PART I
CHAPTER I
"We have distinctly maintained that representative Government, in its western sense, is totally inapplicable to the Indian Empire and would be uncongenial to the traditions of eastern populations; that Indian conditions do not admit of popular representation; that the safety and welfare of the country must depend on the supremacy of British administration; and that supremacy can, in no circumstances, be delegated to any kind of representative assembly" - Viceroy Minto on January 25, 1910 (1).

Evolution of the British Policy towards India:

Official British opinion and policy about India can be, for the purpose of studying the constitutional development of this country, divided, in space and time, into two parts. The first division distinguishes what were known as "the British India" and "the Princely India". The second division is made by the Great War that started in 1939. By

the "Official British policy", we refer to the policy that was inaugurated in 1858 when, after the Sepoy Mutiny, the King-in-Parliament took over the Government of India. In the following half-century what was seen was nothing more than administrative reforms with a view to associating loyal Indians with the governmental machinery.

It was only by the Indian Councils Act, 1909 (popularly known as the Morley-Minto Reforms), that the foundation of a representative government was laid. By the Act of 1909 some elected Indian members were taken in the Central and Provincial legislatures. While in the Provincial Councils the non-official Indians were in majority, in the Central Council the official representation was heavier. More legislative functions and power over finance were granted to the members. The new Act provided for the denial of territorial representation and introduction of separate electorate for the Muslims at the same time. And this package deal of the first instalment of the grant of a representative government and the foundation of communal electorates turned out to a parricide's bag. Every further step of India towards self-government was accompanied by the extension of communal electorate.
The First World War enhanced the pace of history and radically altered the Indian situation. The Liberal Government of England recognised the reality and disavowed the policy of "increasing association of Indians in every branch of administration and gradual development of self-governing institutions with a view to the progressive realization of responsible government of India as an integral part of the British empire"(2).

The offer, as embodied in the Government of India Act, 1919 was, however, a mere continuation of the British policy since 1858, according to Sapru (3). Neither there was any promise for Indians about a constitution of their own choice. The only significant innovation of the Act was a partially "ministerial" government in the Provinces (commonly known as dyarchy) with strictly

(3) Tej Bahadur Sapru: The Indian Constitution, pp. 3-4.
defined powers. At the Centre there was some slackening of the control of the Secretary of State. This was followed up by the appointment of the Statutory Commission (popularly known as the Simon Commission) in 1928 and its recommendation for further devolution of provincial autonomy.

By the time the Simon Commission submitted its report (October, 1929), the federal idea had become popular as a compromise between the Congress proposal of United India on the one hand and the Muslim League demand for safeguards and the Princes' demand for their independence on the other. The British Scheme of the federation could not be sold, however, at the Round Table Conference, which yielded no practical result. Finally, the British Prime Minister MacDonald gave the Indians the Communal Award. The Award, modified by the Poona Pact, formed the basis of the Government of India Act, 1935.

The Government of India Act, 1935 bore the same preamble as the Act of 1919. It amounted to the
reiteration of the old policy of the English Parliament and of the authority of the same to preside over the destiny of the Indian people. As a new feature it envisaged, for the first time, a federation including the Indian States. It also granted, by statutory provisions, a large amount of autonomy to the Governors' Provinces. Finally, right of franchise was extended but not made universal. No representation was proposed for the Indian States, whose participation was yet uncertain.

Until the beginning of the second great war, therefore, British schemes for constitutional reform in India were confined to the grant of responsible government within the British empire, and under British supervision. And the major obstacle to the grant of responsible government was considered to be the so-called "Indian problem", by which the British constitutionalists referred to the organic heterogeneity of the Indian community and the reluctances of the Princes to sacrifice their rights and status. The core of the Indian problem was, however, unmistakably
considered to be the Hindu-Muslim communal rivalry reflected in the Congress-League differences on the political future of India.

The Communal Problem.

"What then is the essence of the Indian problem"? Coupland asked, and himself answered the question:

"There are several problems but only one is of cardinal importance. The division between British and Indian India is not that one. It is in the conflict of these two great parties or, more strictly, the Hindu-Moslem schism which that conflict reflects that the supreme obstacle to an agreement is to be found" (4).

