

EMERGENCE OF INDIAN FEDERATION : SOME ASPECTS

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CHAITALI MUKHERJEE

**CENTRE FOR HISTORICAL STUDIES
SCHOOL OF SOCIAL SCIENCES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI - 110 067**

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जवाहरलाल नेहरु विश्वविद्यालय
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI - 110067

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Certified that the Dissertation entitled 'Emergence of Indian Federation: Some Aspects' submitted by Chaitali Mukherjee in partial fulfilment of the requirements for the degree of Master of Philosophy of the University is, to the best of our knowledge and belief, a bonafide work and may be placed before the examiners for evaluation.

(S. Saberwal)
Chairperson

(Aditya Mukherjee)
Supervisor

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Introduction

Decentralisation of political power can occur through two ways: (a) by devolution of power, which is usually associated with a unitary government, and (b) by federalism in which power is distributed constitutionally. In the colonial period decentralisation of power occurred through the former. It was no altruistic favour of the colonial state, but it was the result of the efforts of nationalists, who were asking for greater representation in legislative councils, total self control in the local government institutions etc. Whatever decentralisation was visible in the late nineteenth and early twentieth Century, it was not true decentralisation, i.e. decentralisation of power with simultaneous democratic reforms. According to K.T. Shah, whatever decentralisation took place was for administrative convenience, rather than for any genuine feeling of devolution of power to the Indians.¹ But many feel that Montagu and Chelmsford Reforms were a watershed in decentralisation and local self government. According to Hugh Tinker.The transformation was dramatic and complete. In most provinces officials only retained control in a few backward areas or in towns with some special character... He further adds that this revolution in local government was another 'leap' in the dark.²

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1. K.T. Shah, Sixty Years of Federal Finance, 1945.
 2. Hugh Tinker, The Foundations of local Self-Government in India, Pakistan and Burma, Lalvani, 1967.

However, supposed to be decentralised local boards were not fully free of the officialdom. The non-official members were mostly nominated and did not represent, true public opinion -- that is why they failed. But according to Hugh Tinker the local authorities' comparative lack of success had been due partly to failures in British and Indian Political Leadership,¹ and partly due to certain other adverse factors which were both fortuitous and yet inescapable (such as poverty, political ferment, social flux). He further adds that one of the major reasons for failure of the local government was the Congress Party, and its activities since 1921. The non-cooperation movement adopted by the Congress disrupted the working of local services. Tinker here assumes a narrow perspective of the national movement and where he discounts the nationalist efforts to win freedom as something which was disrupting the local services. He studies local self government with in a straitjacket of ideal administration. In this process he overlooks the 'self' in local self government.

Decentralisation of power through federalism was tried once in the colonial period in 1935. The federation of 1935 Government of India Act was damned before it's birth. The Federation was condemned by the Indian nationalists, because it was highly undemocratic. It was designed with a bias for Muslim communalists and the Princely States. This was done to secure their support for the British.

1. Ibid.

Moore assumes that the 1935 Government of India Act meant that the internal sovereignty of the Princely States which was to be surrendered and they were to have subordinate status with respect to the Federal government but it was the precise reason why the nationalists were against it. As the Act meant perpetuation of the feudal control in the form of special nominations to the Princely states and also imperialist domination by creating a loyal class composed of the feudal lords and the Muslims. The Communal Award had already given the Muslims an upperhand in Muslim majority provinces, where they were surprisingly treated as minorities and were thus getting reservations.

Moore however is correct that the very creation of autonomous Muslim provinces under 1935 Act encouraged and validated the demand for separate nationhood. The Muslim League's achievement was to convert the process of provincialization into the process of separation.

This process got facilitated by indefinite postponement of national government at the centre, the removal of the Congress from competition in provincial politics (due to their resignation, because of the War crisis) and recognition of Jinnah as the Muslim spokesman on all-India problems. And this encouraged and enabled the League to capture by constitutional process all but one of the component provinces of the putative
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Pakistan.

1. R.J. Moore, The Crisis of Indian Unity 1917 - 1940, OUP.

According to Anita Inder Singh British and Congress tactics contributed to the rise of the League and the solidification of its communal support. Her claim is debatable, she feels it's the Congress refusal to admit League representatives to a share in ministerial power in UP in 1937, which caused League's determination for the separate state of Pakistan. This claim is highly questionable. Had the Congress admitted League representatives on terms set out by the League it would have meant Congress' acceptance of the Communal position of the League, and this would have further facilitated the League's communal hold over muslim politics. Her claim that British contributed to the rise of Muslim League is beyond doubt, because the mutual support system developed against the Congress by the British and the League, gave the League critical support.¹

This was done to secure their support by the British Government in order to relegate the status of Congress from it's co-equal status with colonial government in the political scenario. In theoretical terms the need of the colonial government to introduce Federation in 1935 was in order to create fragmentation in the Indian political structure against any ideal Federal Principle.

It is claimed by some that a Federal concept developed over the first half of the twentieth century and culminated into the Federal Constitution of free India. According to P.J. Thomas,

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1. R.J. Moore, Churchill, Cripps and India 1939-1945, Clarendon, 1979.
 2. Anita Inder Singh, The Origins of the Partition of India 1936-1947, OUP, 1987.

the Federal structure grew because of the political needs of those times. According to him the provinces of India were not formed on cultural or linguistic considerations, but were generally the results of military or political exigencies. And the provinces were too unwieldy to be properly administered by a single Government.¹ Where as K.T. Shah has the opinion that the historicity, the spatial patterns, the socio-economic activities practised in various regions and cultural values determined the territoriality of the provinces.² Moreover nationalists and the Colonial rulers had different objectives for establishing a federation in India. The Colonial rulers wanted a federation to keep the empire integrated and the nationalists wanted to have a federation to promote national solidarity.

There is another view that federal concept in India was not the product of a gradual process of evolution, but represented a decision which was somewhat abruptly taken as a result of the necessity of including the Indian princely states within the Indian polity. K.A. Ramasubramaniam feels that India's present federal system had its roots in the Government of India Act of 1919 and 1935. According to Ramasubramaniam India is the oldest, largest and most persistent plural society with distinct linguistic and ethnic groups within distinct territorial boundaries, there are moreover inherent centrifugal pulls in Indian life and culture and attempts to overcentralise or create

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1. P.J. Thomas, The Growth of Federal Finance in India, 1939.
 2. K.T. Shah, Federal Finance in India, op.cit.

a monolithic unitary structure is only to accentuate the process¹ of decentralisation. Similar arguments are given by Ashis Banerjee also, he holds the view that the Federal idea is an organising principle of a state, which has territorially bound diversities of population, such that the totality of the national state is in a significant sense constituted by the relationships between diversities. These relationships may be relatively simple on account of some overarching social or civilisational commonalities between these diversities prior to the formation of² the federation.

A very different viewpoint on Federalism is given by Ashis Nandy, according to him federalism is a structural and a permanent fixture in a cultural set up. It can neither be disowned nor sanctioned by a culture. Meaning thereby that culture can endorse a political culture that bends all federal structures to its purpose. Nandy focusses on (i) the nature of Indian pluralism as a distinctive component of the Indian political culture and (2) the relationship between this pluralism and the changing conceptualisation of the State in India. According to Nandy, it is a part of the modern India's political socialisation to believe that the country always had problems in³ maintaining a Central authority.

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1. K.A. Ramasubramaniam, Historical Development and Essential Features of the Federal System in N. Mukarji & B. Arora (eds), Seminar on Federation in India : Papers and Proceedings, New Delhi, 1989.
 2. Ashis Banerjee, "Federalism and Nationalism : An Attempt at Historical interpretation", in Ibid.
 3. Ashis Nandy, "Federalism the Ideology of the State and Cultural Pluralism", in Ibid.

In my opinion the federal concept rather than being a permanent fixture emerged in India partly due to the incessant demand of the nationalists for local self government & provincial autonomy and partly because, before the Federation the political structure under the British was fragmented i.e., there were Princely States, apart from the British Indian Provinces, who were to be brought under a united banner for final transfer of power, for that their identities were to be maintained and nothing but a Federation could bring that unity by striking a delicate balance between autonomy of these territories and complete integration with the sovereign national government. This was realised by the nationalists and therefore, the federation proposed in the Cabinet Mission was accepted inspite of reservations.

The object of the framers of the Constitution independent India was to build a strong centralised federation, which would be able to foster economic development and social justice. According to Rudolph and Rudolph,¹ Liberal theory of the State became the principal ideological determinant of the Constitution of 1950. It drew on both domestic and international-examples. The Liberal State created at independence was not merely the result of four years of deliberation in the Constituent Assembly or the political legacy of four decades of gradual parliamentary growth. Rather according to them the historical circumstances

1. L.I. Rudolph & S.H. Rudolph, In pursuit of Lakshmi : The Political Economy of the Indian State, Chicago University Press, 1987.

and accidents made Nehru the principal founder of the State which enabled him to shape its conventions also and play an important part in determining its character. It was the liberal State of the nationalists and Gandhi's Commitment to right means that became Nehru's option. He shaped the liberal state in ways that accomodated it to the 1950 Constitution's new commitments to universal adult sufferage, a federal system, and socialist objective. Nehru and his colleagues preferred the Liberal state to the untried and utopian Hindu or administrative State alternatives advocated by leaders of minority factions in the Constituent Assembly.

Though Rudolph and Rudolph give full credit to Nehru in shaping up the federal Constitution, Granville Austin holds the view that because of the majority of the Congress in the Constituent Assembly the Euro-American framework of a parliamentary Constitution was adopted.¹ He also points out how Nehru was opposed to the ideas of Gandhi regarding the future Constitution, while Gandhi was for an indigenious model of Constitution, Nehru and his supporters in the Constituent Assembly adopted the Western Parliamentary form of Government. Once, Nehru wrote to Gandhi that if India was to be independent in the real sense and if it had to face foreign aggressions and it was to be technically advanced,² it was only possible under a centralised form of government.

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1. Granville Austin, the Indian constitution : Cornerstone of a Nation, Clarendon Press, Oxford, 1966.
 2. Ibid.

Ashis Banerjee however feels that with the withdrawal of the Muslim League from Constituent Assembly proceedings and the declaration of Pakistan's formation, things swung in a totally reverse direction from what was conceived in the 'Objectives Resolution'. It was earlier envisaged that a Federal System with strong states and a weak centre would be established but because of Partition the Federal idea was underplayed.

In the post independence period the study of federation has been limited to various aspects of Centre-State relationships. The most problematic aspect of the Centre-State relations is the fiscal relation between the Centre and the Constituent subordinate bodies in the federation. The problem has been detected, because it is seen that in spite of impressive record of resource mobilisation largely through indirect taxation and transfer of savings from the household sector, the bulk of the resources have been frittered away in current expenditures.

According to Pranab Mukherjee the Union collects taxes not only for itself but also collects for the States and this devolution of resources constitutes the backbone of Union State fiscal relations. He feels that magnitude of transfers from centre to the states have increased over the years through the agencies of the Finance Commission and the Planning Commission.¹

He however adds that the disparity between responsibility and resource position of the Centre and the States is immaterial,

1. Pranab Mukherjee, Beyond Survival, Vikas, 1984.

when flow of funds is towards national priorities. Also according to him whatever financial indiscipline takes place, its because of mismanagement of economies in the various States. In this situation it is clear that Pranab Mukherjee works with in a Centralist paradigm.

I.S. Gulati however projects another strand of ideology upon this issue, according to him centre - state fiscal relations in the post independence period has become such that centre's hold over states has increased progressively overtime. This has given rise to over-centralisation. Over-centralisation, according to Gulati gives rise to inequitable distributions of resources, as in recent years the states with relatively high per-capita income had substantial surpluses in the revenue account where as remaining states with zero or negligible surplus had to be content with the extent of resource transfer they could mobilize through Planning Commission. Therefore he refutes the justification that centralisation of resources in the hands of centre can see to it that in the inter-state distribution of resource transfers equity is ensured.

The conventional wisdom which comes out of the various studies upon this aspect of federation is that the more provincial governments are dependent on Central financial allocations, the more centralised the whole system is bound to become. Accountability of local governments to their electorates

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1. I.S. Gulati, "The Indian Federal Fiscal Model : A Case of Increasing Centralisation", Social Scientist, 1988.

is there by undermined since locally elected representatives no longer control the spending for which they are ultimately held responsible through the ballot box. Although seemingly a common sense view, this interpretation of the impact of the financial arrangements on inter governmental relations and levels of centralisation hardly does justice to the complexity of the problem.

A very different view point regarding the investments of these funds which are given by Centre to the States is taken up by Pranab Bardhan. He holds the view that the increasing gap between public expenditure and expected returns ^(is) due to inadequate administrative infrastructure in face of diverse needs in scattered remote regions. He believes that all this is due to the nature of state in India, which can be influenced by Dominant proprietary classes. These economic classes try to run the system advantageously for their specific gains.

Bardhan agrees that state power in post-independence period has tremendously increased but he feels that State has been constrained in its policy implementation by the proprietary classes.

Thus, the Federation in post-independence period is faced with pressures of the sub-national institutions, local and regional interests. Under these pressures the federation either centralises or decentralises. It centralises when it wants to implement certain policies independently and decentralises when it wants to placate a certain group or region. In other words it

depends upon complex set of historical, ideological and political forces.

This work attempts to study the evolution of the Indian Federation through different stages over a broad period of 1857 to 1949 and also link up the study with much more contemporary aspect of Federation, i.e., the fiscal relations between the Centre and the states in post-independence period. In the pre-independence period my focus will be to examine the various positions taken by the colonial state, the Indian nationalists and the communal forces during each stage. And how the various political strands changed their positions, in each stage.

Chapter I, traces the gradual growth of representative institutions in the colonial state, that too in response to the nationalist pressures. Also all the measures of decentralisation taken up by the colonial state is examined carefully during the period 1857 to 1947 so that the intentions of the British become evident with regard to increasing demand for local self government and representative institutions.

Chapter II, makes an attempt to study the political situation with reference to the demand of the nationalists for a new constitution. The emergence of federation, some say, was possible under the 1935 Government of India Act, but, the federation which was actually proposed was criticised and remained unacceptable by most of the political strands in India. Thus, the focus will be on the proposed federation and the negative response of the polity.

The evolution of the federal system is discussed in Chapter III and consequently the demand for Constituent Assembly is further analysed. The nationalists succeed in convening the Constituent Assembly which was to draft the new Federal Constitution. The controversies prevailing in the Assembly regarding the nature of the new Constitution are also presented in the Chapter.

Chapter IV examines the financial aspect of the Federation in the post-independence period. The aim in the study is to discuss the factors which are causing tensions between the centre and the states. The study makes a departure from the existing liberative finding in out why the Finance Commission, a constitutional body failed to allocate resources equitably? Many Scholars have attempted to analyse the problems of inequitable distribution of resources, but they detect the problem in too much centralisation and interference from the centre through the Planning Commission, while the Finance Commission a source of unbiased constitutional transfers is sidelined. Some studies detect the problem of resources in financial mismanagement by the states and not due to Centre's interference. This study opens that even the Finance Commission have failed to allocate resources equitably, because they have technical faults in their methods of allocation. Moreover the interference of Planning Commission also brings in bias in allocation of resources, as vested interest groups manage to influence the Centre's discretion.

Chapter I

Struggle for Representative Institutions and Democratic Decentralisation

Introduction of Representative Institutions

The great Revolt induced the British to give more attention to Indian affairs. The surprise attack by the Indians made the British feel that their territorial expansions, subjugation of Indian Princes on flimsy grounds would have to stop. The Queen's Proclamation to the Princes, Chiefs and people of India on 1st November, 1858 made an announcement:

..... we desire no extension of our present territorial possessions; while we will permit no aggression upon our dominions or our rights to be attempted with impunity, we shall sanction no encroachment on those of others.....¹

The proclamation had placatory tones, it assured that Indians would be freely and impartially admitted to Offices of British service if they were qualified by their education, ability and integrity. However, the concessions announced were nowhere near to what the Indians were expecting.

In the same year of Proclamation, Hindoo Patriot was making a demand for an Indian Parliament. It said "A nation ought not to forfeit what they can demand as right and depend for the

1. Desika Char, (Ed) Readings in Indian Constitutional History of India, 1757-1947, Select Documents, OUP, 1983, p.300.

highest end of national existence upon the casual, fitful voluntary benevolence of a few philanthropic members of Parliament, who occasionally drop one or two words of sympathy for the Indians from the same motive that they at times send orphan Asylums donations... The grievances of India, with every class of her population unrepresented may easily be imagined...

The alternative suggested to the above situation by Hindoo Patriot was creation of Parliaments in each of the Presidencies in India. It felt that entry into the legislative council was too modest a goal of those who were agitating for it. It emphasised that what India needed was not the introduction of a small independent element in the existing unrepresentative Council but an Indian Parliament. The demand for a Parliament was bold and aggressive but perhaps too premature, considering the concessions which the British were prepared to give.

The Indians till date had no representation in the Legislative Council: wherefrom to exhibit their aspirations. Sir Bartle Frere wrote in his Minute of 1860, regarding the lack of information about the Indian psyche and their aspirations. He wrote, "the perilous experiment of continuing to legislate for millions with few means of knowing except by rebellion whether the laws suit them or not". In the wake of this realisation that Indian opinion was important for Indian policy making and

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1. Sengupta (Ed), Writings of Hurish Chunder Mooukerji, pp.214-5.
 2. Ibid.
 3. J. Martineau, The Life and Correspondence of Sir Bartle Frere, pp. 373-374.

Indian counsel was needed in day to day administration, the 1861 Indian Councils Act was initiated. The Act introduced certain changes in the Viceroy's Executive Council. The appointment of non officials, i.e., members chosen from outside the ranks of civil service, helped to appoint a few Indian members, though they were either Princes or big zamindars. The ex-officio and the official members were too powerful and were in majority. Thus, the part of non officials was insignificant. The non official Indian members also most of the time did not understand people's problems as they were not elected but nominated by the Governors. Their powers were moreover purely legislative, the crucial conduct of administration or finance remained in the executive control of the wholly official Governor General's Executive Council.¹

The basic idea behind the Council act was evidently to provide convenience in administration without divulging any political power to the Indians. It was a measure to gain confidence of the 'Liberal Indians'. There was no desire as such to truly develop a representative government and devolve power to the Indians. With the Councils Act of 1861, various other reforms in subsequent years were introduced in order to decentralise the administration, which was getting excessively centralised and thereby 'counter productive for the Imperial State. The centralised financial structure was to be

1. R. Coupland, The Indian Problem, 1833-1935, OUP, 1942, p.21.

decentralised for lessening responsibility from the over-burdened centre.

Reforms in the Financial Sphere:

Readjustment in the financial sphere after 1857 had become necessary, as for the previous eighteen years the budget showed a deficit. It was not just the shock of 1857 but the numerous Wars in which the Imperial Government was engaged that pressed Government of India's finances. Also after the transfer of the Government of India to the British crown in 1858, the tendency to centralisation began to stiffen.¹ The spread of railways and telegraph helped to make the power of the Central Government more rigid and more direct. After a century of financial mismanagement, the Imperial Government were in the years immediately following the transfer, anxious for economy and retrenchment. This necessity compelled them to devise means of inducing a degree of responsibility in the provincial authorities, and a measure of economy in their expenditure, which was since 1833, progressively lacking.²

The Imperial authorities were made to realise by the force of circumstances, their own inability at once to control and carry out works of material benefit to the country, and also to keep provincial authority with certain specified amounts for expenditure in provincial administration. Lord Mayo, in a

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1. Bisheshwar Prasad, The Origins of Provincial Autonomy, 1941, p.81.
 2. K.T. Shah, Federal Finance in India, p.86.

Government of India Resolution of 14th December, 1870, first outlined the principles of a scheme of financial decentralisation.¹ A number of minor departments of administration - like Jails, Registration, Police, Education, Medical were shifted to the provincial governments and a lump sum grant of Rs.4,68,87,110 was assigned to the provinces for expenditure on the same. The amount was distributed among the provinces by the Government of India. The receipts from the above mentioned departments along with the grants were given to the provinces. If this did not suffice for the needs of any of the provinces, then they were supposed to depend on their own resources. This was rather a measure of administrative convenience than an index of a political reconstruction.²

The reforms introduced by Lord Mayo suffered from the defect that the subjects in which the Provinces were given a financial interest were relatively few and that the local Governments had no interest in developing the revenues raised through their agency. Thus, in 1877-79 the Government of Lord Lytton made a material alteration in the terms of the financial settlements.³ The new settlements made, gave the Provincial Governments financial responsibility in regard to other heads of expenditure, assigning to them the financial control of services connected with general administration, land revenue, excise, stamp, law and justice and at the same time gave them, generally speaking the

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1. Ibid.
 2. Ibid.
 3. Royal Commission on Decentralisation, 1909. Introduction, GOI.

revenues raised from law and justice, excise stamps, and license (income) tax. But any increase over the revenues as they stood at the time of the assignment was to be shared with the Government of India, who were also to bear a share of any decrease. The local Governments were still, however not interested in the development of any revenues other than those covered by the assigned heads, which were far from sufficient to meet their liabilities, with the result that their income had to be largely supplemented by fixed grants.¹

In 1882, Major Baring and later Lord Cromer, members of Ripon's government abolished the system of fixed lump sum grant for the provinces introduced by Lord Mayo. All the income of the specified departments were given to the provinces. Forests and Registration instead of being wholly provincial, were divided for the most part equally between the provinces and the Government of India. The balance for provinces was made up by a fixed share of the land Revenue. The total provincial resources under the quinquennial contract of 1882-83 were made up of the following noted items:

| Revenue from | Amount (in Rs.) |
|---|-----------------|
| Wholly provincial heads | 4,000,000 |
| Divided heads | 8,009,000 |
| Varying proportion of certain other heads | 23,000,000 |
| Nominal from others | 7,000,000 |
| Total of all Provinces | 42,000,000 |

1. Ibid.

Taking the rupee at 1s8d this represented over 50 crores of revenues, in which the province were given an interest. The only contingencies which could at all unsettle this were war and ¹ famine.

In the remaining years of the nineteenth century the dominating circumstances in Indian finance was the falling exchange value of the rupee. But the reforms in financial sphere were overwhelmed by the excuse of the Government of India regarding rising exchange rate and famine. The stabilisation of Exchange (1899), and Systemisation of the policy in regard to Famine (1901-1902), are supposed to have strengthened the ² Provinces financially, in face of the growing imperial expenditure. But the theme of administrative convenience remained, there was no thought of a radical change in the constitution on federal lines. The Government of India were absolute masters of the situation; they varied and reformed the contracts at their discretion, or for their convenience. They insisted on the maintenance of minimum favourable credit balances in the budget account ostensibly to guard against political extravagance. But when the need arose they confiscated these balances. The needs of the provinces for material development, social reform, educational progress never could be a priority for the Government of India and its requirements. For military extravagance or exchange losses the burden of Government of India

1. K.T. Shah, op.cit., p.91.

2. Ibid., p.94.

was appropriated from the Provinces. While Provincial expenditure had to be rigorously kept down, the Imperial expenditure went on steadily increasing on every available pretence of war, Famine, Exchange, etc.

Decentralisation and local self governments:

Simultaneously with the adjustments and reforms in the financial sector at the provincial level a few reforms were introduced in the local governments also. Efforts were made by Lord Mayo in 1873 to establish rural committees for local subjects such as sanitation, medical relief and education. It was felt that these subjects should be developed through local governments. Funds for local bodies came from local taxation like cesses to land revenue for rural areas. For the first time a few steps were taken towards the development of the Rural Boards, though the Rural Committees thus established were still far from being democratic and effective, being controlled and conducted by Government officials.¹

The transfer of the Government of India to the British crown in 1858, brought the past experience of financial mismanagement in full view.² The increasing conflict for the share of resources by the provinces with the centre were the causes of financial decentralisation. The Mayo scheme of provincial finance was a step towards decentralisation not based on any considered principle of division or co-ordination but was a

- 1. Ibid, p.90.
2. Ibid.

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measure to tide over the financial crisis at that juncture of time. This decentralisation was just for administrative convenience in the sense that provinces got the right to raise their own resources, i.e., the right to collect taxes; but simultaneously their power did not increase and they were as inequipped as they were before. In a way a superficial reform from above was what that was introduced in the Mayo scheme.

The grants from the central authority stopped and the provinces in their inadequacy to meet their costs had to levy fresh taxation, thus introducing an oppressive tax structure. The income from fresh taxes were still too meagre to meet their needs.

