The federal principle was first accepted for India under the Government of India Act, 1935. The federation visualised under this Act was an All-India federation and thus, under this scheme of federation the Indian States were for the first time proposed to be included in the same governmental system with British India, which had been regarded as a remote ideal even by the Indian Statutory Commission. In order to appreciate the importance of the scheme of an All-India federation it is necessary to recollect that at that time India was divided into British India and the Indian States and considerable differences in political status existed as between these two parts of the country. British India, as its name suggests, was under the direct administration of the British Crown. But the expression 'The Indian States' was a misnomer; for these were not States in the true sense of the term. There were some five hundred and sixty-two such 'States' differing largely in size and population and having an endless variety of characteristics - geographical, political and economic. And these were under the personal rule of hereditary Rulers and Chiefs. Though these States were largely autonomous, they were under the suzerainty of the British Crown. Their external relations constituted a responsibility of the

Paramount Power and internally also their autonomy was not complete for the British Government could intervene in their internal affairs as well.

British India on the other hand, as has been stated above, was subject to British rule and 'pursued its constitutional development as a part of the British Empire'. The system prevalent in British India, before the passing of the Government of India Act, 1935, was a thoroughly unitary system of government, though attempt at devolution had been made under the Government of India Act. The centralisation may be traced back to 1773, when the

5. The basis of the Constitution of British India, before the passing of the Government of India Act, 1935, had been the Government of India Act without any year suffixed to it. The Government of India Act, 1919 was an amending Act, embodying the reform proposals based upon the Report on the Indian Constitutional Reforms, 1918. The principal Act - the Act of 1915 as amended by the subsequent amending acts of 1916 and 1919 - was to be cited simply as the Government of India Act.

C) Sec. 135 of the Government of India Act.
East India Company Act of 1772, commonly known as the Regulating Act of 1773, was passed. This act was described as an Act of 1772, because Acts then dated from the beginning of the session in which they were passed.

The said Act tried to introduce a centralised system of government by bringing hitherto independent provinces under the control of Bengal Presidency. So long the Presidencies of Bengal, Madras and Bombay had complete independence. But now the Government of Bengal was given some supervisory authority over the other two Presidencies. The heads of the other two Presidencies were called Governors, while the head of the Bengal Government was termed the Governor-General. The Governors were deprived of the power of declaring war or of concluding peace without the assent of the Governor-General in Council, except under some special circumstances mentioned in the Act.

Subsequent legislation in 1784 further increased the powers of the Governor-General in Council. The control of the Governor-General in Council was to extend to all transactions with the Country powers, or to war and peace, or to the application of revenues or forces of such Presidencies in times of war. Thus in all political and military affairs the Presidencies were placed under the control of the Governor-General in Council. So long the

7. S. 7 of the East India Company Act, 1772 (P. Mukherjee - Indian Constitutional Documents, Vol.1, P.21)
Court of Directors in London was the controlling authority over the actions of the Governor-General in Council. But under the Act of 1784, a body of six Commissioners for the affairs of India, popularly known as the Board of Control, was to be established, which was to 'superintend, direct and control' East India Company's civil and military operations. This Board of Control might approve or disapprove or modify the despatches proposed to be sent by the Court of Directors.

The East India Company Act of 1793 carried this process of centralisation one step farther. It invested the Governor-General in Council with full power and authority to superintend, control and direct the Governments of Madras and Bombay and all other Governments erected or to be erected by the East India Company, in all such matters as would relate to any negotiations or transactions with the Country powers or States or levying war or making peace, or the collection or application of the revenues of the said acquisitions and territories in India, or to the forces employed at any of such Presidencies or Governments or to the Civil or Military Government of the said Presidencies, acquisitions or territories. The subordinate Presidencies were to obey the orders and directions of the Governor-General in Council in all cases whatever, except where positive orders to the contrary had been received from the Court of Directors. Moreover, the Supreme Government was to be kept continuously informed of the proceedings and acts of the other two Governments.