And what was the nature of this schism? F.K. Khan-Durrani, a theoretician of the Muslim League possibly

(4) The Constitutional Problem of India, part III, p.16
gave the correct answer:—

"The question is wholly political and may be briefly stated thus: The Hindus claim the right of majority-rule. Majority-rule means Hindu Raj. Muslims can not agree to it. There can be no peace or agreement between the two nations, unless and until the major community abandons the dream of Hindu Raj" (5).

Growth of this "political question" is, however, generally explained by the apprehension of the Muslims who were not only numerically much inferior to the Hindus, but also had been left behind the Hindus in the march of history. To most of them Congress was exclusively a Hindu affair. "On the other hand, the growing influence of the Congress and the attention paid to it by the Government were a lesson Moslem could not miss. Once more it seemed they were in danger of being left behind. The knowledge that a new

instalment of "Reforms" were under consideration spurred them to action, and, since most of the leaders were unwilling to make a common cause with the Congress, a separate political organisation of Indian Moslems was created - the All India Moslem League" (6).

In an apparently neutral mood A. B. Keith narrates the effect of the 'Reforms' of 1919: "Another unhappy feature of the operations of the reforms was the inevitable impetus given to sectarian strife. It was obvious to Hindus and Muslims alike that the change in the form of governments meant the possibility of securing effective domination by legal means, especially in the case of Bengal and the Punjab where numbers are fairly balanced" (7).

So, the counterpoise between the nationalist demand of freedom and the Muslim demand for "safeguard"

(7) A Constitutional History of India, 1600-1935, p. 287.
(later "self-determination") was perfectly built up. It is relevant to recall, however, Coupland's Restatement about India: "The British no doubt United India, but this was the almost automatic result of the development of modern transport which synchronised with the growth of British rule. That communal peace had been imparted by a neutral British administration was an illusion. The Hindu-Moslem gulf in particular, had grown wider; the British indeed, it was ultimately asserted, had deliberately widened it on the principle of "divide and rule". Thus, it will be honest to admit that the seeds of communal difference in the socio-economic structure of the Indian community which, given proper treatment, could certainly be destroyed, but the successive mistakes on the part of Indian Leaders and the British Government, rather than destroying them, helped their growth.

Positive encouragement to separation in the constitutional set-up indeed started with the Morley-Minto Reforms which granted separate electorates to the Indian people with the first instalment of responsible government. The Montagu-Chelmsford Report considered the system as repugnant to democracy but, in regard for Viceroy Minto's commitment, not only retained it but also recommended its extension. The Government of India Act, 1919 gave separate electorates to Muslims, Sikhs, Indian Christians, Anglo-Indians and Europeans. Among the Hindus the non-Brahmins of Madras and Marhattas in Bombay had reservation of seats in their respective provincial legislatures. Provision was made for nomination of Depressed-class Hindus to ensure them adequate representation.

The Simon Commission (1928), recommended the continuation of separate electorates for the Muslims, Sikhs, Anglo-Indians and Europeans. Reservation of seats was recommended for the Depressed Classes and Indian Christians (the latter had so long enjoyed separate electorate). So was recommended the abolition of reservation
for the non-Brahmins of Madras, though reservation for Marhattas was allowed to stay. The Statutory Commission commented that, "The separate representation of communities and special interests is ................ the most noticeable feature of the Indian electoral system" (9).

The Government of India Act, 1935 provided separate electorates and reservation for 18 communities and interests, viz: (1) General (2) Reservation for Scheduled Castes, (3) in Bombay, reservation for Marathans), (4) Backward areas and Tribes (including those of Assam); (5) Sikh; (6) Muslim; (7) Anglo-Indian; (8) European; (9) Indian Christian; (10) Commerce, Industry, Mining & Plantation; (11) Landholders; (12) University; (13) Labour; (14) Women; (General, 15, Sikh, 16, Muslim; 17, Anglo Indian; 18, Indian Christian). The special interests created in 1935, thus, almost doubled over those created in 1919.