In 1882, a step towards local self-government was introduced by Lord Ripon's Resolution. The Consultative Committees so far established to advise and assist the district officers were to be abolished. Directions were given to set up Rural Boards, with small areas as units of territories to be administered by each with the proviso that common matters were to be decided at periodical District Councils to which each Local Board would send delegates. As alternative it was suggested that District Boards be set up with controlling power over the local Boards. The area of jurisdiction for each Board was to be so small as to admit both local knowledge and interest.

In these Boards the official element was to be in a large majority, the official exceeding 1/2 of the total. The system of elections was to be introduced wherever possible, and the non-

official members were to hold office for not more than two years. The Government's control over these boards were limited to check the acts of these local bodies.

But these Local Boards were guided by the official authority at the district headquarters, with the result that strong powers were still retained by this authority. These bodies had no adequate funds at their disposal, nor did they make their own efforts to raise income. A quarter part of their income came from the local cesses which were realised by government officials, while the rest of it came from other sources at their disposal such as the falls, public ferries and cattle-ponds. The income from these could be increased by their own efforts. No such efforts were made. Nor did the Chairmanship of these Boards actually fall in the hands of the Indians.

Between Ripon and Morley none took any initiative regarding the reforms for local self government. Morley appointed the Decentralisation Commission which gave its report in 1909. The Commission introduced a sort of representative government in the Provinces where non-official membership was supposed to be in majority and which was supposed to have an influence in the Provincial Legislation. The Executive Councils could now discuss both administrative and Financial issues of the Government. But there were serious limitations on the Provinces. In the Decentralisation Commission it was specified.

It is essential to remember that the mutual relations of the Indian Governments are not those of states or colonies

voluntarily associated in federal system, where a written constitution is necessary to presume original rights of the contracting parties. In India the Provincial Governments are, and should remain, subject to general control of the Government of India in all respects, and their functions and powers should be available by the Central Government or by Secretary of State as circumstances require.¹

According to the Commission the difficulties² in further decentralisation were (1) The interest taken by Parliament in the details of the Indian administration, which necessarily had a tendency to have a close check over the actions of local Governments and of the Government of India itself, led to over-centralisation. (2) Another reason was, that there was no independent body in India which possessed the power of checking or sanctioning the expenditure of the Imperial and Local Governments. The Legislative Councils could only discuss in general terms, the budgets and the policy underlying them. (3) Also there were suggestions by prominent non-official witnesses that decentralisation was only acceptable if and only if they were based on popular opinion. On this issue Gokhale emphasising³ democratic reforms with decentralisation said :

... I am strongly opposed to the present system of excessive centralisation of authority in the hands of the Government

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1. Report of the Royal Commission Op.cit., paras - 45-64.
 2. Ibid.
 3. D.G. Karve and D.V. Ambedkar, Gokhale, Vol.II, p.252 (Written Statement submitted to the Royal Commission on Decentralisation).

of India, but I should be more strongly opposed to any scheme of decentralisation which, while it freed the Provincial Governments from a large part of the control exercised at present by the supreme Government, substituted nothing in place of the control so removed. But even more the official control, imperfectly exercised from a long distance is better than no control, and I certainly have no wish to see "petty despotisms" pure and simple, set up in place of the present Provincial Governments... The Provincial officials have indeed on their side the advantage of a more intimate knowledge of local conditions and local needs, but the officials of Government of India may claim a much greater freedom from local prejudices and local prepossessions and a wider outlook, and these are qualities which are of great importance in a country governed as India at present is... It may be argued that if the seat of final authority is in the Province itself, Provincial public opinion has a better chance of influencing the course of administration. But the tendency to resent criticism, which goes with all absolute power, is bound often to import on the official side an amount of feeling which cannot fail to neutralize the strength and usefulness of public opinion.

But Gokhale though believed in democratic reforms with decentralisation, he was not against establishment of Local

Boards and Municipal as totally non-official bodies. He believed that if it could be done, it will (self-government) touch¹ intimately the interests of the mass of the people.

(4) For General efficiency also it was felt that the control of Government of India was to be exercised on the Provincial Governments.

The four important reasons out of many explained by the Commission regarding difficulties in decentralisation were in British perspective, the obstacles. But in Indian perspective, what was important was democratisation with decentralisation. Gokhale, honoured member of the Indian side always emphasised the importance of public opinion. Decentralisation could be fruitful only if it was coupled with removal of officials from the Council with substitution of non official elected members. Thus, Indian perspective of decentralisation meant political power to the Indians at lower levels and in British perspective it meant devolution of power to the officials at lower levels for administrative and financial convenience.

Congress and the political reforms:

The Congress demand for political reforms dates back to its inception. A year after the foundation of Congress in 1886 Surendranath Banerjee demanded self-government, he felt that

1. Proceedings of the Indian Legislative Council, Vol.XIV (1906-7) Speech on Annual Financial Statement pp.165-166.

every nation should arbiter its own destiny¹. Regarding the Indian situation he said,

... We are passing through a period of probation and a period of trial under the auspices of one of the most freedom loving nations in the world. And we claim that the period of probation may now fairly terminate...²

He felt that local self government was successful at least in his own province, he likened the age old Panchyat system with the local self government and said that its graven on the hearts of the people of India. Thus, he demanded a fair representation of Indians in the reconstituted councils. This in his opinion was to be a question of association of the people, in a partial and modified form, in the government of the country.³

On these lines, the Congress resolved and perfected a plan for the reconstitution of the Legislative Councils. It resolved that (1) the number of persons composing the Legislative Councils, both provincial and of the Governor-General, to be materially increased. Not less than one-half the members of such enlarged councils were to be elected. Not more than one-fourth were to be official or non-official nominated by Government. (2) The right to elect members to the Provincial Councils was to be conferred only on those classes and members of the community prima facie capable of exercising it wisely and

1. Report of the Second Session of INC, 30th December, 1886, pp.98-100 (Speech while moving a resolution on Constitutional Reforms).

2. Ibid.

3. Ibid.

independently...Whatever system was to be adopted...care was to be taken that all sections of the community and all great interests, are adequately represented.

The action plan of the Congress in this period was to govern India in the interests of the Indians themselves. This was something similar to what existed in the self-governing Colonies of the British Empire. Gokhale argued once, since the destinies of England and India were linked, the Congress must seek any constitutional advance within the empire. And moreover that advance could only be gradual as at each stage a brief course of apprenticeship was to be passed before going to the next one. Because he felt that appropriation of Western political institutions by Eastern people was only possible through practical training and experience.¹

The demand was similar to that of self-governing British Colonies which wanted immediate reform in the Legislative Councils. The response to this by the liberal Government of Britain was the formation of the team of Lord Morley the Secretary of state and Lord Minto the Viceroy to reconsider the Indian Constitution. The reforms suggested by Morley-Minto were incorporated in the Indian Councils Act of 1909.

The reforms suggested enlargement of the Councils and higher induction of non official members. But actually due to

1. G.A. Natesan, Indian National Congress, Madras, 1917, pp.810-12 (Presidential Address of the INC at Banaras).

the introduction of separate electorates the proposed Mahomedan representation in proportion to general non official members increased. Gokhale expressing his dissatisfaction over the reforms said that Mahomedan representation in the Viceroy's councils was excessive and was monstrously unjust¹. This enabled a much less eligible Mahomedan to cast vote in election in comparison to a Hindu or a Parsee. The reforms of the Councils Act also arranged the representation so as to neutralise the non-official majorities that had been created in the provincial majority over the years. The arrangement in Bombay for example neutralised the effectiveness of non-official members, as out of the 28 non-official members seven were nominated, seven were to be Mahomedans, 2 Europeans representing the Chambers of Commerce of Bombay and Karachi, 2 landlords, thus, rendering 18 men out of 28 unjustly elevated as Council members².

Thus, the Morley-Minto Reforms failed to satisfy the aspirations of Indians. The elective principle was adopted conceding finally to the Moderate demand but at the same time anti-democratic communal representation was introduced, which was to have a long term effect on the political scenario of India.

The Congress stepped up its activities, the Karachi Session of 1913 was highlighted with the demand for reform in the Secretary of State's Council. By 1916 Congress was declaring India's

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1. Gokhale Collection, Vol.203, Part II, No.159 (Letter to Sir William Wedderburn, 3, December, 1909).
 2. Ibid.

desire to cease being a dependency and its desire to be raised to the status of a self governing state as an equal partner with equal rights and responsibilities as an independent unit of the Empire ¹.

Another change in the constitutional front was the Montagu Chelmsford Report which reflected the British interest to decentralise only for administrative convenience gave a four formula constitutional advancement on 22 April 1918 ². The four formulae were as follows:

1) There was to be, as far as possible, complete popular control in local bodies and the largest possible independence for them of outside control.

2) The Provinces were the domain in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given immediately which would culminate in giving complete responsibility to them in suitable conditions...

3) The Government of India must remain wholly responsible to Parliament and having such responsibility, its authority in essential matters must remain indisputable, pending experience of the effect of the changes now to be introduced in the provinces. In the meantime the Indian Legislative Council should be enlarged

1. P.B. Sitaramayya, History of Indian National Congress, pp.23-24.
2. Report on Indian Constitutional Reforms, 1918, para-191.

and made more representative and its opportunities of influencing Government was to be increased.

4) In proportion as the foregoing changes take effect, the control of Parliament and the Secretary of State over the Government of India and Provincial Governments must be relaxed. Thus, these reforms envisaged an enlargement of the Councils and further devolution of powers from the centre to the Provinces. The problem of responsible government was attempted to be solved by dividing the field of the government, in a form of Dyarchy. The Report recommended that certain subjects of administration in each province should be transferred to the control of 'Minister' chosen from and responsible to the majority in the council. The other remaining subjects were to be reserved for the Governor. To safeguard the discharge of his duties in his 'reserved' field he was to be empowered to enact any bill, including a money-bill¹ over the head of the Legislative Council .

The Indian opinion on the Report was not welcoming. It was felt by leading Indian figures that the reforms were no good:²
On 18th July 1918, Gandhiji, regarding the reforms, said:

... I would, therefore, for instance ask for the rejection
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of the doctrine of compartments . I very much fear that the dual system in the Provinces will be total to the success of the experiment and as it may be only the success of the experiment that can take us to the next and, I hope, the

1. Report on Indian Constitutional Reforms, 1981 Para - 191.

2. Ibid.

* Dual Government suggested in the Reforms.

final stage... One cannot help noticing an unfortunate suspicion of our intentions regarding the purely British as distinguished from purely Indian interests. Hence, there is to be seen in the scheme elaborate reservations on behalf of these interest. I think that, more than anything else, it is necessary to have an honest, frank and straightforward understanding about these interests, and for me personally this is of much greater importance than any legislative feat that British talent may be capable of performing...

... No scheme of reform can possibly benefit India that does not recognise that the present administration is top-heavy and ruinously expensive, and for me even law, order and good government would be too dearly purchased if the price to be paid for it is to be the grinding poverty of the masses. The watchword of our reformed councils will have to be, not the increase of taxation for the growing needs of the growing country, but a decrease of financial burdens that are sapping the foundation itself of organic growth. If this fundamental fact is recognised, there need be no suspicion of our motives, and I think I am perfectly safe in that in every other respect, British interest will be as secure in Indian hands as they are in their own.

Thus, before acceptance of any reform Gandhiji wanted that the idea of conquest and the primacy of British commercial interest was to be given up. Jinnah, voicing his

dissatisfaction pointed out the inequality in reforms regarding the Centre and the Provinces, He said,¹

... I do not accept the proposition that in order to achieve progressive realisation of responsible government, you must confine the advance such as is foreshadowed to the Provinces... why must you confine it to the Provincial, and why should the Government of India be ~~left~~ untouched?

... You leave the Government of India in this position. That we the elected Members in the Government of India shall have nothing else but opportunities of influencing the Government since 1892; we have been influencing the Government since 1909 (Minto-Morley Reforms), and you are leaving us practically in the same position and at the same stage as we have been in ever since 1892.

Despite the differences in outlook regarding the Reforms, there was a promise of a new start unto the next stage or the final stage of self-government. Congress despite its categorical rejection of the proposals, accepted the scheme in its outline and urged modifications and improvements consistent with the outline, which in its opinion was absolutely necessary to make it a substantial step towards responsible government in India, both in Central and Provincial governments.² The All India Muslim League also adopted the same view. Many prominent public men

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1. Ibid, (Jinnah's Speech in the Legislative Council on 7th September, 1918).
 2. Address by Pandit Madan Mohan Malviya, Congress Presidential Addresses 1911-34, pp. 394-6.

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also agreed to the proposals of Congress and the League . Thus, it was clear that Indian public opinion was unanimous in urging that the principle of responsible government should be introduced in the Government of India simultaneously with similar reforms in the Provinces.

The Montagu-Chelmsford Reforms became the basis of the 1919 Government of India Act. The existing division of the functions were not substantially altered, rather it was clarified and confirmed². The Act concerned mostly the Provinces. The Governor in the Provincial administration became important; though he was supposed to accept the advise of his minister, he could easily veto any bill that was passed. In case of any financial measure the Governor had the last say. He could also, any time dissolve the legislature, or anytime extend for one year its statutory life of three years; inspite of the various intended reforms the Act made sure that actual power rested with the Governors rather than the Councils. The Governor was only answerable to the Secretary of state, thus, actual decentralisation of power never took place, the administration of the Provinces rather went into the hands of the crown and the British Parliament³.

In 1920 Gandhiji started the historic Non-Cooperation Movement. The main grievances on which this movement was started

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1. Ibid.
 2. Government of India Act, 1919, Recommendations.
 3. Meston Committee Proposals, quoted in Indian Statutory Commission Report, Vol. II, (Recommendations), 1930.

were the Turkish Peace Treaty and the Jallianwalla Bagh massacre. In his plea to boycott the Reformed Councils Gandhiji¹ said :

I must confess that I have not heard a single argument in favour of going to Councils... I have found, and it is a practical maxim adopted in English public life, that every institution thrives on obstruction. When we seek elections to Councils, I assure you that Government will not be pleased to see Nationalists outside the Councils...

What do these Councils mean? A simple test I venture to present to you and the leaders is that these wrongs that we are come to consider are the Khilafat and Punjab. Do you believe that by going to the Council and engaging in debates there, you can produce a direct impression upon British Ministers and secure a revision of the Turkish terms and repentance on account of the Punjab affair?

... It will mean that non-cooperation must commence at the top, viz., in a body miscalled representative body, namely the reformed Council and, if the best mind of the country refuses to associate with Government, I promise that, that Government's eyes will be opened.

1. The Collected Works of Mahatma Gandhi, Vol.XVI, Delhi, 1965, p. 366 (This is an extract from Gandhiji's Speech at the Amritsar Session of the INC, September 8, 1920).

The Congress Resolution while launching the non-cooperation movement on 8th Sept 1920 criticised the British stance on Turkey and the Jallianwalla Bagh massacre. It was made aggressively clear that there could be no contenment in India without redress of the two aforementioned wrongs and that the only effectual means to vindicate national honour and to prevent a repitition of similar, wrongs in future was the establishment of Swarajya. The Resolution further added that there was no course left open for the people of India but to approve of and adopt the policy of progressive, non-violent non-cooperation inaugurated by Mr. Gandhi until the said wrongs were righted and Swarajya was established. Congress resolved to boycott the reformed Councils as long as they did not mend their manner suitable to the attainment of Swaraj¹.

The Swarajists and the Constitutional Reforms:

In 1920 Gandhi's programme of non-violent non-cooperation was approved by the Calcutta Congress, but the stiffest opposition came on the issue of the boycott of legislatures. The reasons were not new, for the leaders of the Indian National Congress, ever since its inception, had believed in transition from a foreign and bureaucratic regime to an Indian and democratic polity through elected legislatures with a progressively wider base and larger powers².

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1. Jagdish Saran Sharma, India's Struggle for Freedom: Select Documents and Sources, Vol.I, New Delhi, 1962, p.87.
 2. Congress Presidential Op.cit, pp.589-97 (Speech by C.R.Das on 26 December, 1922).

Many congress leaders had their stakes attached to the imminent election in the reformed councils. Thus, in the Calcutta Congress, Madan Mohan Malviya, Lajpat Rai, B.C. Pal and Jinnah opposed the boycott of councils. Therefore, when in 1922 the non-cooperation Movement had collapsed, the suggestion for withdrawal of the boycott of council started coming in, as Gandhi's decision of stopping the most ardent advocates of council entry were Motilal Nehru and C.R. Das ¹.

But in Gaya Congress the motion of the 'Pro changers' - as the advocates of council entry came to be known, was defeated by the 'No changers' - in whose eyes any deviation from the programme prescribed by the Mahatma was an act of betrayal. The Gaya Congress called for the continuance of the 'triple boycott' of courts, schools and councils. Thus, the pro changers led by C.R. Das and Motilal Nehru decided to defy the verdict of Gaya Congress and decided to form a new party, the 'Congress Khilafat Swaraj Party', with C.R. Das as its leader. ²

The Party contested the elections in 1923 and got itself elected into the Councils. In its programme the Swaraj Party included the wrecking of the reformed Councils. In a resolution adopted on 16-17th Aug 1924 it resolved that it would within the Legislative bodies refuse supplies and throw the Budget unless

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1. B.R. Nanda, Gokhale, Indian Moderates and the British Raj, Delhi, 1977, pp.155-6.
 2. B.R. Nanda, "The Swarajist Interlude" in B.N. Pandey, (eds.) A Centenary History Op.cit, Vol.II, pp. 114-115.

and until the system of Government was altered in recognition of their rights or as a matter of settlement between the Parliament and the people of India. Also it added in its Resolution that it would throw out all proposals for legislative enactments by which the bureaucracy proposed to consolidate its powers. It would help the constructive programme of the Indian National Congress¹. By the mid twenties, the Montagu Chelmsford Reforms and the Dyarchic operation of the British was failing in all the Provinces. It is evident in a speech by the Earl of Birkenhead,² 1st July 1925.

.....Has the Montagu-Chelmsford reform succeeded, or has it failed? My Lords, I cannot say that it has failed. It has been exposed to every cruel mishap which could befall a new Constitution freely conceived and generously offered. Most of the popular leaders in Indian life have abused and defamed it.

It was evident that the British were extremely weary of the whole situation. They were aware of their failure but it was blamed on the Indians and their non-cooperation. The Indian leaders were in a bargaining position, because they'd successfully impressed upon the British that their cooperation was crucial for any British policy to work.

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1. Ibid., pp. 115-116.
 2. Char, Op.cit, pp.493-494

In 1924, the Minority Report of Reforms Enquiry Committee analysed the faults of the inherent defects of the Constitution of 1919. The Dyarchic experiment in operation proved that the system did not give real responsibility to the Ministers. The subjects of administration were divided into 'Reserved' and 'Transferred' which made it extremely difficult for the Legislatures at times to make in practice a distinction between the two sections of Government. Moreover the Meston award proved to have crippled the resources of the Provinces, it prevented the Ministers from developing nation building departments, because they did not have the required funds and the authority.¹

The question of Provincial autonomy became inevitable after the failure of the Dyarchic experiment. The Provincial autonomy which was demanded by Indian nationalists meant an exclusive authority for the Provincial Government in the Provinces, broadly free from the control of the Central Government and Legislature. It was a fundamental departure from the system that existed under which the Provincial Government exercised a devolved and not an original authority.²

The nationalist demand was gradually aiming towards a federation, because until the Montagu Chelmsford Report, it was assured that

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1. Ibid, p. 510 (Parliamentary Debates Fifth Series, House of Lords, Vol.61, p. 1080).
 2. Report of the Reforms Enquiry Committee, 1924, pp.201-3.

Provinces would have decentralisation of power within the colonial unitary system, but now a basic change in the demand was suggested. The new demand was for altogether a new constitution which would constitutionally empower the Provinces with self-governing powers like a federation.

The Indian Reforms Act of 1919 was to expire in ten years, thus a Commission was appointed (in 1927) by the Conservative Government in England to enquire into the working of the Indian Constitution and to determine the desirability of establishing, extending, modifying or restricting the degree of responsible government existing in India. The Commission had all British members and was to be led by Sir John Simon. The arrangement created a very negative reaction in India, as no Indian was included in the Commission. The All-India Leaders' manifesto¹ on 16 Nov 1927 stated that the exclusion of Indians from the Commission was fundamentally wrong, and that the proposals about committees of legislatures being allowed to submit their views to the Commission and later to confer with the Joint Parliamentary Committees, were wholly inadequate to meet the requirements of the case. It further added that the underlying principle of the scheme that Indians were to have no authoritative voice either in the collection of proper materials and evidence or in the taking of decisions by way of recommendations of the Commission to Parliament, was of such a character that India could not with any self respect, acquiesce in it.

1. Joint Committee on Indian Constitutional Reform, Vol.I, Part I, Report 1934, p.29.

Tej Bahadur Sapru voicing the views of Indian Liberal
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Federation said :

I do not think a worse challenge has been thrown out ever before to Indian nationalism... Moderate school have been compelled to ask if the only way of recognising the spirit of co-operation is by telling Indians that their lot is to be none other than that of petitioners, that they cannot be trusted to participate in the responsibility of making recommendations to Parliament for the future of their country... Now if this is what is meant by cooperation, if this is the new idea of equality of status on which we are to be fed, if our patriotism is a prejudice...then we liberals feel justified in telling the Government here and in England, 'You may do anything you like in the assertion of your right as supreme power, but we are not going to acquiesce in this method of dealing with us. Neither our self respect nor our sense of duty to our country can permit us to go near the Commission.

The British side also was feeling that an injustice was done by not including any Indian in the Commission. Commenting upon the composition of the commission the then Viceroy Lord Irwin said on
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8 November, 1927 :

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1. Desika Char, Op.cit, pp.535.
 2. Ibid, p.429, Presidential Address of the All India Liberal Federation.

We should however, make a great mistake if we supposed that these matters were purely constitutional or could be treated merely as the subject of judicial investigation. Indian opinion has a clear title to ask that in the elaboration of a new instrument of government their solution of the problem or their judgement on other solutions which may be proposed should be made an integral factor in the examination of the question and be given weight in the ultimate decision. It is therefore, essential to find means by which Indians may be made parties to deliberations so nearly affecting the future of the country.

In face of the above situation the AICC called upon the Congress Working Committee to frame a Swaraj Constitution in consultation with the elected members of the legislatures and other leaders of political parties. The demand for a Constituent Assembly to frame a Swaraj Constitution was gradually taking shape and gained strength every day under the Swarajist banner¹. Though the demand was put forward by Gandhi earlier, in 1922, Swaraj Party also specified in the 1923 Allahabad meeting that its objective was to secure the right of framing the Constitution in conformity with the country's traditions².

A concrete step towards a scheme specifying democratic constitution for India was taken on 30 Jan. 1923 when the Swaraj scheme was prepared by C.R. Das. The Swaraj scheme formulated

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1. Ibid, pp.534-535 (Parliamentary Papers Cmd, 2986 (1927)).
 2. J.P. Mishra, "The Congress and Constitutional Reforms", in B.N. Pande (ed), A Centenary... Op.cit, pp. 416-41.

local autonomy as the basis of the constitution. It favoured genuine decentralisation of administration. It underlined the importance of the Village Panchayat, District Panchayats, the Provincial Panchayats and at the apex, the All-India Panchayat. The idea was to formulate a Panchayat system of administration for India. This was to ensure local elective autonomy and minimum centralisation, considerable attention was paid to the qualifications of the role of the legislator¹.

Similar attempts were made later to formulate a democratic constitution with the help of all shades of opinions from all parties. And thus, an All Parties conference appointed a Committee of leaders under the leadership of Motilal Nehru to formulate a Constitution. The Committee had nine members representing all interests. The Report was finally published on 21 August, 1928 and popularly came to be known as the Nehru Report. The Constitution which Nehru Report put forward was a most exhaustive document complete in itself and as such it covered a wide range of constitutional issues. According to the Report's provisions both at the Centre and in the provinces the executive was to be under the complete control of the popularly elected legislature equipped with full plenary powers². The democratic character of the constitution was emphasised all through on the principle that all powers governmental and judicial are derived from the people³. The Constitution as chalked out in the Report was a compromise between the feudal and

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1. Ibid.
 2. AICC Papers, File No.8/1924.
 3. J.P. Mishra Op.cit, pp.22-23.

unitary forms of governments. The Committee was inspired by a desire to create a strong and stable constitutional system which, in view of the country's history and the known existence of divisive forces, should be capable of maintaining national unity and power. The most important aspect of the Report was it rejected the system of separate electorates. It recommended reservation of seats for Muslims in the central legislature and in the legislatures of Hindu-Majority provinces¹. The Muslim Leaders were opposed to some basic proposals of the report, which subsequently destroyed all hopes of a common constitutional programme for all parties.