12. S. 41, Ibid.
The centralisation which began in 1773 reached its culmination in the Government of India Act, 1833. The Governor-General of Bengal was renamed the Governor-General of India. All powers of superintendence and control over the whole field of civil and military administration of all the territories and revenues were vested in the Governor-General in Council. The independent legislative powers of the other two Presidencies, i.e., the Presidencies of Madras and Bombay, were taken away and they were to enforce the laws made by the Central Government. On the 10th of December, 1834 the Court of Directors of the East India Company sent an important despatch to the Government of India, providing instructions necessitated by the changed character of the Government of India and in this despatch the Directors stressed the legislative supremacy of the Government of India. It was stated: "Hitherto you have been invested with executive powers of superintendence over the legislation of the subordinate Presidencies. But as those Presidencies have had the right of legislating for themselves, your superintendence has been exercised only on rare and particular occasions. Now their legislative functions, with a reserve for certain excepted cases, are to be subordinate to those of the Supreme Government. The whole responsibility rests on you ......." Not only in legislation but in finance also, the Government of India became the supreme controlling authority. The Presidency

15. Ibid.
Governments of Bombay and Madras could not create any new office, or grant any salary, gratuity or allowance without the previous sanction of the Governor-General in Council. The duties of the Presidency Governments to obey all orders of the Governor-General in Council and to keep the supreme government informed of their proceedings were reaffirmed in the Act of 1833. Thus the Government of India became the controlling authority in every respect and centralisation was complete under the Government of India Act, 1833.

The next important landmark in the constitutional development was the Government of India Act, 1858 which declared that the British Crown assumed full and direct responsibility in respect of the Government of India. The powers hitherto exercised by the Court of Directors and the Board of Control were transferred to one of Her Majesty's Principal Secretary of State, acting on behalf of the Crown. The Secretary of State for India was to be assisted by a council of fifteen members. He was endowed with the powers of overriding the Council in case of difference of opinion. The Governor-General in Council became responsible to the Secretary of State for India and through him to the Crown.

The defects of this extremely centralised system - disharmony, extravagance and irresponsibility - soon became obvious and an opposite trend was noticeable. As a learned writer puts it, "If one word could sum up the

20. S.68, Ibid.,
post - 1858 administration of the British in India it was 'decentralisation' ......' With the beginning of this process of decentralisation Legislative Councils began to grow in the Provinces. On June 6, 1861, Sir Charles Wood, the then Secretary of State for India, emphasised in the House of Commons in his introductory speech to the Bill which became the Indian Councils Act, 1861, the advantages of legislation being enacted by those who reside 'on and nearer the spot'. Therefore, he proposed to restore to the Presidencies of Madras and Bombay the power of passing laws and enactments on local subjects within their own territories. "It is obviously necessary," he observed, "that these bodies should not be empowered to legislate on subjects which I may call of Indian rather than of local importance. The Indian debt, the Customs of the country, the Army of India and other matters into the details of which it is not necessary that I should enter, belong to a class of subjects which the local Legislatures will be prohibited from entering upon without the sanction of the Governor-General." The Indian Councils Act, 1861 consequently restored the power of legislation to the Councils of Bombay and Madras. There was no allocation of subjects of legislation between the Centre and the Provinces. In certain cases mentioned in the said Act previous sanction of the Governor-General was necessary and all acts required his subsequent assent.

22. M.V. Pylee - India's Constitution at work, P.11.
The Governor-General was directed to establish a Legislative Council in Bengal. Subsequently, Legislative councils were established in other newly created Provinces.

In the direction of finance also, decentralisation of a limited character beginning from 1870 onwards was noticeable. The fiscal position of the Provinces was considerably improved by some amount of financial control being transferred to their hands. By the Resolution of December 14, 1870, associated with the name of Lord Mayo, the then Governor-General of India, certain heads of expenditure were transferred to Provincial control together with the revenues accruing therefrom; and provision was made for certain fixed grant also. Again in 1877, certain other heads of expenditure were transferred to the control of the Provincial Governments and also several heads of revenue. The Central Government was to receive half of any surplus realised in excess of the specified amount that these sources were estimated to yield and was to bear, correspondingly, half of any deficit. In 1882, during the Viceroyalty of Lord Ripon, the system of fixed grants being given to the Provinces was abolished and all sources of revenue were divided into three broad categories - Imperial, Provincial and Divided. Income from the Provincial heads was given wholly to the Provinces, while the revenue from the Divided heads was to be shared mostly in equal proportions between the Central and the Provincial Governments. This system gave some amount of fiscal certainty no doubt; but as has been truly observed, this financial system

'had nothing of federal character about it.' There was no statutory division of revenues. It was devised to tide over the administrative difficulties and was alterable at the pleasure of the Central Government. The supreme authority regarding the whole civil and military administration remained as before in the Governor-General in Council. The entire Governmental system was in theory one and indivisible.