A major part of this aspect of the Indian problem was the position of the tribal people of India who required special treatment and protection of the Government. The British Government since 1871 adopted a policy of isolation for the tribes. The Government of India Act, 1919 empowered the Governor-General to declare any areas of a Province as "Backward Area" and exclude it from the scope of ministerial administration. The power was extensively used. Upon the recommendation of the Simon Commission, the Government of India Act, 1935 established Excluded and Partially Excluded Areas with these tribal regions.

On the effect of this isolation of the Assam Hills the Commission on the Hills Areas of Assam (1965-66) wrote: "A kind of distinct barrier was maintained between these Hills and the Plains during the British rule". The position was not different in the other tribal areas. Yet the 'protection' of the tribal people had very little

significance in political terms, as out of 1535 seats in the provincial legislatures only 24 were reserved for the Scheduled tribes by the 1935 Act. No reservation for them was provided in the Central Legislative Assembly (11).

The State's problem.

Since Queen Victoria's pronouncement, in 1858, guaranting the integrity of the Indian States, the British Government developed a rather queer system of relationship with the native States - which proved a no less effective and, perhaps, in some ways, more effective-instrument of the maintenance of its own interests therein than the direct assumption of power. The Chiefs gained protection from external attacks and internal rebellions and a guarantee that their rights over their subjects would be respected. The British

Crown which became the paramount power was in charge of their foreign affairs and relation with other States. The subjects of those native States were the subjects of the rulers who had no jurisdiction over the British nationals living in the State whatsoever.

But for the fact of a common link with British India through the Governor-General, the 562 native States had virtually no unity among themselves. But, as Coupland says, "if there was very little unity between the States themselves, they were bound to share to some extent in the unity imposed by the force of circumstances on India as a whole. The economic development of India which steadily gathered strength as the nineteenth century proceeded, inevitably affected the domestic life of the States. Their peoples were entangled in innumerable ways in a common Indian economy........

"........The major fact has been the growing influence of modern conditions of life in breaking down the isolation of the States from one another and from the rest of India. It was artificially created and to a large extent it has been artificially
Maintained. But it was not till 1917-19 that the idea of India being governed otherwise than in two watertight compartments was tentatively broached; and it was not till 1930-35 that a real attempt was then bodily taken ...........

(12)

At the first Round Table Conference in London, "The States were prepared for federation provided the Federation was independent of British control, though for a transition period that independence might be modified by the existence of limitations .......... It was felt that by such an attitude it would be possible to secure in framing the constitution a much stronger position for the States than their numbers would give them, and that at the same time they would be able in non-federal matters to secure freedom from intervention by the Crown except on definite and agreed grounds" (13).

British Indian politicians at the first Round Table Conference initially welcomed with enthusiasm

(13) A Constitutional History of India, 1600-1935, p. 296.
the idea of making with the Princes a common stand-
against British control. Those conservative elements
of Indian leadership saw no harm in having in the
representatives of the Princes an assured strength
of conservatism. "It was only gradually that it came
to be realized by the more advanced and moderate
politicians that the princes were engaged essentially
in the business of securing a definite position
whence they could defy the introduction of any form
of democracy, in their dominions, and that they
would act rather as a support for British control
than for furthering Indian autonomy" (14)

When the scheme of federation was released,
however, the Rulers of States raised a series of
objections against the bill. Later, it seemed impossible
to attain the participation of the princely Indian(14A)

(14) Ibid., p. 297.

(14A) Section 6(7) of the 1935 Act enabled the States to join
the Federation any time within 20 years of its establishment. If they chose to join the Federation
after the said period, the Federal Legislature would
have to make a request to the Governor-General to
permit this entry. The war came too early for this.
States in the federation. The Congress was meanwhile suspected by the Princes to be intending to swallow the Princely rights.

