a constitution acceptable to all sections of the people. The proposal of the withdrawal of the British power from India is not intended to mean the physical withdrawal of all Britons from India and certainly not of those who would make India their home and live there as citizens and as equals with the others. The Congress reiterates its pledge to resist aggression effectively with the people's united will and strength behind it and expresses its agreement with the policy of stationing the armed forces of the Allies in India to resist Japanese or other aggression and to protect and help China. Should this appeal fail, the Congress will then be reluctantly compelled to utilise all its non-violent strength for the vindication of political rights and liberty. A similar resolution was adopted in the Bombay session of the All-India Congress Committee on the 8th of August 1942.

(2) The Moslem League's stand is definitely aimed at the disintegration of India and creation of sovereign and autonomous provinces without the cohesive influence of a Central Government. This stand is generally on the basis of the existing territorial boundaries of the provinces formed by the British administration, but it ignores integral unity brought about by the British Government through the establishment of a Central Government. The Muslim League opposed the plan of reform advocated in the Non-Party Leaders' Conference under the guidance of Sir Tej Bahadur Sapru, merely on the ground that the Sapru scheme meant the transfer of all power and authority to the Central Government to be set up on the basis of India being a single national entity and enjoying Dominion Status in action. Any scheme which seeks to torpedo the Pakistan demand of Moslem India will be resisted by the Moslem League, and as such any political party which stands for the establishment of a democratic State in India can have no agreement with the Moslem League. The Cripps mission was found to accelerate the demand for Pakistan. Mr. Jinnah presiding at the annual meeting
of the Moslem League at Allahabad in April 1942 when Sir Stafford Cripps was exploring the avenues of compromise on the draft proposals of the British War Cabinet, announced clearly and forcibly: "Rest assured that our aim is Pakistan, and whatever the proposals of His Majesty's Government may be, if they are such that we cannot achieve Pakistan, we will never accept." The Allahabad meeting of the Moslem League made Mr. Jinnah virtually a dictator till the next session of the League.

(3) The failure of the Cripps mission disheartened Mr. C. Rajagopalachari, a prominent member of the Congress Working Committee. It was current in Congress circles that it was through his able persuasion that the Congress made the memorable offer of co-operation couched in the Poona resolution of the Congress Working Committee in 1941, and that it was largely through his insistence that the Congress showed its eagerness to Sir Stafford Cripps to form a national Cabinet in the interest of war efforts on behalf of Great Britain and the Allies. After the failure of the Cripps mission, a resolution recommending the All-India Congress Committee to acknowledge the Moslem League's claim for separation, should the same be persisted in when the time comes for framing the future constitution of India, and to invite the Moslem League to consultation for the purpose of arriving at an agreement and securing the installation of a National Government to meet the present emergency, was passed by the Madras Congress Legislature Party at its meeting on the 23rd of April 1942, Mr. C. Rajagopalachari presiding. The same resolution was moved by Mr. C. Rajagopalachari at the Allahabad session of the All-India Congress Committee on the 2nd of May 1942. It was rejected by 120 votes against 15 votes. Mr. Rajagopalachari resigned first from the Congress Working Committee and later from the Congress organisation, to preach his living message and faith to the people unhampered by the whip of Congress organisational discipline. Mahatma Gandhi criticised the stand of Mr. C.
Rajagopalachari: “He yields the right of secession now to buy unity in the hope of keeping away the Japanese. I consider the vivisection of India to be a sin. I am firmly of opinion that there is no unity whilst the third party is there to prevent it. It creates the artificial division and it keeps it up.”

Mr. C. Rajagopalachari asserted the vindication of the right of self-determination for the people of India which is recognised by the Congress, as is evident from the resolution of the Congress Working Committee in New Delhi, April 1942, on the draft proposals of the British War Cabinet. The right of self-determination carries with it the right of a territorial unit to vote itself in or out of a Union. It is no concession to the Pakistan movement inasmuch as the right of self-determination is to be exercised by the declared will of a territorial unit, and not by the declared wishes of the majority of a major community resident therein. In practice, the grant of the right of self-determination is not likely to help the disintegration of India as it will be difficult for any Moslem province to obtain a majority of the people thereof in favour of secession from the Indian Union, when such a secession carried the threat of weakening the political, financial and military position of such province. But the All-India Congress Committee at its Allahabad session in May 1942, in a huff and out of dread of the spectre of Pakistan, adopted a resolution to the effect that any proposal to disintegrate India by giving liberty to any component State or territorial unit to secede from the Indian Union or Federation could not be acceptable to the Congress. The Congress thus placed itself in an embarrassing position, as the right of self-determination was indirectly vetoed out for no practical gain. Congress leaders, however,

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1 The Moslem League under Mr. Jinnah’s leadership leaves aside the right of self-determination and recommends national plebiscite of Moslems in Moslem-majority provinces to determine Pakistan. It is only Sir Sikander Hyat Khan, Premier of the Punjab, and a prominent member of the Moslem League, who talked in the language of self-determination in tune with Azad Moslems.
maintain that their stand in favour of self-determination is not affected. The Congress and other bodies are apprehensive that Pakistan is not the final demand of the Muslim League but only the first stage towards affiliation with Pan-Islamism. To quote the language of Mr. K. M. Munshi, “Pakistan begins with a modest search for safeguards against Hindu majority, but it ends by preaching a crusade for the restoration of the Empire of Chengizkhan.”

(4) The failure of the Cripps mission radiated a sense of frustration in political India. There was a belief that the British Government would sincerely try to enthuse the Indian nation in favour of war efforts by the transfer of power to Indian hands. The Indianisation of the Governor-General’s Executive Council was not the point at issue; the vital demand was for the transfer of power. The failure of the Cripps mission put out the light of faith, and black resentment against the British Government followed. This is fatal for India’s constitutional progress and India’s war efforts in favour of her allies. The will to resist the enemy suffers in the long run. Such a situation cannot be contemplated with equanimity.

Future historians will, it is hoped, be in a better position to judge the significance of the Congress decision of August 1942 in a more dispassionate manner and to apportion responsibility for the regrettable incidents that followed the arrest of Congress leaders. It must, however, be recognised that the resolution of the All India Congress Committee of the 8th August 1942 and almost simultaneous arrests of its authors by the Government of India were interpreted by the people who took part in the movement of disobedience as a signal for revolt. From non-violence the struggle degenerated into a general rising, attended with all its concomitant evils including loot, arson and murder. The communications of the country were dislocated, though temporarily, at a moment when Japan was knocking at the very gates of Bengal and would have
certainly over-run the country if she could. Thus the outburst was harmful to India's safety, and as such it greatly prejudiced her claims for a National Government and alienated the sympathy and support of many Britons and other people friendly to India's political aspirations.

The expansion of the Governor-General's Executive Council in July 1941, and its further expansion in July 1942, have little constitutional significance. The expansion is effected within the ambit of the existing Constitution Act; the appointments were made not on party affiliation having influence and voice in the country; there was no attempt to assuage political discontent. Some individuals were appointed on arbitrary standards, subject to two limitations, viz., the major provinces and major communities may be represented in the Executive Council. The Congress, the Moslem League, the Liberal Federation, the Hindu Mahasabha, none of these were consulted, nor were their recognised representatives taken in. The expansion does not involve the transfer of power on the part of the British Government; it was more for administrative convenience than for political appeasement. The key portfolios, such as Home and Finance, are still in the hands of Britons, whereas many portfolios have been subdivided and new ones created to increase the number of Councillors. After the two expansions, one in July 1941 and the other in July 1942, the portfolios except War which is left to the Commander-in-Chief, were as follows: Defence, Commerce, Supply, Law, Home, Labour, War transport, Finance, Posts and Air, Indian Overseas, Information and Broadcasting, Civil Defence, and Education, Health and Lands. The new Executive Councillors, the majority of whom are Indians, have not asserted their right to behave as Cabinet Ministers; there is no understanding that they shall function as a policy-formulating and policy-directing body. The spirit of the Constitution Act demands that the Executive Councillors should reflect the opinion of the people in the Council and act accordingly, although
they are not formally responsible to the legislature. Thus the present Governor-General's Executive Council, giving the majority of seats to non-official Indians for the first time, stands irremovable by the legislature, non-responsible to public opinion, unrepresentative of the major political parties and denuded of any effective power except by the good will of the Governor-General. Political India has evidently nothing to gain from such expansions. It is undoubtedly a strange phenomenon that the Governor-General's Executive Council consisting of ardent individuals of mature political experience and wisdom cannot be transformed into a national Cabinet because of the overriding powers of the Governor-General. That is not the lesson of Dominion autonomy and Dominion practice in the British Commonwealth.

The testimony of Mr. M. S. Aney, who was appointed a member of the Governor-General's expanded Executive Council in 1941, is, however, encouraging. After his resignation which took place on the 17th of February 1943 owing to fundamental difference with the Government of India on the issue of Mahatma Gandhi's fast in jail for a period of three weeks (which began on the 10th of February 1943) he made an important statement in course of which he observed: "Indians holding the high office of member of the Viceroy's Executive Council can do much useful and beneficial work. The creating of a distinct and indisputable majority of Indians in the Viceroy's Executive Council is an outstanding reform and improvement, of which progressive elements should have taken further advantage. . . . . . There is enough scope for solid service to the Indian people by Indian members even under the existing system and still more by conventions which slowly but steadily grow up." The fact that he had to resign along with two other colleagues, Mr. N. R. Sarker and Sir H. P. Mody, was not depressing to him. The full results of this experiment are yet sealed to us in the stress of emergency born of the War.
CHAPTER III

THE FEDERATION OF INDIA

The British have established their ascendancy in India through fortuitous circumstances. The political unity of India, the growth of democratic ideas, and the spread of liberal movement on all fronts of life have been the direct blessings of British rule in India. Gladstone laid down that "our title to be in India depends on the first condition that our being there is profitable to the Indian nations, and on the second condition that we can make them see and understand it to be profitable." This liberal policy comes into direct conflict with the conservative creed set out by Sir Samuel Hoare, Secretary of State for India, in piloting the Government of India Bill 1935, that Parliament cannot relinquish its responsibility of fixing a constitution for British India which it considers most suitable. This arrogation of power is hurtful to political reforms designed for the transfer of power to the people.

The series of constitutional reforms culminating in the Morley-Minto Reforms of 1909, aimed at the creation and enlargement of legislative councils and not "at the creation of Parliament", were governed by two policies, first, that representative government in its Western sense is totally inapplicable to the Indian Empire; secondly, that the safety and welfare of India must depend on the supremacy of the British administration.1 There was a welcome departure in the Reforms Act of 1919 which recognised responsible government as the goal of India. The Government of India Act 1935 is a further instalment in the direction of self-government. The reforms granted were modelled on the British system subject to qualifications

1 Lord Morley, Secretary of State for India, described the Congress claim to self-government on colonial lines as "a cry for the moon" and said: "The furcoat of Canada would never suit the actual conditions of the historical, cultural, and psychological climate of India."
and modifications devised by Parliament mainly in the interests of Great Britain. The release from British dominance was, however, for the first time contemplated in the pronounced intention of fostering ministerial responsibility in the provinces. To put it in the language of Mr. Amery, Secretary of State for India, “the Act of 1935 was in essentials the work of the British Government and Parliament and was based on the existing structure of Indian Government and inspired by British ideas.” The political goal was fixed by the British Parliament, and the reforms were modelled on the British system of parliamentary government for fulfilment of India’s political aspirations. The Constitution contains elements of parliamentary government and provisions helpful for creation of healthy conventions, but the Act of 1935 also provides hurdles which have to be overcome before the goal can be reached. It may, therefore, be said that the frame of reforms is good, as it contemplates the all-India Federation, but the picture is bad, as there are many provisions prejudicial to the growth of full responsible government.

**Genesis of the Federal Principle**

The British Government in India was established on a centralised basis; it sought to give political unity to India through the machinery of a strong central administration. The devolution of powers that followed was not the work of federal sentiments; it was related to administrative conveniences. Indian States which cover an area of 5,98,138 square miles, or nearly two-fifths of the total area of India, do not form a compact piece of territory. There are 562 such units in India, and out of the estimated total revenue of about Rs. 45 crores for all the States, 23 States have between them a revenue of over 35 crores. There are too many small States whose backwardness is inevitable in view of their small revenues. They are historical accidents,
not a matter of deliberate choice. Subjects of common concern to the States and British India, such as defence, tariffs, exchange, opium, salt, railways, and posts and telegraphs, are growing in volume and importance. So long as they remain in the hands of the Governor-General, Princes feel that their point of view will receive adequate consideration. But in a self-governing British India, Princes cannot let things alone, and naturally they would claim a share in the control of common subjects. Moreover, responsible government in British India cannot be a matter of indifference to the Princes as political hopes and aspirations “overleap frontier-lines like sparks across a street”. The dawn of self-government in British India is bound to stir Indian Princes into a course of action seeking association with British India in matters of common concern without loss of their individuality. The conception of the future of India as a sisterhood of States, self-governing in all matters of provincial interest, presided over by a Central Government dealing with matters of common interest to the whole of India and acting as arbiter in inter-State relations, was visualised in the Report of Indian Constitutional Reforms 1918, and it was definitely stated that “in this picture there is a place also for the native States”. It is true that the Reforms Act of 1919 did not disturb the basic scheme of unitary government as the Governor-General in Council was the cornerstone of the whole constitutional edifice. The Indian Statutory Commission 1929, known in political parlance as the Simon Commission, recommended the creation of an all-India Advisory Council for organised consultation between the States and British India leading to Indian Federation. The Simon Commission reported “What we are proposing is merely a throwing across the gap of the first strands which may in time make the line of a solid and enduring bridge.” The Government of India in their despatch on the Report of the Simon Commission considered the federal union of the provinces of British India
and States as “a distant ideal”. It was in the first session of the Round Table Conference in 1930 that the representatives of Princes made their historic declaration that they were prepared to join an all-India Federation and could federate “only with a self-governing British India”. The British Indian delegates at the Round Table Conference endorsed the principle of all-India Federation.

