THE CONSTITUENT ASSEMBLY VERSUS THE INTERIM GOVERNMENT

Scope of the Interim Government

"While the constitution-making proceeds", declared the Cabinet Mission, "the administration of India has to be carried on. We attach the greatest importance, therefore, to the setting up at once of an Interim Government having the support of the major political parties. The Viceroy has already started discussion to this end, and hopes soon to form an Interim Government in which all the portfolios, including that of War Member, will be held by Indian leaders having the full confidence of the people" (1).

The scope of the Interim Government was clearly "to carry on the administration of British India until such time as a new Constitution can be brought into being" (2). At the Simla Conference which had started on May 5, 1946 and ended on May 12, 1946 negotiations for replacing the Viceroy's Executive Council by an Interim Ministry of fourteen members (six Congress nominees including a Scheduled Caste Hindu member, five League nominees and three

(1) Para 23 of the Cabinet Mission's Statement.
(2) Para 3 of the Cabinet Mission's Statement.
representative members of other communities to be nominated by the Viceroy) were initiated. The major point of Congress-League difference on which the talks failed was the Congress insistence on its right to nominate two nationalist Muslims from its own quota. Acceptance of the demand by the League would lead to a Muslim strength of seven in a fourteen-member Cabinet.

**Congress-League Tussle:**

Jinnah, however, had a different calculation. If on the eve of the transfer of power which was then only a matter of time - the Muslim League failed to be recognised as the sole representative of the Indian Muslims, it would suffer a tremendous strategic defeat by the Congress. The effect of the interim Government on permanent decisions over the failure of India was realised by all. On June 16, 1946, following the failure of the Simla Conference, the Viceroy issued invitation to fourteen Indians "to serve as members of the Interim Government, on the basis that the constitution-making will proceed in accordance with the statement of May 16th" (3). Five of them belonged to the upper caste Hindu community and were members of the

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Congress. One Scheduled Caste member was also a Congressite. Five Muslim members were Leaguers. One representative each from the Sikh, Parsee and Indian Christian communities belonged to no party. The Scheduled Castes still being considered a minority community, parity was sought to be established between the caste-Hindu Congressites and the Muslim Leaguers as the sole representatives of the Muslims of India.

This was a position clearly unacceptable to the Congress. The parity between the Congress as an upper-caste Hindu organisation and the Muslim League as the sole Muslim organisation was considered as essentially unjust. The Congress also wanted the inclusion of a nationalist Muslim. Besides, the Parsee member N.P. Engineer, who was an official, was not considered by the Congress as a representative Parsee. In view of these reasons, mainly, the Congress Working Committee rejected, on June 26, the Interim Government Plan. The Congress Working Committee, however, accepted the long term plan of the Constituent Assembly. But then it objected to the grouping arrangement, as it considered that the Plan would be unjust to the Congress-following Provinces of Assam and N.W.F.P. and to the Sikh minority of the Punjab (4).

(4) Ibid., pp. 175-6.
Subject to certain conditions the Muslim League was ready to join the Interim Government. When the Congress refused to join the Interim Government, the Muslim League wanted to form the Interim Government even without the Congress. The Cabinet Mission and the Governor General, evidently, found no sense in having such an Interim Government. On June 29 Viceroy Wavell announced the formation of a Caretaker Government for the time being. The elections to the Constituent Assembly were held duly in July, 1946 inspite of the opposition from the League. (The League indeed took part in the elections).

On July 6-7, the A.I.C.C. approved of the June 26 resolution of the Working Committee and elected Jawaharlal Nehru as the Congress President. On July 10 Jawaharlal Nehru in a press statement categorically announced that the Congress had no intention to abide by the grouping arrangement proposed by the Cabinet Mission. He also said that the Congress had only agreed to join the Constituent Assembly and regarded itself free to change the Cabinet Mission Plan as it thought best (5). The statement has been considered unfortunate by many (6) but it was consistent with the


hitherto enunciated Congress stand, though Nehru had misread the Cabinet Mission’s mind in Pethick Lawrence’s letter (7).

