State in the Indian Constitution** (Delhi, 1958)

Mahtab, H, **The Beginning of the End** (Calcutta, 1949)

Masani, RP, **Britisa in India** Bombay, (1960)

- Mazumdar, RC, *Three Phases of Indian Struggle for Freedom* (Bharatiya Vidya Bhawan, 1963)
- McInnis, E, *Democracy and National Development in India* (Toronto, 1960)
- Menon, VP, *The Story of the Integration of the Indian States* (Calcutta, 1956)
- , *Transfer of Power in India* (Calcutta, 1957)
- Mitra, Nripendra Nath, *Indian Annual Registers*.
- Moon, P, *Divide and Quit* (London, 1961)
- Mosley, L, *The Last Days of the British Raj* (London, 1961)
- Mukherji, P, *India's Constitutional Documents, 1600-1918* (Calcutta, 1918)
- Munshi, KM, *Akhand Hindostan* (Bombay, 1942)
- , *The President Under the Indian Constitution* (Bharatiya Vidya Bhawan, 1963)
- , *National Emergency and its Problems* (Bhawan's Book University, 1964)
- , *The Indian Deadlock* (Allahabad, 1945)
- Nair, Pyarelal, *Status of Indian Princes*.
- Narayan, Jayaprakash, *Towards Struggle* (Bombay, 1946)
- Natarajan, MS, *Indian Constituent Assembly* (New Delhi, 1947)
- Nehru, JL, *Unity of India* (London, 1948)
- , *Independence and After* (New Delhi, 1950)
- , *Discovery of India* (Meridian Books, 1960)
- , *An Autobiography* (Allied Publishers, 1962)
- , *Bunch of Old Letters* (Bombay, 1960)
- , *Towards Freedom*.
- , *Glimpses of World History*.
- Pal, B, *Beginning of Freedom Movement in Modern India* (Calcutta, 1954)
- Panikkar, KM, *Relations of Indian States with the Government of India* (London, 1937)
- Pattabhi, Sifaramayya, *History of the National Movement in India* (Bombay, 1950)
- , *The History the Indian National Congress* (Bombay, 1947). 2 Volumes.

Pole, D Graham, *India in Transition* (London, 1932).

Prasad, Beni, *A Few Suggestions on the Problem of the Indian Constitution* (India Press, 1928).

Prasad, Bisheshwar, *The Origins of Provincial Autonomy* (Allahabad, 1941).

Prasad, Rajendra, *India Divided* (Bombay, 1946).

———, *Autobiography* (Bombay, 1957).

Pylee, MV, *Constitutional Government in India* (Asia Publishing House, 1960).

Raghuvanshi, VPS, *Indian National Movement and Thought* (Agra, 1957).

Rao, KV, *Parliamentary Democracy of India* (Calcutta, 1961).

Rao, MV, Ramana, *A Short History of the Indian National Congress*.

Rau, BN, *India's Constitution in the Making* (Bombay, 1961).

Rudra, AB, *The Problem of India's Constitution* (Patna, 1942).

Santhanam, K, *Union-States Relations in India* (Bombay, 1960).

Sapru, Tej Bahadur, *Indian Constitution* (Madras, 1932).

Shah, KT, *Federal Structure* (Bombay, 1938).

Shrinivas Sastri, VS, *The Future of Indian States* (Poona, 1926).

Singh, GN, *Indian States and British India* (Benaras, 1930).

———, *Landmarks in Indian National and Constitutional Development* (Delhi, 1952).

Spratt, P, *India and Constitution Making* (Calcutta, 1950).

Tarachand, *History of Freedom Movement in India* (Delhi, 1961).

Thapar, R, *India in Transition* (Bombay, 1956).

Ward, DJ, *India For the Indians* (London, 1949).

Warren, C, *Making of the Constitution* (Boston, 1937).