Those who are conversant with Indian history know full well that beneath all differences of religion, culture, race and political structure there is an underlying unity, and that India's mission in the march of history has been to accommodate differences and not to accentuate them. There is the fundamental geographical unity “which has walled off India from the outside world”, there is the unity of race which “makes Indians a distinctive type among the main races of mankind”, there is the political unity which India has enjoyed in a far stronger manner under British rule through unity in the administration of law, economic development and of communications. It is, indeed, a commendable and patriotic sentiment that “if some sort of Indian unity had not existed, it would have to be invented.” Accordingly, the ideal of an all-India Federation is considered essential for the full expression of India's political objective and cultural mission. Such a federation on a basis predominantly democratic is necessary for the dignity and greatness of India, for the preservation of her internal peace and unity, and also for enabling India to play her role in helping to mould the affairs of the world.

In the task of framing India's constitution it is to be recognised that India is, “in fact, as well as by legal definition, one geographical whole” and that a sense of inner cohesion runs through the whole fabric of Indian culture. The greatest argument for Federation is the constitutional unity of India as a whole. The federation of British India alone impairs the organic unity of India. An all-India Federation provides scope for political cohesion which the peoples of India in a sense never before possessed in all
their long history. British India, governed on the advice of Ministers responsible to the legislature, is sure to run at a tangent from Indian India under the paramountcy of the Crown. Cultural unity on which emphasis is laid in respect of India is no substitute for constitutional unity. The history of Europe teaches the tragic lesson that cultural unity offers no dependable bond if the creation of separate sovereignties under different constitutional systems is permitted. The separatist tendencies that follow political divisions serve as dynamite for conflagration. It is only by Federation that unity and local diversities may be maintained on the basis of cohesion for which India has striven all these years.

There is no escape from the hard truth that “to wait till the administration of Indian States is brought into line with that of British Indian provinces will mean indefinite waiting for united India”. But the advocates of the all-India Federation sincerely believe that the active contact of Indian States with British Indian units in the federal government would accelerate the pace of responsible and representative government in the Indian States. Through the interplay of social forces it is inevitable that in due time the basic civil liberties, viz., the right of habeas corpus, freedom of speech and freedom of association, must be established, and that in the ultimate analysis Princes must more and more assume the role of constitutional rulers. Federation will make this process “more smooth and less violent than it may otherwise become”.

The Act of 1935 accepted the constitutional scheme of an all-India Federation.¹ To make any federal scheme a

¹“In a loose sense the word “federal” may be used to describe any arrangement under which self-contained States agree to delegate their powers to a common Government with a view to an entirely new constitution even of the States themselves. But the natural and literal interpretation of the word confines its application to cases in which these States, while agreeing on a measure of delegation, yet in the main continue to preserve their original constitutions.”—Judgment of Viscount Haldane in Attorney General for the Commonwealth of Australia and others v. the Colonial Sugar Refining Co., Ltd. and others (1914), A.C. 237.
success, the units and the federal centre must crystallise the principles of self-government in the allotted sphere of jurisdiction, and there should be healthy co-operation between the Federation and its parts. On the first reading of the Indian Constitution Bill, the Marquess of Linlithgow rhetorically put it in the House of Lords: "I can conceive of no greater folly than that of those who would write liberty across the face of every provincial constitution and at the centre perpetuate a form of constitution which withholds the principle of self-government. To do that would be to secure for the Central Government the mistrust and hostility of politically minded Indians throughout the country, and to invite Governments and legislatures in every province to dedicate themselves to the task of rendering unworkable the system of Central Government." But the introduction of Federation at the centre was deferred indefinitely, and gradually the idea of its introduction under the present Constitution was finally abandoned. This was indeed a tragedy, especially when Sir Samuel Hoare emphatically declared that he regarded the scheme "as a single, comprehensive scheme" and that he was not prepared to countenance any proposal that should divide the scheme into two parts and that would make it possible for one part to come into operation without the other.\(^1\) To quote the language of Mr. Amery, "the worst form of dyarchy is when you have a dyarchy between an irremovable executive on the one side and an irresponsible, vociferous majority in the legislature on the other; there you have the kind of Government that creates the maximum of friction and produces irresponsibility on the one side and violence and timidity on the other. It is a system that has never worked in this country or anywhere in the British Empire."\(^2\) But the irremovable Executive and irresponsible Opposition in the legislature are being

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\(^1\) Parliamentary Debates, Indian Affairs, House of Commons, Vol. 1 (1934-35).
\(^2\) Ibid.
continued in the Central Government of India with the Government of India Act 1935 in its federal part held up for reasons which have not been satisfactorily explained to political India.

Provincial autonomy under the Act of 1935 came into effect in April 1937. India was assured from responsible quarters that every effort would be made to inaugurate Federation within a reasonable time after the introduction of provincial autonomy. When Lord Linlithgow came out as the Governor-General of India, he expressed himself in that strain. On the 4th of October 1937, after the experience of eighteen months in India, he held out the same hope and urged the importance of Federation as the needed move to secure unity in the political sphere, although there were many sincere doubts and hesitancies from the major political parties. Lord Stanley made a statement in the House of Commons that the aim of the Imperial Government was to carry into effect Parliament's intention of introducing provincial autonomy as an integral part of a single constitutional scheme with the least possible delay and that steps towards that end were being taken by the Governor-General.

Lord Linlithgow announced towards the end of 1937 that to hasten the introduction of Federation which involved the harmonization of Indian provinces with their widely varying conditions and problems and the Indian States with their long individual traditions into a common scheme of British Indian and Indian State interests and concerns, emissaries had been despatched to the Rulers of the States to obtain the fullest information regarding the attitude of the Indian States, and there was a direct reference to the difficult nature of the problems inherent in the establishment of Federation. An authoritative statement was made in the Central Assembly in 1938 on behalf of the Government of India that representatives of the Viceroy had had discussions with the Rulers and their Ministers "on many points of difficulty or uncertainty" and
that the replies received from the States were under the consideration of Government. There was the usual assurance that the early achievement of Federation "represents the considered policy of both His Majesty's Government and the Government of India". On all conceivable occasions it was pointed out that "provincial autonomy and federation, essentially and intrinsically parts one of the other, represent a great decision."

Lord Zetland, Secretary of State for India, in a speech at the Bombay Dinner in London, 1938, clearly indicated that the federal structure in the Constitution could not be amended before Federation had come into being. He suggested that room might be found within the framework of the Act to accommodate the reasonable requirements of the provinces and the States. In fact, however, Government did nothing in a constructive manner; they did not bring Federation into being, nor did they seek to meet the criticisms by making necessary amendments. Time rolled on; the Central Government remained unformed; the old central legislature was extended year after year resulting in stagnation.

Political India is opposed not to federation in principle but to the particular scheme embodied in the Government of India Act. The vital defects of the federal scheme may be enumerated as follows:—

1. Representation of Indian States through nomination by the Princes and undue weightage given to them, especially in the Council of State. The weightage in the Council of State is significant as the Upper House has co-ordinate powers with the Lower House.

2. There is nothing in the Act to prevent the Princes from introducing some element of popular choice in the matter of representation of States in the federal legislature, and Lord Zetland as Secretary of State gave assurance that the Paramount Power would not stand in the way of any Prince seeking to temper the rigid autocracy of bygone days with a more liberal system (Bombay Dinner Speech in London, 1938).

(2) The system of indirect election and separate electorates for the federal legislature in the British Indian Provinces.

(3) Reserve powers and special responsibilities in the hands of the Viceroy are overpowering.

(4) The rigidity of the Constitution, even parliamentary authority in the matter of alteration of the constitution is dependent on the sanction of the Princes.

British Indian critics suspect in the scheme of federation a deliberate design to stifle responsible government at the centre through the play of reactionary forces represented by the Indian Princes. But British critics explain away the defects by stating that the Act was the outcome of a compromise between many conflicting elements, that it was passed through a predominantly Conservative Parliament and that alterations in the constitution, recommended by the responsible Ministry and legislature, would not be opposed in Parliament on the analogy of the Dominion conventions. They do not seem to take note of the fact that the vetoing power statutorily given to the acceding States in the matter of amendment of the Constitution restricts the growth of conventions which would be called into aid in removing the extreme rigidity of the Act of 1935.

The political status of the provinces and States, as defined in the Government of India Act, is this: (1) the residuary powers in British India will be exercised by the Federal Government, (2) the sovereign power in British India will be exercised by the British Cabinet through the Federal Government and in the Indian States by the British Cabinet through the Viceroy as representative of the King of England.

It is true that Federation will consecrate the political unity of all India, but the federal structure as envisaged in the Constitution Act of 1935 was erected as "a counterweight to democracy in the provinces". The Imperial Government evidently encouraged an all-India
Federation because the known loyalty and conservatism of Indian Rulers were a guarantee of stability, order and resistance to subversive and revolutionary force in a self-governing India. Sir Austen Chamberlain pleaded for federation of all-India as “the interests of the Princes are intimately associated with the British Empire, just as for the same reason our interests are intimately associated with theirs.” Lord Reading asked for the large proportion of representatives of the Princes in the federal legislature as “a steadying, a stabilising influence”. Sir Samuel Hoare, Secretary of State for India, correctly expressed the views of the British Government when he observed: “We want the all-India Federation to be an effective Federation. We have no intention of bringing into operation a Federation which is not definitely an all-India Federation.” It was made clear in the Round Table Conference debates by the representatives of the British Government that the grant of partial responsibility in the centre was dependent on the establishment of an all-India Federation. That gives the clue to the Centre remaining unreformed and to the Governor-General’s Executive Councillors failing to attain Cabinet rank and responsibility, even in a limited way, through conventions. Great Britain feels it dangerous to leave the Central Government at the mercy of the autonomous provinces of British India lest the home charges, obligations of the debt, the cost of Indian defence, the cost of pensions for pensioners in the United Kingdom, should not be attended to in an approved manner. Practically, the aid of autocratic Rulers was asked for to nullify the votes of the British Indian people. The unnatural co-mingling of democracy and autocracy in the federal scheme has, as Dr. Keith maintains, given birth to “a bastard federalism”, and he, therefore, pleads that “no State should be admitted to Federation unless it is willing to adopt the principle of responsible government and of democracy.” British Indian critics have urged that the Indian Rulers must abandon their autocratic dominance in partnership
with their subjects and that the success of an all-India Federation is related to the introduction of responsible government in all the constituent units.

Sir C. P. Ramaswami Aiyar, Dewan of Travancore, raised the important point in the Travancore Legislative Assembly that the Rulers of Indian States had no power to introduce responsible government in their States without the consent of the Paramount Power. It was an unfortunate statement. Constitutionally, it rests with the Rulers themselves to decide what form of government they should adopt in their internal administration. If the Paramount Power is consulted in these matters, it would tender advice without bringing pressure on the Rulers in either way. The Paramount Power may not be anxious to see responsible government established in an Indian State. That is a different issue. But even under responsible government, in the event of a clash of views between a State and the Paramount Power, the latter must prevail. Lord Lothian rightly observed: "Paramountcy certainly cannot be interpreted to mean that Great Britain has the duty of supporting a Ruler in denying to his own subjects the very rights which have been established by the authority of Parliament throughout British India".