Jinnah, who had already been angered by the Viceroy’s unwillingness to form the Interim Government only with the Muslim League, reacted immediately. He issued a statement that the statement by the Congress President demanded a review of the whole situation (8). The League Council met at Bombay on July 27-30 and, withdrawing the acceptance of the Cabinet Mission scheme as a whole, called for "direct action". The League blamed the Viceroy for going back on his promise and insisting on the participation of the Congress in the Interim Government even though the Congress, by putting several conditions on the Cabinet Mission Plan, had virtually rejected it. The League also emphasised that the Congress had agreed to join the Constituent Assembly only and that it considered the Constituent Assembly as a sovereign body. The League was afraid of the brute majority of the Congress in such a Constituent Assembly, which would result in the suppression

(7) May 22, 1946.

Formation of the Interim Government

The Viceroy had renewed his attempt to set up an Interim Government on July 22. In his letter to the Presidents of the Congress and League he proposed that the Interim Government should be formed with fourteen members of whom six would be nominated by the Congress (of whom one would be a Scheduled Caste Hindu), five by the League (Muslim) and one each from the Sikh, the Parsee and the Indian Christian communities to be nominated by the Viceroy. Distribution of the portfolios would be decided after the parties had agreed to join the Interim Government. As regards the status of such a Government the Viceroy was sure that it would enjoy the status of a Dominion Government with least interference by the British Government. The Viceroy would welcome a convention, if freely offered by the Congress, that major communal issues would be settled by the assent of both the major parties.

Jinnah rejected even this offer as it was not based on Congress-League parity and as he apprehended that the Congress would not respect the "convention" of respecting minority interests in a Cabinet under their dominance. On August 8-10, 1946 the Congress Working Committee accepted the offer and evasively repeated their acceptance of the Cabinet Mission Plan "in its entirety" (10). The Viceroy immediately requested the Congress President Jawaharlal Nehru to form the Interim Government. Nehru sought the co-operation of Jinnah who objected to the status of the Interim Government. Unless it was some version of the Viceroy's Executive Council, the position was unacceptable to the League (11). No agreement could be reached between Nehru and Jinnah.

Hence came the Direct Action on August 16, 1946 which immediately resulted in the mass killing of thousands of innocent souls and ignited a series of communal riots all over the country. In the midst of this situation the personnel of the Interim Government was announced on August 24. Most of the members were Congressites, three members from the Sikh, the Indian Christian and the Parsee communities.

(11) Nehru-Jinnah Correspondence; The Indian Annual Register, 1946, Vol.2, p. 222.
Of the Congress members one was a Scheduled Caste Hindu, three were nationalist Muslims. Two seats remained vacant. A communique said that the Viceroy's Executive Council had resigned. It also stated that five seats would be allotted to the Muslim League whenever it agreed to join the Government (12).

Preparation for the Constituent Assembly Meeting

On the same day Wavell gave a radio broadcast. The Viceroy said, "It is desirable that the work of the Constituent Assembly should begin as early as possible. Here again let me remind you that assurances have been given to the Muslim League that the procedure laid down in the statement of May 16th regarding the framing of provincial and group constitutions will be faithfully adhered to; that there can be no question of any change in the fundamental principle proposed for the Constituent Assembly in paragraph 15 of the Cabinet Mission's Statement or of a decision on any main communal issue without a majority of both major communities; and that the Congress are ready to agree that any dispute of interpretation may be referred to the Federal Court. I sincerely trust that the Muslim League will reconsider their decision not to take part in the plan" (13).

Nehru, in a broadcast, told a few days after joining the Interim Government (September 7, 1946) that,

"There has been much heated argument about sections and groupings in the Constituent Assembly. We are perfectly prepared to and have accepted the position of sitting in sections which will consider the question of formation of groups. I should like to make it clear, on behalf of my colleagues and myself that we do not look upon the Constituent Assembly as an arena for conflict or for the forcible imposition of one view-point over another ....... " (14).