The Indian Struggle

The Indian political struggle vis a vis the communal problem has a chequered history. The post-Mutiny national movement came, almost automatically, under the aegis of the English-educated, and predominantly Hindu, middle-class. At the outset, the leadership believed in 'constitutional' devices and wavered sometimes between 'Home Rule' and 'Self-Government within the British Empire' and sometimes between 'Self-Government' and 'Dominion Status' until 1930, when only the goal of 'Complete Independence' was announced from its only political platform - The Indian National Congress. The Congress, which was organised as a gathering of Indian leaders and intellectuals to discuss "Social matters" on friendly footing turned a political body before long and, almost side by side with it, a separatist Muslim organisation began to grow and advise the Indian Muslims to
dissociate themselves from the Congress movement. Following the partition of Bengal there was the first tremendous national upsurge in 1906 which had an anarchistic wing and unfortunately a Hindu revivалиstic outlook. The Muslims in general were not only cool about it, in the same year the Muslim League and the Hindu Mahasabha were set up. Inevitably, the main challenge to Congress came from the Muslim League. Congress response did not yield much happy results.

The Lucknow Pact, 1916, having accepted the system of separate electorate, consolidated the Congress-League amity which produced the Khailafat movement. The Congress at the Nagpur session of 1920 converted itself into a mass party, adopted the goal of 'Swaraj' and launched Satyagraha. The moderates left Congress, formed the 'Liberal Party' and decided to cooperate in the working of the Mont-Ford Reforms. While Gandhi after the confession of 'Himalayan blunder', withdrew the movement many Congressites, specially the young radicals, were upset.

On January 1, 1923, however, the moderates within the Congress organised the Swarajya Party and planned to enter the legislatures with a view to 'mending or ending' the Reforms. The Gandhian leadership reluctantly permitted their programme. The Swarajists had a great success over the Liberal Party, who, anyhow, were their precursors. On February 5, 1924, in the Central Legislative Assembly, the Liberals moved a resolution recommending to the Government revision of the 1919 Act so as to secure for India Dominion Status and full Provincial Autonomy. Motilal Nehru, leader of the Swarajya Party moved an amendment on the resolution calling for "a Round Table conference to recommend a Scheme of Full Responsible Government for India" (15). The amended resolution was passed by a great majority, though the Government raised several points of objection to the demand for Dominion Status or responsible government for India. These objections were answered by Nehru then on the floor of the Assembly and later in the All-Parties Report (1928).

In March, 1927, the Muslim leaders met in Delhi under the then moderate Leaguer Jinnah to demand a joint electorate with reservation of seats in legislatures for Muslims. In December, 1927 the League conference in Calcutta, dominated by Jinnah and Ali brothers resolved to boycott the Simon Commission, as the Congress had done. The extremist Leaguers, on the other hand, decided to cooperate with the Simon Commission. Jinnah's position in the League's leadership became difficult. A split in the Muslim League was impending. The nationalist Muslims gradually dissociated from it.

The Indian feeling being generally hurt due to the appointment of the Simon Commission, in February-March, 1928 the All Parties Conference met at Delhi and appointed a Committee to draft a Constitution for India purely by Indian efforts under the Chairmanship of Motilal Nehru. In its report, submitted to the All Parties Conference in late August, the same year, the Nehru Committee looked forward to a free India wherein parties would be
formed on socio-economic rather than religious and communal basis. The contemporary communal question, they thought, resolved itself to "the question of electorates, the reservation of seats, the separation of Sind and the form of Government in the N.W.F.P. and Baluchistan" (16). The Committee, therefore, rejected the claim of separate electorate and recommended reservation of seats in the legislatures of the Muslim-minority Provinces and the Centre. The N.W.F.P. and Baluchistan were recommended full provincial status. The question of Sind's separation from Bombay remained unsolved.

The Nehru Committee rejected the idea of 'Independence' pressed by the young Congress radicals and demanded Dominion Status in its report to accommodate the moderates. But it could not, and perhaps had no intention to, meet the new twist of League politics.