The Indian States

A study of the Indian federal scheme brings us into direct contact with the conclusion that the limitations on the sovereignty of Indian States are not to be ignored. It would add to confusion if we insist on describing them

1 The statement of Earl Winterton in the House of Commons on February 21, 1938, wherein it is stated that the consent of the Paramount Power is not required in initiating proposals for constitutional advance by the Ruler of an Indian State. This is repeated by His Excellency Lord Linlithgow, Governor-General of India, in his address at the Annual Meeting of the Associated Chambers of Commerce, 1938. Vide also the statement of Lieut.-Col. Llewellyn, Under-Secretary of State for India, on the 16th December 1938.
as sovereign States. It is not true, as is loosely stated, that
the Ruler of an Indian State stands, in respect of internal
affairs, on the same footing as the British Government in
India. This was the stand which His Exalted Highness
the Nizam of Hyderabad took with regard to the Berar
controversy in 1925. The view gathers strength from the
joint opinion of the Rt. Hon'ble Sir Leslie F. Scott, K.C.,
m.p., Mr. Stuart Bevan, k.c., m.p., Mr. Wilfrid A.
Greene, k.c., Mr. Valentine Holmes and Mr. Donald
Somervell submitted before the Indian States Committee
1928, known as the Butler Committee, on behalf of the
Princes of India. The five eminent counsel came to the
significant conclusion that (i) the Indian States possess all
original sovereign powers, except in so far as any have been
transferred to the Crown, and such transfer has been effected
by the consent of the States concerned; (ii) it is the State
and not the Crown which has all residuary jurisdiction,
(iii) the right of any given State being defined by its
agreement with the Crown, it follows that the Crown has
no power to curtail those rights by unilateral act. The
Crown is in relation to all the States the Paramount
Power. Paramountcy gives to the Crown definite rights in
respect of certain defined matters, viz., those relating to
foreign affairs and external and internal security, and it
imposes upon the Crown definite duties, such as protecting
the State and its Ruler against enemies and dangers,
external and internal, and supporting the loyal Ruler and
his lawful successors. The Princes' counsel held that the
Crown had no indefinite powers or unlimited discretion,
and accordingly the true test of the legality of any claim
by the Crown, based on paramountcy, to interfere in the
internal sovereignty of a State is in discharge of its specified
rights and obligations.

Lord Reading as Viceroy in his classic letter to His
Exalted Highness the Nizam of the 27th of March 1926
maintained that the sovereignty of the British Crown was
supreme in India and that its supremacy existed indepen-
dently of treaties and engagements with the Indian Rulers, and as a corollary he enunciated that the ultimate responsibility for remedial action must lie with the Paramount Power if the Imperial interests are affected and the general welfare of the people of a State is gravely prejudiced by the action of the Indian Ruler in his internal government. The principle of *res judicata* cannot be applied in precluding the Crown from taking cognisance of a matter, nor can the Crown by virtue of its paramountcy be denied the general discretion to overrule the objections of the State in case of a difference of opinion with the Crown.

The standpoint of Lord Reading which comes into conflict with the opinion of Sir Leslie Scott and others gains support in law and in fact when it is remembered that paramountcy must fulfil its obligations according to "the shifting necessities of the time and the progressive development of the State". The Butler Committee did not agree with the opinion of the Princes' counsel.

The Judicial Committee of the Privy Council in the well-known Malta case of *Sammut v. Strickland* maintained that cession, even if voluntary, implied complete submission to the royal will. It is only Parliament which can limit the prerogative. Dr. Keith calls it "a hard doctrine, essentially inequitable", but its legal value can hardly be doubted. The residuary jurisdiction is thus vested in the Paramount Power.

The Indian States may in theory be sovereign States, as sovereignty is divisible, but they are not independent, being subject to the ultimate jurisdiction of the British Crown. Nor do all the States enjoy equal powers of autonomy. The Gazette Notification of 21st August 1891 laid down that the principles of international law had no bearing upon the relations between the Government of India and the Native States, and the paramount supremacy of the Government of India as representing the Crown "presupposes and implies the subordination of the Native
States." Accordingly, the Indian States "acknowledge the allegiance and subordination to and dependence upon the Crown as Paramount Power". The position is made difficult, as the Butler Committee held that the relationship between the Paramount Power and the Princes, entered in the treaties, engagements and sanads, should not without the agreement of the latter be transferred to a new Government in British India responsible to the Indian legislature. Hence, the Government of India had to wait to settle the terms of the Instrument of Accession, the ultimate word being evidently left to the Indian Rulers. It is difficult to synthesise "the promise of the King-Emperor to maintain unimpaired the privileges, rights and duties of the Princes" with bringing the Indian States as federating units in the Federation for eventual evolution of the Indian Union as a self-governing and sovereign entity. Sir William Holdsworth significantly states that "if and in so far as the Ministers who govern British India are made responsible to an Indian legislature in that event and to that extent they are incapable of acting as agents of the Crown in their relation with the Rulers of Indian States".

Indian Princes are avoiding Federation as recognised in the Constitution Act of 1935, primarily for the following reasons:

(1) The States, once they federate, have no right to walk out of the Federal Union. Secession can only be sanctioned by the Imperial Parliament, but as a matter of constitutional practice, Parliament will refuse to consent to any such secession at the desire of the federating State.

(2) The Instrument of Instructions as a safeguard for the protection of the rights of the States is not enforceable in law.

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1 In the Manipur rebellion, the Government of India under the viceroyalty of Lord Lansdowne laid down their unquestioned right of interference and their authority to remove by administrative order any person whose presence in the State may seem objectionable.

2 Mr. J. H. Morgan, K. C., who was consulted in 1937 by the Chamber of Princes, pointed out the dangers inherent in the entry of the Indian States to the Federation.
(3) The sovereignty of the State is very considerably impaired and wholly transformed if it accedes to Federation, although the sovereignty of the State will not be affected beyond the Instrument of Accession. The allegiance of the subjects of a Ruler of a State will be divided between the Ruler and the Federation inasmuch as they would be subjected to the federal authority. Mr. J. H. Morgan pointed out that the coercive power of the Federal Government in securing federal legislation to compel Indian States to carry out any executive obligations imposed on them is unlimited under the Act of 1935.

(4) Judicial construction may result in narrowing the rights of the States contrary to the original intention of the authors of the Act. In construing the Instrument of Accession, the negotiations preceding the accession of States to Federation are immaterial in a court of law, and the text will be interpreted on the same rules as are applicable to the construction of Statutes. This formal approach is disconcerting to the Princes.1

(5) The dualism of the office of the Governor-General as contemplated in the Act is, in the opinion of Mr. Morgan, an artificial one, as the Crown-representative of Indian States may be influenced by the opinion of the federal legislature and federal executive where British India predominares. The apprehension of the Princes thus persists, as responsible government in the federal centre may establish conventions harmful to the sovereignty of the States even in spheres which are not parted with.

(6) The nominees of the Indian Rulers in the federal legislature will not hold their tenure of membership at the pleasure of the Rulers, and as such the Rulers will not

1 It is to be noted that the Instrument of Accession is a final and complete limitation of the authority of the Federal Court and the Privy Council and that any fundamental change in the protected provisions of the Act of 1935 would mean the termination of the understanding embodied in the Instrument of Accession. In that event, the States would be released from indissoluble union with the Federation as established under the Act of 1935.
have the right to recall them even if the representatives fail to see to the interests of the States.

(7) The Indian Rulers do not feel sure that their interests in customs, defence, economic and other rights will be adequately safeguarded. Referring to the revised draft of the Instrument of Accession, the Chancellor of the Chamber of Princes hinted at the difficulties involved and stated: "We have to examine carefully and to ensure that the power of the States to develop their natural resources remains unaffected and that the financial implications of the scheme leave us a sufficient margin to balance our budgets and to provide funds for the growing and legitimate need of improvements in raising the standard of our administrations, and in developing beneficent activities".

As against these apprehensions may be set out the advantages to the States to be derived from the establishment of Federation, and they may be stated as follows:

(1) Federation gives strength and stability to each acceding State: the strength of each State as a constituent part of the Indian Federation will be based on the strength of the whole organisation.

(2) The smaller States will come into prominence as they would form separate units of the Indian Federation.

(3) Every State acceding to Federation will enjoy collective security provided by all the acceding States; the rights and privileges of a particular State will be the concern of all the States joining Federation.

(4) The States will have the privilege of a voice in British Indian matters, a privilege which is undoubtedly to be valued as a great political gain. The representatives of the States will get a wider field of service and greater opportunities of showing their mettle.

1 The Joint Memorandum of the Indian delegates at the Round Table Conference, which was rejected by the Select Committee, stated, amongst many other things, that the representatives of the Indian States in the federal legislature should not take part in federal matters affecting British India only.
It is indeed unfortunate if it is a fact, as is shrewdly suspected, that the federal scheme could not be started primarily 'because of the unwillingness of the requisite number of Indian States to accede to Federation. The Act makes a large number of concessions to the Indian States so that no undue difficulties should have been experienced in bringing Federation into existence. Some of these concessions, which provoked very strong criticism, may be noted below:

(1) Federation cannot be started unless States aggregating 50 p.c. of their total population and half of the States competent to be represented in the federal Council of State have acceded. The tests of population and status have been applied to ensure that Federation should start with a good number of States of varying importance. The Act does not provide for obtaining consent, or for an expression of opinion, of the British Indian provinces.

(2) The Ruler of an Indian State shall execute an Instrument of Accession specifying matters to be transferred to the federal legislature imposing limitations, if any, on the federal legislature and the federal executive in respect of his State. Under the Act, federal subjects falling within the competence of the federal legislature shall be divided into two categories, the first category relating to the Indian States and the Indian provinces, and the second category relating to the Indian provinces only. The federal legislature will have power over the Indian States in respect of subjects surrendered by the Indian Princes in the Instrument of Accession. Thus the representatives of Indian States in the federal legislature will have a voice in the legislation and administration of subjects affecting the Indian provinces unless a convention after the precedent of Scottish legislation in the House of Commons is established whereunder representatives from Indian States would abstain from voting when matters concerning exclusively the British Indian provinces are considered.
(3) Section 6 (5) of the Act of 1935 provides that the structure of the Constitution in respect of Federation cannot be altered without the consent of the Rulers. The Solicitor-General explaining sub-section 5 of Section 6 states: "If the structure were to be altered in fundamental respects, of course the States would clearly have the right to say: This is not the Federation to which we have acceded". This provision operates as a fetter on Parliament and makes India's constitutional progress dependent on the good will of the Rulers; the State would evidently be the ultimate judge if the "accession of the State" is affected by any amendment. It gives an indirect route for the States to walk out of Federation as the Princes have acceded to "the Federation as established under this Act" in terms of Section 6 (1) (a).

(4) The broad principle of the Federation as envisaged in the Act of 1935 is that "the Ruler shall remain ruler of his State and his subjects shall therefore remain his subjects". It is the business of the Ruler to ensure the enforcement of the provisions of the Act in his State [vide Section 6 (1) (b)]. All the federal authorities established for the purposes of the Indian Federation shall be subject to the terms of the Instrument of Accession.

(5) In the federal Council of Ministers the Governor-General is instructed to secure representation of the federated States and foster a sense of joint responsibility amongst his Ministers (Article 8 of the Instrument of Instructions). Thus the representatives of the federated States who are nominees of the Princes will be admitted in the Cabinet on the same footing of equality with the Ministers from elected representatives of British India, a position which is not in accord with the principle of parliamentary government.

(6) His Majesty's Representative shall have to be given money out of the federal revenue for the discharge of the functions of the Crown in its relations with the Indian States, including payments in respect of any customary
allowances to members of the family or servants of any former Ruler (section 145).

(7) The remission of cash contributions payable by the States over a period not exceeding twenty years is provided for on their agreeing to join Federation subject to specific limitations in sub-section 3 of Section 147. The cash contributions represent the sums which were paid by the Princes under the treaties in return for the general protection from the Crown.

(8) The administration of federal Acts in the federated States is to be secured by an agreement between the Governor-General and the Rulers of federated States. It is the Governor-General acting in his discretion and not the federal Government that is charged with proper enforcement and execution of the policy of the federal Government.

(9) The incidence of the sea customs duties falls upon the consumers both in the Indian States and in British India. But the Indian States have at present no say in fixing the Indian tariff. Even the maritime States cannot fix import duty without reference to the rate in British India. With their entry into Federation the States will take active part in the determination of the Indian tariff, a privilege which they asked for as was evident from their claiming a share in the proceeds of the increasing import duties.

(10) Corporation tax is not to be levied by Federation in a federated State within ten years from the establishment of the Indian Federation. It is favoured treatment to the industries in the federated States.

The Government of India Act 1935 does not lay down a constitution which is capable of expansion and development in response to forces from within. India cannot attain responsible government, far less the conventions of the Dominions, within the framework of the Act. It is “an instrument by the wise use of which India can take a great stride forward towards the attainment of the aims set out in the preamble to the Government of
India Act 1919. The preamble, which gives statutory expression to the announcement made in the House of Commons on the 20th August 1917 by the Secretary of State for India, refers to the gradual development of self-governing institutions. The ultimate goal is to be achieved by "successive stages", and the "time and manner of each advance can be determined by Parliament". The Constitution Act of 1935 is to be taken as a substantial step in the direction; it contains no provision to bring India to its final stage. The Indian legislature under the Act of 1935 cannot reform itself, nor can it press Parliament to introduce the desired reform. Any effective constitutional advance by an amendment of the Act cannot be achieved without the consent of the Rulers of federated States. The measure is sacrosanct, and the hope of automatic constitutional advance is destroyed in toto.1

The Joint Parliamentary Committee in their report, 1933, state their conviction that "a specific grant of constituent powers to authorities in India is not at the moment a practicable proposition" and that "the main provisions of the Act should remain unaltered for an appreciable period". The absence of constituent powers in a Constitution Act reacts unfavourably on the political development of the country and accelerates the pace of extreme movement outside the legislatures. It shows insensibility to new forces as the Constitution fails to grow in line with the new desires in society. The Act merely permits the Indian legislatures to pass a resolution recommending alterations in (1) the size or composition of the Chambers of the federal legislature, or the method of choosing or the qualifications of that legislature without varying the proportion between the number of seats in the Council of State and the Federal Assembly or the proportion allotted to British India and Indian States; (2) the number of Chambers, the size or composition of the Chambers

1 This point of view was urged by Colonel Wedgwood in the debate in the House of Commons on the Indian Constitution Bill.
or the method of choosing or the qualifications of members of a provincial legislature; (3) the franchise qualifications of women, (4) qualifications entitling persons to be registered as voters for the purpose of elections. Even this little power of recommendation with an elaborate procedure, provided for in Section 308, can be exercised only after the expiry of ten years from the inauguration of the Constitution.