The Report was not accepted unanimously by all parties. Some Muslim Leaders were already opposed to it. A part of the Congress was against it.* This was because, Motilal Nehru had been obliged to make Dominion status the pivot of his constitutional scheme. To a section of Congressmen this was an unacceptable retreat from the resolution demanding complete independence proposed by Jawaharlal Nehru and passed without opposition in the 1927 session.

Congress and Further Constitutional Reforms

Inspite of the lack of total unanimity over the Report the Indians could impress upon the British the seriousness of the

1. All Parties Conference, 1928, Report of the Committee, pp.10-26.

* Jawaharlal Nehru, Subhash Chandra Bose, Srinivasa Iyengar, denounced the Report.

Indian approach towards a new constitution for free India. The British side was now serious to offer a compromise and Lord Irwin announced a Round Table Conference. The Conference opened on 12 November, 1930 and its sessions continued for more than two months. Meanwhile the Statutory Commission had submitted its Report. It proposed an All-India Federation. It extended upon the 1919 proposals and kept the reforms limited to the Provinces. The Centre remained untouched; it retained all the powers of the centre within a legal framework of a Federation. In the Conference three central ideas emerged, namely Indian Federation, responsibility at the centre and the involvement of the Indian Provinces in the framing of the constitutional scheme.

The Congress had kept away from the first session of the Round Table Conference, as their proposals submitted to the Viceroy were disregarded. This was a natural British response to the Civil Disobedience Movement¹. The Conference failed without the Congress, every speaker felt that Congress represented a vast majority and it had the right to speak for the people. C.Y. Chintamani deplored the British system of administration which could be maintained only by putting noble beings as Mahatma Gandhi and Madan Mohan Malaviya in jail². Srinivasa Sastri assured the Conference that Congress leaders were kinsmen both in spirit and blood³.

1. J.P. Mishra, Op.cit.

2. Proceedings of the Indian Round Table Conference, pp.142-156.

3. Ibid.

The Congress view point on the Congress participation in the ¹ Round Table Conference, 1931 was expressed by Vallabhbhai Patel :

... Working Committee thought that if an honourable truce could be arranged and if it was open to the Congress to press without any reservation for what it considered to be the best for the country, the Congress should, if invited, take part in the Conference and attempt to reach an agreed solution of the Constitutional issue. ... Under the Constitution clause of the settlement it is open to us to press for Purna Swaraj, to ask for complete control over our defence forces, foreign affairs, finance, fiscal policy and the like. There would be safeguards or reservations, or as the late Pandit Motilalji called them, adjustments, conceived in our interests...we could never let our defence be controlled by the British...Nor can divide financial control with the British Government. The nation cannot grow to its full height if it has not exclusive control over its finances...

Regarding the proposed federation Patel said that Federation was a fascinating idea, but it introduced new embarrasments, Princes would not give in to the policy of severence. And if they come, it would be the true spirit and they will gain. Their

1. Ibid.

association must not impede the progress of democracy... All the inhabitants of Federated India should enjoy some common elementary rights ¹. Regarding the communal question he said the Congress could not be a party to any Constitution which does not contain a solution of the communal question that is not designed to satisfy the respective parties... The Round Table conference he felt would give the Congress an agreement with the British and would help them get nearer to the Princes, but he added that it could never enable the Indians to achieve unity ² (i.e. the unity envisaged by the nationalists).

The Gandhi Irwin Pact came on 5 March 1931. The Congress agreed to 'discontinue' the Civil Disobedience Movement, and as evident by Patel's speech agreed to take part in second session of the Round Table Conference. Gandhi was appointed by the Congress Working Committee as the sole delegate of the Congress. He put forward the Congress national demand in the Conference. He pointed out the variations in ideologies of the Congress and various other parties and the government. He said the Congress stood for central responsibility, Indian federation and safeguards in her interest. He emphasised that Congress did not want a mere political Constitution but a scheme of partnership ³ between the two equal nations. He also made clear that the main question was of Constitution making and not communal settlement

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1. Ibid.
 2. Ibid.
 3. Collected Works of Mahatma Gandhi, Vol. IVXVIII, p.13.

as the authorities were driving at. However, Gandhi's endeavour failed as the British were not willing to come terms with the Indian national demand.

The third session of the Round Table Conference was opened in the middle of November 1932. It was however not attended by Congress. It was mainly a Conference which reaffirmed the Constitution of the Statutory Commission of 1930. After the Conference a White Paper containing proposals for Constitutional reforms was drawn up. It proposed measures to create provinces with an autonomy of their own, and assigned them a defined and exclusive share of the activities of government. It was also proposed to declare that the executive power and authority in each of the Governor's Provinces was vested in the king's representative, to constitute a council of Ministers to aid and advise the Governor, and a Legislature of elected representative of the Provincial populations, to whom the Ministers would be responsible ¹.

The White Paper proposals produced widespread dismay in India. But still the Joint Parliamentary Committee worked upon it and with some modification finalised it into the 1935 Government of India Act. Commenting upon the Joint Parliamentary proposals, Pandit Hriday Nath Kunzru said, "the proposals neither

1. Proposal for Indian Constitutional Reform, the White Paper, of December, 1931.

satisfied political self respect of the Indians, nor it gave any scope so as to shape the Indian economic future... The Constitutional proposals conceded minimum of power and betrayed the maximum distrust of Indian Legislators and Ministers, thereby making the Governor General and Governors the despots of the new Constitution¹.

The Congress also condemned the white paper proposals. The Congress President Babu Rajendra Prasad voiced Congress resentment and said, 'The white paper did not in any way fulfil the requirements of the Congress'; it was the negation of the demands voiced by the Congress and held no promise of 'even a gradual progress towards them'. He further added that the federation proposed, had no parallel in history. He thought, it would be a kind of federation in which unabashed autocracy would sit entrenched in one third of India and try every now and then² to strangle popular will in the remaining two-thirds.

In conclusion, it is observed that the Constitutional Reforms by the British starting with the 1861 Indian Councils Act, gradually advanced because of the efforts of the Indian nationalist leaders who believed in progressive realisation of democratic government. But the method adopted by our leaders was gradual and unique. Upto 1934, the Indian political scenario projected growing public opinion for self-government which had by

1. Statement, Times of India, 29, December, 1934.
2. Congress Presidential Op.cit, pp. 923-32.

now acquired a mass base, and the British were fervently grappling for existence in the Colony with unrealistic constitutional measures which had a tendency to centralise powers in the hands of the Colonial government. Centralisation was practiced with simultaneous administrative decentralisation which was not however teamed with adequate democratic reforms, thus resulting in an accomodation of various political strands within the monolithic structure of Colonial administration.

Chapter - II

Abortive Federation and After...

The 1935 Government of India Act makes a turning point in Indian Constitutional History. The new Constitution introduced in the Act suggested federation. A stop gap measure introduced by the imperialist government to create a "Dominion" in the Indian Colony. The measure was adopted to subdue internal dissidence and political conflicts within British India and also with neighbouring territories of Indian India. Also, it was adopted in order to placate the Indian nationalists, the Princes and the Muslim League by giving them some concessions according to their respective demand and in the process playing them against each other.

The Act was preceded by various important political happenings: (1) The Simon Commission Report of 1930 (2) The Nehru Committee Report 1928 (3) The White Paper proposals (4) The discussions held at the Round Table conferences (5) and the Joint Parliamentary Committee Report etc. All these political events were significant but except for the Nehru Committee Report all the other events lacked nationalist support. The Act was supposed to incorporate the important points of the preceding Commissions but in actuality it was a heavily borrowed treatise from earlier Government of India Act of 1919. The Preamble of the new Act was duplicated from the same. The supremacy of the British Parliament was maintained, as only British Parliament had the authority, according to the new Constitution to determine

Dominion status and the stages through which it was to be achieved by India ¹.

The advisory Council, which was established in 1858 was abolished. Now the Secretary of State could appoint not less than three and not more than six advisors ². But they were to be merely advisors and not policy makers. The Secretary of State was also vested with special powers over the Governor General and Governors, thus reigning supreme in the administration.

The Act envisaged the establishment of a federation in India, which was to consist of eleven existing provinces and those Princely States which offered to join. For the Province it was obligatory to join the federation but for the Princely States it was voluntary. The Princely States were to sign 'Instrument of Accession' in order to join the federation. The Act proposed ³ provincial autonomy and dropped the Dyarchic System of 1919. The Act claimed genuine decentralisation after the failure of Dyarchy established in 1919, but the autonomy proposed in Provinces was not accompanied with democratic reforms, which was being demanded by the nationalist leaders since the first decade of twentieth century. The Ministers however were to be chosen by the Governors from the Provincial Legislature on the advice of the person who commanded majority. The franchise qualifications were supposed to be lowered and enlarged. This did not mean a significant enlargement of the voting population -

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1. Government of India Act, 1935 Preamble, GOI Publication, 1935.
 2. Ibid.
 3. Ibid.

approximately 10 per cent got the right to vote for the Provincial Legislatures. The electorate was further grouped and divided into seventeen equal bits. There were separate electorates on communal basis and also for women.

The proposed autonomy was neutralised by the safeguards prescribed in the Act. Dyarchy in the provinces was removed but, Dyarchy in the centre remained in the proposed federation. The federal executive was divided into two parts: the reserved and the transferred. The reserved part consisted of the important subjects of Defence, External Affairs, the Tribal Areas and the Ecclesiastical Affairs. These subjects were to remain under the control of the Governor General and the transferred part was to be governed with the help of popular Ministers. Apart from the Dyarchy in Federal Executive, some special responsibilities of Governors and Governor General pertained to prevention of grave menace to peace of the country, safeguarding the interests of the Princely states, protection of the interests of the minorities; protection of the interests of the public services and prevention of discrimination against the British Commercial interests¹. The Governor General also had the special responsibility of maintaining the financial stability of the Federation², meaning thereby that even the financial strings were in the hands of the colonial government, leaving no powers whatsoever for the elected ministers. The Governor General could also grant nomination and

1. Rajendra Prasad on White Paper, 26 October, 1934, Congress Presidential Addresses, 1911-1934, G.A. Natesan and Co. Madras.

2. Ibid.

extra seats to princely states even if it meant excess seats in proportion to their population. The police and other higher services were also kept beyond the Ministers. Finally the power for the Amendment of the Constitution was also kept in the hands of the Parliament alone.

The Act when it came, was favourable for the Princes in general, because under the paramountcy rights they were to be under the home political department of the colonial Government. The proposed Federation gave them an opportunity to 'free' themselves¹. At the Round Table Conference the Princes in general expressed their willingness, to join the proposed Federation, they knew that there was no alternative, but they emphasised that their accession should be voluntary and individual, since the paramountey rights could not be transferred to a third party without the consent of the princes concerned. This was specified in the Butler Committee Report of 14th February 1929:

... the States demand that without their agreement the rights and obligations of the paramount power should not be assigned to persons who are not under its control, for instance an Indian legislature. If any government in the nature of a dominion government should be constituted in British India, such a government would raise questions of law and policy which we cannot now foreshadow in detail...

1. B.R. Ambedkar, Tract for Times No.3, Federation Vs. Freedom, 1939, Gokhale Institute of Politics and Economics, Kale Memorial Lecutre, 1939, pp.145-56.

In view of the historical relationship between the Paramount power and the Princes, the latter should not be transferred without their own agreement to a relationship with a new government in British India responsible to an Indian legislature ¹ ...

The Butler Committee Report ensured that the Princes remain loyal to the British Crown rather than to any elected Indian Government ². The Princes also laid emphasis on the importance of their being co-equal partners. They could not accept any position of slightest subordination or inferiority to British India. The Princes wanted to maximise their powers in any deal which was to take place, as they were apprehensive about their future in the new federation. Their demands were becoming unjust and opportunistic, as they found that to discourage Congress solidarity with the other Indian political groups, the colonial government was ready to provide the Princes many concessions keeping in line with their 'divide and rule' strategy. Congress was repeatedly asking for a united India and democratic decentralisation but the colonial government was providing administrative decentralisation in the form of a Federation, which was going to give undue importance to the Princely states where the seats were to be allotted arbitrarily rather than on population basis and moreover nominating representatives in legislative assemblies rather than electing them. This unequal

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1. Report of the Indian States Committee, 1929-29.
 2. It was noted by the Butler Committee.

treatment was criticised by the Congress and any step towards decentralisation by the British proved a farce and seemed a means of safeguarding imperial interest.

The Princes were placated in order to create disunity in the Indian political scenario. The partiality of the Colonial Government was evident in the unequal provisions given to the Princely states. In the proposed Federation, the instrument of accession did not make them subject to the Federal Legislature. They were still related to the Crown by Treaty. It became clear that the Act was made to undermine the interests of nationalists by giving fictitious importance to the Princes. The Princes gained extraordinary powers under the Federal Scheme. Their autocracy remained intact as they remained outside the control of the Federal Legislature. Commenting on the sinister significance of the entry of the Princes into the Federation on February 1936.

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Jawaharlal Nehru said :

The new Constitution stares at us offensively, this new chapter of bondage which has been imposed upon us despite our utter rejection of it...

.... Alongwith the effort to fight the Act,... we have to stress our positive demand for a Constituent Assembly elected under adult suffrage...

1. Presidential Address, INC, 50th Session, Faizpur, 1936, pp.8-14.

....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 so we must exert ourselves to the utmost to break this and thus end the Act as a whole. To live not only under British Imperialist exploitation but also under Indian feudal control is something that we are not going to tolerate whatever the consequences....

Till recent years little was heard of the treaties of the states or of paramountcy. The rulers knew their proper places in the imperial scheme of things and the heavy hands of the British government was always in evidence.

... But the Growth of the national movement in India gave them a fictitious importance, for the British Government began to rely upon them more and more to help it in combating this nationalism. The rulers and their ministers were quick to notice the change in the angle of vision and to profit by it. They tried to play, not without success, the British Government and the Indian people against each other and to gain advantages from both. They have succeeded to a remarkable degree and have gained extraordinary power under the Federal scheme.

Thus our opposition to the federal part of the constitution Act is not merely a theoretical one, but a vital matter which affects our freedom struggle and our future destiny...

The general objection of the nationalists against the Government of India Act was the undue importance given to the Princes in the Act. The Act tried to put the Indian people under the control of the non-representative Princes of India. The whole of the 340,000,000 people were to be held at ransom by the aristocracy who were very backward. The list of the proposed members of the Legislative Assembly, and also the list of the members of the Council of State clearly showed that Congress could never gain majority (inspite of being the single majority party in the country). Thus, the Indian nationalist leaders were perplexed with the provisions, a substitute of Colonial Government in the form of autocratic feudal government was unthinkable when the foremost question was freedom and a new indigenous Constitution ¹.

The 1935 Government of India Act, thus was highly undemocratic, even though Indian States had only 24 per cent of the population of India, their autocratic rulers had secured representation (through the Act) to the extent of 40 per cent in the Council of State and 33.5 per cent in the Federal Assembly ².

There were marked protests against the Act. All-India National Convention of Congress Legislatures demanded a national resolution for withdrawal of the 1935 Government of India Act. The Convention reiterated the opinion of the people of India that

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1. Col. Wedgewood in Parliamentary Debates, The Constitutional History of India: Select Documents, OUP, 1983, pp. 597-598.
 2. Babu Rajendra Prasad, Presidential Addresses, Op.Cit.

the Government of India Act of 1935, had been designed to perpetuate the subjection and exploitation of the Indian people¹ and for strengthening the hold of British imperialism in India. The electorate had by now given the Congress majority in the provinces, this showed that the Congress objective of independence and the rejection of the new constitution was more or less accepted by the people. The convention of Legislators² condemned the constitution and stated :

The Constitution therefore stands condemned and utterly rejected by the people, through the self-same democratic process which had been involved by the British Government and the people have further declared that they desire to frame their own Constitution based on national independence through the medium of Constituent Assembly.

The Convention therefore calls upon all Congress Parliamentary Parties to take the earliest opportunity to put forward in the name of the nation, a demand in their respective legislatures that the Government of India Act, 1935, be withdrawn so that the people of India may frame their own Constitution.

The Indian nationalists rejected the federation proposed in the Act because the safeguards provided in the Act gave the

1. Indian Annual Register, 1937, Vol.I, P.182.
2. Ibid.

imperialists an opportunity to intervene in the affairs of the country inspite of a responsible government. The hierarchy of Governors and Governor-General over the bureaucracy chosen by the provinces was enough to neutralise the elected representatives of people. The devolution of power towards real decentralisation was nowhere achieved. Instead, by giving the autocratic Princely States an advantageous position in the Federation, the imperialist hands were strengthened.

At this juncture the most difficult issue the Congress faced was whether or not to accept office. The only purpose of sending Congressmen to the legislatures was to seek to end the Act; but this issue was postponed till the elections. Nehru argued in 1936:

The policy of the Congress in regard to the legislatures is perfectly clear; only in one matter it still remains undecided - the question of acceptance of office... It seems to me that the only logical consequence of the Congress policy, as defined in our resolutions and in the election manifesto, is to have nothing to do with office and Ministry. And deviation from this would mean a reversal of that policy. It would inevitably mean a kind of partnership with British imperialism in exploitation of the Indian people, an acquiescence, even though under protest and subject to reservations, in the basic ideas underlying the Act.¹

1. Presidential Address, 50th Session, Op. Cit.

The matter regarding acceptance of office was debated in the Lucknow Session and a resolution was adopted subsequently to solve the issue as many right wing leaders like M.A. Ansari and B.C. Roy urged the Congress to occupy all places of power, initiative and vantage in its struggle for freedom². Many amendments were moved and a long debate took place as the Congress socialists were not prepared to allow the programme of Council entry to be approved by the Congress. However a vote was demanded and the left wingers lost by 255 to 487. The Congress criticised and condemned the Act and at the same time demanded a Constituent Assembly in the name of the Indian people. It was resolved that in the case of elections to the provincial legislatures, the Congress would put forward candidates on its behalf to contest such seats in accordance with the mandate of the party and in pursuance of its declared policy. The most controversial point of acceptance or non-acceptance of Office was left to be decided at the proper time.³

Congress knew that if they assumed office the Government will soon adjust itself and the bureacracy will make every possible attempt to make everything unworkable. But Congress would never let that happen it was decided, for the first time in history of India and perhaps the world, a political organisation demanded assurance of the Governors that they would not use their

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 2. File No. 2/1935, AICC Papers.
 3. V.A. Narain, "The Act of 1935, Impact on the Nationalist Politics" in B.N. Pande (eds). A Centenary History of the Indian National Congress, Vol. III, 1935-47, pp. 130-131.

special powers of interference or set aside the advice of ministers in regard to constitutional activities. The reason for this was the fact that this constitution was imposed upon India. Thus, Indians made clear to the British that should they work such a constitution it could be only on their terms .

The Muslim League and the New Act

The Muslim League claimed to be the champion of the minority community, its ideas about decentralisation held as long as it meant special political concessions and privileges to the Muslims. The Muslim League had stated in 1929 the Fourteen points which projected their ideology regarding the future Constitution. The form of their future constitution was to be a federal one with residuary powers vested in the provinces, where equal autonomy would prevail. There would be separate electorates for the minorities, and by all means the Musalmans were to have one third representation in the Central Legislature. There were also many safeguards which were mentioned in the Fourteen Points, over and above the main points mentioned. The Fourteen Points came through way back in 1929. Keeping in mind the Muslim demand the British government proceeding on its 'divide and rule' strategy announced the Communal Award which was extremely unjust regarding the position of other parties and

1. Pattabhi Sitaramayya, History of Indian National Congress, Vol.2, 1935-47, p.51-52.

groups. The Award was given effect in 1935 Government of India Act. In other words the Communal award which was meant for the protection of Muslim minorities, concerned itself more with the protection of Muslim who were in majorities in the States of Bengal, Punjab, North West Frontier Province and Sind by giving them the privilege of separate electorates. Where as the Sikh and the Hindus inspite of being minorities in these States did not ask for protection through separate electorates or reservations. Thus, in a strict sense the communal aspect of the 'award' was less for minorities as such than for Muslims whether a majority or minority. This was true for Europeans also in several provinces, notably in Bengal.

The Table showing the seats allotted to various groups by the Government of India Act in the Provincial Legislature proves the point that the Communal Award was unjust benefiting the so called minorities in those states, where they were in majority. This was totally irrespective of any proportions to the population.

**GOVERNMENT OF INDIA ACT 1935 : PROVINCIAL LEGISLATIVE
ASSEMBLIES : TABLE OF SEATS**

| Province | Total Seats | General (Total of General Seats) | Seats (General Seats reserved for SCs | Seats for represen- tatives of Backward Areas and Tribes | Sikh Seats | Muslims Seats | Anglo Indian Seats | European Seats | Indian Christian Seats | Seats for represen- tatives of Commence Industry Mining and Planning | Land Holders Seats |
|--------------------------------|----------------|---|---|---|---------------|------------------|--------------------------|-------------------|------------------------------|--|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| Madras | 215 | 146 | 30 | 1 | - | 28 | 2 | 3 | 8 | 6 | 6 |
| Bombay | 175 | 114 | 15 | 1 | - | 29 | 2 | 3 | 3 | 7 | 2 |
| Bengal | 250 | 78 | 30 | - | - | 117 | 3 | 11 | 2 | 19 | 5 |
| United Provinces | 228 | 140 | 20 | - | - | 64 | 1 | 23 | 2 | 3 | 6 |
| Punjab | 175 | 42 | 8 | - | 31 | 84 | 1 | 1 | 2 | 1 | 5 |
| Bihar | 152 | 86 | 15 | 7 | - | 39 | 1 | 2 | 1 | 4 | 4 |
| Central Provinces and Behar | 112 | 84 | 20 | 1 | - | 14 | 1 | 1 | - | 2 | 3 |
| Assam | 108 | 47 | 7 | 9 | - | 34 | - | 1 | 1 | 11 | - |
| N.W.F.P. | 50 | 9 | - | - | 3 | 36 | - | - | - | - | 2 |
| Orissa | 60 | 44 | 6 | 5 | - | 4 | - | - | 1 | 1 | 2 |
| Sind | 60 | 18 | - | - | - | 33 | - | 2 | - | 2 | 2 |

Note : Fifth Schedule of the Government of India Act, 1935.

Thus, the Muslim League favoured the Federation, because they knew that this was the only means of protecting themselves against the 'Hindu Majority', the demand for reservation of seats with separate electorates and weighted representation were now the instruments through which the League achieved an edge over the Congress and safeguarded their Muslim Communal interests. The whole practice was in order to gradually carve out new provinces in which Muslims would be in majority. But according to Jinnah majorities and minorities were permanent and did not

1. B. Shiva Rao, Framing of India's Constitution, A Study, IIPA, New Delhi, 1966.

change in India, where he labeled Hindus as the majority and the rest as minorities. In his opinion the majority could afford to assume a non-communal label, but in spirit and action it remained exclusively Hindu¹. The League was therefore pleased with the arrangements in the Act and decided to contest the elections in the provinces.

Congress reaction to the whole arrangement was that of dissatisfaction. They found the Communal Award as anti-national. The privileged treatment of Muslim League was criticised and Jawaharlal Nehru voiced his opinion, which suggested a mutual consent of all the parties concerned. He did not agree with the claim of Jinnah that Muslim League was the only organisation representing Indian Muslims. He said:²

I do not understand what is meant by our recognition of the Muslim League as the one and only organisation of Indian Muslims. Obviously the Muslim League is an important Communal organisation and we deal with it as such. But we have to deal with all organisations and individuals that come within our ken...

The other groups in the political scene in India which welcomed the Act and the proposed Federation was the Hindu Mahasabha representing Hindu Communalists. The Mahasabha was concerned with only one thing that how they were to meet the

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1. Matlubul, H. Saiyid, Mohammad Ali Jinnah (A Political Study), Lahore, 1945, pp.590.
 2. Nehru-Jinnah Correspondence, AICC, Allahabad, pp.61-73.

menace of Musalmans. The Hindu Mahasabha was in favour of the Federation because it felt that the accession of the Princely states would strengthen the Hindu Strength ¹.