The League's Participation in the Interim Government

There passed sometime, however, before the purport of Nehru's September 7 statement and its apparent inconsistency with the statement of July 10 was clarified.

On September 2 the Interim Government took office; negotiations with the League on the Interim Government continued. On October 13, Wavell was able to persuade the League to join the Interim Government. Three Congress members having resigned, five Leaguers joined the Interim Government. After some bargains the portfolios were redistributed to some extent. The Leaguers took office on October 22, 1946.

The effort of the Viceroy to have a coalition government was laudable in that, a long period of working of the same might have some healing effect on the strife-torn country. But the position contained some constitutional anomaly. So far as the interpretation of the Cabinet Mission Plan was concerned, "neither the Congress accepted the stand-point of the Cabinet Mission in respect of grouping nor did the Cabinet Mission give up its point of view" (15).

Even until the day of its acceptance of office no Congress resolution or statement did suggest that the Congress had accepted the interpretation of the Cabinet

(15) N.C. Roy: Towards Framing the Constitution of India, p. 173.
While the Viceroy invited the Congress to form the Interim Government, it must be assumed that he was aware of the position and invited the Congress inspite of the same. On the other hand, while the Muslim League joined the Interim Government, it did not cancel its Bombay resolution of July 29, which had rejected the Cabinet Mission Plan in toto.

Yet the move was judicious on the part of the Viceroy who hoped that joint working of the two parties might lead to some understanding between them. In such a situation the convening of the Constituent Assembly had naturally to be postponed till December. But then, difficulty arose due to the Congress eagerness to convene the Constituent Assembly as early as possible and the persistent refusal of the Muslim League to participate immediately in any long-term project.

In a letter to Jinnah, written on October 6, Nehru hoped that if the League finally decided to join the Interim Government, it would simultaneously decide to join the Constituent Assembly. On October 7, Jinnah replied
emphasizing that the question of the long-term plan should stand over until a better and more conducive atmosphere was created and agreement was reached on points of difference. Wavell wrote to Nehru on October 23:

"I have made it quite clear to Mr. Jinnah ....... that the Muslim League's entry into the Interim Government is conditional on the acceptance of the schemes of the Cabinet Delegation contained in the statement of May 16 and explained in the statement of May 25 and that he must call his Council at an early date to agree to it" (16).

He also wrote that Jinnah had agreed to join the Constituent Assembly as well as the Interim Government. Jinnah, however, on October 26, the day before the League joined the Interim Government, said to the Press that he had "never for a single moment conveyed to the Viceroy anything by way of assurances or otherwise, except that the long term plan could only be considered and decided by the Council of the All India Muslim League" (17).

In the Cabinet Mission's statement on May 16, the Interim Government plan was not integrally connected with the long-term plan of the constitution-making. The Interim Government was necessitated because, "while the constitution-making proceeds, the administration of India has to be carried on." The integral connexion of the Interim Government with the constitution-making body was, like the interpretation of the 'grouping' clause, an after-thought. It was introduced only when the Viceroy issued his invitation, on June 16. Ever since the Muslim League took office the Congress pressure on the Viceroy for the former's participation in the Constituent Assembly went on increasing. The Congress forgot that the May 16 statement had not been, and could not be, accepted by itself in toto.

Summoning of the Constituent Assembly Meeting

On November 20, a Government press note said that it had been finally decided that the preliminary meeting of the Constituent Assembly would be held at New Delhi on December 9. On the same day the correspondence between the Viceroy and Jinnah was released to press. The Viceroy had
written to Jinnah, on November 5, urging him to hold the
meeting of the League Council at an early date to consider
the acceptance of the May 16 statement. He wanted to know
from Jinnah what assurance he needed exactly. Jinnah in
reply reminded him that the Congress had not so far
accepted the May 16 statement in toto, as in all official
documents and statements the Congress leaders expressed
their reservations about the grouping clause. As the
Congress had not budged from its position, it would be
"futile" for him to summon the meeting of the League
Council (18).