Some of the provisions referred to are covered by the Communal Award of 4th August 1932, as modified by the Poona Pact on 25th September 1932, and the Communal Award can be upset by Parliament before the scheduled period of ten years is out. There is the British Government's declaration that there is no intention of altering the Communal Award except with the agreement of the communities themselves. Parliament is not bound by such declaration, nor is it hindered by the prohibition operating on the Indian legislature. It is only Parliament to which we have to look for liberalizing the Constitution. But the Indian Federation as contemplated can hardly be reformed by Parliament. The Indian States according to the Act are outside the sovereignty of Parliament. The provisions of Part II of the First Schedule regarding representation of States in the federal legislature cannot be altered without the consent of the Rulers of the States concerned. The Second Schedule contains provisions which exclusively affect British India, and such provisions can be amended by Parliament. But in terms of Section 6 (5), Parliament cannot amend those provisions which affect the States without the consent of their Rulers. The Instrument of Accession is taken as a treaty, and any change striking at the basis of the Instrument results in the breakdown of the agreement. The Act, in effect, states that the representation of States in the legislature and the reservation of certain departments in the federal centre from ministerial control and the exercise of powers by the Governor-General in his discretion, all this being essential
to the Federation to which the States would accede, cannot be altered by Parliament without the consent of the Rulers of the federating States. If the "protected" sections of the Act are amended, the Instrument of Accession is voidable, though not void. The Princes are, in that event, free either to stay in or walk out. Section 6 (5) of the Government of India Act operates as a fetter on the powers of Parliament as does Section 4 of the Statute of Westminster. But the Statute of Westminster places restrictions on the Imperial Parliament's power to affect the powers of Dominion Parliaments without their consent whereas the Government of India Act limits the powers of Parliament to make the Indian Federation expansive and the Indian legislature responsive to healthy conventions and statutory modifications towards the extension of the principles of self-government.

The Opposition of Different Parties

The federal scheme, reactionary as it is, encountered opposition from the different parties for different reasons. It is instructive to study their grounds of opposition as they give a clue to the future of a federal scheme for all-India. The conflicting ideologies inspiring the parties in their opposition to the federation of India give an unfortunate impression that the political system of all-India could hardly be built upon mutual trust and agreement. The spirit of compromise is absent, and the points of agreement are not impressive, as the interests of India are not generally placed above party considerations. A brief analysis of the attitude of the Congress, the Liberal Federation, the Hindu Mahasabha, the Moslem League and the Indian Princes is given below.

The Indian National Congress stands for the integrity and unity of India; it considers the Indian States as an integral part of India, which cannot be separated, and stands for the same political, social and economic freedom in the States as in the rest of India. Purna Swaraj is for
the whole of India inclusive of the States. Such a political philosophy is helpful for federation. It is true that the Congress will fight for full responsible government and guarantee of civil liberty in the States, but it persisted in the policy of non-interference in the internal affairs of the States. The Congress was only ready to extend moral support and sympathy to the internal struggles of the States. The Tripuri session of the National Congress in March 1939 noted that the great awakening which was now noticeable in the States might lead to relaxation or complete removal of the restraint which the Congress had imposed upon itself.

The Congress is not opposed to the ideal of federation; it opposes the federal scheme as envisaged in the Government of India Act 1935. It holds that the Indian States' participation in Federation should approximate to the provinces in the establishment of representative institutions, responsible government, civil liberties and the method of election to the federal legislature, otherwise Federation will, instead of building up Indian unity, encourage separatist tendencies and involve the State in internal and external conflict. In the opinion of the Congress, a real federation must, even apart from the question of responsibility, consist of free units enjoying more or less the same measure of freedom and civil liberty and representation by the democratic process of election. The Congress really objected to the grant of authority to irresponsible Rulers of States to administer the affairs of British India.

It is true that the Congress came out openly in the field to wreck the federal part of the Constitution Act 1935, but the continuance of irresponsible government at the centre was becoming intolerable, and the all-India Congress Committee at its session in September 1938 gave a warning that “any further continuation of unreformed government at the Centre might precipitate a crisis which

1 Resolution of the Congress Working Committee at Wardhaganj, February 1938.
all desire to postpone, if at all possible." It is really impossible for the Governments of the provinces to function with self-respect if an irresponsible but increasingly active Central Government continues to sit over them in all important matters, unwilling and unable to throw off the force of habit and the conventions of previous practice.¹

The Nehru Committee scheme, adopted by the National Convention in Calcutta in December 1928, proposed that the Commonwealth of India should have the same constitutional status in the British Empire as the self-governing Dominions. The federal ideal was not brought out in all its attractive features, and it was given out that "the Commonwealth shall exercise the same right in relation to, and discharge the same obligations towards, the Indian States, arising out of treaties or otherwise, as the Government of India has hitherto exercised and discharged".

In the Gandhi-Irwin agreement of 1931 the Congress stood committed to the principle of all-India federation and of Indian responsibility and reservations or safeguards in the interests of India for such matters, as, for instance, defence, external affairs, the position of minorities, the financial credit of India and the discharge of obligations. As a result of this agreement, Mahatma Gandhi attended the second session of the Round Table Conference in London on behalf of the Congress. Mahatma Gandhi's efforts in London failed; he could not improve the situation at all. The Congress took no part in the subsequent stages leading to the Act of 1935. To quote the phraseology of the Congress, the Act of 1935 and the policy are intended "to tighten the hold of British Imperialism on India and to continue the exploitation of the Indian people". The Congress entered the legislatures under the Act of 1935 to fight the new Constitution, to resist the introduction and

¹ Such a complaint was made by the Chief Minister of Madras, Mr. C. Rajagopalachari, in presenting budget estimates for 1939-40 in the Madras Assembly.
working of the federal part of the Act, and to lay stress on the nation’s demand for a constituent assembly.

The all-India Congress Committee at its Calcutta session in 1937 called upon the Ministries to prevent the imposition of Federation “which will do grave injury to India and tighten the hands which hold it subject to Imperialist domination and reaction”. They asked the Congress Governments in the provinces to move resolutions opposing Federation and requesting the British Government not to impose it. The Congress Governments in the provinces moved and passed resolutions in the provincial Assemblies expressing their definite opinion that “the Government of India Act 1935 in no way represents the will of the nation and is wholly unsatisfactory as it has been designed to perpetuate the subjection of the people of India and that this be repealed and replaced by a Constitution for a free India framed by the constituent assembly elected on the basis of adult franchise which may allow the Indian people full scope for development according to their needs and desires.”

The National Liberal Federation of India is definitely of the opinion that the Constitution embodied in the Government of India Act of 1935 is utterly inadequate and retrograde in many respects, and includes features which do not meet with the approval of Indian nationalists. This body stands by the principles of federation for the whole of India. In respect of the federal part of the Constitution Act, it asked for changes on the following lines at its Bombay session in January 1939:— (a) securing for the subjects of the States the right of election of States’ representatives; (b) doing away with safeguards in respect of monetary policy and commercial discrimination; (c) introducing direct election for members of the Federal Assembly by provinces; (d) making the Constitution elastic to attain Dominion Status within a reasonable period of time. It also recorded its decision that an irresponsible Centre with
responsible provinces was untenable and urged for an early introduction of federation.

The Liberal Federation believes that the enactment of a federation for all India was a distinct step forward towards the attainment of Dominion Status; it trusts in the silent influence of public opinion. Accordingly, it has urged that the Constitution Act of 1935, even in its federal part, should be utilised to the best advantage of the people, for the amelioration of their social and economic condition and for the attainment of Dominion Status. It was definitely opposed to multiplying the concessions to the Princes in the course of negotiations at the expense of the federal Government.

The political programme of the Hindu Mahasabha was practically borrowed from the philosophy of constitutionalism which forms the bedrock of the Liberal Federation. The Hindu Mahasabha\(^1\) puts on record its deliberate opinion that "inspite of the defective and unsatisfactory character of the Constitution, the Hindus should utilise whatever powers are provided under the Act in the interests of evolution of Hindusthan as a united nation and urge the Government to expedite the introduction of Federation." The Hindu Mahasabha was also convinced along with the other political bodies, such as the Congress and the Liberal Federation, that "provincial autonomy will not work with smoothness unless responsibility was introduced in the Centre". It also requested the Indian Princes to grant full citizenship rights and facilities for responsible government within their States but the refusal of co-operation to a federal scheme wherein the Indian States are not to enjoy an amount of responsible government on the lines of the British Indian provinces was never a serious issue with the Mahasabha.

The all-India Moslem League is opposed to the federation as contemplated in the Constitution Act. It

\(^1\)Hindu Mahasabha Conference at Ahmedabad, December 31, 1937, and January 1, 1938.
objects to the federal part mainly on the ground that there is a Hindu majority in the federal Centre. It fights for equal representation in the Centre on the basis of the two-nation theory. Mr. Jinnah feels that “the Hindu mind is that they should dominate the Moslems and the Moslem mind is that they should rather die than be dominated by the Hindus”\(^1\). The Council of the Moslem League at its New Delhi session objected to the federal part because it allowed a permanent hostile communal majority to trample upon their religious, political, social and economic rights. Before the Act of 1935 was conceived, the Moslem League urged Mr. Jinnah’s famous fourteen points wherein the Moslem claim put forward was a federal constitution for India, the residuary powers being vested in the provinces, and one-third representation of Moslems in the central legislature. The fourteen points were later modified into higher demands, and British sympathy for Moslem demands is an important factor in Indian politics.

The Moslem League has opposed the Congress claim to frame India’s constitution with the help of a constituent assembly, elected on the basis of adult franchise. Mr. Jinnah favours a Convention or Conference elected on the basis of the electorate as provided in the Communal Award in the absence of an agreement to the contrary, and he further holds that the rights and interests of Moslems and other minorities should be effectively safeguarded with the consent of the communities concerned.\(^2\) The Congress definitely holds that no permanent communal solution is possible except through a constituent assembly where the rights of all recognised minorities will be fully protected by agreement between the elected representatives of various

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\(^1\) Mr. Jinnah’s speech at the Lucknow session of the all-India Moslem League, October 1937.

\(^2\) Mr. Jinnah’s amendment on the resolution moved by Mr. Satyamurti in the Central Assembly on the 17th of September 1937 recommending that the Act of 1935 should be replaced by a Constitution framed by the constituent assembly on the basis of adult franchise.
majority and minority groups or by arbitration, if agreement is not possible, and that any other alternative will lack finality.\textsuperscript{1} The Congress demand for a constituent assembly on the basis of adult franchise, irrespective of castes and creeds, is thus toned down to make a realistic approach to Indian politics. The two-nation theory was crystallised in the resolution of the Moslem League at its Lahore session on the 23rd March 1940, but the idea germinated in the Sind Moslem League Conference at its Karachi session in October 1938, presided over by Mr. Jinnah. The Sind Conference also asked for the division of India into two federations, a Federation of Moslem States and a Federation of non-Moslem States. It also contemplated the admission of the Moslem Federation to any other Moslem State beyond India's frontier and guaranteed such safeguards for non-Moslem minorities as might be conceded to Moslem minorities in the non-Moslem Federation of India. The spirit indicated in this resolution was one of lack of toleration and of distrust in the Hindu majority and the very same spirit marked the famous Lahore Resolution which forms the basic creed of the Moslem League at the present moment. Mr. Jinnah wants to divide India into autonomous national States, as "Muslim India cannot accept any constitution which must necessarily result in a Hindu majority government". That forms the main inspiration of his opposition to the all-India Federation. To establish his case, Mr. Jinnah has enunciated that Moslems are a nation and not a community and that democratic government based on the party system, as is found in Great Britain, is not suitable to the conditions of India. Mr. Jinnah claims that the Moslem League is the sole representative of the Moslems of India and that no constitution would be acceptable to them unless it had had the seal of approval and consent of the Moslem League. Its resolutions give the impression that the all-India Federation can be acceptable to Moslems, provided the power in

\textsuperscript{1} Congress Working Committee Resolution, March 1, 1940.
the Centre is equally divided between Hindus and Moslems. If the claim for an equal division does not materialise, the Moslem League will stick to the Lahore Resolution which seeks to divide India into communal zones. As time rolls on, Mr. Jinnah’s opposition to any form of Central Government on the basis of India as a unified entity is growing. Today he stands by Pakistan.