The mass uproar over the Act was achieved through mass contacts arranged by the Congress, promoted widely by establishing primary committees in villages and in the Mohallas of towns and also through other organic connections of the Congress, Trade Unions, Labour Associations, Kisan Sabhas etc. A hartal on April 1, 1937 was organised to effectively demonstrate the will of the Indian people to resist the imposition of the unwanted Constitution which, the Congress considered, as betrayal of India's struggle for freedom which would only result in strengthening the hold of British imperialism and further exploitation of the Indian masses. India claimed for herself the right to frame her own Constitution and if a genuine democratic state, with its political power transferred to the people as a whole, should come into existence, it could only come through a Constituent Assembly elected by adult suffrage and invested with the power to determine finally the Constitution of the country. ²

The election campaigning took a leap forward after the Faizpur Session of INC. Though the enfranchisement of only 1/10th of the population took place, the political awakening of the country was silently taking place. The programme of the Congress was clear, to organise the elections and secure lasting

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1. Tract for Times Op.cit, pp.145-56.
 2. P. Sitaramayya, Op.cit.

triumph for the Parliamentary phase of national life. This was the supreme duty before the Congress. It was to hold thereafter a convention not as a substitute for a Constituent Assembly but as a preparation for it as well as for disciplined and effective fight against the federal structure and the rest of the New Act. The Constituent Assembly was meant to frame a Constitution for a free India. It was meant to be a grand 'Panchayat' of the nation elected on an adult franchise - meeting when the reality of power had reached the people so that they could give effect to their decisions without any interference from the outside authority, and thus establish a free democratic State, for which the Congress stood ¹.

The Congress went to the polls and swept it. Over 54 per cent of the total electorate of three and half crores cast their votes. The Congress was able to secure absolute majority in the legislative assemblies of five provinces namely Madras the United Provinces, the Central Provinces, Bihar and Orissa. The Congress emerged as the biggest single party in four provinces, namely, Bombay, Bengal, Assam and North - West Frontier Province. Only in Punjab and Sind Congress was comparatively a small minority ².

The total number of the Muslim seats in the Legislative Assemblies of the 11 provinces was 482, out of which Congress contested only 58 and won 26, that is 45 per cent of the total

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1. Ibid.
 2. Ibid.

seats contested. The total number of Labour seats in the 11 provinces was 38 of these the Congress contested 20 and won 18¹ i.e. 90 per cent.

The response of the people was evident in the elections. The next issue was that of accepting office. Gandhi said that in accepting offices, it was not intended by the Congress to work the Government of India Act. Gandhi said that the Act should be lawfully worked out in order to make the Act defunct. The 'lawful' working of the Act came under severe criticism. Then² Gandhi said:

The hope may be frustrated if the representatives of the 30 million voters have a faith of their own and are intelligent enough to use the powers (including the holding of offices) placed in their hands for the purpose of thwarting the assumed intentions of the framers of the Act. And this can be easily done by lawfully using the Act in a manner not expected by them and by refraining from using it in the way intended by them.

When the Congress ministries accepted office, neither the Congress leaders nor the Government knew exactly how the new partnership in the provinces would actually work out. The partial democracy of 1937-9', wrote Jawaharlal Nehru in his book

1. Ibid. p. 56.

2. Ibid.

The Discovery of India, 'was always on the verge of conflict'. There were crises in U.P. and Bihar on the release of political prisoners, and there was a crisis in Orissa on the selection of an officiating Governor. There was the perpetual near - crisis on the policy of the Government towards the Indian states and the declared opposition of the Congress to Federation. The inherent contradiction between popular governments in the provinces and a completely authoritarian government at the centre remained.¹

The emergence of Pakistan and abortion of the Federation

A breach between the Congress and the Government was inevitable but it was hastened with the outbreak of the War. The Congress working Committee met on 8-15th September in Wardha to decide and formulate its policy regarding the War. Its resolution stated.

The Congress has laid down that the issue of war and peace in India must be decided by the Indian people, no outside authority can impose this decision upon them, nor can the Indian people permit their resources to be exploited for imperialist ends. Any imposed decision or attempt to use India's resources, for purposes not approved by them, will necessarily have to be opposed by them... The people of India have in the recent past faced great risks and willingly made great sacrifices to secure their own freedom

1. B.R. Nanda, Mahatma Gandhi: A Biography, OUP, 1958, p.395-396.

and establish a free democratic state in India, and their sympathy is entirely on the side of democracy and freedom. But India cannot associate herself in a war said to be for democratic freedom when that very freedom is denied to her and such limited freedom as she possesses taken away from her.¹

The Congress was determined to non-cooperate with the British, in their war efforts. The Central Legislative Assembly declared that no Indian troops should be sent abroad without the consent of the Legislature. It was obvious that since Indian troops were being sent to Egypt and Singapore, the declaration of the Assembly was ignored and this could lead to India's entanglement in the War. The All India Congress Committee called upon all members of the Central Legislative Assembly to refrain from attending its next session. At the same time, the Provincial Governments were warned not to assist, in any way Britain's war preparation even at the peril of the Congress Ministries having to resign.² The moment Congress resolved not to extend its support to the British, League announced its whole hearted support to the British, on condition that justice is meted out to those Musalmans who belong to the Congress Governed provinces, where their liberty, person, property and honour was in grave danger and was most callously trampled upon.³

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1. CWC Resolution, 14 September, 1939, Desika Char, Op.cit.
 2. Sitaramayya Op.cit., p.126.
 3. Resolution of the Working Committee of the All India Muslim League, 17-18, September, 1939.

The British on the other hand, given the total opposition from the Congress, decided to face the War with the help of a 'Consultative group', representing major political parties and the Indian Princes under its own Presidentship. The Government's rigid stand made the Congress to resolve that in the existing circumstances it could not give any support to Great Britain, for it would mean an endorsement of imperialist policy. Thus, as a first step to end this policy the Congress Ministries were called upon to tender resignations. A silver lining to this situation was the decision of the Government to suspend all preparation for introduction of the Federation ¹.

Meanwhile, Jinnah's campaign against Congress rose in tempo. Jinnah had already attacked the provincial part of the new constitution and alleged that it failed to safeguard Muslim rights. He also questioned the suitability of a democratic system of government in such a vast country with differing nationalities ². His propaganda therefore widened the gulf between the two communities and he went on to prove his hypothesis that a democratic set up was impossible for India. The decision of the Congress to resign was however of great satisfaction to the Muslim League, the day of the resignation was celebrated as the 'Deliverance Day' by the Muslim League. In its resolution of 22 December 1939 the League stated:

This public meeting of the Musalmans records its opinion that the Congress Ministry has conclusively demonstrated and

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1. Sitaramayya Op.cit, p.129.
 2. B.R. Nanda Op.cit, p.408.

proved the falsehood of the Congress claim that it represents all interests justly and fairly, by its decidedly anti-Muslim policy.

... The Congress Ministry both in the discharge of their duties of the administration and in the Legislature have done their best to flout the Muslim opinion, to destroy Muslim culture, and have interfered with their religious and social life, and trampled upon their economic and political rights, in matters of differences and disputes the Congress Ministry invariably have sided with supported and advanced the cause of the Hindus in total disregard & prejudice of Muslim interests...

.... This meeting therefore expresses its deep sense of relief at the termination of the Congress regime in various provinces and rejoices in observing this day as the 'Day of Deliverance' from tyranny and oppression and injustice¹ during the last two and half years

In these circumstances Jinnah began to develop his two-nation theory, the difference between Hindus and Muslims were now not just confined to religion but reached into their social, economic, political & cultural realm. In March 1940, the two nation theory was officially accepted by the AIML, which declared that no constitutional plan for India would be workable or

1. Jamil-ud-Din Ahmed (ed), Some Recent Speeches and Writings of Mr. Jinnah, Lahore, 1943, pp.96-7.

acceptable to Muslims unless it was based on a demarcation of Muslim majority areas in the north-west and the east as independent states.¹

In the meantime, Congress was making its demand for the Constituent Assembly more eloquent. A Constituent Assembly representing all the political parties. The Congress made clear that any mis-conception regarding representation should not find ground as the Congress wanted that a duly constituted electorate should send members to the Constituent Assembly, and that these members should be charged with the duty and entrusted with the power to frame a final draft so that no party organisation or individuals at large may thereafter raise any objection or propose modifications. The Congress also kept the provision of separate electorate for some communities which would so desire. (Despite its opposition to separate electorates fundamentally). It reiterated its Commitment towards minorities and suggested safeguards. But it pointed out that there should not be any misconception about the status of minorities and status of Princely States and they should not be treated at par. Rather the States should be treated at par with the Provincial Governments.²

The Indian Liberal Federation President Dr. Paranjpey on the other hand felt that the insistence on a Constituent Assembly by the Congress was impolitic. The Scheme suggested could create

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1. B.R. Nanda Op.cit, p. 410.
 2. Congres and the War Crisis (Statement by C. Rajagopalachari, 15 November, 1939) pp. 144-6.

further difficulties. It was further pointed out that the question of weightage was kept vague. The question of representation of Indian states had been untouched. And a vast number of other questions were being left unconsidered. He further added that the history of all Constituent Assemblies, whenever they appear to have succeeded showed that the ground was first of all fully prepared by informal discussion among all leaders and by securing an almost complete preliminary unanimity, and then, if at all considered necessary, a formal cachet of approval was given to it by means of a Constituent Assembly if it could be convoked.¹

The League was against the idea of the Constituent Assembly at this juncture when there was war and Britain was weak and its position critical. Jinnah in his article in Time and Tide, 19 January 1940 stated :

....the question arises, why is this demand made at this particular time? The answer is obvious. The War is to the Working Committee a heaven-sent means of increasing its rule from over eight provinces to over the whole of India, state and Province I feel certain that Muslim India will never submit to such a position and will be able to resist it with every means in their power.

And of what type of constitutionalists will this Constituent Assembly consist? There are in India roughly 400 million

1. Presidential Address of National Liberal Federation in Desika Char Op.cit, pp.626-627.

Souls who, through no fault of their own, are hopelessly illiterate and consequently, priest and caste ridden. They have no real conception of how they are being governed even today, and it is proposed that to the elected representatives of such, India's future constitution be entrusted. It is too much to say that since the vast majority of the elected representatives will be illiterate Hindus, the Constituent Assembly will be under the influence of Mahatma Gandhi and Congress leaders, and the constitution that will emerge will be as the Working Committee directs?

Thus, through the Constituent Assembly will the working Committee attain its ends, British Control and Commerce will disappear; the Indian States will be abolished. Minority opposition will be stifled and a great Hindu nation will emerge, governed by its beloved leader, Mahatma Gandhi, and the Congress Working Committee.¹

A futile attempt was made again to coax Jinnah to join the Constituent Assembly. He was assured by Gandhi, Jawaharlal and Rajendra Prasad that the Constituent Assembly would be formed on the widest possible franchise and by agreement on communal representation and that the Assembly would frame full protection for the rights and interests of all minorities.

Jinnah's lack of real interest in this subject, was because he was thinking in terms not of the future but of the immediate

1. M.H. Saiyid, India's Problem of her Constitution, 1940, pp.27-8.

present, and trying to force the Congress to form Coalition Ministries with the League. He had no wish to be involved in any agitation which the Congress might launch and was prepared to fall in line with the Government in order to secure concessions from them¹.

All talks with Jinnah were called off by the Congress and a policy of non-cooperation was to continue till the Government ceased to maintain their imperialist domination in alliance with the reactionary elements in the country. The Government had no intention of breaking the stalemate which they had themselves created. It was their political strategy of weakening a pluralist nation by dividing them. Way back in the Reforms Act of 1919 Lord Chelmsford and Edwin Montagu recognised the genesis of Separatist mischief through separate electorates, "Division by creeds and classes means the creation of political camps organised against each other, and teaches them to think as partisans and not citizens; it is difficult to see how the change from this system to national representation is ever to occur. The British Government is often accused of dividing men to govern them"².

The demand for a Constituent Assembly was conceded by the British government, in an indirect way in what is known as the 'August Offer' of 1940, which had many important reservations.

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1. S. Gopal, Jawaharlal Nehru: A Biography, Vol.I, OUP, 1975, p. 258-259.
 2. Ibid.

It was now felt by many quarters among the British that if the British did not act towards bringing a Constitutional settlement, it will lose India. Attlee's despatch reflected this feeling. It was suggested that a representative with power to negotiate within wide limits should be sent to India, either as a special envoy or in replacement of the present Viceroy, and that a Cabinet Committee should be appointed to draw up terms of reference and powers¹. The British Government gave its proposals on 30th March 1942. It was claimed in the proposals that:

- a) Immediately upon the cessation of hostilities, steps shall be taken to set up in India, in the manner described hereafter, an elected body charged with the task of framing a new constitution for India.
- b) Provision shall be made, ... for the participation of the Indian States in the Constitution-making body....

It was also elucidated that if a Constitution making assembly cannot overcome differences and if the Provinces remain unsatisfied with the Constitution, then such Provinces can go out and remain out if they wished and just the same degree of self government and freedom would be available for them as for the union itself....² There was also to be reservation regarding Defence, the full responsibility of Naval, Military and Air defence of India was to lie with the Commander-in-Chief under the War Cabinet. Appointment of an Indian representative in the War

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1. Memorandum to the War Cabinet, Mansergh and Moon (Eds). The Transfer of Power, Vol.I, pp.111-112.
 2. The Indian Annual Register, Op.cit, pp. 221-4.

Cabinet was claimed as giving equal and effective share to the
Indians in the new arrangement.¹

The Congress Working Committee reacting to the Cripps proposals stated:

The Committee recognises that future independence may be implicit in the proposals, but the accompanying provisions and restrictions are such that real freedom may well become an illusion.

.... While the representation of an Indian State in the Constitution making body is fixed on a population basis, the people of the state have no voice in choosing those representatives.... such states may in many ways become barriers to the growth of Indian freedom.

The acceptance beforehand of the novel principle of non-accession for a Province is also a severe blow to the conception of Indian unity.... Congress has been wedded to Indian freedom and unity and any break of that unity especially in the modern world when people's minds inevitably think in terms of even larger federations would be injurious to all concerned and exceedingly painful to contemplate.

.... It has been made clear that the Defence of India will in any event remain under British control. At any time

1. Ibid.

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 farce and nullity.

.... what is most wanted is the enthusiastic response of the people, which cannot be evoked without the fullest trust in them... but that can only be done by freedom and full responsibility being cast upon them. The Committee are therefore, unable to accept the proposals put forward on behalf of the British War Cabinet.¹

On the one hand Congress was talking about Indian Union and was objecting even to the provision of voluntary accession of Provinces in the Federation in Cripps proposals. On the other hand Muslim League in response to the proposals gave its opinion that the only solution of India's constitutional problem was the partition of India into independent zones; and therefore any compulsion for the Muslims to enter into a constitution-making body which would endorse a new Indian Union would be unfair to them. The League further added that since in any constitution making body Musalmans would be a minority of 25 per cent, that body would function contrary to justice and constitutional practice followed in other countries. Thus, it demanded clear pronouncement on their demand of partition rather than meagre¹ concession of right to accede and secede.

1. Ibid, p. 247-9.

The Cripps proposals failed, both the War Cabinet (barring Attlee) and Linlithgow's Government had no wish to see it succeed. The failure of Cripps was welcomed by many at the British end. The relief over Cripps failure was because of the reason that Cripps had offered Home-Affairs Department and Finance in the proposed self-government.²

Finding that Cripps was bartering away his powers in his bid to get the concurrence of Indian leaders to his proposals, Linlithgow cabled to the War Cabinet on 6th April cautioning against glossing over the status and powers of his Executive Council particularly because of the popular references to 'an Indian Cabinet or National Government'. He said, the vital test of Cabinet Government, namely responsibility to an Indian Legislature, does not and cannot exist in the interim period. The Constitutional responsibility of the Governor-General in Council must remain to Parliament; the Governor General must retain his powers of overriding the Executive Council, and the Secretary of State his powers of direction and control over the Governor-General in Council.³ Thus it was made clear that there could be no question of any convention limiting the powers of Governor General, and the Indian members were to conform to the existing constitutional restrictions. This resulted in the breakdown of the negotiations.

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1. Desika Char Op.cit., p.659.
 2. Mansergh, Transfer of Power, op.cit., pp.756-8.
 3. Ibid, pp.654-720.

The global situation was meanwhile hastening an era of freedom where the imperialist schedules were being broken. The All India Congress Committee was conveying its appreciation to the Russian and Chinese people for their heroism in defence of their freedom. For the imperialist powers the possession of empire was increasingly becoming indefensible India the classic land of imperialism was now gaining importance. For by the freedom of India, Great Britain's and the United Nations' reputation was to be judged.

Thus the Quit India resolution of the AICC, 8 August 1942 stated:

The AICC, therefore repeats with all emphasis the demand for the withdrawal of the British power from India. On the declaration of India's independence, a provisional Government will be formed and free India will become member of the U.N. The provisional Government can only be formed by the co-operation of the principal parties and groups in the country. It will thus be a compromise government representative of all sections of the people of India... The provisional Government will evolve a scheme for a Constituent Assembly which will prepare a constitution for the Government of India acceptable to all the sections of the people. Its primary functions must be to defend India and resist aggression with all the assumed as well as the non-violent forces at its command... The Constituent Assembly will prepare a Constitution for the Government of India acceptable to all the sections of people. This

Constitution according to the Congress view, should be a federal one, with the largest measure of autonomy for the federating units, and with the residuary powers vesting in these units....¹

Gandhiji meanwhile prepared terms for settlement of the Pakistan issue. On 24 September 1944, he wrote to Jinnah:

With your assistance, I am exploring the possibilities of reaching an agreement, so that the claim embodied in the Muslim League Resolution of Lahore may be reasonably satisfied....

I proceed on the assumption that India is not to be regarded as two or more nations, but as one family consisting of many members of whom the Muslims living in Baluchistan Sind, N.W. Frontier Province and that part of the Punjab where they are in absolute majority over all the other elements, and in parts of Bengal and Assam where they are in absolute majority, desire to live in separation from the rest of India.²

Proceeding on these terms Gandhiji's terms were as follows:

1. The areas demarcated by a commission approved by the Congress and the League. The wishes of the inhabitants of

1. Mahatma Gandhi, To the Protagonists of Pakistan, Karachi, 1947, pp.221-4.
2. Ibid, pp.132-133.

the areas demarcated should be ascertained through the votes of the adult population of the areas or through some equivalent method.

2. If the vote is in favour of separation, it shall be agreed that these areas shall form separate States...
3. There shall be treaty of separation which should also provide for the efficient & satisfactory administration of Foreign Affairs, Defence, Internal Communications, Customs, Commerce and the like, which must necessarily continue to be matters of common interest between contracting parties.
4. The Treaty shall also contain terms for safeguarding the rights of minorities in the two states.
5. Immediately on the acceptance of this agreement by the Congress and the League, the two shall decide upon a common course of action for the attainment of independence of India.
6. The League will however, be free to remain out of any direct action to which the Congress may resort and in which the League may not be willing to participate.

If you do not agree to these terms, can you let me know in precise terms what you would have me to accept in terms of the
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Lahore Resolution .

1. Ibid.

Jinnah however rejected Gandhiji's terms on 25 September 1944 on grounds that Gandhiji had rejected through his terms the basic and fundamental principles of the Lahore Resolution. He alleged that Gandhi did not accept that the Musalmans of India were a nation. Also they had an inherent right of self-determination which was ignored. Jinnah rejected the terms because he did not want a Central authority which was to be the supreme authority over the two Sovereign States, as proposed by Gandhi.

Thus, there was no conclusion or solution of the Indian Constitutional problem till 1944. The British offer of March 1942 stood unconsidered. The British anxiety over Indian Constitutional deadlock was obvious. Amery on 14th June 1945 gave proposals to break the Congress-League deadlock.

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He proposed that:

The Executive Council should be reconstituted and that the Viceroy should in future make his selection for nomination to the Crown for appointment to his Executive from amongst leaders of Indian political life at the Centre and in the provinces, in proportions which would give a balanced representation of the main communities, including equal proportions of Muslims and Caste Hindus.

Also a suggestion was made regarding installation of responsible governments there where it became necessary to

1. R.Coupland, India: A Restatement pp.295-8.

put into force the powers of the Governors under Section 93 of the Act of 1935. The hope was projected that these Governments would be based on the participation of the main parties, thus smoothing out communal differences...

Congress was not taken in by any of these proposals. On 21-22 June 1945, Congress gave its acceptance conditions, mainly stating that Congress could never be treated at par with the Muslim League and Congress could never accept that the sole right of nomination of Muslim members lay with the League.

Wavell Plan

When Lord Wavell took over the viceroyalty on 20th October 1943, Subhas Chandra Bose was active across the eastern frontiers, preparing for armed re-entry into India. The Provisional Government of Free India was inaugurated on 21 October, the day after Wavell assumed Office. Lord Wavell took charge when Congress Muslim League 'no-compromise' was at its peak. On 17 February 1944 he stated (his first political utterance) 'India was a natural unit within which the two great communities must decide how to live together, as communities¹ differing in culture or religion had contrived to do elsewhere'. He further added that he could not advise the release of the members of the Congress Working Committee as long as the policy² of non-cooperation and even obstruction was not withdrawn.

1. B.N. Pandey (eds). Op.cit, p.61.

2. P. Sitaramayya Op.cit, p.617.

After Gandhi's release and convalescence in July 1944, he assured Wavell of full co-operation in War efforts if the British would make a declaration of immediate Indian independence, and form a national government. But this offer for Congress-Government understanding was rejected by Amery on the ground that these proposals did not even form a starting point for fruitful discussion.

Moreover it was impossible to move Churchill's Government for any understanding on the basis of Congress demands. That being so, Gandhi paid greater attention to a negotiation with Jinnah. Meanwhile Raja Gopalachari had prepared a formula to bring about a Congress-League compromise.

The Gandhi-Jinnah talks yielded no result, but only aggravated the existing Congress - League differences. One year thus passed since Wavell assumed office, with the Indian situation remaining as gloomy as before. The Churchill Cabinet of course stood firm on its principle that there should be no move for negotiation as long as the Quit India demand stood and the Congress did not change its policy towards war.¹

The War was coming to an end, and British policy of putting war as an excuse in all constitutional proceeding, as an obstruction to self government was not handy any more. Moreover, the Quit India movement had succeeded in deepening the nationalist appeal all over the country. Also the Congress

1. B.N. Pandey, Op.cit

leaders were now out of the prison. The best course of action possible was a British initiative towards constitutional advance. The British initiative was spearheaded by Wavell on 24 October 1944. He wrote to Churchill:

The present Government of India cannot continue indefinitely, or even for long. Though ultimate responsibility still rests with His Majesty's Government, his Majesty's Government has no longer the power to take effective action.

....If our aim is to retain India as a willing member of the British Commonwealth, we must make some imaginative and constructive move without delay. We have every reason to mistrust Gandhi and Jinnah and their followers. But the Congress and the League are the dominant parties in Hindu and Muslim India and will remain so...

Wavell proposed that a fresh start should be initiated as early as possible. Since India could not be any longer held down by force, he felt the necessity of installing a provisional government and of devising means to reach a constitutional settlement. But Wavell's plea fell on Churchill's deaf ears.

On 14th June 1945 Wavell announced in a broadcast his political proposals for India's advance towards full self government. He proposed to invite the Indian Leaders to Simla to seek their counsel in regard to the formation of a new Executive

1. Ibid.

Council which would be more representative of Indian political opinion and would include an equal number of Caste Hindus and Muslims.... This Council would be entirely Indian with, for the first time, Home, Finance, and Foreign Affairs in Indian hands. The new council would also explore the means by which agreement could be reached for a new, permanent Constitution.

The announcement was coupled with an order for the immediate release of the members of the Congress Working Committee. Nehru did not view with favour the Wavell Plan and Sardar Patel¹ Commenting on it said:

Parity between Caste Hindus and Muslims can have no place at the conference. I hope that no nationalist will be a party to any arrangement which has as its basis a religious division. I express these sentiments not only on my own behalf but all those Congressmen who are with Gandhi at the moment.

It can be presumed that had the Simla Conference gone in favour of the Congress with the prospects of a Congress dominated Interim Government unchecked by the League, the Churchill government would have never agreed to it. For reasons known to him alone, Wavell was not sorry at the failure and took the responsibility for it on himself. The Viceroy's failure at Simla was soon followed by one of the most significant incidents in Indo-British relations at the cross roads of time - the fall of Churchill from power in Great Britain.