On the same day invitation was issued to all
members of the Constituent Assembly to attend its session.
Jinnah declined the invitation. On November 21, 1946,
Nehru addressed the Meerut session of Congress and
reiterated the "two basic principles" of the formation of
the Interim Government. They were "firstly, that it should
work as a team, and, secondly, that Muslim League could
only join it if it accepted the [long text cut off] term plan". He
blamed that, the League had "accepted both the principles
although Mr. Jinnah used round-about phrasing, but now
the League say that the Interim Government is neither a

Cabinet nor a coalition and that the Muslim members form a separate block".

In the same speech Nehru's comments about the Constituent Assembly, for the first time, appeared pessimistic:

"Mr. Jinnah has tried to get the Constituent Assembly postponed sine die. If it is so postponed now, it may be said to be postponed for ever. I am not enamoured of this Constituent Assembly, but we have accepted it and should make the best use of it for our benefit. I do not expect that this will be the last Constituent Assembly. When our freedom becomes ampler we shall have another Constituent Assembly". (19).

On the eve of the convention of the Constituent Assembly, Prime Minister Attlee made a last-moment bid to solve the deadlock by inviting the Congress, League and Sikh leaders along with Wavell to London on a talk. Nehru, Liaquat Ali and Baldev Singh went to London, but the talk failed. Nehru returned on December 8 and made the following statement:

"The Constituent Assembly is meeting tomorrow and we will no doubt consider the whole position. The main point about the Constituent Assembly has been that it is a self-governing and self-determining body and any kind of imposition from outside will not be welcomed. It has been our purpose all along to make the Constituent Assembly as representative as possible of all groups in the country, but if some people unfortunately keep away, this cannot be allowed to stop the functioning of the Constituent Assembly as a whole" (20).

The British Interpretation vs. the Congress Interpretation

On December 6 the British Government, at the failure of the London talks, issued the following statement (21):

The Cabinet Mission have throughout maintained the view that the decisions of the sections, should, in absence of an agreement to the contrary, be taken by a simple

(20) The Statesman, December 9, 1946.
This view has been accepted by the Muslim League, but the Congress have put forward a different view. They have asserted that the true meaning of the statement, read as a whole, is that the provinces have the right to decide both as to grouping and as to their own constitution.

His Majesty's Government reasserted "that the statement of May 16 means what the Cabinet Mission have always stated was their intention. This part of the statement, as is interpreted, must therefore be considered an essential part of the scheme of May 16". It was hoped by HMG, however, that other questions of interpretation might be submitted to the Federal Court with the consent of both the parties. "On the matter immediately in dispute, His Majesty's Government urge the Congress to accept the view of the Cabinet Mission in order that a way may be opened for the Muslim League to reconsider their attitude. If, inspite of their reaffirmation of the intention of the Cabinet Mission, the Constituent Assembly desires that this fundamental point should be referred for a decision to the Federal Court, such a reference should be made at a very early date. It will then be reasonable that the meetings of the sections of the Constituent Assembly should be
postponed until the decision of the Federal Court is known.

Finally, HMG made it quite clear that, "should the constitution come to be framed by a Constituent Assembly in which a large section of the Indian population had not been represented, His Majesty's Government could not, of course, contemplate—as the Congress have stated they would not contemplate—forcing such a constitution upon the unwilling parts of the country".

The Congress now took a position which complied with the May 16 statement, but not with the statement of May 25 of the Cabinet Mission and thus pointed out the contradiction between the two. The Congress was ready to the extent of sitting in sections but was opposed to the enlisting of a Province in any Group, for constitutional and administrative purposes, wherein the Province would consider her interests unsafe. Joining of a Group, thus, still remained an open question for the Congress.

Under such circumstances, further postponement of the convention of the constitution-making body and a trial
of the working of the Interim Government meanwhile, for a rather long duration, was perhaps the only alternative. This might not necessarily mean the postponement of the transfer of power, for a free national government was a better authority to convene the Constituent Assembly. By all estimates it is recognised that the convention of the Constituent Assembly without the League, was ill-timed and one cannot but regret the "do it alone" attitude of the Congress.