Yet, as the first remarkable contribution of Indian genius to the growth of constitutionalism, the Nehru Committee recommended a constitution based on a federal structure of India with the participation of Princely States, maximum autonomy being granted to the units. Devolution of provincial autonomy was, however, "carried no further than the Act of 1919 had carried it" (17).

The League, meanwhile, had completely parted company with the All Parties Conference. In May, 1928 Jinnah left for England. Soon the League Council met at Lahore and decided to boycott the Nehru Committee. Jinnah returned in October and opposed the Nehru Report in the All Parties Convention in Calcutta (December, 1928). The split was completed subsequently. In 1930 the League first heard, from its President, Iqbal, the plan for Pakistan—a Muslim homeland.

(17) R. Coupland: The Constitutional Problem of India, part I, p. 94.
At the expiry of the period of Congress ultimatum, that was issued at its Calcutta conference of December, 1928 over the Nehru report, on December 31, 1929, the Congress met at Lahore in 1930. The mighty growth of the left forces in the Congress was recognised when Gandhi nominated Jawaharlal Nehru in his place as the Congress President. The demand for complete Independence was passed and the Congress resolved to start Satyagraha under the sole leadership of Gandhi.

The movement started had a mighty potentiality, though its leadership wavered between the strategy of struggle and participation in the Round Table Conference.

The first phase of Satyagraha was over, to the dissatisfaction of the leftists, with the Gandhi-Irwin Pact of March 5, 1931. Gandhi, however, secured nothing by joining the Second Round Table Conference from the MacDonald Government which had already faced a critical position in the home front. On his return to India Gandhi was arrested; the Second phase of Civil Disobedience movement started in 1932 and collapsed before long. It
was not till the Second World War that the Congress could launch another mass movement.

Democratic Movement in the States.

The nationalist programme in the States consisted in the movement for democratisation of the States' administration and securing the people's rights. The programme was inaugurated in 1927 with the establishment of the States' Peoples' Conference with the purpose of "attainment of responsible government for the people in the Indian States through representative institutions under the aegis of their Rulers". This aim was endorsed by the Indian National Congress, with which the conference was affiliated in 1928. The Nehru Committee, while welcoming the participation of the Princely States in the federation of India, told the Princes clearly that such participation "would necessitate, perhaps in varying degrees, a modification of the system of government and administration prevailing within their territories" (18). "The Commonwealth shall exercise the

same rights 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 discharged" (19). In 1929 the Congress demanded that the States be brought into line with the rest of India through the introduction of responsible government and social reforms.

The Congress policy towards the States suffered a contradiction. Liberation movement in 'Indian' India was essentially linked up with the movement for democratic institutions and liquidation of all foreign and feudal vested interests in the States. On the other hand the Gandhite moderate leadership of the Congress was eager to form a broad national front in which the big and small feudal interests and the bourgeoisie would take part along with the common mass of people. This attitude of the Congress, in the later

(19) Ibid., p. 122.
days, promoted on the one hand, revolutionary tendency among the people of some States like Kashmir, Mysore and Travancore and, on the other, suspicion among the Princes about the intention of the Congress about their rights and interests.

At the second Round Table Conference, Gandhi claimed that the Congress represented the States' people as well as the British Indian people. But, as Coupland comments, the statement "was not intended to be carried to its logical conclusion"(20). So far the Congress had identified itself with the reforms in the States only in spirit and not in action. Direct intervention by the Congress organisation in State affairs was still regarded as unwise.

(20) The Constitutional Problem of India, part II, p.4.
The Economic Development:

Late in the twenties Vera Anstey the eminent British Economist raised the question: "Is India an economic unit in the making"? She herself answered the question; "The difficulties confronting economic unification are the vast size of the country and the political elements contained therein. On the other hand, India forms a clearly geographical unit, a not inconsiderable extent of economic unification has already been achieved, and there are a number of strong unifying forces at work" (22).

Inspite of great communal and cultural diversities of the Indian people the strongest social force that favoured the unification of the country was the need for economic centralisation - the inevitable result of industrial development, which, notwithstanding all odds, was progressing steadily.

(22) The Economic Development of India (1929) P.485.