1. Ibid, p.70.

The Congress policy at this moment was unequivocal. they would have nothing to do with the Cripps proposals of 1942 or the Wavell proposals of 1945, those being the rotten gifts of the Churchill Cabinet. The Labour Party was expected to be more sympathetic and Congress was expectant.

From late August to mid September 1945, the Viceroy stayed in London to negotiate policies with the new open. The problem for the latter was not the Congress, but Jinnah. According to Wavell any Constituent Assembly would certainly be boycotted by the Muslim League if Pakistan was not conceded. According to Attlee anything conceding Pakistan would result in fresh outbreak of Congress agitation.

Cabinet Mission Plan

According to the 5th para of the Cabinet Mission Plan the Indian Constitution was to take the following form:

1. There will be a Union of India containing British India and the States which should deal with the following subjects: Foreign Affairs, Defence and Communications; and should have the powers to raise the finances required for the above subjects.
2. The Union should have an Executive and a Legislature constituted from British Indian and States representatives. Any question raising a major communal issue in the

1. Selected Works of Jawaharlal Nehru SWJN (Footnote), Vol.14, p.9.

Legislature should require for its decision a majority of the representatives present and voting of each of the two major Communities as well as a majority of all the members present and voting.

3. All subjects other than the Union Subjects and all residuary powers should vest in the Provinces.
4. The States will retain all subjects and powers other than ceded to the Union.
5. Provinces should be free to form groups with Executives and Legislatures, and each group could determine the provincial subjects to be taken in common.
6. The Constitutions of the Union and of the groups should contain a provision where any Province could by a majority vote of its Legislative Assembly, call for reconsideration of the terms of the constitution after an initial point of few years and in ten-yearly intervals thereafter.

The Congress Working Committee reacting upon the statement issued by the Cabinet Delegation specified that the Committee did not agree with some of the recommendations of the Statement. The Committee held that if the Constituent Assembly wanted, it would have the full authority to make changes and variations and regarding communal matters, a majority decision of both the major parties would be necessary.

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1. Constitutional Proposals of the Sapru Committee, Bombay, 1945.
 2. Indian Annual Register Op.cit, Vol.II. p.145-7.

The Congress also criticised the grouping scheme of the Cabinet statement. Jawaharlal Nehru speaking upon grouping said, 'the big probability is that... there will be no grouping. He pointed out that everybody outside the Muslim League was entirely opposed to grouping. Also in his opinion provincial jealousies would work against each other, for example North West Frontier Province and Sind would not like to group with Punjab for economic and other reasons.

Jinnah and the Muslim League now took the opportunity formally to define the territories which the contemplated Pakistan should include. According to the All India Muslim League Council resolution on 29 July 1946, the scheme of the Cabinet Delegation fell far short of the demand of the Muslim nation for the immediate establishment of an independent and fully sovereign state of Pakistan comprising the six Muslim Provinces, but the Council accepted a Union Centre for ten years strictly confined to three subjects, viz. Defence, Foreign Affairs and Communications.

The All India Muslim League felt that once the Constituent Assembly was summoned there would be no provision or power that could prevent any decision from being taken by the Congress with its overwhelming majority. It would rest entirely with the

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1. Independence and After: Collection of Speeches, GOI, N.D.1940
 2. Document relating to the Statement made by the British Cabinet Mission and H.E. the Viceroy on 16 May 1946, Constituent Assembly, India, New Delhi, 1947.

majority to take such decisions as they might think proper or which will suit them. Moreover, the Congress had already secured an overwhelming majority and they would be in a position to use the Assembly in the manner in which they have already declared. I.e., the League accused Congress of not cooperating according to the principles laid down by the Cabinet delegation and Viceroy. They felt that the British Government was sacrificing the interests of the Muslims to appease the Congress and it withdrew acceptance of the Cabinet Mission proposals.¹

It was maintained that the Muslims of India would not rest contented with anything less than the immediate establishment of an independent and fully sovereign state of Pakistan and would resist any attempt to impose any constitution making machinery or any Constitution, long term or short-term, or the setting up of any Interim Government at the Centre without the approval and consent of the Muslim League.

A resolution of the Working Committee of the Indian National Congress in response to Muslim League's rejection of the Cabinet Mission Plan stated:²

The Committee have noted that criticisms have been advanced on behalf of the Muslim League to the effect that the Congress acceptance of the proposals contained in the statement of May 16th was conditional. The Committee wish

1. Ibid.
2. Ibid, p.3

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.

The Committee emphasizes the Sovereign character of the Constituent Assembly, that is its right to function and draw up a constitution for India without the interference of any external power or authority. But the Assembly will naturally function within the internal limitations which are inherent in its task, and will therefore seek the largest measure of co-operation in drawing up a Constitution of free India allowing the greatest measure of freedom and protection for all just claims and interests.

Reacting to the Resolution of AICC, M.A. Jinnah made a statement on August 12th, 1946. He said :

.... the question is how this Assembly will function and they make it clear that it will do so with internal limitations... If any decisions are taken by this Assembly which are repugnant, ultra vires or incompetent for the Assembly to adopt, what is the check provided for it either internally or externally except again the brute majority in the Assembly.

1. Ibid, p.7

The Cabinet Mission adopted the population basis for the elections to the Constituent Assembly. But it was found by the Mission that it was wholly impracticable to extend the population basis to each of the minorities, because their numbers were so divided up among the different provinces that it would, in practice, have resulted in some of them not gaining any representation at all. Therefore only three major divisions were made, that of Muslims, Sikhs and General. Population basis was adopted for representation, i.e., one representative for a million of people.

However, Congress was a vast majority where minorities were not to be elected on population basis but rather their election rested on Congress decision of how to give minorities their due representation. This was of course, arbitrary but it was better than the population basis because through the population method Minorities would have had been insignificant in the Constituent¹ Assembly.

The Congress was against the division of the country. It was however sympathetic to the idea of local authority, that which would conform to the maintenance of the unity of the country. Accordingly it suggested that the future framework of the country's Constitution be based on a federal structure with a limited number of compulsory central subjects such as defence, communications and foreign affairs; the federation would consist

1. Ibid.

of autonomous provinces in which would rest the residuary subjects. It was proposed that on the completion of the constitution making process a province could elect to stand out of the Constitution altogether or federate on the essential minimum subjects, or federate on the essential as well as the optional subjects.¹

Lord Wavell made it clear that the Muslim League's entry into the Interim Government was conditional on the acceptance of the scheme of the Cabinet Delegation contained in the statement of May 16 and explained in the statement of May 25 and that he must call his council at an early date. But Jinnah on 5th November 1946 accused the Congress of inactivity in Bihar in the face of gruesome massacres and on that condition found the atmosphere too explosive to even think about a Constituent Assembly. Therefore, Jinnah in his letter to Lord Wavell, dated November 17, 1946 asked for a postponement of the Constituent Assembly.²

But when the decision to summon the Constituent Assembly was taken and it was to be on December 9th, Jinnah found the situation not much to his tastes, he commented:³

It is quite obvious that the Viceroy is blind to the present serious situation and the realities facing him and is entirely playing into the hands of the Congress and is appeasing them in complete disregard of the Muslim League...

- 1. Ibid.
2. Ibid.
3. Ibid.

In these circumstances, it is obvious that no representative of the Muslim League will participate in the Constituent Assembly.... By forcing this meeting of the Constituent Assembly, the matter has been further exacerbated and a situation has been created which will lead to serious consequences.

Even this date, (9 December) it must be remembered, was given months after the election of the members of the Constituent Assembly. Any further postponement in the given context would, in all probability, have resulted in the abandonment of the plan and created a feeling of uncertainty all round which was not only undesirable but could actually encourage various forms of violent propoganda.

The opposite reaction of the two parties, regarding the Constituent Assembly meeting was spurred due to their respective interests. The Muslim League wanted equal representation in the interim government portfolio wise, it wanted that AIML should also have the same discretionary power as the Congress regarding the choice of minority representatives and other arrangements regarding the number of representatives etc. This clearly substantiates the Muslim League's disappointment with the Cabinet Mission proposals.

Nehru's talks with Jinnah having failed, the Viceroy undertook further negotiations. He was able to persuade Jinnah to nominate five members to the interim Government from his party, without any further conditions or stipulations. Nehru and

the Congress representatives pointed out that the representatives of Muslim League could not join the Cabinet Mission without a formal acceptance of the proposals of the Cabinet Mission and the League's agreement to cooperate in the work of constitution - making within the framework of the plan.

The British meanwhile proceeded with the formation of an interim Government which was supposed to be as representative as possible of those who were willing to accept the statement of May 16th. Nehru's talks with Jinnah had failed, and eventually the Viceroy could persuade Jinnah to nominate five members to the interim Government.¹

However, Nehru and other Congress representatives pointed out that the representatives of the AIML could not join the Interim Government without a formal acceptance of the proposals of the Cabinet Mission and League's agreement to cooperate in the work of constitution-making within the framework of the plan.

Nehru was definitely of the opinion that plans for summoning the Constituent Assembly should be put through inspite of the fact that the attitude of Jinnah and the Muslim League at the time was one of non-cooperation. The political implication of ALL India Muslim League's abstention from the Assembly meant an appeal to the existing British Colonial State to intervene in the affairs of the Constituent Assembly, which was however not

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1. Gwyer and Appadorai, Speeches and Documents on Indian Constitution 1921-1947, Vol II, OUP, 1957, Bombay, p.653.
 2. V.P. Menon, The Transfer of Power in India, p.322.

possible² as it was unacceptable to the nationalists. Nevertheless the Secretary, of State made an effort again to bring a settlement between the two major political parties. Accordingly on November 26, the Viceroy conveyed to Nehru, Jinnah, Liaquat Ali Khan and Baldev Singh an invitation from the British Government for discussions in London. The discussions were unfruitful. The British Government made a last, but not the least, effort to strengthen the division of the opinions of the two parties by innocently stating in the British Prime Minister's¹ Statement, 6 December 1946 that:

On the matter immediately in dispute, his majesty's Government urge the Congress to accept the view of the Cabinet Mission in order that the way may be open for the Muslim League to reconsider their attitude. If in spite of this reaffirming of the intention of the Cabinet Mission, the Constituent Assembly desires that this fundamental point should be referred for decision of the Federal Court, such a reference should be made at a very early date. It will therefore be reasonable that the meetings of the sections of the Constituent Assembly should be postponed until the decision of the Federal court is known.

... should a Constitution come to be framed by a Constituent Assembly in which a large section of the Indian population had not been represented, His majesty's Govt

1. B. Shiva Rao and others (eds) Select Documents op.cit, pp.347-348.

could not, of course, contemplate as the Congress have stated they would not contemplate - forcing such a Constitution upon any unwilling parts of the country.

The Congress reacted sharply against the statement. The Working Committee of the Congress passed a resolution declaring that the point at issue was not merely one of the procedure but the fundamental principle of provincial autonomy, and whether or not a province or part should be coerced against its will. The idea of the Federal Court binding the decisions of Constituent Assembly was also not welcomed. But still the Congress Working Committee made a conciliatory effort:¹

The Congress seeks to frame, through the Constituent Assembly, a Constitution of a free and independent India with the willing cooperation of all elements of the Indian people. The Working Committee regret that the Muslim League members of the Constituent Assembly have refrained from attending its opening session.

The (objectives) resolution according to the Muslim League was "illegal, ultra vires and not competent of the Constituent Assembly to adopt". The consideration on objectives Resolution was delayed in order to give some more time to Muslim League for its decision to participate in the Assembly. But Muslim League postponed the decision on its future course of action until

1. Ibid.

January 31. By then the objective resolution was already passed without the Muslim League's participation.

The Congress formed the interim government and later nominees of the Muslim League were also inducted but after much ado. The Muslim League had to give in on two points to get into the Cabinet. It had to agree to the Congress nominating a Muslim member, and thereby give up the right, long claimed, to exclusively nominate all Muslim members of the Cabinet; and it had to undertake to join the Constituent Assembly.

The League made its final stand clear and decided to non-cooperate in the Constituent Assembly. The Congress made the Viceroy's assurance clear to the League, which stated that as a consequence of the League's failure to join the Constituent Assembly its withdrawal from the interim government was compulsory. Nehru added that if it did not adhere to it, then Congress members would themselves resign.

The situation was going out of hand for the British Government. It was decided in face of the continuing political crisis that the British would terminate their rule in India, and transfer power to responsible Indian hands by a date not later than June, 1948. The government agreed to recommend to the British parliament a Constitution worked out in accordance with the Cabinet Mission plan.

Since, 1935, it's seen that two political strands Congress and the Muslim League were critical in the political scenario of India. Both were asking for political reforms. But it is evident that the Congress was fighting for a long term gain of Indian Independence and self-government thereby ending Colonial rule, where as the Muslim League was fighting for small concessions and short term gains. It's shifting attitude is visible over the period because of its shallow ideology of short term gains. Both the parties we can say were in conflict over the question of Centralisation and Decentralisation on every political issue. Muslim League was always in favour of Decentralisation in order to contradict the Congress or Nationalist ideology of unity of the country which the Congress was demanding. The Congress obviously wanted a centralised structure with provincial autonomy which could be attained in a Federation.

The Muslim League on the other hand was not in favour of a federation under the auspices of a popularly elected responsible government. It is interesting that the Muslim League was backing the Federation of 1935 under Colonial auspicious because it meant autonomy in Muslim majority provinces and the promise of future secession from the main-land. But later its ideology regarding a federation changes, when Federation is proposed in the Cabinet Mission Plan, for the obvious reason that it meant a united set up with India. Now Pakistan was first and foremost in their minds. Congress on the contrary did not back

the 1935 Federation because it was decentralisation without democratic reforms, the Federation proposed was supposed to give the Princely States and Muslim League undue advantage on undemocratic basis. In the Cabinet Mission proposals Congress accepted the proposal of Federation because it meant a united front of all pluralist strands of the country which was to attain freedom and self-government.

Chapter - III

Creation of the Federal Constitution

Background

On 16th May 1946 the Cabinet Mission made its plan public, and the proposals for the new Constitution were made clear to the Congress and the Muslim League. By the end of June after a tortuous process of detailed negotiations, both the Congress and the League accepted the plan, but both publicly and privately recorded their reservations. Jinnah accepted the plan, because the clause of compulsory grouping meant the inevitability of a separate state, and he was optimistic enough to make it result in independent Pakistan. The Congress accepted the plan subject to its own interpretations. The Statement of the Congress Working Committee expressed that the proposals were accepted conditionally and the committee wished to make it clear that while they did not approve of all the proposals contained in the plan, they accepted the scheme in its entirety.¹

According to the Cabinet Mission plan, the procedure to make the Constitution, called for the creation of a Constituent Assembly. Regarding the creation of the Constituent Assembly the reaction of the Congress and Muslim League was opposite. Congress had instantly made its stand clear, asking for fast² action regarding the convening of a Constituent Assembly, Muslim League on the other hand decided not to participate in the

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1. Maurice Gwyer & Appadorai (eds) Select Documents.
 2. Ibid.

Assembly. The Muslim League was actually unhappy with the representation it was to get in the interim government. It wanted equal representation in the interim government portfolio wise, it wanted that Muslim League should also have the same discretionary power as the Congress regarding the choice of minority representatives, other arrangements regarding the number of representatives etc. Congress on the other hand had reservations in conceding to Muslim League's demands. This detente lasted through July, long enough to see the Constituent Assembly elected under the terms of the Cabinet Mission Plan. League did not cooperate.

The election procedure adopted for the Constituent Assembly rejected adult suffrage as too cumbersome and unpracticable. The plan provided that the provincial legislatures elect the Assembly. The Provincial Legislatures were freshly elected. The Provinces were to be represented in the Assembly in the approximate ratio of one to one million of their population. There were to be ninety three representatives of the Princely States.

Membership of the Constituent Assembly

The Cabinet Mission stated that it was sufficient to recognize only three Communities in India. The members of three communal categories in the legislatures would elect the members of the Assembly separately. The three categories were of Muslims, Sikh and General (Hindus and all other Communities). The

minorities were to be nominated as upon population basis, they had very little chance of representation.¹

On this basis the allotment of seats among the various Provinces and Communities in British India was as follows:

2
TABLE OF REPRESENTATION

SECTION - A

| Province | General | Muslims | Total |
|-------------------|---------|---------|-------|
| Madras | 45 | 4 | 49 |
| Bombay | 19 | 2 | 21 |
| United Province | 47 | 8 | 55 |
| Bihar | 31 | 5 | 36 |
| Central Provinces | 16 | 1 | 17 |
| Orissa | 9 | 0 | 9 |
| | 167 | 20 | 187 |

SECTION - B

| Province | General | Muslim | Sikh | Total |
|-----------------|---------|--------|------|-------|
| Punjab | 8 | 16 | 4 | 28 |
| N.W.F. Province | 0 | 3 | 0 | 3 |
| Sind | 1 | 3 | 0 | 4 |
| | 9 | 22 | 4 | 25 |

SECTION - C

| Province | General | Muslims | Total |
|----------|---------|---------|-------|
| Bengal | 27 | 33 | 60 |
| Assam | 7 | 3 | 10 |
| | 34 | 36 | 70 |

1. B. Shiva Rao and others, Select Documents, Vol. I, 48(i), p. 214.
2. Ibid.

The total number of members from Governor's Provinces of British India was 292. As far as Indian States were concerned, Cabinet Mission stated that states would be given in the final Constituent Assembly appropriate representation, which would not be based on the representation of the British India type but would be on the basis of selection which will be determined by consultation. The States in the preliminary stage would be represented by a Negotiating Committee.¹

Thus, total membership of the Assembly was 389 of whom 93 were representatives of the Indian states and 296 from British India (292 from Governor's Provinces and 4 from Chief Commissioner's Provinces).² On the basis of the proposals of the Cabinet Mission, elections were held in July and August, 1946, of the 292 Seats allotted to the Governor's Provinces.

The elections as stated earlier were held in three categories (communal divisions) under the proposals of Cabinet Mission Plan, the total number of seats allotted from the Governor's Provinces to Muslims was 78, to Sikhs 4, and the Candidates in the General Category 210. Of the 210 general seats Congress captured 199. The Congress also won three of the four Sikh Seats in Punjab and three Muslim Seats, and three Seats allotted to Coorg, Ajmer Merwara and Delhi. Thus, the total seats accruing to Congress were 208. The Muslim League had a

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1. Reports of Committees, First Series - Report of the Committee Appointed to Negotiate with the States Negotiating Committee, 20 April 1947, p.9.
 2. Shiva Rao & others (eds) Framing of India's Constitution, A Study.

fair success with the Muslim Seats, capturing seventy three out of a total of seventy-eight.¹

Congress was anxious to construct the Constituent Assembly its strength as an united and strong party had been tested in the elections of representatives into the Assembly.

The Muslim boycotted the Assembly, and when the Assembly began its three year task on 9th of December 1946, the Seventy three representatives of the Muslim League were not present, proportionate to the population almost 73 million Muslims were not represented (numerically). Gandhi was skeptical about the whole arrangement and felt that there was no use declaring somebody else's creation a sovereign body, but since the proposals of the Cabinet Scheme was accepted, he thought that all parties should join the Assembly in an effort to make it work.²

Thus, the Assembly as stated earlier remained a one party body. The Congress made sincere efforts to make the Assembly representative of all the elements in India's national life. Of the two hundred and five members elected into the Assembly from the Governor's Provinces on Congress vote, thirty members were from outside the party. From the minorities, the scheduled castes accounted for twentynine, the Indian Christians had six, Anglo Indians three and Tribals, four.³

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1. B. Shiva Rao, Select Documents op.cit, pp.287-380.
 2. B.G. Tendulkar Mahatma, (to Louis Fischer in an interview held about 22nd July 1946; Vol. VII pp.189-90.
 3. Ibid

Gandhi's advice to incorporate the best talents in the Assembly was not overlooked by the Congress. Irrespective of party affiliations, the best available talents were nominated by the Congress as representatives in the Assembly. The Congress nominees among many included, N. Gopalswami Ayyangar eminent civil servant from Madras, who was the Prime-Minister of Kashmir from 1937-43; a members of the Sapru Committee 1945; Minister without portfolio in Government of India, 1947-48; Leader of Indian Delegation to U.N. Security Council 1948, etc. ¹ Hriday Nath Kunzru, President of Servants of India Society, was another important figure of the Indian public life. ² Alladi Krishnaswami Ayyar was an eminent advocate, he was Advocate General Madras, 1929-44. S. Radha Krishnan, great philosopher and educationist and H.C. Mookherjee, respected educationist from Bengal, also president All-India Council of Christians; Member Bengal Legislative Assembly 1937-42. ³

This anxiety of the Congress to secure the largest measure of agreement for the Constitution was reflected also in the composition of the Drafting Committee. Of the Seven members of the Drafting Committee, only K.M. Munshi estranged Congressman and T.T. Krishnamachari were members of the party. One member Muhammad Saadulla, was a member of Muslim League; and others B.R. Ambedkar, Alladi Krishnaswami Ayyar, N. Madhava Rau, and D.P. Khaitan were independent members.

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1. Shiva Rao & others, A Study, op.cit., Biographical Sketches (Appendix I), p. 843.
 2. Ibid., p.97.
 3. Ibid. p.844.

The party-wise break up of the Assembly's British Indian membership was as follows.¹

| | |
|----------------------------|------------|
| Congress | 208 |
| Muslim League | 73 |
| Unionist | 1 |
| Unionist Muslim | 1 |
| Unionist Scheduled Castes | 1 |
| Krishak Proja | 1 |
| Scheduled Caste Federation | 1 |
| Sikh (Non-Congress) | 1 |
| Communist | 1 |
| Independents | 8 |
| Total | 296 |

Among the members of Constituent Assembly, were the Presidents of many parties and organisations for example, the Indian National Congress, the Depressed Classes League, the Muslim League, the All-India Scheduled Castes Federation, the All-India Women's Conference, the All-India Landholders' Association, the Hindu Mahasabha, the Servants of India Society,² the Anglo Indian Association. The Assembly thus, consisted of an association of members of Central Government (10), Presidents and ex-Presidents (5), Members and ex-Members of various important Parties (22). There were members of Provincial Congress Committee and also, Provincial Muslim League Committees, ex-Members of Viceroy's executive Council (4), Premiers of Provinces (8), Ministers of Provinces (10), ex-Ministers of Provinces (17), Members of Central Legislature (34), ex-members of the Central Legislature (3), Members of Provincial Legislatures (155), the speaker and an ex-speaker of provincial

1. Ibid, p.97.

2. Ibid, p.98.

Legislature. Therefore its evident that cream of all the professions were incorporated, people's representatives of present and past were not overlooked. Successful people from all fields, Lawyers, Doctors, Educationists, Industrial and Commercial Magnates, Working Class (industrial or agricultural) representatives, journalists authors, politicians all were represented.¹

There were a few but important changes in the membership of the Constituent Assembly, due to the territorial changes and population changes corresponding with it because of partition, after independence. As a result of the territorial changes, the new Dominion of Pakistan was to include the provinces of Sind, Baluchistan and the North-West Frontier Province, the Muslim majority Districts of Bengal, and Punjab, and the district of Sylhet in Assam. This territorial delimitation was determined by the Radcliff Commission Award. As a result of this partition, West Bengal was allotted a membership of nineteen (Fifteen General and Four Muslim Seats) and East Punjab Twelve (Six General and four Muslim and two Sikh Seats). The representation of Assam was reduced to eight. The membership of the Constituent Assembly changed to:²

| | |
|-------------------------------|------------|
| Governor's Provinces | 226 |
| Ajmer-Merwara Delhi and Coorg | 3 |
| Indian States | 89 |
| Total | 318 |

1. Ibid.
2. Constituent Assembly Debates, Vol.VI, pp.3-13.

The Congress gained in membership from its earlier position. Thus, the Congress' overwhelming majority resulted due to December 1945 provincial legislature elections and from partition. Under the scheme of indirect election in the Cabinet Mission plan, the Constituent Assembly reflected the complexion of the provincial legislatures, keeping aside the nominations and membership of the Indian states. The complexion of the provincial legislature, one can say was somewhat skewed, because dully 28.5 per cent of the adult population of the provinces could vote in the Provincial Assembly elections of 1945-46.¹

One of the primary qualifications for a candidate it is certain was a record of active work in the political sphere, and the secondary qualification was that of elected through provincial legislatures, the Congress made certain exceptions to this general rule, intervening in the affairs of the Provincial Congresses to assure that persons of exceptional ability found places in the Constituent Assembly and the minority Communities were justly represented.