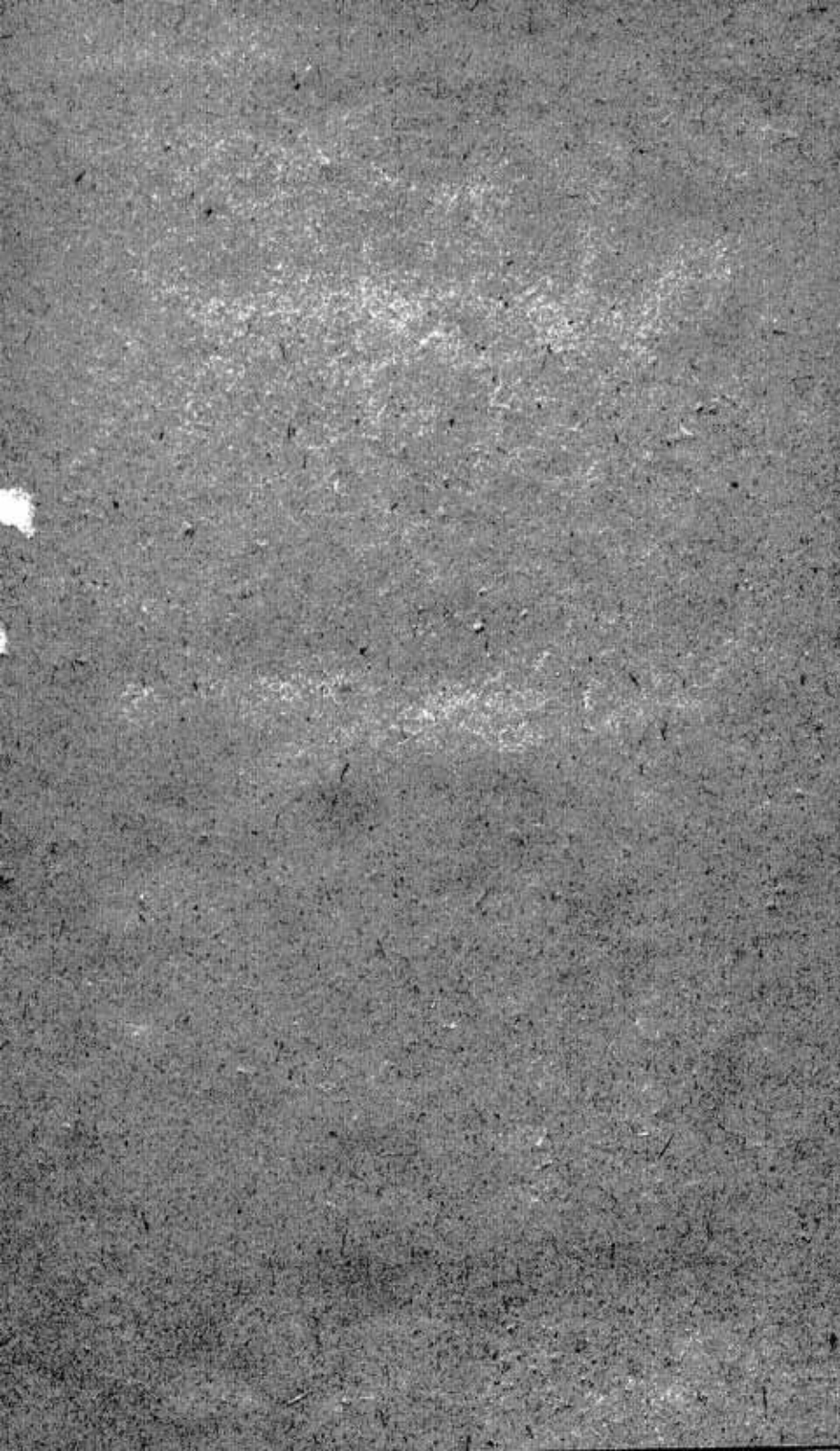
Weiner, M, *Party Politics in India* (Princeton, 1957).

Wolpert, SA, *Tilak and Gokhale* (Berkeley, 1962).

Zutsch, CN, *This is Nehru's India* (Delhi, 1958).

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