The joint Conference of Indian Princes, representatives of Indian States, and States’ Ministers met in Bombay in June 1939 and adopted the following resolution: “The Conference of Princes and Ministers assembled at Bombay considered the revised draft Instrument of Accession and connected papers and resolves that the terms on the basis of which accession is offered are fundamentally unsatisfactory in the directions indicated in the Report of the Hydari Committee of Ministers and confirmed by the recommendations of the Gwalior Conference and are therefore unacceptable. At the same time the Conference records its belief that it could not be the intention of His Majesty’s Government to close the door on an all-India Federation”.

It is interesting to find that the Committee which met under the chairmanship of the late Sir Akbar Hydari, Prime Minister of Hyderabad, came to the conclusion that the terms of the draft Instrument of Accession were unsatisfactory from the point of view of treaty rights, internal administration rights and economic rights of the States. The revised draft did not, in the opinion of the Princes, provide for the safeguards as asked for. The Hydari Committee, however, reiterated the conviction that “there is in fact no alternative ideal for India except that of an all-India Federation, provided it ensures all the essential safeguards advocated by the Committee and offers effective assurance of continued autonomy and integrity of the States”. The

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1 The Chamber of Princes has a Standing Committee of 35 Princes; there is a Standing Committee of Ministers to whom technical work is entrusted. They look to the interests of the States.
Princes ask for sufficient security in matters of defence, customs, railways, industries and excise duties and for the guarantee that the treaty rights could not be encroached upon by unilateral action of the federal Government.

In this context, it may be stated that the interests of the bigger States and the smaller States do not converge on the same channel with regard to Federation. Some of the smaller States can hardly function usefully without a prop. On the 15th of April 1943 a communique issued from New Delhi announced that the Crown Representative (since April 1, 1937, the Viceroy, in his relations to the States, acts not as Governor-General but as representative of the Crown) had decided upon, with the approval of the Secretary of State for India, a scheme of qualified merger of small Indian States with the neighbouring larger ones with whom they have geographical, economic and political affinities. The changes proposed are immediately concerned with the small States of Guzerat and Western India, but there are indications in the communique to suggest that ultimately all small States throughout India will be affected by them.

**Postponement of Federation**

It is extremely unfortunate that provincial autonomy, so far as it was granted by the Act of 1935, was launched without a federal link at the centre, broadbased on popular opinion. The establishment of Federation being delayed, the centrifugal force in the country has been fully at work, charged with explosive for breaking up India into fragments. Sir Samuel Hoare, Secretary of State for India, stressed very strongly that “it would be extremely dangerous to leave the Centre unreformed and at the mercy of these great autonomous provinces whose chief object would be to extort more revenues from the unreformed Centre.” But the British Government have allowed the provinces to grow up with a strong provincial feeling unredeemed by a responsible Government in the federal centre. This
has discredited the Constitution Act of 1935 to a degree. The Government of India criticised the Simon Commission's proposal for a non-responsible Executive at the Centre confronted by an irresponsible elected legislature as being destructive of strong central government. The Executive would suffer from the loss of public credit and confidence through conflict with the legislature. But since the 1st of April 1937, when provincial autonomy under the Act of 1935 was ushered in, there had been no constitutional change in the Centre. The existing disharmony between the Central Legislature and the Central Government has "tended to sap the efficiency of both." The central legislature is, at present, a debating society, whose members have no chance to provide an alternative Government and whose opinions are uninformed by the experience of power and where support of the Government policy is generally regarded as a betrayal of the national cause. The alliance between an irresponsible Centre and responsible provinces is unnatural, and the absence of harmonious co-operation between the Centre and provinces is apparent.

That the delay in the launching of the federal scheme has been to the prejudice of the interests of India as a whole became evident when the War caused grave danger to the security of India. Lord Linlithgow frankly but sorrowfully stated the position in December 1941: "Had we been able, before the outbreak of the war, to have brought Federation into being so many of the problems that confront us now would have been solved. No better constitutional basis could have been found on which to develop the efforts of British India and the Indian States in a partnership which would I believe have been as fruitful a source of unity and concord in the years to come as of military advantage in the issue that immediately confronts us".

It will remain a puzzling question to students of constitutional history how far the opposition of British India or of Indian States contributed to the suspension of
the federal scheme, as envisaged in the Act of 1935. It was given out by the authors of the Act that Federation is an integral part of provincial autonomy and that there should be no undue delay in launching the federal scheme after the introduction of provincial autonomy. In fact, Lord Linlithgow and other Government spokesmen told us again and again that the spade work to bring the federal scheme into operation was far advanced. But the British Government were careful to point out that (1) the States are as essential an element in a Federation of India as are the provinces of British India, (2) the decision in the matter of accession to Federation must rest with the Rulers themselves; (3) no pressure will be brought upon the Rulers of Indian States to decide what form of government they should adopt in the diverse conditions of Indian States. On the other hand, responsible statements were made in the House of Commons that no changes or modifications were contemplated in the scheme of federation embodied in the Act of 1935. The official explanation offered through the Viceroy was that the suspension was necessary "to concentrate every atom of our energy on the prosecution of the war to the exclusion of all other matters."

After the outbreak of war in September 1939, Lord Linlithgow established personal contact with 52 political leaders representing different parties and interests to discover the extent of Indian co-operation in the prosecution of the war, and thereafter he made a memorable announcement on the 18th October 1939 that the work of the federal scheme had been suspended and that the British Government would, at the end of the war, be prepared to regard the scheme of the Act of 1935 as open to modification in the light of Indian views. The old unresponsive attitude of going on with the federal scheme, as embodied in the Act of 1935, and of meeting the wishes of Indian Rulers only without regard to the claims of the

2 Viceroy's Address, 10th January 1940.
political parties of British India was gone at the first whiff of war, and the Governor-General of India was authorised by His Majesty's Government to announce that "at the end of the war they will be very willing to enter into consultation with representatives of the several communities, parties and interests in India, and with the Indian Princes, with a view to securing their aid and co-operation in the framing of such modifications as may seem desirable" and that the future constitutional development and position of India was "Dominion Status".

The chief reason for the non-application of the federal provision of the Act lay in the fact, as was pointed out by Mr. Amery in the House of Commons on the 14th of August 1940, that the delay "afforded occasion for the development of a volume of adverse criticism and opposition in the face of which their enforcement could no longer serve the purpose for which they were originally devised". The delay was occasioned by the bargaining attitude of the Rulers of Indian States and the decision of the British Government that the Rulers would not be subjected to any influence favouring a particular mode of action.

It is true "the Congress Party objects on grounds of egalitarian democracy to the influence which the Act concedes to autocratically governed States. The States on their side have shrunk from the extent of interference in their affairs conceded to the elected majority in the central legislature. The Moslem community refuses to entrust its fate to the control of a permanent Hindu majority". These objections are all sincerely held and deeply felt; these differences are undoubtedly to be bridged. History provides examples that "a self-contained and self-governing State cannot survive if the elements which compose it are unwilling bed-fellows." In the task of framing a constitution, there is need for antecedent agreement between the geographical units and between the racial elements. But such an agreement can be forthcoming only if the basic
issues are accepted, viz., (i) it is of the essence of a democratic constitution that ultimately the popular will shall prevail; (ii) the democratic machine can be worked only with a majority decision in some form; (iii) the parties concerned should be left free to come to an agreement based upon mutual confidence and trust. The British Government are not helpful in the matter of securing agreement amongst the principal elements in India's national life by their insistence on the due fulfilment of "the obligations which Great Britain's long connection with India has imposed on her" and of "the responsibilities which the course of history has imposed upon it in India". These "obligations" and "responsibilities" differentiate the case of India from the Dominions of the British Empire where agreement was sought and arrived at without external interference, and where a sort of "corporate sense" was born through the free "impact of mind upon mind". There was no antecedent declaration made by the British Government with regard to the Dominions, as is found in respect of India, that His Majesty's Government would not transfer power to any system of government which is denied by powerful elements in the national life of the country concerned, nor was His Majesty's Government a direct party to the multilateral agreement reached after free and full deliberation in the Dominions.

The British Government in India, however, feel that they cannot dissociate themselves from the shaping of the future constitution of India. There are treaties with the Princes which are to be respected; there is the British stake in India which has grown out of historical forces; there is defence in which Great Britain is directly interested; there are obligations towards the minorities which are embedded in the very texture of the tapestry of history; there are obligations for the defence of India until she...
is in a position to take over the burden unaided, and the presence of British forces in India requires that the British Government cannot but retain a measure of control over them. In giving these reasons, Lord Zetland stated in the House of Lords on the India Debate on the 8th of April 1940 that “they are rooted in the history of the past 200 years, and however much you might like to do so, you simply cannot wipe out history and treat events recorded in its pages as if they had never occurred”. Similar arguments were not put forward in the case of Canada, South Africa, and Ireland where racial and religious differences were not non-existent and where the theory of British trusteeship was not pursued as an inherent obstacle to the grant of responsible government.
CHAPTER IV

RESPONSIBLE GOVERNMENT IN THE PROVINCES

The Government of India Act 1919 was “to design the first stage in a measured progress towards responsible government.” The policy of gradualness arose from the theory that “the electorate must grow” and that “practical experience in the conduct of public affairs must be enlarged”. In the intervening period, it was the British case that the Governor-General in Council should “remain in undisturbed responsibility to Parliament.” The British believed it to be “a generous opportunity” offered to Indians. With the British Government, the Montagu-Chelmsford Reforms of 1919 interpreted the pronouncement of 20th August 1917 “with scrupulous accuracy”; with Indians, the scheme evoked apprehensions. The Joint Select Committee reminded the people of India that the announcement of the 20th August 1917 spoke of “a substantial step in the direction of the gradual development of self-governing institutions” and “not of the partial introduction of responsible government.” It was a distinction, made undoubtedly not with a generous spirit. The Government of India Act 1935 adhered to the announcement of August 1917 and gave a further instalment of reforms towards the growth of self-governing institutions. The Act was not self-sufficient for the growth of full responsible government.

Pre-Requisites of Parliamentary Government

Representative government to be effective and successful must have its roots in the historical traditions of the country and enlightened liberalism of the people. To deserve it one must earn it. In India, the representative government, as established by the Constitution Act of 1935, is not born of any revolution or of a civil war; it has been
introduced by an Act, conceived in England, drafted at Whitehall and delivered to us as parliamentary legislation. The co-operation of Indians was sought, but their counsel did not prevail. The proceedings of the three Round Table Conferences, 1930-1932, established that India’s voices were discordant and that real power lay with the British Government. The memorandum of the Indian Delegation which represented the maximum measure of agreement amongst the political parties in the third Round Table Conference did not form the basis of the Constitution Act of 1935. Thus the Act had many features which were not acceptable to any of the parties, and the flowering of representative government on such a barren soil is not to be expected. The fundamental hindrances to the working of representative government in India are that (1) the whip hand in the governance of India lies with the British Government; (2) the political parties grow and gain strength in opposition to the interests of the British Government; (3) it does not constitute the right and duty of the political parties to carry on, or to assist in, the administration of the country; (4) the Government, as established, has not the competence to satisfy the aspirations of the people even in a limited way. Under the load of these basic imperfections, representative government cannot function smoothly and usefully.

The other two factors retarding the growth of parliamentary rule are (1) the obstinacy of the majority parties in having their own way, and (2) the unwise actions of the minorities in transcending the bounds of legitimate opposition and defying the decisions of the electorate.

As we are situated, there is that brooding dissatisfaction with the Constitution which is to be worked. The Indian National Congress fought the elections in terms of conflict and entered the legislatures with the avowed purpose of wrecking it. There was no agreement amongst the various political parties on the fundamental issues; they were rather determined to change the Constitution Act on
various grounds; the habit of tolerance and the method of working peacefully in the pursuit of party government were eloquently absent. The pre-requisites of successful representative government were lacking.

Constitutional principles, it is well known, do not operate in "a vacuum of abstract reason." They are shaped to the purposes which people seek to achieve; they are tuned to secure the ends for which the people ask. If parliamentary government, charged with British formulæ, does not operate in the desired manner, this is not to be surprised at. The traditions of the country, the genius of the race, the political aspirations of the people, the growth of political consciousness, all contribute to the success or failure of representative government. The strength or weakness of parliamentary government is measured by its capacity to satisfy the wishes of the electors. "Nothing is more dangerous in a democratic State than a condition in which the people is persuaded that the fundamental instruments of its government are not equal to the tasks imposed upon them." The present Constitution Act suffers from that imperfection.

It is also to be recognised that the conventions of the Constitution, on which much emphasis is laid, are "vague in form and imprecise in substance." "Their binding and sacred nature" depends upon the agreement of parties. If the majority controlling the apparatus of the State refuses to respect the conventions, there is no help. But such an uncompromising temper is fatal to parliamentary government. In Great Britain, many of the fundamental rights of the people rest upon constitutional conventions. It is their genius for compromise that takes the vessel of parliamentary government through the storm of party strife. The temper of all nations is not the same, and accordingly, the success of parliamentary government resting more on conventions than on rigid and legal rights is not similar everywhere. In India, the prospects of parliamentary government are prejudiced by the lack of historic traditions and by
growing intolerance amongst the parties, if the fundamental defect of the ministerial power of the country proving inadequate to increase its national wealth for the purpose of satisfying the increasing grievances of the people is not taken into account.