Although three political organisations had no Official representation in the Constituent Assembly the Communist Party, the Socialist Party and the Hindu Mahasabha. But members of Hindu Mahasabha were present in the Assembly under different sponsorships.² The Socialist Party members were divided to the last in their opinions about the desirability of joining the

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1. Based on the average proportions of the electorate to the adult population.
 2. S.P. Mukherjee was sponsored by Congress.

Assembly. the Communist Party had earlier elected its member but it was due to partition and was not reelected.

The Nature of Leadership in the Assembly

The nature of the leadership in Constituent Assembly was the product of inter-relationship in three spheres. That of Government with the Assembly and of both with the Congress Party. Nehru, Patel, Azad, Pant, Ambedkar (non-Congress) were ministers in the newly formed Cabinet, they were also members of the Working Committee of the Congress Party except Ambedkar and also in Leadership position in the Constituent Assembly. The Assembly had total fifteen Committees, out of which, eight major Committees were -- Rules, Steering Advisory, Drafting, Union, Subjects, Union Constitution, Provincial Constitution, and States. Either Nehru, Patel or Prasad Chaired each of these Committees. Though Ambedkar Chaired the drafting Committee which was an exception. Thus, the inner circle of the Assembly consisted of:

| Name | Committee | Congress Position | Government Position |
|------------------------|-----------|--|--|
| Prasad | 2 | Working Committee (member) | President (Constituent Assembly) gave up Ministership of Govt. |
| Azad | 4 | " | Minister |
| Patel | 4 | " | Deputy Prime Minister |
| Nehru | 3 | " | Prime Minister |
| Pant | 3 | " | Prime Minister, U.P. |
| Sitaramayya | 4 | Congress Working Committee (member) | -- |
| Ayyar | 5 | -- | Minister |
| Munshi | 6 | Member | -- |
| Ambedkar | 3 | -- | Minister |
| Sinha, Satyanarayan | 2 | Member | Minister & Chief Whip |

Nine more members were also in prime positions, they were N.G. Ayyangar, Jairamdas Daulatram, Shankarao Deo, Mrs. Durgabai Acharya Kriplani, T.T. Krishnamachari, H.C. Mookerjee, B.N. Rau and Mohammed Saadulla.¹

The above twenty individuals comprised the most influential members of the Constituent Assembly. They possessed good qualifications; came from diverse backgrounds. All were University graduates. Twelve were lawyers, one was a doctor, two were teachers, three were high ranking Civil Servants. One was a business man. Half the group was active in the national movement. Five from the group were non Congressmen, two were its opponents, Ambedkar and Saddulla, who was actually a Muslim League Member, Another man who was extremely important, and had a say among the leadership was Sir B.N Rau, who was the Constitutional Adviser. He was an eminent advocate and judge. In the course of the Assembly he proved himself as an able draftsman and coordinator.

The Assembly and its Task

The task in simple terms, before the Assembly was to formulate a Constitution for free India, and not just a Constitution but an instrument by which the ultimate goal of social revolution could be achieved. But it was far more complicated than what it seemed, because a choice was to be made by the Assembly members regarding the appropriate forms of political institution, to foster or at least permit a social

1. Shiva Rao & others (eds) Vol.I, op.cit., pp. 215-250.

revolution. Or in other words there was a question as to what should be the basic character of the Constitution, should be unitary, federal or almost completely decentralised. The Choice finally meant deciding which political tradition. The two alternatives had different natures altogether, the Euro-American Constitutional tradition meant continuing in the same direction which India had already taken, i.e. continuing in parliamentary form of Government, combined with some improvements by taking some good points from other Democratic Constitutions boasting Parliamentary forms of Government, for example, America, Canada, Australia, Britain etc.

On the other hand indigenous tradition meant working within the traditional village system and Panchayat form of Government which was first suggested by Gandhi in his pamphlet Hind Swaraj. It was also proposed in Common Wealth of India Bill in 1924, prepared by a National Convention of which Dr. Annie Basant and Sir Tej Bahadur Sapru were the joint sponsors. Gandhi wanted a constitution based on the village and its panchayat and erected upon it a superstructure of indirect decentralised government. And in the system referred to in the India Bill, the Constitution was to be based on the principle of adult suffrage at the village panchayat level and a system of indirect elections for both the Central and Provincial Legislatures. Mahatma Gandhi articulated his indigenous bias for the future Constitution in a letter to J.L. Nehru dated October, 1945. He wrote:

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1. B.N. Rau, India's Constitution in the Making, pp.331.
 2. J.L. Nehru, A Bunch of Old Letters, pp.502-12.

....I have said that I still stand by the system of Government envisaged in Hind Swaraj. These are not mere words. All the experience gained by me since 1908, when I wrote the booklet, has confirmed the truth of my belief..... I am convinced that if India is to attain true freedom and through India the world also, then sooner or later the fact must be recognised that people will have to live in villages not in towns, in huts, not in palaces.....

My ideal village will contain intelligent human beings. They will not live in dirt or darkness as animals. Men and Women will be free and able to hold their own against the World.¹

Gandhi submitted two plans, one in January 1946 and the other in January 1948. His final plan expected that the Congress would become a social service organisation based on a nationwide network of panchayats. Each village panchayat in Gandhi's plan was to form a unit, two such panchayats would constitute a working party with an elected leader. Fifty leaders would elect a second grade leader, who would co-ordinate their efforts and who would also be available for national service. Second grade leaders could elect a national Chief to regulate and command all groups.² The Congress Party's Working Committee did not accept Gandhi's suggestions, believing that the Congress would neither forego its political role nor become so utterly decentralised.³

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1. Ibid.
 2. N.V. Rajkumar, Development of Congress Constitution, pp.145-6.
 3. AICC Papers, 1948.

Also Nehru prior to the AICC's rejection of Gandhi's plan had already rejected Gandhi's proposal for an indigenous constitution. In a letter date in 1945, he wrote.

... A village normally speaking is backward intellectually and culturally and no progress can be made from a backward environment. Narrowminded people are much more likely to be untruthful and violent ... Again it seems to me inevitable that modern means of transport as well as many other modern developments must continue and be developed. There is no way out except to have them...

...How far that will fit in with a purely village society? I do not think it is possible in India to be really independent unless, she is a technically advanced country.

Therefore, Gandhian tradition was rejected for reasons which were supposed to be correct/appropriate at that time. Moreover the constitutional advisor B.N. Rau had circulated a questionnaire to all members of the central and Provincial Legislatures to facilitate the framing of the new constitution, by giving their individual viewpoints. The questionnaire contained the salient features of the new Constitution. But unfortunately apart from a few, the response was low. It was not possible in these circumstances to know what the majority felt. That is why the Constitutional adviser prepared a memorandum

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1. Nehru, A Bunch of Old Letters, op.cit.
 2. B.N. Rau, op.cit., pp.16-17.

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which reflected his own ideas, which were obviously aligned to the Euro-American tradition in each and every aspect.

Finally the Assembly's alternative was a Constitution aligned to the Euro-American tradition based on the principles of directly elected governments. The tendency in these type of traditions are towards centralisation, meaning a pyramidal structure, in which a paraliamentary form of government is directly elected and the elected government is all powerful and is at the apex of the pyramid, with overarching power over the base. The decision to opt for this type of a tradition was predetermined for certain reasons: (a) It was tested and experienced already in India (b) It was the World trend (c) The members were by this time convinced of a strong centre after the partition. Thus, it was hastily but firmly decided that India would be a federation with a strong Central Government and Legislatures, that there would be three legislative lists on the lines of the Government of India Act, 1935, and that the residuary powers would vest with the centre and not the Provinces.²

Since partition, the whole Assembly made an effort to maintain the unity of India in each and every aspect of the Constitution. The initial debate on Objectives Resolution gave an opportunity to several members to voice their conviction that a strong centre was necessary to build up national strength and

1. Ibid.

2. B. Shiva Rao, A Study, op.cit.

prosperity. This amounted to abandoning the rules of the Cabinet Mission plan, which had proposed a weak centre for the unity of the country because it was the only way by which cooperation of the Muslim League could be achieved at that time. When therefore, the Assembly got a free hand to devise the constitutional structure according to its own choice, there were many who hailed the new development as a release from the handicaps of curbs and conditions of the Cabinet Mission Plan. K.M. Munshi voicing his opinion on this said:

....the plan of May 16 had one motive to maintain the unity of the Country at all costs. A strong Central Govt. was sacrificed by the May 16 plan at the altar of preserving the unity which many of us after close examination of the plan found to be an alternated unity which would not have lasted longer than making it.¹

The Draft Constitution

The draft of India's new Constitution was released to the public on February 26, 1948. The first criticism levelled against the draft was its heavy borrowing of concepts from the Government of India Act, 1935 and the Constitutions of other Countries. Second was its neglect of the Indian indigenous village System.² For the first criticism, Dr. B.R. Ambedkar gave an unabashed defence: "I make no apologies there is nothing

1. Constituent Assembly Debates, Vol. IV, p.544.
2. B.N. Rau, op.cit, pp. 360-361

to be ashamed of in borrowing." ¹ Regarding the same criticism B.N. Rau stated, "Most modern Constitutions do make full use of the experience of other Countries, borrow what ever is good from them and reject whatever is unsuitable." ²

About the Second Criticism, the story had started during the drafting stage of the Constituent Assembly's proceedings. The proposal pertaining to making village panchayats the basis of elections under the permanent Constitution, emerged. The President of the Constituent Assembly Dr. Rajendra Prasad referred it to the Constitutional Advisor, Sir B.N. Rau. Prasad wrote to B.N. Rau, transmitting and explaining an article that he had received suggesting changes in the Draft Constitution. He wrote:

I like the idea of making the Constitution begin with village and go upto the Centre, the village has been and will even continue to be our unit in this country.....

I strongly advocate the idea of utilising the adult franchise only for the village panchayat and making the village panchayats the electoral college for electing representatives to the provinces and the centre. ³

B.N. Rau in his reply rejecting Prasad's suggestion stated:

It may not be easy to work the panchayat idea into the draft Constitution at the present Stage. Articles 67(5)(a) and 149(1), which, I believe embody decisions already taken by

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1. CAD. Vol. X.
 2. B.N. Rau, op.cit.
 3. Rajendra Prasad Papers, File No.5-4/48.

the Constituent Assembly provide for direct election to the Lower House, both at Centre and in the units. These decisions will first have to be reversed if elections are to be indirect, as required by the Panchayat plan. Whether this will be practicable I do not know.....

Since the world trend is towards direct elections it will therefore not be easy to reverse the decision already arrived at by the Constituent Assembly. Also indirect election would call for proper qualifications of the legislators..... I fear if the Indian Constitution incorporates the village... then the constitution will be of inordinate length and will be even more rigid than at present.¹

This debate was renewed when the draft Constitution was presented. During the general discussions it was felt by many that the draft Constitution spelt a departure from the Gandhian ideals. The issue came up when the second reading of the Draft Constitution in the Constituent Assembly in November 1948. Since, Ambedkar was the Chairman of the Drafting committee he was found responsible and was charged by the members for overlooking Gandhian ideals.²

Ambedkar being an ardent supporter of a strong centre and a unitary constitution, reflected that the Gandhian Scheme was not practicable and would be harmful for the future democratic system, as it would perpetuate the existence of caste system,

1. Ibid., File 27-C/48.
2. CAD, Vol.VII, 1948, p.39.

illiteracy and discrimination, because there won't be any change in the age old tradition of the villages. The issue came up when the second reading of the Draft Constitution in the Constituent Assembly in November 1948 was taking place. Since Ambedkar was the Chairman of the drafting Committee he was found responsible. Ambedkar's opinion on the issue reflected his disagreement with the village Community System he believed that the Gandhian Scheme was not practicable and would be harmful for the future democratic system, as it would perpetuate the existence of caste system, illiteracy and discrimination because there won't be any change in the age old traditions of the villages. He also felt that swaraj might mean a total capture by the traditionally privileged uppercaste Hindus, which would aggravate the sufferings of the untouchables. Thus he had every reason to believe that swaraj meaning an end to untouchability would rather extend its life. Therefore, he felt that social reformation was only possible from upwards, for which a structure is needed which will ensure equal opportunities for the untouchables, this meant a system which would have a strong central authority to curb resources from the majority to the minorities and keep them protected from their tyranny. The life long dedication of Ambedkar towards the cause of untouchables was reflected in his ardent wish to have a centralised state. The other members were also unanimous on the issue of strong central government because they also shared the view of Ambedkar regarding distributive equality between majority and minorities.

1. Ibid.

The Gandhians however in the assembly felt that the Committee was ignoring Gandhian ideals for ready made experimental Western Parliamentary models. They felt that Euro-American governmental forms seeking parliamentary form of government had limits to their democratisation. Meaning thereby that devolution of power in parliamentary forms of government were restricted up to an extent, because to uphold and maintain the parliamentary form of government, a centralised bureaucracy was inevitable. The Gandhian paradigm on the otherhand envisaged a system of government which would be free of bureaucracy, where the devolution of power would reach the individual through village administrative system, But the Drafting Committee rejected the suggestion of having village republics as the basis of the whole constitution. To most members the Gandhian models seemed neither practical politics nor practical economics.

Majority of members though were unanimous for a strong central government and were unsympathetic towards the cause of decentralisation up to the village levels. The members were encouraging centralisation, from the objectives resolution debates of the Assembly. Jawaharlal Nehru framed the objectives resolution and expressed his ideas upon the future constitution. He hoped to encourage state activities, such as planning, industrial development, relief of unemployment nationalisation of industries etc. He sought to combine liberalism with egalitarianism, democracy and individual liberty with socialism and planning. His views found support from large section of the Assembly members. Patel, Azad, shared Nehru's views. He also

indicated that centralised administration and Constitution can protect the country from foreign aggression and also it would provide stability and unity.¹ This theme ran through all his views in the Constituent Assembly Debates. The other members were also convinced that purely decentralised village system would not be able to harness industrialisation, nor would be able to provide the political framework for undertaking a policy of planning by the state.

Pandit Thakurdas Bhargava, suggested that the industries should be decentralised as much as the administration, meaning there by that the economic and political both decentralisation processes have to be simultaneous. This was to happen in order to abolish any disparity between rural and urban people.

Members remaining loyal to Gandhian ideals asked for Panchayats, so that the centralised structure could be decentralised up to some extent on Gandhian principles. T. Prakasan appealed to the Assembly that the Gandhian scheme should be considered. He advocated modern panchayat system with financial autonomy.² N.G. Ranga another Gandhian spokesperson, supported the Panchayat System and termed it as a necessity as he felt that village panchayats were the foundation stone of the country without which the masses would be devoid of powers to play their rightful part in democracy.³ H.V. Kamath felt that

1. Ibid.

2. B.N. Rau, op.cit., An interview with Nehru, by Rau, p.34.

3. CAD, Vol. VII, p.350.

international peace and security could only be achieved through the establishment of village republics. He insisted on inserting a new Article to the effect that "State shall endeavour to promote the healthy development of Gram Panchayats with a view to ultimately constituting them as basic units of administration.¹

Shibban Lal Saksena suggested the inclusion of village panchayats and local self government within the emerging constitution. Sarangdhar Das requested that this matter be reconsidered so that the villagers might get their dues. Chaudhari Randhir Singh wanted that the villagers should have full participation in the nation building process. V.I. Muniswami Pillai expressed his dissatisfaction given the absence of any provision in the Draft to consider the village as a unit. He expected the Assembly to reconsider the Draft proposals. Gokulbhai Daulat Ram Bhatt complained that the constitution can't be accepted if villages are ignored in it. Renuka Roy expressed her belief that if villages are reformed and freed from superstition and ignorance, they could certainly become the backbone of the structure of the Constitution.²

The Gandhians were of course, outnumbered. Members who opposed the village system found their voice reflected in Begum Aizaz Rasul's statement "A lot of criticism has been made about Ambedkar's remark regarding village polity. Sir, I entirely agree with him. The modern tendency is towards the right of the citizen as against any corporate body a village can be very

1. Ibid, p.504.

2. Ibid.

autocratic.¹ Manmohan Das gave a note of caution, "enthusiastic protagonists of the village people are educated and until and unless the village people become conscious of their rights and privileges, this village panchayat system will do more harm than good."²

To balance the controversy Alladi Krishnaswami Ayyar said, "with large powers vested in the provincial or state legislatures in regard to local self government and other matters there is nothing to prevent the provincial legislatures from constituting the villages as administrative units for the discharge of various functions vested in the State Governments,"³ K. Santhanam said, ".... I wish that some statutory provision had been inserted regarding village autonomy within proper limits. Of course, there are difficulties because there are villages which are very small, and there are big villages and many of them have to be grouped for establishing Panchayats, their existence may have to be recognised in the constitution, for in the long run local autonomy for each village must constitute the basic framework for the future freedom of this country"⁴ N.G. Ranga and M.A. Ayyangar also suggested that there should be a Directive provision for the establishment of village panchayats.

Members who were sympathetic to the cause of village system favoured generally uplifting the villages, they were in favour of giving the villages some financial resources and a measure of

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1. Ibid., p.305.
 2. Ibid., p.308.
 3. Ibid., p.386.
 4. Ibid., p.264.

autonomy. None of them however, attempted to make panchayats the base for an indirect system of government, nor did these amendments support the decentralisation envisaged in the Gandhian Constitution. On November 22, 1948. K. Santhanam moved amendments¹ for the adoption of Panchayat and decentralisation at lower levels. Panchayat Raj as a directive principle, after a brief debate, was adopted, and also accepted by Ambedkar. This was later embodied as Article 40 of the Constitution. But the intents of these amendments were negligible, it was not sufficient in any way to change the centralised parliamentary system, established by the Draft Constitution. The members assumed that implementing this amendment was the duty of the state in order to encourage and develop the concept of panchayat.

The pro-panchayat speeches were not for the rejection of parliamentary form of government in favour of a Gandhian Constitution, rather a criticism of some aspects of the Draft. The critics on the other hand supported centralisation, for greater power and status for India at international levels. Thus, those who criticised the Draft for not giving panchayats their due place were then, not putting forward an alternative, a Gandhian Constitutional philosophy but an administrative and political demand. A system of administrative decentralisation was demanded which would decentralise administratively the level lower than the provincial governments, while politically, Indian federalism would operate from provincial governments upwards.

1. CAD, VIII, 10, p.520.

Treated both as administrative and political issues, the supposedly incompatible goals of centralisation and decentralisation, of rejuvenated panchayats and direct government, could be accommodated in the constitution.

Draft Constitution and Federal Policy

The form of federal policy embodied in the Draft constitution came under heavy criticism, when presented. The Union Powers Committee report when presented to the President and Assembly, came in for great deal of criticism. Some strongly felt that the whole approach of the Committee to the problem of distribution of powers was wrong, vitiated by an obsession to make the centre responsible for everything. Representing this view K. Santhanam observed that although he was too anxious to have a strong Government for the country, his conception of the strength of the centre was different from that embodied in the report which provided in his judgement, for almost a unitary centre. Further he was highly critical of the allocations of the financial powers envisaged in the report. Also he added that unless the federal taxes were divided by statute, the Provinces would be "beggars at the door of the centre".¹

A. Ramaswami Mudaliar emphasised that the cardinal feature of the proposal made in the report was its taxation proposal. The tax items included in the Provincial list were not likely to yield much and the recommendation that provision should be made for an assignment or a sharing of the

1. CAD, Vol. V, pp.55-57.

proceeds of some of the federal taxes was not only vague and indefinite but also illusory.¹

The criticisms were defended fervently by Alladi Krishnaswami Ayyar, he justified the tax system and said that it was an improvement on the scheme of taxation in other countries.² D.P. Khaitan voicing something similar gave the example of Bengal Famine of 1943, and justified the Central Government's superior financial powers, explaining that how the province of Bengal was rescued from sad circumstances.³

G.L. Mehta impressed upon the Assembly that the problem of federation-making in India was unprecedented and had to build a federal system responding to the peculiar needs and interests of the Country. While in most other countries a federation had been built up through independent sovereign states coming together, in India there had been under the British a long tradition of a powerful centre. At the same time, the country was unfortunately too prone to fall victim to fissiparous and disintegrating tendencies,⁴ and it was essential to guard against them.

Refuting the criticism that the centre had been made too strong, Ambedkar maintained that the Draft Constitution had struck a fair balance between the claims of the centre and the

1. CAD, Vol. V, pp.84-90.

2. CAD, pp.73-76.

3. CAD, pp.96-102.

4. Ibid, pp.76-84.

units. While the centre was not given more responsibilities and power than were strictly necessary, conditions in the modern world rendered centralisation of power inevitable and that trend was bound to operate in India, irrespective of the provisions of the Constitution.¹

The powers given to the centre to meet emergent situations continued to be criticised by some members. About Articles 277-A and 278 Shibbanlal Saxena felt would reduce the autonomy of the States to a farce. H.N. Kunzru felt that articles 278 and 278A were not at all necessary.² Some members commented that too much centralisation had reduced the states to 'glorified district boards'. To allay such fears Dr. Ambedkar said:

A serious complaint is made on the ground that there is too much of centralisation and that the states have been reduced to municipalities. It is clear that this view is not only an exaggeration, but is also founded on a misunderstanding of what exactly the constitution contrives to do.... It may be that the constitution assigns to the Centre too large a field for the operation of its legislative and executive authority than is to be found in any other federal Constitution. It may be that residuary powers are given to the Centre and not the States. But these features do not form the essence of federalism. The chief mark of federalism as I said, lies in the partition of the

1. CAD, Vol. V, pp.33-37.
2. CAD, pp.186-198.

legislative and executive authority between centre and the units by the constitution... Centre cannot by its own will alter the boundary of partition, nor can the Judiciary. The first charge of centralisation defeating federalism must therefore fall."¹

The second charge regarding article 278 - which spelt overriding powers of centre over the states, was also handled very skillfully by Dr. Ambedkar. He said:²

... before condemning the Constitution for containing such overriding powers, certain considerations must be borne in mind. The first is that these overriding powers do not form the normal features of the constitution. Their use and operation are expressly confined to emergencies.

But the criticism of the form of federal polity embodied in the Draft Constitution. Many members who believed in decentralisation, expressed their dissatisfaction with the scheme of union-state relations. Thus, decentralisation was discussed within in the strait jacket of the Union-State power relations. Mahbood Ali Baig and N.G. Ranga feared that the emphasis on centralisation and the facility with which the Central Government could convert the federal system into a unitary one,³ might lead to totalitarimism and to the negation of democracy.

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1. CAD, Vol. XI, pp.967-977.
 2. Ibid.
 3. CAD, Vol. VII, pp.296 and 350.

On October 26, 1948 in face of criticisms and suggestions on the Draft, Ambedkar wrote to the President¹ of the Constituent Assembly that since the Secretariat of the Constituent Assembly have received further comments and suggestions from members of the Constituent Assembly, Provincial Govts., Provincial Legislatures, Ministries of the Government of India and also from public, therefore on 18th October a meeting was held which examined all the criticisms on the Draft and thereby picked out some amendments which it would support and recommend.

The Draft Constitution as settled by the Drafting Committee was introduced in the Constituent Assembly by B.R. Ambedkar, the Chairman of the Committee, on November 4, 1948.² He moved for its consideration on the same day and attracted the attention of the Constituent Assembly to its salient features and dealt with each and every criticism levelled against it. The Draft Constitution contained 315 articles and 8 schedules and was a voluminous document. The Draft remained before the public for eight months. In Ambedkar's opinion the criticisms were based on misunderstanding and inadequate understanding of the articles.³

Regarding the form of government under the Draft Constitution, Ambedkar explained in his speech that two principal forms of the Constitution are known to history - one is called unitary and the other federal. The two essential features of a

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1. Letter from the Chairman of the Drafting committee to the President of the CA, October 26, 1948.
 2. CAD, Vol. VII, pp.31-44.
 3. Ibid.

unitary Constitution are: (1) the supremacy of the central polity and (2) the absence of subsidiary sovereign polities. On the other hand a federal constitution is marked (1) by the existence of a central polity and subsidiary polities side by side, and (2) by each being sovereign in the field assigned to it. In other words, Federation means the establishment of a dual polity. This dual polity under the proposed Constitution will consist of 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. This dual polity resembles the American Constitution. The dual polity in American Constitution consists of the Federal Government and the other states which correspond respectively to the Union Government and the state Governments of the Draft Constitution. Both the American and Indian federations have dual polity but they differ in one aspect and that is citizenship. In India there is single citizenship but in America there is double citizenship.