We are living in a “marginal” period of history, marginal in the sense that the expectations of the people, based on a particular class-relation, are being challenged in their fundamentals, and in such intemperate climate parliamentary government which is after all a government by consent and adjustment is put to the hardest test. The menace is discernible in the antithesis of the views held by the different political parties. All this is to be taken note of in assessing the working of responsible government in our country.

Cabinet government in England is the consequence of parliamentary government; it is founded not on laws but on practices. The Cabinet and the Prime Minister are an extra-legal development, although they form the core of the British constitutional system. In the Act of 1935, there is no mention of the Prime Minister or the Chief Minister who would co-ordinate the machinery of government, nor is it obligatory on the Council of Ministers to act collectively so that the desired integrating unity in their work may be obtained. But the Governor is definitely instructed by the Instrument of Instructions to encourage the appointment of a Chief Minister and a sense of joint responsibility among the Ministers. It is true that the Governor will select his Ministers and that he will see that the members of important minority communities are, as far as practicable, represented in the Council of Ministers, but all this is to be done in consultation with the person who is likely to command a stable majority in the legislature. There is no such instruction that the Governor will form a coalition Government; all the Ministers can be recruited from the majority party, and the instructions will be duly followed if all classes of the
population are given a due share in the government of the province.

The Governor's task is to secure a stable Government; he is not to form a Government which is to formulate policies to his liking. He is not to take part in party warfare. Ordinarily, he is left with no alternative but to call in the leader who commands the majority support in the legislature. The Minister will recommend his colleagues; it is the Governor who technically appoints them. Constitutionally, the Chief Minister has the final word in the selection of his colleagues; it is his responsibility to secure a stable Government. If the Governor interferes and the Chief Minister submits, that is a departure from constitutional government. To try to keep out the leader of the majority party in the legislature is to take sides in a party issue, and such an attempt on the part of the Governor is unconstitutional. "Government is the duty as well as the right of the majority party." In a parliamentary system the real duty of the Opposition is to work it by criticising the Government and agreeing to undertake the responsibility of forming a Government if the party in power loses confidence of the House. It is essential that the Cabinet should be formed, and the Cabinet must remain until its successors have been appointed. "The minority agrees that the majority must govern, and the majority agrees that the minority should criticise." It is in this background of agreement that parliamentary government is carried on. The Indian political field did not provide the needed background.

The consequences of Cabinet government are that (1) Ministers owe responsibility to the legislature; (2) they are united by loyalty to the Prime Minister; (3) the majority decision is binding on all of them; (4) all ministerial offices are placed at the disposal of the Prime Minister. The Prime Minister, it may be noted, is the keystone of the Cabinet arch. It is the Cabinet which is the final arbiter of policy in a parliamentary
system, and it is that very Cabinet which is in practice formed by the Prime Minister and dismissed by the Prime Minister on his advice; he can force dissolution of the Cabinet by his advice; he can force dissolution of the Cabinet by his personal resignation. Whether the Prime Minister dominates the Cabinet or not depends on his character and personality. Formally, all members of the Cabinet “stand on an equal footing and speak with equal voice”, but the exceptional and peculiar authority of the Prime Minister cannot be doubted. In the last analysis, “the office of Prime Minister is what its holder chooses to make it.”

If the Act of 1935 is made to vibrate with the desire of furthering the principle of Cabinet government, it is not unlikely that the office of Chief Minister will have added prestige of its own, primarily for the reason that he is the party leader who is trusted and who has the right to be consulted on major problems by the other Ministers. He functions as the leader of Government in the legislature. But the Indian Constitution Act, read together with the Instrument of Instructions, makes the Finance Minister “a sun around which planets revolve,” as he is to be consulted upon any proposal which affects the finances of the province.

The supremacy of the Cabinet is traceable to the following causes:

(1) it finally determines the policy to be placed before the legislature; (2) it assumes the supreme directing authority over the executive in accordance with the policy prescribed by the legislature, (3) it co-ordinates and delimits the authorities of the several departments of the State.

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1 Sir Robert Peel said “Under all ordinary circumstances, if there was a serious difference of opinion between the Prime Minister and one of his colleagues, and that difference could not be reconciled by an amicable understanding, the result would be the retirement of the colleague, not of the Prime Minister” (quoted by W. J. Jennings in “Cabinet Government”, p. 163)
Governor in a province is undoubtedly the chief executive on whom the final responsibility for legislation and administration rests. The character of responsible government in a parliamentary system is evolutionary, and as such the transfer of authority from the Governor to the hands of Ministers takes place through healthy practices on the basis of Cabinet supremacy. The Cabinet is primarily a policy-formulating and a general controlling body, and as it accepts the final responsibility for all political acts, it is the right and duty of every Minister to consult the Cabinet on all major issues. Urgent matters are often put through on the Prime Minister's authorization.

It is an inevitable growth that every Cabinet must have an inner Cabinet, consisting of leading Ministers, although all Ministers are formally equal. There are Ministers who will by dint of exceptional talent, experience and personality constitute an inner council directing the Ministry as a whole.

In parliamentary government, it is the Cabinet which rules. The legislature exists to give approval to the policies placed before it by the Ministry. The legislature, apart from carrying out the intentions of the Ministry, has another important function. It affords an opportunity to the Opposition to criticise primarily with a view to educate and influence public opinion, rather than with a view to modify Government policy. The Ministry of the time has a majority, but the function of the Opposition is to criticise and not to govern. The Opposition criticises so that in the next election it may obtain a majority to form the Government. The legislature provides the forum for the discharge of the historic function of the Opposition. It is said that "the House is its platform, the newspapers are its microphones and the people is its audience." If this role of Opposition is suppressed or restricted, it involves derogation from parliamentary government and seeks to instal dictatorship. The Opposition must be given
unfettered right to criticise. The restriction of discussion on the plea of the public interest should not be arbitrary. Freedom of discussion and freedom of association are the basis of democracy. "The dogs bark in Parliament; if there were no Parliament, they might bite." This is the hard, ineluctable fact that political power rests on public opinion.

It was explicit in the resolutions of the Imperial Conferences of 1926 and 1930 that the King should be directly advised by the Dominion Government on the same footing as that of the United Kingdom and that the relation of the Dominions with the King is essentially the same. In the United Kingdom, the people owe him allegiance, and the King is their constitutional head. It is not to be doubted that the King can spread his influence by his intimate relations with the Prime Minister and other members of the Cabinet, but for every act of his there must be ministerial responsibility. The King is entitled to the fullest information on matters which he is to approve; he discusses them fully, raises objections and suggests changes, but in the event of the Ministry persisting, he is to give in. His share in government is personal, and, in many cases, real. This personal touch is lacking in the case of the Dominions. Accordingly, his royal functions in internal matters are delegated to the representatives, and even in external matters where the King is to act on the advice of the Dominion Ministry, the right of discussion and suggestion does not play any part.

The Crown's position in the Dominions is complicated by the fact that each Dominion is autonomous, and each may have its own foreign policy which may be conflicting. The consistency of action may be imperilled in future, and such a position would be embarrassing for the King. The tie of allegiance to the Crown binds the Dominions whose nationals enjoy British nationality.

It is only through the King-Emperor that the link between the States and British India is established. Even if the States come into a federation with the British Indian
provinces, the provinces will look to the Crown for the preservation of their rights which would not be placed within a federal control. Under the Constitution Act of 1935, all governmental powers in India are exercisable by the King who will be associated in an increasing degree with the development of constitutional rule in India. The common allegiance to the Crown secures to the people of India equality of treatment in the other parts of the Empire. But in the Dominions the position of Indians is very unfortunate. The dignity of the Crown requires, to quote Mr. Gladstone, that it should never come into contact with the public, or with the Cabinet, in mental deshabille. The Crown can discuss and exercise influence by personal discussion, but in the end the Sovereign acts upon the advice of Ministers. It is a well-established tradition of two hundred years, as Mr. Asquith put it in 1913. The dissensions in the Cabinet are of no concern to the Crown; the Cabinet is "a unity before the Sovereign, and the Sovereign is a unity before them." "To descend into the cockpit" is to lose independence and impartiality, and that will encourage different Ministers to angle for the Sovereign's support. Thus Cabinet solidarity and decorum are destroyed. Mr. Asquith puts the doctrine in an admirable way: "It is not the function of a constitutional Sovereign to act as arbiter or mediator between rival parties and policies: still less to take advice from the leaders on both sides, with a view to forming a conclusion of his own... ....... The growth and development of our representative system, and the clear establishment at the core of our Constitution of the doctrine of ministerial responsibility, have since placed the position of the Sovereign beyond the region of doubt or controversy."

The Crown's prerogative in England is declining through force of circumstances. The authority for dissolution of Parliament practically rests with the Cabinet. The King acts on the advice of the Cabinet in the matter. It is said that in deciding upon the dissolution of 1935
Mr. Baldwin, the Prime Minister, claimed for himself the full power to determine the issue. The modern tendencies in Great Britain are to make the King the ceremonial head of the State, divorced from essential contact with the conduct of its business. With the abdication of Edward VIII, the prestige of monarchy suffered and the position of the Prime Minister stood firmly established. The Regency Act 1937 crippled the discretionary powers of the King in the matter of determining the line of succession. The denial of the title of Royal Highness to the wife of the Duke of Windsor was unfair to the King. It is interesting to note that the *modus operandi* of the Munich agreement 1938 "clearly deprived the King of any opportunity of discussion, as opposed to mere homologation of a policy in whose formation he had taken no part. It is significant that the accord, which Mr. Chamberlain asked the Fuehrer to sign on September 30, was one between himself and the German dictator, the Royal name being entirely ignored."

If the Act of 1935 has any pretension to lay down responsible government it is the sacred task of the Governor to support "frankly, honourably, and with all his might, the Ministry of the time, whatever it may be, so long as it commands a majority, and governs with integrity for the welfare of the country." It frees the Governor from all responsibility for the acts of the executive and legislature, and it gives full play to the constitutional maxim that the King can do no wrong. It is his duty to see that "the Constitution functions in a normal manner", and it is no evidence of normality if the Governor feels called upon to act in his discretion or in his individual judgment in disregard of ministerial advice, although the Constitution Act gives formal sanction to all kinds of discretionary action of the Governor.

The partnership of the Governor and his Ministers under the Act of 1935 was explained very lucidly by Sir John Anderson in his address before the joint sitting of the Bengal legislature in July 1937. Before the Reforms
of 1935, the Governor had to accept direct responsibility for every measure, but under the new reforms Ministers would be solely responsible to the representatives of the people for every legislative measure that might be submitted by Government for enactment in either of the Chambers, and the special responsibilities under Section 52 in no degree oust or undermine the primary responsibility that rests on Ministers. To quote his words, "under the new Act the Governor as representative of the Sovereign becomes for the first time himself a part of the legislature. There is, in fact, a new legislative partnership established, and it is in this capacity and not in his capacity as the titular head of the Government that the Governor is entrusted with certain of his discretionary powers." When the Governor addresses the legislature, he does so by virtue of his statutory right; he does not do so on the responsibility of his Ministers. The terms of the Governor's address are not, like the King's speech in the British Parliament, thrown open to a general debate, nor does it serve as a vehicle for a general declaration by the Ministry of the legislative and general programme for the session.

The Prime Minister's power in office is dependent on his personality, on his personal prestige, and on his party support. Being the leader of a party which supports the Government, he will be consulted on the major problems of the country by other Ministers. There is a tradition in the parliamentary life of England that a Minister carries on for the public good, and it implies that a hint is enough to produce a resignation. The tradition reduces the possibilities of a conflict between the Prime Minister and a colleague. Such a tradition, which is built up by subordinating the attractions of office, is the product of long parliamentary training, and can work smoothly in a homogeneous Cabinet. In a coalition Government which is based on compromise, the rigid adherence to political convictions, even at the risk of losing the prospects of office, is not the approach of a realist. But in ordinary
circumstances, when a one-party Government is formed, to forego the prospects of office because of opinions keeps the level of parliamentary life high.

Mr. Baldwin's tenure of office in England was an epoch of deliberate aggrandisement of the executive at the expense of the legislature. His action accentuated the primacy of the Prime Minister. Before his retirement he made a public announcement that his successor would be Mr. N. Chamberlain and that such advice to the Crown would be acted upon. It is true that the Prime Minister occupies a special position as the leader of the Cabinet, and his resignation terminates the life of a Ministry. But the exaltation of the office of Prime Minister depends upon the personality of the Premier. Here in India, the office of Chief Minister in the Congress provinces did not provide opportunities of establishing its primacy in the Cabinet as the Ministry was controlled and supervised by an extraneous organisation, known as the Congress Parliamentary Sub-Committee. The party in the legislature which sustained the Ministry was subordinated to the ukase of the Congress Party outside; the Ministry although responsible to the legislature according to parliamentary convention had to remain really responsible to the Congress Working Committee whose orders were a law to them. In the non-Congress provinces, there were coalition Governments, and the Chief Minister could not lead the Cabinet and its supporters on the strength of leadership. A coalition Cabinet is not helpful for the exaltation of the office of Prime Minister.