Apart from the differences with American Constitution, the proposed Indian Federation had differences from all the other federations. All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war it is so designed as to make

it work as though it was a unitary system. Once the President issues a Proclamation which he is authorized to do under the provisions of article 275, the whole scene can be transformed and the state becomes a unitary state.

This is not the only difference between the proposed Indian Federation and other Federations. Federalism is described as weak if not an effete form of government. There are two weaknesses from which federation is alleged to suffer. One is rigidity and the other is legalism. That these faults are inherent in federalism there can be no dispute. A federal constitution cannot but be a written constitution and a written constitution must necessarily be a rigid constitution.

Ambedkar claimed that the proposed constitution had added new ways of overcoming the rigidity and legalism inherent in federalism. Among them were the provisions of articles in the constitution namely articles 226, 227 and 229. Under article 226 Parliament can legislate when a subject becomes a matter of national concern though the subject is in the state list, provided a resolution is passed by the Upper Chamber by two-thirds majority in favour of such exercise of the power by the centre. Article 227 gives a similar power to Parliament in a national emergency. Under article 229 Parliament can exercise the same power if provinces consent to such exercise.

There was another special feature of the proposed Indian Federation which distinguishes it from other federations. A Federation, being a dual polity based on divided authority with

separate legislative, executive and judicial powers for each of the two polities, was bound to produce diversity in laws, in administration and in judicial protection. Upto a certain point this diversity does not matter. ... But this very diversity when it goes beyond a certain point is capable of producing chaos and has produced chaos in federal states.The Draft constitution has sought to forge means and methods whereby India will have a federation and at the same time will have uniformity in all basic matters which are essential to maintain the unity of the country.

The means adopted by the Draft Constitution were three:

- 1) a single judiciary;
- 2) uniformity in fundamental laws, civil and criminal;
- 3) a common all-India civil service to man important posts.

The consensus to have a unitary system was so strong in the Assembly that the pure form of a federal system was not given a chance, the duality inherent in this system was not considered inspite of its being important as it spelled an attempt to accomodate the powers of Government to local needs and local circumstances. It was considered a chaotic system. But it is also true that in various federations a duality is maintained and this very duality is the main feature of federation.

The Constitution made the Centre from the inception very strong, Ambedkar stressed the objective pressures in that direction. He said:

... Some critics have said that the centre is too strong. Others have said that it must be made stronger. The Draft

Constitution has struck a balance. However much you may deny powers to the Centre, it is difficult to prevent the Centre from becoming strong. Conditions in World are such that centralization of powers is inevitable. One has only to consider the growth of the Federal Government in the U.S.A. which notwithstanding the very limited powers given to it by the Constitution, has outgrown its former self and has overshadowed and eclipsed the State Govts. This is due to modern conditions. The same conditions are sure to operate on the Government of India and nothing that one can do will help to prevent it from being strong.¹

Amedkar, however, warned against overcentralisation. He pointed out that there were no provision in the Constitution to curb overcentralisation, though provisions existed to curb the opposite tendency. The Centre, therefore, should chew only what it can digest otherwise it would fall by its own weight.

The clause by clause consideration of the Draft Constitution, taken up by the Constituent Assembly on November 15, 1948, was concluded on Oct 17, 1949. The Draft Constitution, with the amendments adopted by the Assembly, was then referred again to the Drafting Committee with instructions to carry out such altering of the articles, clauses and sub clauses, such revision of punctuation and such revision and completion of the marginal notes as might be necessary, and to recommend such formal or consequential or necessary amendments to the

1. CAD, Vol.XI, pp.972-81.

constitution as might be required.

The Draft Constitution as revised by the Drafting Committee contained 395 articles and eight Schedules and was submitted to the President of the CA on November 3, 1949.

Apart from the additions, deletions and amendments incorporated in the revised Draft the Drafting Committee gave notice of some further amendments. Some other members also gave notice of amendments. The Draft constitution as revised by the Drafting Committee, was submitted to the president of the Assembly on November 3.

The Constituent Assembly took up the third reading of the Constitution on November 17, 1949 on a motion by Ambedkar "that the Constitution as settled by the Assembly be passed". The discussion on the motion concluded on November 26 and the motion was put to vote.

What was of greatest importance to most members was not that socialism be embodied in the Constitution, but that a democratic constitution with a socialist bias be adopted. All the members fervently believed in a strong centre federal constitution and thus, opted for a parliamentary form of federal constitution. There were people who believed in state socialism and centralisation for rapid progress, but there were also those who wanted state socialism but not with centralisation but decentralisation up to the lower levels, to provinces and panchayats. But whatever be the degree of alignment towards

centralisation or decentralisation it was within the framework of a federal constitution with a strong centre, for which there was an unanimous decision in the Assembly.

Ambedkar reacting to the unanimous decision to opt for a¹ Parliamentary form said:

....The task of the Drafting Committee would have been a very difficult one if this Constituent Assembly had been merely a motley crowd, a tessellated pavement without cement, a black stone here and a white stone... There would have been nothing but chaos. This possibility of chaos was reduced to nil by the existence of the 'Congress Party' inside the Assembly which brought into its proceedings a sense of order and discipline. It is because of the discipline of the Congress party that the Drafting Committee was able to pilot the Constitution in the Assembly with the sure knowledge as to the fate of each article and each amendment. The Congress Party is, therefore, entitled to all the credit for the smooth sailing of the Draft Constitution in the Assembly...

Party discipline in all its rigidity, would have converted this Assembly into a gathering of 'yes' men, Fortunately, there were rebels. They were Mr. Kamath, Dr. P.S. Deshmukh, Mr. Sidhwa, Prof. Saxena and Pandit Thakurdas Bhargava. Along with them I must mention Prof. K.T. Shah and Pandit

1. Ibid.

Hriday Nath Kunzru. The points they raised were mostly ideological.

....As much defence as could be offered to the constitution has been offered by my friends Sir Alladi Krishnaswami Ayyar and Mr. T.T. Krishnamachari.

There is only one point of Constitutional import to which I propose to make reference. A serious complaint is made on the ground that there is too much of centralization and that the States have been reduced to municipalities. It is clear that this view is not only an exaggeration, but is also founded on a misunderstanding of what exactly the constitution contrives to do. As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what the Constitution does. The States under our Constitution are in no way dependent upon the Centre for the legislative or executive authority. The Centre and the states are co-equal in this matter. It is difficult how such a Constitution can be called centralism.

Accepting the Constitution, on 26 November, 1949, Dr. Rajendra

Prasad emphasising the enormity of the task undertaken, said:

... If you consider the population with which the Assembly has had to deal, you will find that it is more than the population of whole of Europe minus Russia, being 319 millions as against 317 millions. The countries of Europe have never been able to join together or coalesce even in a Confederacy, much less under one unitary Government. Here, in spite of the size of the population and the country, we have succeeded in training a Constitution which covers the whole of it. Apart from the size, there were other difficulties which were inherent in the problem itself. We have got many communities living in this country. We have got many languages prevalent in different parts of it... We had to make provision not only for areas which are advanced educationally and economically, we had also to make provision for backward people like the Tribes and for backward areas like the Tribal Areas. The Communal problem had been one of the knottiest problems which the country has had before it for a pretty long time.

Another problem of great magnitude was the problem of the Indian states. When the British came to India, they did not conquer the Country as a whole or at one stroke. They got bits of it from time to time. The bits which came into their direct possession and control came to be known as British India: but a considerable portion remained under the

1. Ibid,

rule and control of the Indian princes.

The British thought at the time that it was not necessary or profitable for them to take direct Control of those territories, and they allowed the old Rulers to continue ... But they entered into various kinds of treaties and engagements with them. We had something near six hundred states covering more than one-third of the territory of India and one-fourth of the population of the country. They varied in size from small tiny principalities to big states like Mysore, Hyderabad, Kashmir, etc. When the British decided to leave this country, they transferred power to us, but at the same time, they also declared that all the treaties and engagements they had with the Princes had lapsed. The paramountcy which they had so long exercised and by which they could keep the Princes in order also lapsed. The Indian Government was then faced with the problem of tackling these states which had different traditions of rule, some of them having some form of popular representation in Assemblies and some having no semblance of anything like that, and governing completely autocratically. As a result of the declaration that the treaties with the Princes and Paramountcy had lapsed, it became open to any Prince or any combination of princes to assume independence and even to enter into negotiations with any foreign power and thus become islands of Independent territory within the country. There were undoubtedly geographical and other compulsions which made it physically impossible for most of

them to go against the GOI but constitutionally it had become possible. The Constituent Assembly therefore had, at the very beginning of its labours, to enter into negotiations with them to bring their representatives into the Assembly so that a Constitution might be framed in consultation with them. The first efforts were successful and some of them did join this Assembly at an early stage but others hesitated. By August 1947 when the Indian Independence Act came into being, almost all of them with two notable exceptions, Kashmir in the north and Hyderabad in the South, had acceded to India. Kashmir soon after followed the example of others and acceded. There were standstill agreements with all of them including Hyderabad which continued the status-quo. As time passed, it became apparent that it was not possible at any rate for the small states to maintain their separate independent existence and then a process of integration with India started. In course of time not only have all the smaller states become integrated with some province or other of India but some of the larger ones also have joined. Many of the States have formed Unions of their own and such Unions have become part of the Indian Union.

On the question of Unitary vs. Federal Constitution Rajendra Prasad added:

... I do not attach any importance to the label which may be attached to it - whether you call it Federal Constitution or

Unitary Constitution or by any other name. It makes no¹ difference so long as the Constitution serves our purpose.

Thus we see that the restructuring the of old Colonial system, to an independent democratic system involved the processes of (1) accomodation of the Indian Princely States and (2) restructuring of the British Indian Federation. The process of centralisation and decentralisation could be detected in both the processes. These two forces are not mutually exclusive opposite forces, but are complimentary to each other. These have an organic relationship. The Indian Constitution was a magnificent attempt at forging such a relationship.

1. Ibid,

Chapter - IV

Tensions in the Federation: Some Issues

The post-independent State of India adopted equality as a political principle. Thus it was accepted that the State was required to perform redistributive and welfare activities. It is usually believed that egalitarian pressures on contemporary state structures can give rise to the logical antithesis of Federalism by becoming over-centralised. But rather than going into the debate of over-centralisation, one should concern oneself with whether the enlarged activity of the centre is working in favour of territorial equality both horizontally and vertically. The much debated problem is not in centralisation or reduction of autonomy but ignoring the importance of territorial diversity which has resulted in maladministration over the years.

The Indian Constitution over the years has departed, in certain respects fundamentally from the orthodox theory as well as the practice of Federalism. This departure is most evident in the field of finance. The theoretical treatment of Public Finance in India lacks any organised and generally known theoretical rules, because the federal set up itself in India was an outcome of a series of compromises, adjustments, pulls and pressures¹. Though one thing definite has been located i.e. the deficiencies of the political arrangement. Fiscal relations between the centre and the regional governments in this sense,

1. Raja. J. Chelliah, Fiscal Policy in Underdeveloped Countries, Allen and Unwin, 1969, Introduction.

have become an important problem area in all federal states in recent times.

The principles of public finance are to be differently interpreted and applied in a federation like India. The most important issue of fiscal equity between the rich states and the poor states emerged as the main problem area in Indian federation. But treatment of the concept of fiscal equity is subject to important limitations ¹ :

- i) The principle assumes the applicability of quid pro quo idea of public finance, which in a developmental economy, may be unacceptable because of the role of fiscal policy in securing a rapid economic development.
- ii) Difficulty in imputing the total fiscal benefits accruing to individuals.
- iii) Equalisation of fiscal burdens however desirable from an economic view-point, faces a constitutional hurdle in a federal system; and the same is true of any regional or dissimilar treatment that might be found necessary for optimum welfare.

The primary concern of federal finance is to optimise utilities through a process of interpersonal inter-regional equalisation. The problem in achieving the twin objectives of optimisation of utilities and interpersonal and inter regional equalisation is the wide disparities among the states in factor

1. N.R. Rao, Union State Financial Relations in India, Research Publication Series, 15, Karnataka University.

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endowments . Thus the considerations of allocative efficiency conflict with complete inter-regional equalisation.

It is also true that division of fiscal sovereignty and limited fiscal competence of public authorities in a federation make optimum resource allocation extremely difficult. This in a way can prove to be the doom for planned progress of underdeveloped countries .² But it is too superficial an aim to motivate federal principles on the path of economic growth, where economic growth itself is a problematic indicator of welfare maximisation and equity in the society.

The distribution of functions and powers of the State among a number of co-ordinate bodies each originating in and controlled by the Constitution is the essence of federalism. The Constitution clearly recognised that independent sources of revenue were necessary for the proper functioning of a federal government, and effected a division of taxes in such a manner that ordinary taxes that have an inter-state base were assigned to the Union and those that have regional base were assigned to states. Exact correspondene of resources although is not possible to secure in a federal situation, and in India the balance is tilted rather heavily in favour of the Centre and the outstanding feature of the financial relationship between the Centre and the states consequently is that the former is always³ the giver and the latter the receiver .

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1. Ibid.
 2. Ibid.
 3. Ibid.

The favourable position given to the centre in regard to financial resources reflects the strong centre theme running through the constitution which has been an important factor in keeping the country united¹. But if national unity had been the only consideration all resources could have been kept at the Centre and devolutions made annually to the states according to their needs. This was not done because of another principle, namely the principles to devolve certain amount of autonomy in raising resources for the states and also for responsible public administration. What degree of financial independence is appropriate for this purpose is as much a matter of judgement today as it was when the constitution was drafted².

The imbalance existing between the functions and resources of the states has to an extent been sought to be rectified by the Constitution in a two fold way. (1) Certain duties and taxes have to be shared by the Centre and the States. (2) Grants-in-aid are to be given by the centre under Article 275 of the Constitution to such states which are in need of assistance³. The Constitution provides for an independent Finance Commission to make recommendations to the President in regard to the distribution of shareable taxes and the payments of grants-in-aid to the states. These provisions are designed to ensure that there should be as little central interference in state

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1. R.N. Bhargava, The Theory and Working of Union Finances in India, Allen and Unwin, 1956.
 2. N.R. Rao, Op.cit.
 3. Report of the Finance Commission, 1952, Government of India Publication, 1952, pp. 5-15.

administration as possible. But with the advent of planning the devolutions mentioned were overshadowed by the large grants and loans given by the centre to the states on the recommendations of the Planning Commission. The sense of dependence has been heightened by the fact that plan grants are discretionary in character, almost all of them being made under Article 282 of the Constitution¹.

The introduction of planning and the consequent increase in public spending widened the gap in the states between needs and resources. Three-fifths of the plan-expenditure incurred by the states in the first three plans were directly financed by the centre. This meant devolutions were discretionary in character. As time went by it rose up to 60 percent leaving 40 percent to non-discretionary funds which was given by the Finance Commission. This discretionary element introduced a centralising tendency the dimensions of which were not envisaged by the Constitution makers².

The shortcomings which manifested themselves in the system were as follows:

- (a) Excessive financial dependence of the states on the Centre³.
- (b) Faulty mechanism of devolving funds, where there was duplication of work in the Finance Commissions and the

1. Ibid.
2. I.S. Gulati, 'The Indian Federal Fiscal Model: A case of increasing centralisation' in Social Scientist, 1988.
3. Administrative Reforms Commission: Report of the Study Team on Centre-State Relationships, Vol.I, GOI, Publication, 1968, p.19.

Planning Commissions and because of their timings and differences in approach divergence in assessment both of the expenditure and the resources of the states. These inconsistencies at the Centre stemmed from the absence of an integrated approach .¹

The deficiencies caused by the federal financial arrangement were detrimental to the full realisation of the principle of public finance. In certain ways regional disparities in economic development were accentuated because of the nature of division of resources. In order that these deficiencies were removed and an all round growth of the federation was achieved, several devices were adopted. There were certain, built in Constitutional positions which anticipated certain financial adjustments and they also provided the machinery of work.

In the prevailing philosophy of socialism and planning in the country, how did Union-State relationships stand and what shifts took place in their Constitutional position need to be investigated.

One of the important financial provisions in the Indian Constitution is the establishment of a Finance Commission .² If one looks at the Constitution of the Finance Commission, it is evident that India has derived valuable lessons from the experience of other federal countries. The Constitution of a

1. Ibid.

2. Administrative Reforms Op.cit, p.15.

periodic yet regular Finance Commission is largely the reproduction of its Australian counterpart namely the Commonwealth Grants Commission¹.

If the functions of the Finance Commission are strictly interpreted the Commission can scarcely go beyond the point of determining the statutory transfers of certain central grants to states. In the very nature of its Constitution the Commission can undertake neither an exhaustive and comprehensive enquiry of Union-State financial relations nor of the economy of the country. In this respect the Finance Commission may be said to compare itself with the Planning Commission rather unfavourably.

But the question which arises has got something to do not with the increasing powers of the centre and declining powers of the Finance Commissions, but with whether Finance Commissions are competent enough to make recommendations with the foremost principle of equitable distribution in mind.

Acting under Article 280(1) of the Constitution the President by an order dated the 22 November 1951, constituted the First Finance Commission with Shri K.C. Neogy as the Chairman. The Commission submitted its report in 1952 and its recommendations covered the five years beginning from 1 April 1952². It formulated principles on which assistance to the states were to be given. The Commission had laid down³ :

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1. Ibid.
 2. Finance Commission Report Op.cit.
 3. Ibid.

In drawing up the scheme of assistance we have kept these main considerations in view. Firstly the additional transfers of resources from the Centre must be such as the Centre could bear without undue strain on its resources, taking into accounts its responsibility for such vital matters as the defence of the country and the stability of its economy. Secondly, the principles for the distribution of resources between the states and the determination of grants in aid must be uniformly applied to all the states. Lastly, the scheme of distribution should attempt to lessen inequalities between the states.

The First Finance Commission made provisional recommendations in the initial 1951-52 period of the five year period regarding Union transfers to states. The Commission made recommendations regarding the sums which were to be given as grants-in-aid of the revenues of Assam, Bihar, Orissa and West Bengal (in lieu of export duty on jute and jute products)¹. The Commission also increased the share of states in income tax to 55 percent from the earlier level of 50 percent. This was complimented by 40 percent of the revenues from excise duties on three commodities to the various states.

1. Ibid.

I : Finance Commission

Table I : (%) Share of Income Tax to various States on Population Basis

| State | Percentage | State | Percentage |
|----------------|------------|-------------------|------------|
| Assam | 2.5 | Mysore | 2.25 |
| Bihar | 9.75 | Orissa | 3.50 |
| Bombay | 17.50 | Pepsu | 0.75 |
| Hyderabad | 4.50 | Punjab | 3.25 |
| Madhya Pradesh | 1.75 | Rajasthan | 3.50 |
| Madras | 15.25 | Saurashtra | 1.00 |
| West Bengal | 11.25 | Travancore-Cochin | 2.50 |
| Uttar Pradesh | 15.75 | | |

Source: Report of Finance Commission, 1952.

The Finance Commission recognised population and contribution as two relevant factors in the distribution of the proceeds of income tax among the states. However the relative weightage was subject to changes from time to time. The First Finance Commission recommended 80 percent weightage to population and 20 percent to contribution as measured by collection¹. For devolution of income tax therefore population became the major criterion (Table I). The highest percentage share according to Table I went to Bombay, Madras, Uttar Pradesh and West Bengal as they were the most populous States.

In case of the Union excise again distribution lynched on population and it ranged from 80 to 90 percent.

1. Ibid.

Table II : (%) Share of Union Excise to various States on Population Criterion

| State | Percentage | State | Percentage |
|----------------|------------|-------------------|------------|
| Assam | 2.06 | Mysore | 2.62 |
| Bihar | 11.60 | Orissa | 4.22 |
| Bombay | 10.37 | Pepsu | 1.00 |
| Hyderabad | 5.39 | Punjab | 3.66 |
| Madhya Bharat | 2.29 | Rajasthan | 4.41 |
| Madhya Pradesh | 6.15 | Saurashtra | 1.19 |
| Madras | 16.44 | Travancore-Cochin | 2.68 |
| Uttar Pradesh | 18.23 | West Bengal | 7.16 |

Table II shows populous States like Bihar, Madras, Uttar Pradesh etc. benefited the most, while Assam, Madhya Bharat, Pepsu, Saurashtra etc. received the least through the commission's recommendations.¹

Thus, in practice, the First Finance Commission made all efforts to maximise equalisation but it could not achieve it. It emphasized the factor of population in income tax as well as the Union excise. But the problem in using population can be justified only in an ideal condition of lack of significant differences among the states in respect of area, physical nature of terrain, distribution of population over the area, approximate equality of per capita income, etc. Further if the most populous states are the poorest, then only it is right to take population as the index of fiscal need.²

1. Ibid.
2. K.V.S. Sastry - Federal State Fiscal Relations in India, Oxford, 1966.

Therefore, arrangements for the distribution of excise duties as proposed by the Commission did some injustice to the sparsely populated states. The cost of administration and social services are less in high density areas than in low density areas. Rajasthan and Assam whose population was 159.71 lakhs and 88.31 lakhs in 1952 respectively in comparison with their total area of 1.32 lakhs and 47 lakh sq. miles respectively should have received some weightage on account of high cost of social services for widely spread population ¹.

The Commission broadly accepted the necessity of a larger transfer of central resources than in the past. In retrospect it may appear strange that the Finance Commission, in formulating some broad considerations in recommending grants did not make any direct or even a casual reference to state plans and the financial needs of the State Governments. To augment the resources of states in achieving plan targets on the other hand should have been the primary considerations of the Finance Commission.

In the background of general consideration and also on applying the Budgetary criteria, the Commission concluded that the states of Madras, Uttar Pradesh, Bihar, Madhya Pradesh, Hyderabad, Bombay, Madhya Bharat and Pepsu were not to get any assistance. Punjab and Assam were to be definitely assisted; and the other states namely West Bengal, Orissa and Saurashtra were to be treated as marginal cases ².

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1. N.R. Rao, Op.cit.
 2. Finance Commission Op.cit.

The reaction of the Union Government at that time was appreciative of the recommendations of the Finance Commission, it accepted the recommendations in toto. The reaction of the State Governments, to the recommendations of the Commission were not in any sense sharp. The main criticism came from Bombay and Bengal. They felt that due weightage was not given to the principle of collection of income tax and excise duties in the Commission's recommendations ¹. But the Finance Commission rejected the criteria of collection as sole or even major factor in the distribution of states' share of income tax because it felt that the incomes that are assessed and collected in one state is not always also the state in which the incomes originate ². Also the basis of income creation are far more diversified and widely spread than the facts of collection would seem to suggest ³.

When the First Commission was constituted, the dimensions and depth of economic planning were all but clearly known. The implications of planning on inter-governmental relations were not fully visualised. The political consolidation of the country had just been completed. But in 1956, when the Second Finance Commission was appointed, far-reaching changes had taken place in the country. The redrawing of the political map of India, on linguistic basis, which began with the creation of Andhra State in 1953 out of the Madras state, was extensively executed in

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1. Report of the Administrative Reforms Commission Op.cit, pp.15-20.
 2. Ibid.
 3. Ibid.

November 1956 in accordance with the state reorganisation Commission Report.

Because of the sudden territorial changes carried out in the composition of states, the Finance Commission found it difficult to assess their financial and revenue possibilities. The resource position of the states had completely altered, and the Commission had to make original estimates of their economic position¹.

The Commission was supposed to function with an objective of recommending principles governing the distribution of the 'net proceeds' of estate duty in respect of property other than interest rates and the terms of repayment of Government of India loans made to the states between August 15, 1947 and March, 31, 1956. The Commission was also asked to formulate principles for the distribution of additional excise duties among the states and to specify amounts to be assured to them in lieu of the income they desired from sales tax on these commodities. The Commission was also requested to recommend principles which should govern the distribution of the net proceeds from the taxes levied on Railway Passenger fares². The Second Finance Commission thus embraced not only shared taxes and grants in aid but also taxes levied and collected by the Union, assigned to the states.

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1. Report of the Finance Commission, 1957, GOI Publication.
 2. Ibid.