The joint responsibility of Ministers demands that a Minister who is not prepared to defend a Cabinet decision must resign and that a Minister who does not resign is responsible. When the decision is made, all Ministers "must tell the same story." On incidentals there may be a compromise, but on fundamentals there is to be a rigid adhesion to the decision. The strength of Government is undoubtedly impaired by differences amongst Cabinet
members. The Cabinet may leave certain matters as “an open question,” but that is only to be resorted to to prevent the breakdown of a Ministry. Ordinarily a Minister should avoid expressing personal opinions; he should not announce a new policy without Cabinet consent. The Prime Minister undoubtedly holds a privileged position, but he must be careful to get his colleagues’ support in advance on any measure, as his resignation involves the fall of the Ministry.

The joint responsibility must not be understood to mean that for every personal mistake or error of judgment of a Minister the whole Ministry will suffer. In a modern Government, there is a substantial delegation of power to the Minister of a department; he has substantial discretion. For the errors of his department the Minister must accept personal responsibility. In that case, he will resign; Parliament can censure him. The Minister is responsible for every act of the Civil Service of his department. In India, the scope of ministerial responsibility for the errors of his department is limited. The Secretary as the head of the department is responsible for its smooth working. The Secretary belongs to the Indian Civil Service which owes official allegiance to the Secretary of State for India. The Secretary has access to the Governor to keep him informed of the work of his department. In cases of extreme urgency, the Secretary may anticipate the Minister's sanction and issue orders at his discretion. The Secretary of a department has direct responsibility for ascertaining what matters are to be referred to the Governor or to the Public Service Commission. The Secretary of a department shall take action if it is necessary to do so in terms of the assurances and undertakings given by the Governor in his replies to the addresses presented.

The incorruptibility of Ministers is very essential in a democratic constitution. That is why the acceptance of presents, the holding of directorships in a commercial undertaking and the retaining of any employment coming into conflict with the King’s service which has the para-
mount claim on them are viewed with disfavour. Mr. Asquith laid down that Ministers ought not to enter into any transaction whereby their private pecuniary interest might come into conflict with their public duty and that they should not use any official information for their own private profit or their friends'. They should avoid speculative investments in securities. These are much more than "rules of prudence"; they are "rules of obligation." Mr. J. H. Thomas had to resign both office and membership of the British Parliament because he revealed facts about the budget in 1936. The report of the Bribery Commission appointed by the Governor of Ceylon to enquire into the alleged receipt of gratification by the members of the Council in respect of their work as members was published in May 1943, and eight members including three nominated European members were found guilty. The nominated members had to resign. In India the vague charges against legislators and Ministers were there, but there was no public enquiry into their conduct. It is discreet that Ministers should not write articles for publication in any way connected with "matters of public policy". Mr. Baldwin announced in the House of Commons in 1927 that the rules which they had adopted would preclude the practice by Ministers of "journalism in any form" but such restriction would not extend to authorship or to writings of a literary, historical, scientific, philosophical or romantic character. In India, conventions on these lines have not yet crystallized, although the conventions of British Parliamentary life have their influence in shaping the course of activities here.

The Act of 1935 implants the British political system in India; it seeks to introduce parliamentary democracy in the provinces. Parliamentary democracy in political parlance means that the Executive, constituted of elected members, is to be responsible to, and dependent on, the majority in the legislature. To make parliamentary democracy a success, there must be an agreement on funda-
mentals between the parliamentary majority of the day supporting the Executive and the Opposition which is in a minority for the time being. The Opposition must have the ambition to form the Ministry by future electoral gains or the strengthening of its party. This willingness to shoulder the burdens must be patent in both majority and minority parties. The majority party should not ruthlessly suppress the minority; nor should the minority party be intolerant of the decisions of the majority party; there must reign a spirit of trust and compromise. It is wholly alien to the spirit of the democratic constitution that the majority edicts in total disregard of the wishes of the Opposition should be the same thing as laws. The restraint of the majority party makes the minority Opposition a cheerful partner in the democratic parliamentary life of a nation. It is true that the working of provincial autonomy in the British Indian provinces did not guarantee a safe future for parliamentary democracy in our country. The Congress wanted to look upon the provincial Cabinet and legislature as a forum to strengthen its struggle for supremacy and political independence; it showed no spirit of compromise in accommodating other parties, and recognised only two parties in the country, viz., the Congress and the British Government. The Congress Cabinet showed adherence and obedience to the commands of the Congress Working Committee, a practice unknown to the laws of the country. The Moslem League did not disguise its dislike for democratic institutions, and in the Moslem League Coalition Cabinets the wishes of the Opposition on communal issues were disregarded. The Fascist tendencies of the political parties, especially of the Congress Party which tasted the powers of office, were pronounced.

Limitations on Responsible Government

Under the Act of 1935 the function of the Council of Ministers is to "aid and advise" the Governor. The
Instrument of Instructions to the Governor requires the Governor to be guided by the advice of his Ministers. It is true that legally the Governor can discharge his functions in exercise of his discretion or individual judgment even without consulting or accepting the advice of his Ministers. But the object of the Act being encouragement of responsible government in the provinces, the legal disabilities should be subordinated to constitutional conventions. The expressions "aid" and "advise" occur in the Constitution of the Irish Free State Act 1922 (Section 51) and in the British North America Act 1867 (Section 11); the expression "advise" finds place in the Australian Constitution Act 1900 (Section 62) and in the South Africa Act 1909 (Section 12). The growth of ministerial responsibility in the Dominions and Great Britain was facilitated by constitutional conventions. The responsibility of Ministers to the legislature is also the product of constitutional understanding, although it is stereotyped in law in the Irish Free State. The function "to advise the Governor" means the right of Ministers to initiate proposals. The legal duty cast upon the Governor to consult his Minister is found in Section 59 (5). The Governor may therein act in his discretion, but the consultation is statutory, and it refers to the conduct of business of the provincial Government.

Section 50 (3) gives the final authority to the Governor whose decision is final and cannot be questioned in a court of law on the ground that he ought not to have done this and that in his discretion or in his individual judgment. But the principle of responsible government demands that the Governor should always consult his Ministers in all matters, whether falling within the sphere of special responsibilities or not. It is not the individual Minister but the Ministry as a whole that should be consulted. And if the Governor fails to follow the advice of his Cabinet, that

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*S. S. Ratnawala v. Emperor* in the Madras High Court, 14th March 1938.
is undoubtedly an unconstitutional act; and if the Governor flouts the Cabinet on any major question, it is for the Ministry to resign, the only constitutional remedy open to them. The expressions “in his discretion” and “in his individual judgment” are peculiar to the Constitution Act of 1935. The words “individual judgment” are used in respect of powers within the area in which normally in ordinary times the Governor would be acting on the advice of his Ministers; the words “in his discretion” are used in respect of powers and functions of the Governor outside that area. The Act draws a sharp distinction between the respective responsibilities of the Ministers and of the Governor acting in his discretion or in his individual judgment.

It is to be mentioned, in this connection, that ministerial responsibility is seriously affected by Section 52 which enumerates the Governor’s special responsibilities. The evolution of responsible government calls for the disuse of these “special responsibilities” of the Governor. It depends much on the collective and cohesive strength of the Ministry in the matter of vindication of ministerial responsibility to the prejudice of the statutory overriding powers of the Governor. If the Ministers act at the whip of the Governor, simply because the Governor has “discretionary authority” and “special responsibilities”, they hurt the cause of responsible government. In August 1942 with the arrest of Congress leaders and the inauguration of a policy of repression by the Government of India following the decision of all-India Congress Committee to launch mass civil disobedience if the Congress demand for a National Government was not conceded, “the Progressive Coalition” Ministers in Bengal found themselves in a quandary, as they were averse to resigning their offices. The Amrita Bazar Patrika came out with an editorial on the 19th of August in support of the Ministry on the following grounds: “In every matter the Ministers cannot have their own way. The Governor’s “discretionary” powers cover a wide field. His “special responsibilities”
constitute a brake on ministerial enterprise. These facts are known to the public. They were known to them when the provincial legislature put these Ministers in power seven or eight months ago by routing the Muslim League Party.” This is a puerile contention, put forward in all seriousness by a nationalist daily. It devolves on the Ministers to reduce the discretionary powers of the Governor in practice and not to accept them in justification of their impotence in answering public expectations. Section 59 (4) authorises the Secretaries along with the Ministers to keep the Governor informed of the business of the provincial Government. To quote Mr. Attlee, “the Secretaries are turned, as it were, into the watch-dogs of the Ministers.” The channel of information to the Governor should be the Minister concerned, in exceptional cases the Governor may call for the Secretary in the presence of the Minister for further clarification. Section 56 provides for the amendment of police rules by the Governor in his individual judgment. Section 57 directs that if a Governor considers that there is a threat to peace and tranquillity, he can take upon himself the responsibility of dealing with the situation and suspend the transfer of law and order to the control of Ministers. This is different from Section 93 whereunder the whole machinery of provincial Government can be brought to an end. Section 58 provides that the sources of information in respect of crimes of violence tending to the overthrow of the Government established by law should not be disclosed without the direction of the Governor. Sir Samuel Hoare pointed out that under British practice the names of informants or agents in a secret service are not disclosed to the Minister immediately concerned and that the Indian Constitution had merely codified British practice. It is not to be denied that the British Minister concerned does not generally ask for the sources of secret information, but his powers are ample, and no convention would prevent him from exercising that power. But Section 58 of the Indian Act takes away the sources of secret
information from the arena of Indian Ministers in the provinces, although the departments of law and order are transferred. This provision has, however, worked smoothly till now and has not given rise to any serious conflict between the Minister in charge of the Home Department and the Intelligence Branch of the Police. In Bengal, over three thousand political prisoners were released by Government soon after the introduction of provincial autonomy and a large number of arrests have also been made since 1939 under the Defence of India Rules without giving rise to any difficulty. The Minister in charge of the department concerned did not complain about lack of information from the I.B. of the C.I.D.

Under Section 80, the Governor is empowered in his discretion to authorise such expenditure from the revenues of the provinces as he deems necessary to discharge any of his special responsibilities. Section 89 empowers the Governor to promulgate ordinances for the discharge of his functions; Section 90 authorises the Governor to enact Acts to deal with every contingency. Under Section 108(2), previous consent of the Governor in his discretion to any Bill or amendment in the provincial legislature affecting the Governor's Act or Ordinance or any Act relating to the police force is to be obtained. There are statutory limitations in respect of recruitment, regulation and control of the services. All this does not encourage ministerial responsibility in the conduct of the provincial Government. The Instrument of Instructions which breathes a spirit of compromise to further ministerial responsibility is dependent on a gentleman's understanding; it cannot be enforced in a court of law. Responsible government by parliamentary institutions flourishes better on understandings than on statutory laws. It was only through understandings that responsible government was established in the Dominions, although the Irish Free State Constitution Act codified some of the conventions of responsible government such as ministerial responsibility to the lower
The “safeguards”, as they are called in political parlance in India, run through every sphere of ministerial responsibility. It is one thing to “reserve” certain subjects from ministerial control, and in that event the sphere of ministerial responsibility may be limited, but it is expected to be full and complete in the transferred subjects. Thus in the division of the reserved and the transferred subjects, ministerial responsibility, however partial, is absolute in the subjects transferred. The present Constitution Act of India does not specifically reserve independent subjects when it lays down that the Governor's special responsibilities are to operate in the prevention of menace to the peace or tranquillity of the province or in the safeguarding of the legitimate interests of minorities. Should the Governor desire, there can be interference with ministerial responsibility at every important stage on the pleas of peace and tranquillity and legitimate interests of minorities. It has to be realised that the principle of responsible government is incompatible with executive safeguards. If responsible government is to be real, executive safeguards must be left in cold storage. It does not involve derogation from the exercise of ministerial responsibility if the safeguards, should they be held imperative, are provided in such a way that their infringement may be remedied in a court of law. To place them within the discretionary power of the head of the Executive is objectionable in principle.

It has to be recognised that the Act, basically imperfect and defective as it is, can help responsible government on the constitutional understanding that “the special responsibilities of the Governor would be restricted in operation to matters of the gravest character.” To say that the Governor would give all possible help and accommodation to the Ministers within the four corners of the Act is not an improvement, when we know that the Act is reactionary to a degree. The very first
act of the Governors in the provinces where the Congress Party was in a majority in the legislatures was unconsti-
tutional when they obtained minority Ministries and allowed them to function for nearly five months. The
Constitution never contemplates a minority Ministry. It
brought into ridicule the clear assurance by Sir Samuel
Hoare, Secretary of State for India, in the course of dis-
cussion on the Government of India Bill in the House of
Commons that "the Governor's special responsibilities are
not intended to obstruct a real transfer of responsible
power. They are not intended to impede the day to day
administration of any Minister. They are rather ultimate
controls that we hope will never need to be exercised for
the greater assurance of the world outside both in India
and Great Britain."