The Second Commission made a significant contribution in consolidating and rationalising the Scheme of Union loans to the states between the year 1947 and 1956¹. This was in the wake of not only the increasing volume of loans but was also because they were contracted for different periods at different interest rates. The bewildering variety of loans, and of interest rates caused a good deal of confusion to both the governments. Simplifying and classifying all the loans to the states was highly desirable. This Commission also recommended that the period covered by Finance Commission should correspond to the period of the Five-Year Plan².

In case of taxes on incomes and share of states, the Second Commission was in favour of giving greater weightage to population and accordingly recommended 90 percent weightage to population and 10 percent to contribution. In case of Union excise duties Second Finance Commission adopted a view that, in the absence of reliable data on consumption, its predecessor used population as the nearest measure of consumption. It felt that 100 percent weightage to the nearest measure of consumption would leave some of the states in an unfavourable position. Thus it reverted to population rather than consumption basis³. Table III and IV shows the percentage shares of the states in income tax and union excise, respectively.

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1. Report of the Administrative...Op.cit, pp.25-30.
 2. Report of the Finance Commission, 19575, Op.cit.
 3. Ibid.

II Finance Commission

Table III : (%) Share of Income Tax

| State | Percentage | State | Percentage |
|----------------|------------|-----------------|------------|
| Andhra Pradesh | 8.12 | Assam | 2.44 |
| Bihar | 9.94 | Bombay | 15.97 |
| Kerala | 3.64 | Madhya Pradesh | 6.72 |
| Madras | 8.40 | Mysore | 5.14 |
| Orissa | 3.73 | Punjab | 4.24 |
| Rajasthan | 4.98 | Uttar Pradesh | 15.36 |
| West Bengal | 10.08 | Jammu & Kashmir | 1.13 |

Table IV : (%) Share of Union Excise to the States

| State | Percentage | State | Percentage |
|----------------|------------|-----------------|------------|
| Andhra Pradesh | 9.38 | Assam | 3.46 |
| Bihar | 10.57 | Bombay | 12.17 |
| Kerala | 3.84 | Madhya Pradesh | 7.46 |
| Madras | 7.56 | Mysore | 6.52 |
| Orissa | 4.46 | Punjab | 4.59 |
| Rajasthan | 4.71 | Uttar Pradesh | 15.94 |
| West Bengal | 7.59 | Jammu & Kashmir | 1.75 |

Source: Report of the Finance Commission, 1957.

Population basis may appear to be more equitable to effect resource transfer. But consumption is not totally unrelated to population, small populations and large consumption do not exist in Indian conditions. The Commission though felt that it placed a few states in a more advantageous position in relation to the

rest if distribution was done entirely on population basis, it, therefore, felt a small corrective in favour of consumption was necessary ¹.

The examination of the two Commission Reports brings to fore the question that, are population and consumption computed on quantitative basis good indicators for Finance Commission recommendations. Quantitatively these two can be termed as suitable indicators but if welfare maximisation and equitable distribution of resources is the main objective then sparsely populated regions, would be unjustly treated in the sense it would not be taken into account that sparsely populated regions would require higher costs of maintenance compared to densely populated regions. And if consumption becomes the indicator then rich and more urbanised states will get more funds compared to dominantly rural states which would comparatively have inelastic consumption patterns ².

Where the Finance Commission loose out being a novel ³ institution is in the realm of identifying the specific needs of the states. The states are treated as cohesive political units, where as it's well known that each and every Indian state is unique, with different geographical setting, political, economic and social culture. Also, within the states there are local differences in their districts even blocs and municipalities.

Thus an integrated approach was needed while devolving funds to the various units. This meant that rather than just bothering

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1. Ibid.
 2. Ibid.
 3. N.R. Rao, Op.cit.

about the convenience of economic accounting, social aspects should have been taken into account by imputing their values. Thus, a complete treatment of the problem in the relationship of centre and the states required more attention on specificities rather than aggregation and universal treatment.

The Finance Commissions should have treated the problems in federal finance with a perspective of welfare maximisation both vertically and horizontally in the society, rather than hankering for economic growth, because it's too problematic an indicator of economic development and social welfare. The two Finance Commissions lacked the perspective of looking at specificities of the political units in a federation. The goal of inter-personal and inter-regional equalisation of resources remained unachieved because, there was never an attempt to identify the specificities of the various regions. The clubbing together of the units and distribution of resources among them on the basis of population or consumption criterion was bound to create injustice for many, because the territorial pattern, the social costs of maintenance of the states, the consumption patterns, the level of economic development were unique features of different states and within the states in various districts, blocs and panchayats.

Another factor which constrains the equitable distribution of resources and causes tension in the federal structure is the over centralisation of the Centre. Centre's power over the States have been facilitated by the Planning Commission, which gives the Centre ample opportunity to interfere in the affairs of the States.

The mechanism of resource transfers between the Centre and the States relies principally on instruments of tax sharing, statutory grants-in-aid by Finance Commission and on other grants and central loans known as non-statutory transfers provided by the Planning Commission. The problem in the Federal structure has arisen due to the increasing importance of non-statutory unconstitutional transfers over statutory constitutional transfers. This means that Centre's discretion over resource transfers have increased. This, many feel is the result of increasing significance of planning, through the Planning Commission.

The creation of Planning Commission early in 1950 itself had brought to the fore the differences between John Matthai the then Finance Minister and Jawaharlal Nehru the then Prime Minister¹ Matthai had a long association with private industrialists and he saw the planning commission as a tool of Nehru, which would reduce the importance of industrial and commercial classes whom now Nehru openly criticised. He was more interested in balancing all the social forces at work in India and was more interested in overall progress.²

Matthai was certain that the planning commission and the Cabinet Economic Committee would be in conflict with the Finance Ministry, particularly as the Government still was, in its general policy, friendly to the industrialists and was seeking to win their support.

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1. S. Gopal J. Nehru; A Biography, Vol. II 1947-56. OUP, 1979, p.99.
 2. Nehru to Mattai, 4 May 1950, Ibid.

Thus, the classes which had acquired significance at the time of independence were gradually failing to hold their importance for long, as was the case of commercial classes, stated above. The old patronage distribution net work was becoming obsolete in face of wider goals like economic progress, socialism and agrarian reforms. The legitimacy of capitalist classes declined. Nehru's statement commenting on capitalist classes proves this: "The capitalist classes had proved totally inadequate to the face things as they are today in the country. They have no grit, no capacity to do anything big. The only alternative is to try to put forward, some big thing ourselves¹ and rope in not only these classes but the people as a whole."

Thus, from early fifties the resources shifted into the hands of the Centre on the pretext of planning, which was conceived in order to achieve rapid growth through mobilisation and equitable distribution of resources among the states. The Centre's importance increased in the Federation as industrial progress, agrarian reforms, etc., were initiated by it. Any non-statutory resources now could be got from the Planning Commission. Overtime this led to over interference of the Centre in the states. The Centre lacked co-ordinated and well designed decentralised schemes at local levels, and it resulted in non-utilisation of funds. The plans to achieve various goals were hindered by those who could influence the Central Government, as Constitutional bodies like Finance Commission started losing its significance.

1. Nehru to John Matthai, 13 Sept. 1949, Ibid.

In India various political parties in response to the working of the federation have increasingly clamoured for centralisation or decentralisation of the Federal State. Parties having a support base of regional interest groups always oppose centralisation, and parties having a support base of national interest groups do not oppose centralisation. The various interest groups become binding on State action and sometimes constrain policies and try to get it implemented advantageously for themselves. Among the various interest groups the important ones are the rich farmers, the industrial bourgeoisie, the traders and petty bourgeoisie and the white collar professionals. They obviously have separate interests and sometimes their interests become conflicting. Thus, those States which have the dominance of rich farmer class always oppose centralisation and clamour for decentralisation, as the rich farmers can benefit only if policies pertain to their region and funds flow into their region, as they are tied to local markets. Bardhan points out that since, Punjab, Haryana, Gujarat, Karnataka are strong in farmer lobbies they have succeeded in major benefits of support prices, subsidies and low taxes on agriculture. Similarly petty bourgeoisie also is tied to local area and its interest are confined within a region thus, it would support decentralisation. Whereas industrial bourgeoisie and white collar professionals operate at national level and would thrive in a united political structure. Similarly bureaucrats also favour centralisation, as it gives them more powers.

Those political parties which have a support base of regional vested interest groups, for example The Communist Party of India, CPI (support base confined to Kerala and West Bengal, primarily peasants and labour classes of these States) regards the Federation as highly circumscribed by State's operations¹. The CPI has always projected that, in the post-independence period the autonomy and powers provided legally by the Constitution to the States have eroded to a considerable extent, thus signifying a negation of the Federal Principle adopted in the Constitution. Moreover the CPI believes that the capitalist path of development and the monopoly of bourgeois power plus the single - party rule at the centre, have been the main contributory factors in undermining the federal features of the Constitution on the one hand and the concentration of exercise powers and authority with the Centre on the other. The CPI, in the post-independence years, has thus argued for radicalisation and restructuring of the federal administration with regard to greater devolution of legislative and financial powers to the states.

The Communist Party (Marxist) CPM also has more or less the same view regarding the problems in Centre-state relations². It holds the view that the bourgeoisie which stood at the head of freedom movement and later became the ruling class, was interested in an extensive home market in a centralised Federation. According to the CPM the basic nature of the

1. Ibid.

2. Sarkaria Commission Report, 1988, Appendix.

Constitution framed in 1950 was declared to be Federal in principle, but its contents were pointing at excessive centralisation. Furthermore in its actual working it has tended to become all the more centralised. The CPM feels that the same political party (The Congress Party) was in power at the Centre and in all states for nearly three decades, which facilitated this process. The states were made to surrender "voluntarily" the rights that they had in the original provisions of the constitution. Therefore both the left parties feel that the Congress, which is composed of the bourgeoisie, for its own gains, acquired centralising principles to facilitate its vested interests.

Another regional party Dravida Munnetra Kazhagam, which has its support bases in Tamil Nadu argues for autonomy as it believes in autonomy for the units. A Federation is the soul of federalism. This party demands the expansion of the constitutional provisions towards autonomy, which would render the states with enough power; so that their development is not hampered by the overlordism of the centre. It argues for the uprootment of a donor-recipient relationship between the centre and the states in the financial sphere.

While the Indian National Congress with its support base all over India and composed of multifarious interest groups, locates the problems of Federalism in centrifugal pulls. Their main

1. Ibid.

policy is to centralise in order to accommodate the centrifugal pulls caused by pluralistic forces. The adoption of planning and the growing significance of it is one of the many manifestations of centralisation. Planning was adopted on the grounds that regionally fragmented resource potential can only be exploited if it is done by a central authority which would mobilise and distribute the resources all over India equitably. Thus, centralisation was adopted to further the interests of social justice and equitable distribution of all the resources.¹

But over the years it has not always been true of Planning Commission or any other centralising instrument that it has achieved social justice, but rather measures overtime have been faulty, because central authorities in their policies have overlooked specific territorial patterns, consumption patterns, level of economic development, etc. It has made policies either complying to the demands of the dominant coalitions, i.e., dominant vested interest groups in the various states or in opposition to those demands to show its assertiveness. In this process the local needs based on its unique patterns and specificities have been overlooked.

Thus, the united ideological purpose of promoting economic development through central policies have been bound by plurality of constraints.² The various interest groups sometimes become

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1. Pranab Mukherjee, Beyond Survival, Vikas, 1984.
 2. Pranab Bandhan, Op.cit.

binding on the state action. These interest groups have been termed as dominant proprietary classes. These classes are composed of the upper two deciles of the population. They have conflictual interests, which over the years have become antagonistic. These classes banking on their importance as support basis of the party in power demand concessions from the state. Sometimes they collaborate and demand various favours and try to run the system advantageously for themselves.

But mostly the State manages to ward off these demands and try over centralised arbitration. Thus, most of the policies are within the context of these classes; be it to give them concessions or to manage them. Therefore, in this process the other important issues of specific territorial patterns, consumption patterns, level of economic development of various regions loose significance and are not isolated for policy making. For common people who do not represent the dominant coalition, policies are made with an assumption of cohesive homogenous units or in other words in monolithic context of rich, middle class and poor. Also, in a federal set up policies for states are made on the basis of area, population etc. which hardly take into account the other specific factors.

The problems in the actual working of the Federation have arisen not just because of over centralisation as claimed in the existing literature, but is also a product of pressures that operate in a democratic set up. The political structure has

become such that various political parties, vested interests and groups operate freely and make numerous demands on the system. As a result the state can never be an independent actor rather it tends to reflect the pressures and responses from those for whom it acts.

Conclusion

The Emergence of the Indian Federation was a tortuous process, beginning with minor demands for representation in the Governor's Council, which went through stages, in which the colonial Government grudgingly kept on giving some concessions. It was not altruism of the British but the grit and determination of the nationalists, who had the patience to work their way up which led to increasing democratisation.. The British were fully committed to their imperialistic aims. Thus to undermine the importance of the nationalists, they started providing concessions to the communal forces. Their strategy was to fragment the polity so that it does not become united against the colonial state. However, the British inspite of their success in introducing religion into politics, way back in the early twentieth century, could not hold on to their own against the nationalists. The Congress party spearheaded the constitutional advance and freedom movement and finally the country was liberated from the colonial rule in 1947.

According to the nationalist demand a Constituent Assembly was constituted and it took three years to prepare a draft Constitution for independent India. The initial debate in the Constituent Assembly was with respect to, what should be the nature of the new Constitution. Majority of the members wanted a Euro-American Parliamentary form of Government and some members wanted a Gandhian Constitution, which was to be decentralised and was to be based on village panchayats. The members

unanimously however rejected the latter because it was termed as utopian and unviable. It is said that the reigning ideology at that time was of a strong liberal State, which could be achieved only through a strong Parliamentary form of government.

Nehru and many other nationalists believed in Socialistic functions of State. Nehru wanted to hasten the process of economic reforms, to achieve faster economic growth and development. He wanted to make the State free of all influencing factors, which could in due course become obstacles in the path of growth and development. Rather than appeasing the economically superior classes he wanted to promote social justice to the peasants and labour class. He equally emphasised the need for a centralised State in order to maintain an international pressure and strong Defence against foreign aggressions. In pursuance of this ideology, Nehru had disagreed with Gandhi's proposals of village republics.

Ambedkar wanted a centralised federation in order to have a strong State which could carry out the functions of social justice. He championed the cause of minorities and wanted that the centre should ensure that minorities got due representation, due resource allocation, etc. This demand was based on the fear that if a Constitution based on village republics came in force, it would further strengthen the age old composition of village, with their feudal lords and other various castes, leading to a system which would facilitate those who were already economically and culturally advanced. The higher castes in villages would

have a free hand to exploit the lower castes. Thus, feudal lords in the villages would become local dictators.

However, in the post independence period inspite of a Centralised Federation, the objectives for which it was created, have not been fully achieved. The Indian Constitution has fundamentally departed in certain respects from the orthodox theory, and practice of federalism, over the years. The post-independence Indian federalism is infested with corrosive tensions due to the conflicts between the dominant coalition of vested interest groups and the progressively Centralising State. These tensions fraught the federal structure and hindered its smooth working. These constraints have grown overtime and now sizeable cracks and strains are visible in the federal structure. The State on the other hand, to achieve conflict resolution in the political economy, has changed the interpretation of the federal constitution.

The most important aspect of the federation in the post independence period has now emerged as the relationship between Centre and the federating states. It is felt by many scholars that though the power distribution is through the provisions in the Constitution, excessive increase in Centre's power has negated the spirit of federal Constitution. This is clearly evident in the financial sphere, where Finance Commission a Constitutional body is loosing significance to the Planning Commission.

Thus, it's seen that Indian Federation, is passing through a centralist phase. Whatever decentralisation measures take place, it is to maintain legitimacy of the State in view of public opinion. But the moment public opinion in the form of vested interest groups become binding on State action, the State further centralises and contradicts the legitimacy of decentralisation. The forces of centralisation and decentralisation work simultaneously in the Indian Federal structure, which is composed of disparate units. In order to accomodate and manage these units, the Central authority always has to centralise and decentralise arbitrarily. Therefore the Federation which was made with a centralised bias has increasingly become more centralised thereby negating the federal principles, which is not in conformity with the spirit laid down by the founding fathers of the Indian Constitution.

Select Bibliography

Unpublished Private Papers

Jawaharlal Nehru Papers, Nehru Memorial Museum and Library, New Delhi.

Gokhale Collection, National Archives of India, New Delhi

Rajendra Prasad Papers, National Archives of India, New Delhi

Unpublished Political Party Papers

All India Congress Committee Papers (A.I.C.C.), Nehru Memorial Museum and Library, New Delhi.

Official Documents (Published)

Proceedings of the Indian Legislative Council (1862-1919 Series).

Report of the Royal Commission on Decentralisation, 1909.

Report of the Indian Constitutional Reforms, 1918.

Report of the Indian Statutory Commission, 1930, Vol. I & II.

Report of the Indian States Committee, 1928-29.

Report of the Indian States Enquiry Committee (Financial), 1932.

Proceedings of the Meetings of Chamber of Princes, Simla, 1940.

White Paper on Indian Constitutional Reform, December, 1931.

Government of India Act, 1919, Recommendations.

Joint Committee on Indian Constitutional Reform, 1931, Vol. I, 1934.

Constituent Assembly Debates, Vol. I to Vol. XII. 1946 to 1949.

Documents relating to the Statement made by the British Cabinet Mission and H.E. the Viceroy on 16 May 1946, Constituent Assembly, India, New Delhi, 1947.

Report of the Federal Structure Committee, 1932.

Government of India Act, 1935.

White Paper on Indian States, 1948.

Administrative Reforms Commission : Report of the Study Team on Centre-State Relationships. New Delhi 1967 and 1969.

Report of the Finance Commission, 1952.

Report of the Finance Commission, 1956.

Sarkaria Commission Report, 1984.

Non-Official Reports and Periodicals

Indian National Congress, Report of the Second Session held at Calcutta 1886.

Indian National Congress, Presidential Address, 50th, Faizpur, 1936.

Indian National Congress Resolutions, 1934-36 & 1940-46, A.I.C.C., Allahabad.

Nehru Jinnah Correspondence, A.I.C.C., Allahabad.

Congress and the War Crisis, A.I.C.C., Allahabad.

All India Muslim League, Resolutions, 1937-38; 1938-40.

Report of the Committee of the All-Parties Conference, 1928.

The Indian Annual Register (1924-47).

Other Books and Articles

Ahmed, Jamil-Ud-Din (Ed.) Some Speeches and Writings of Mr. Jinnah, Lahore, 1943.

Ambedkar, B.R., Federation Vs. Freedom, Gokhale Institute of Economics & Politics, 1939.

Austin, Granville, The Indian Constitution; Cornerstone of a Nation, Clarendon Press, Oxford, 1966.

Banerjee, Ashis, "Federation & Nationalism" An Attempt at Historical Interpretation in N. Mukarji & Arora (eds). Seminar on Federalism in India : Papers and Proceedings, New Delhi, 1989, 2 Vol.

- Char, Desika (ed), Readings in Indian Constitutional History of India, 1757-1947, Select. Documents, OUP, 1983.
- Chelliah, Raja; Fiscal Policy in Underdeveloped Countries with Special Reference to India. Allen and Unwin, 1969.
- Congress Presidential Addresses , 1911-34, G.A. Natesan & Co. Madras, 1940.
- Coupland, Reginald, The Future of India, London, 1944.
- Coupland, R. India, Restatement, London, 1944.
- Coupland, Reginald, The Indian Problem, OUP, 1942.
- Frankel, Francine, Indian's Political Economy, 1947-77, OUP, New Delhi, 1978.
- Gandhi-Jinnah Talks, July-October 1944, The Hindustan Times, New Delhi, 1944.
- Gandhi, M.K. Hind Swaraj, 1921.
- Gandhi, Mahatma, The Collectd Works of Mahatma Gandhi, Vols. XVI, XVIII & XXVIII, Navjeevan, 1965 and 1967.
- Gandhi, M.K., To the Protagonists of Pakistan, Karachi, 1947.
- Gopal, S., Jawaharlal Nehru : A Biography, OUP, 1976.
- Gulati, I.S., & George K.K, "Centre-State Financial Flows in 1969-70" EPW, 13(1978).
- Gulati, I.S., "The Indian Federal Fiscal Model : A Case of Increasing Centralisation", Social Scientist, Vol. 16, No.2, Feb. 88.
- Gwyer, M., Appadorai, A., (eds), Speeches and Documents on Indian Constitution 1921-1947, Vol. - II, OUP, 1957 Bombay.
- Independence and After : Collection of Speeches, Government of India, New Delhi, 1949.
- Karve, D.G. and Ambedkar, D.G. (eds), Speeches and Writings of Gopal Krishna Gokhale, Vol. II, Bombay, 1966.
- Lakdawala, D.T., Union State Financial Relations, Lalvani, 1967.
- Laski, Harold, J., 'The Obsolescence of Federalism, The New Republic, Vol. 98, 1939.

- Limaye, Madhu, Mahatma Gandhi and J. Nehru : A Historic Partnership, 1916-1948, 1990.
- Linlithgow, Marquis of, Speeches and Statements, 1936-43.
- Malyarov, O.V. "The Role of the State in the Evolution of India's Socio-Eco Structure", JAS 1985 No. 177.
- Manasergh, Nicholas (ed), The Transfer of Power, 1942-47, Vol. I: The Cripps Mission, Jan-Apr. 1942, London, 1970.
- Martreau, John, The Life and Correspondence of the Rt. Hon. Sir Bartle Frere, Vol. I, London, 1895.
- Mathew, George, "The Federal Principle in Local Govt.", in N. Mukarji & Arora. Federalism in India : Origins and Development.
- Mukarji, Nirmal & Balveer Arora, (eds) Seminar on Federalism in India : Papers and Proceedings, New Delhi, 1989, 2 Vols.
- Mukherji, P., Indian Constitutional Documents 1600-1918, Vol. I, Thacker, Spink and Co., Calcutta, 1918.
- Mukherjee, Pranab, Beyond Survival, Vikas, New Delhi, 1984.
- Nanda, B.R., Gokhale, Indian Moderates and the British Raj, 1977.
- Nanda, B.R., "The Swarajist Interlude" in B.N. Pandey (eds) A Centenary History of Indian National Congress, Vol. II Vikas Delhi 1990.
- Natesan, G., Indian National Congress. Madras, 1917.
- Pandey, B.N., A Centenary History of the Indian National Congress 1885-1985, Vol. II to Vol. III, Vikas 1990.
- Pandey B.N., Mahatma Gandhi : A Biography, OUP, 1958.
- Philips, C.H., (ed.), The Evolution of India and Pakistan, 1888-1947, London, 1962.
- Prasad, Bisheswar, The Origins of Provincial Autonomy, 1941.
- Rao, Hemlata., Centre-State Financial Relations : Criteria of Federal Fiscal Transfers and their Application in India, Allied, New Delhi, 1981.
- Rao, N.R., Union-State Financial Relations in India, Research Publication Series, 15. Karnatak University.

- Rao, S. (eds), The Framing of India's Constitution : Select Documents, IIPA, New Delhi, 1966.
- Ray, Amal, Inter-governmental Relations in India, Asia, Bombay 1966.
- Ray Amal, Tension Areas in India's Federal System, World Press, Calcutta 1970.
- Rudolph, L.I. & S.H. Rudolph. In Pursuit of Lakshmi, The Political Economy of the Indian State; Orient Longman, New Delhi, 1988.
- Saiyid, Matlubul Hasan, Muhammad Ali Jinnah (A Political Study), Lahore, 1945.
- Shah, K.T., Federal Finance in India, OUP.
- Sastri, K.V.S., Federal-State Financial Relations in India, OUP, 1969.
- Sen-Gupta, Nares Chandra (ed.) Selections from the Writings of Harish Chander Mookerji, Calcutta, 1910.
- Sitaramayya, Pattabhi, History of the Indian National Congress, S. Chand, 1969, Vol. I.
- Tendulkar, D.G. Mahatma; Vols. I to VIII, TOI Press, Bombay.
- Thimmaiah, G., A Critique of the Finance Commission Allahabad, Wheeler, 1981.
- Thorner, Daniel, The Shaping of Modern India. Allied Publishers Pvt. Ltd; New Delhi 1980.
- Tinker, Hugh, The Foundations of Local Self-Government in India, Pakistan and Burma, Lalvani, Delhi, 1967.
- Verma, R.P., "Inter-State Disparity and Fiscal Devolution in India", in JAS, No. 166-168.
- Wheave, K.C., Federal Government, OUP, London, 1963.