In the appointment of the Governors of the provinces,
the resumption of government by the Crown has been
recognised. The Governor of the province is to be
appointed by His Majesty under the Royal Sign Manual,
and the executive authority of the province is exercised
on behalf of His Majesty by the Governor. The Governor
thus ceases to be an agent of the Central Government.
The executive authority in India is, on the analogy of the
Dominions, vested in the Crown. The Governors of the
Australian States are appointed directly by the King, and
the appointment of the Lieutenant-Governor of a
Canadian province by the Governor-General is, in law, an
act of the Crown, and the Lieutenant-Governor is as much
a representative of the Crown for all purposes of provincial
Government as the Governor-General is for all purposes of
the Dominion Government.¹

From a case in the Calcutta High Court,² we gather

¹Liquidators of the Maritime Bank of Canada v. the Receiver-
General of New Brunswick, 1892, A.C. 437.
²T. C. Goswami v. M. Asizul Huque in the Calcutta High Court,
April 29, 1937. The High Court held that under proviso (b) to
Section 321 of the Government of India Act, the appointment made
under the old Act had effect as if it were an appointment under
the new Act.
that after the commencement of Part III of the Government of India Act 1935, Letters Patent were issued creating the office of the Governor of Bengal, but a Commission was not issued under the Royal Sign Manual appointing Sir John Anderson, Governor of Bengal under the old Act, to the office of Governor of Bengal under the new Act, and though an Instrument of Instructions under Section 53 of the new Act had been issued to him, he had not taken either of the oaths provided therein or caused any order appointing him to be read and published as directed in the Instructions. Prof. Keith held that it was not proper.

The executive authority of a province is exercised on behalf of His Majesty by the Governor directly, or through officers subordinate to him, and all executive action is taken in the name of the Governor. In law, the Council of Ministers is not vested with executive functions: Ministers are undoubtedly members of the Government, and they are servants of the Crown, but they are not formally officers subordinate to the Governor, and as such they are not persons authorised by law to administer executive government. This differentiation of the Council of Ministers from the executive Government of the province, if preserved, will not be helpful for responsible government. It is the governing principle of Cabinet government that the executive responsibility is shared by the Ministry, and it is in accordance with the constitutional practice that the Ministers, chosen by the Governor and removable by him at pleasure, are officers subordinate to the Governor, charged with administering executive functions. It is difficult to deny that members of the British Cabinet are not the persons authorised to administer executive government, although the Cabinet in Great Britain is an extra-legal body.

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1 Dhirendra Nath Sen and another v. Emperor in the Calcutta High Court, July 19, 1938. Also Emperor v. Hemendra Prosad Ghose and another in the Calcutta High Court, June 7, 1939.

2 Dr. Keith's article in the Journal of Comparative Legislation, November 1939.
Under the Act of 1935, the Governor is required to act in his discretion in respect of the following:

1. To preside at meetings of the Council of Ministers [Sec. 50 (2)].
2. To decide if in any matter he is to act in his discretion or in his individual judgment [Sec. 50 (3)].
3. To choose, summon and dismiss Ministers [Sec. 51 (7)].
4. To determine the salaries of the Ministers pending their determination by the provincial legislature [Sec. 51 (3)].
5. To prevent crimes of violence intended to overthrow the Government established by law [Sec. 57 (1)].
6. In the state of emergency to authorise an official to speak and take part in the proceedings of the legislature without the right to vote [Sec. 57 (2)].
7. To prevent the disclosure of sources of information regarding certain crimes of violence [Sec. 58].
8. To frame rules for authentication of orders and other instruments (after consultation with the Ministers) [Sec. 59 (2)].
9. To frame rules of business of the provincial Government (after consultation with the Ministers) [Sec. 59 (3) and (4)].
10. To summon and prorogue the legislature and dissolve the Legislative Assembly [Sec. 62 (2)].
11. To address and send messages to the legislature [Sec. 63].
12. To appoint acting President and Speaker in case of a simultaneous vacancy in the offices of President and Deputy President of the Legislative Council and Speaker and Deputy Speaker of the Legislative Assembly [Sec. 65 (3) and (5)].
13. To remove disqualifications for membership of the legislature arising from conviction and sentence of two years or more and failure to lodge return of election expenses [Sec. 69 (1) (e) and (f)].
14. To summon a joint session of the legislature before the normal lapse of time when a Bill affects finance or special responsibilities [Sec. 74 (2), proviso].

15. To assent to the Bills passed in the legislature, or to withhold assent therefrom, or reserve them for the consideration of the Governor-General, or to return the Bills to the legislature with a message to reconsider [Sec. 75].

16. To decide if any proposed expenditure falls within a class of expenditure charged on the revenues of the province [Sec. 78 (4)].

17. To make rules of procedure for the legislature, after consultation with the Speaker or President, with regard to the “discretionary” or “individual judgment” matters, financial business, and discussion and question on any matter connected with any Indian State, and other subsidiary matters [Sec. 84].

18. To certify that the discussion of a Bill, clause or amendment is dangerous to peace and tranquillity and thereby stay proceedings [Sec. 86 (2)].

19. To promulgate ordinances for satisfactory discharge of his “discretionary” and “individual judgment” functions (ordinarily with the concurrence of the Governor-General in his discretion) [Sec. 89].

20. To enact Acts for the discharge of his functions with the concurrence of the Governor-General in his discretion [Sec. 90].

21. To administer and make regulations for excluded areas [Sec. 92].

22. To take over the government of the province by a Proclamation in the event of a breakdown of the constitutional machinery and to revoke such Proclamation with the concurrence of the Governor-General in his discretion [Sec. 93].

23. To give previous sanction to legislation which affects the Governor's Act or Ordinance or any Act relating to police force [Sec. 108 (2)].
24. To suspend the operation of the provisions of Sec. 111 (1) regarding rights of entry of British subjects domiciled in the United Kingdom [Sec. 111 (3)].

25. To give previous sanction to legislation regarding professional and technical qualifications [Sec. 119 (1)].

26. To discharge functions as agent to the Governor-General in relation to tribal areas, defence, external affairs or ecclesiastical affairs [Sec. 129].

27. To give previous sanction to Bills amending the order-in-council or rules under it by which the duties and powers of the provincial Audit-General are defined [Sec. 167 (2) (b) read with Sec. 166 (3)].

28. To concur in the proposal to sell or change the use of the official residence of the Governor [Sec. 175 (1)].

29. To give previous sanction to Bills endowing the High Court with original revenue jurisdiction [Sec. 226 (2)].

30. To decide when the Public Service Commission should be consulted as to appointments to the High Court Staff [Sec. 242 (4)].

31. To appoint the Public Service Commission and to frame regulations for the purpose [Sec. 265 (1), (2) & (3) and Sec. 266 (3)].

32. To give previous sanction to Bills providing for additional functions of the Public Service Commission [Sec. 267].

33. To consent to institution of civil or criminal proceedings against public servants for acts done in official capacity before commencement of Part III of the Act [Sec. 270].

34. To give previous sanction to Bills abolishing or restricting protection of public servants under Sec. 197 of the Code of Criminal Procedure 1889, and Sections 80 to 82 of the Code of Civil Procedure 1908 [Sec. 271 (1)].

35. To give previous sanction to Bills relating to land acquisition, etc. [Sec. 299 (3)].

36. To appoint the Governor's secretarial staff and to determine their remuneration, etc. [Sec. 305 (1) and (2)].
37. To express opinion for the Secretary of State on amendments recommended by a resolution of the provincial legislature in the Act or in an order-in-council to alter the size or composition of a legislative chamber, qualifications for membership, franchise, etc. [Sec. 308 (f)].

38. To make nominations to the Legislative Council. Fifth Schedule, Para 14 (d).

39. To curtail the term of office of certain members of the Legislative Council upon its first constitution. Fifth Schedule, Para 18.

In so far as the Governor is required to act in his discretion he is under the superintendence of the Governor-General in his discretion, who in such matters is again under the superintendence of the Secretary of State. But such superintendence may not conflict with the Governor’s Instrument of Instructions. The validity of anything done by the Governor shall not be called in question on the ground that it was not done in accordance with such superintendence or on the ground that he ought or ought not to have acted in his discretion.

The Congress and Office Acceptance

The Indian National Congress did not approach the new Constitution in a spirit of co-operation. To quote Pandit Jawaharlal, “it has been forced upon us against our will. We dislike it thoroughly, and we propose to make its functioning as difficult as possible.” He contends that there can be no proper solution of the problems of land, poverty and unemployment under British Imperialism. Such an argument appeals easily to discontented people; it is not pitched in a constructive key. The Congress was not unmindful of the follies of any such destructive appeal. Accordingly, the Congress Election Manifesto attempted a synthesis of the two conflicting ideologies. On the one hand, it was stated that the purpose of sending Congressmen to the legislatures under the Act of 1935 was not “to co-operate in any way with the Act but to combat it and seek to end it”; on the other hand, it was proclaimed that
the Congress representatives would “take all possible steps to end the various Regulations, Ordinances and Acts which oppress the Indian people and smother their will to freedom” and that they should “work for the establishment of civil liberty, for the release of political prisoners and detenues and repair the wrongs done to the peasantry and public institutions in the course of the national struggle.” The Congress authorities knew perfectly well that the constructive part of the programme, outlined in the Election Manifesto, could not be carried out without acceptance of office; at the same time, they were aware that discontent in the country with alien rule could not be intensified to accelerate the pace of national struggle without some revolutionary cry. The Manifesto, therefore, postponed the decision on office acceptance and sought to show revolutionary fervour by stating that “whatever the decision it must be remembered that in any event the Congress stands for the rejection of the new Act and for non-co-operation with its working.” In the very fact of postponement of the decision on office acceptance, one could see that the Congress was not opposed to utilising the new Constitution for furthering its own constructive programme; it remained a mystery to non-Congress people how the constructive part of the programme could be furthered by withholding co-operation from the working of the Act. The Congress Election Manifesto was indicative of its indecisive attitude towards the new reforms; it used hard words against the Act of 1935, promised remedy of wrongs to the electors and expressed determination to wreck the Constitution as a way of knitting together the radical elements in the Congress. To cover the inconsistent arguments with a political philosophy, it was emphasised that “real strength comes from organising and serving the masses.” It is a tribute to the Congress organisation that with such a multi-faced Election Manifesto, the electors gave a wonderful response, and the Congress as a party came out triumphant in the elections.
After the elections, the Congress was confronted with the issue of office acceptance. It fought the elections to wreck the new Constitution. It found itself in a majority in six provinces. The strength of the Congress Party in the provincial Assemblies of the majority provinces was as follows: 159 out of 215 seats in Madras, 133 out of 228 in the United Provinces, 95 out of 152 seats in Bihar, 36 out of 60 seats in Orissa, 88 out of 175 seats in Bombay and 71 out of 112 seats in the Central Provinces. The Congress Party held key positions in the Assam, North-West Frontier and Sind Assemblies. It was only in Bengal and the Punjab that the Congress was in an ineffective minority. In Bengal, the Congress was forced to restrict its electioneering efforts to the General constituencies, and even in such constituencies the majority of scheduled caste representatives remained outside the Congress allegiance.

The Congress Working Committee issued a statement in February 1937 realising the high responsibility with which the nation had charged it by sending Congress representatives in large numbers to the legislatures, but it put off the issue of office acceptance. The all-India Congress Committee passed a resolution on March 18, 1937, authorising and permitting the acceptance of ministerial offices in the provinces where the Congress commanded a majority in the legislatures, provided “ministership shall not be accepted unless the leader of the Congress Party in the legislature is satisfied and is able to state publicly that So long as he and his Cabinet act within the constitution the Governor will not use his powers of interference or set aside the advice of Ministers.” The Congress Committee also demanded on behalf of the people of India that the new Constitution should be withdrawn. Soon after the elections, about 800 Congress legislators and 200 members of the all-India Congress Committee met in an all-India convention, the first of its kind, in Delhi, March 19, under the presidency of the Congress President, Pandit Jawaharlal
Nehru. Members of the convention pledged themselves to the service of India and to work in the legislatures and outside for the independence of India and the ending of the exploitation and poverty of the people. The convention stood for a democratic State, to be created by the Indian people through a constituent assembly elected on the basis of adult suffrage.

On the issue of office acceptance the Congress was advised by Sir Stafford Cripps to reject office and by Lord Lothian to accept office. Sir Stafford Cripps at a public meeting in England wanted the Congress Party to oppose acceptance of office because “there is no greater danger to the Congress Party than getting entangled with the imperialist machinery of Government.” Lord Lothian in a broadcast speech from London, dated March 29, 1937 advised acceptance of office and suggested that so long as Ministers were prepared to accept responsibility for their policy, it would be difficult for the Governors to refuse. That was, however, the correct constitutional course.

The provincial Governors with the full assent of the Governor-General and Secretary of State for India declined to give the required undertaking to the Congress Party. According to the Governors, there was an insuperable legal objection per se in the demand of the Congress leaders for an assurance of the kind asked for, because of certain statutory directions. Lord Zetland, Secretary of State for India, held that the reserve powers of the Governor were an integral part of the Constitution, and they could not be abrogated except by Parliament. According to him, the Governor could not pledge in advance not to use his special powers. Sir Tej Bahadur Sapru was of the opinion that on the legal side the Governor was right as he could not contract himself out of his statutory obligations and respons-

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1 Statement of Mr. R. A. Butler, Under-Secretary of State for India, in the House of Commons, 8th April 1937.
2 Lord Zetland’s statement in the House of Lords, April 8, 1937.