This system remained undisturbed under the Indian Councils Act, 1909, though it considerably enlarged the size of the Central and Provincial Legislative Councils and added to their powers. The above-mentioned measure, associated with the names of Lord Morley, the Secretary of State for India, and Lord Minto, the Governor-General of India at the time, failed to satisfy Indian hopes and aspirations. The necessity of some constitutional change soon became obvious. On August 25, 1911, the Government of India sent a Despatch to the Secretary of State, which foreshadowed the introduction of Provincial Autonomy. The necessity of devolution of powers without impairment of the supreme authority of the Governor-General in Council was stressed in the Despatch; for it was certain that in the course of time the just demand of the Indians for a larger share in the Government of the Country would have to be satisfied. The Despatch stated that 'only possible solution of the difficulty would appear to be gradually to give the provinces a larger measure of self-government until at last

India would consist of a number of administrations, autonomous in all provincial affairs, with the Government of India above them all, and possessing powers to interfere in cases of misgovernment, but ordinarily restricting their functions on matters of Imperial Concern. It was further stated that in order to achieve this, it was essential that the seat of the Supreme Government was not to be associated with any particular Provincial authority. The removal of the seat of the Government of India from Calcutta to Delhi was therefore proposed, because it would materially facilitate the growth of local self-government. On December 12, 1911, a Durbar was held in Delhi which His Majesty King George V attended in person. At this Durbar it was announced, among other things, that the seat of the Central Government was to be transferred from Calcutta to Delhi and a Governorship was to be created for the Province of Bengal.

The idea of Provincial Autonomy was given a fuller expression in the Report on the Indian Constitutional Reforms, 1918, which is commonly known as the Montagu-Chelmsford Report. In this Report it was mentioned that the eventual future of India was to become, 'a sisterhood of States, self-governing in all matters of purely local or provincial interest.'

The Central Government was to preside over the States dealing with matters of common interest, both internal and external and was to act as an arbiter of inter-state relations. This Central Government, it added, would be more representative and more responsible to the people of India. It was open for the Indian States also to join this system. However, in one place there was a warning against the idea that this system implied a 'federation.' In paragraph 120 of the said Report it was laid down, "Granted the announcement of August 20, we cannot at the present time envisage its complete fulfilment in any form other than that of a congeries of self-governing Indian provinces associated for certain purposes under a responsible government of India; with possibly what are now the Native States of India finally embodied in the same whole, in some relation which we will not now attempt to define. For such an organisation the English language has no other word but 'federal.' But we are bound to point out that whatever may be the case with the Native States of the future, into the relation of provincial and central governments, the truly federal element does not and cannot enter." Thus according to Mr. Montagu and Lord Chelmsford, though it was possible for the Indian States to enter into a federal relationship with the Central Government, it was not possible to establish such a relationship with the British Indian Provinces. The reason shown in the Report was this: as the Government of India was at that time supreme, the Provincial Governments, no matter how much power they wielded, were actually 'agents' of the Central Government.
Large amount of powers might be given to them; yet that process was not federalisation but devolution or decentralisation. But this line of reasoning does not seem to be forceful enough. At that time, it was true, the Provincial Governments were the agents of the Central Government. But that did not mean that the position was unalterable for all time to come. The essential feature of federalism is the existence of two sets of government, each coordinate and independent of the other within the allotted sphere. But it is not necessary that this co-ordination and independence should come through the same process everywhere. There is no hard and fast rule that in order to form a federation small states everywhere must surrender some of their rights to a central government. And, as stated in the previous chapter, the opposite process is equally conceivable. If a central government can be created out of nothing by the surrender of some powers on the part of the small States, why is it impossible to create units independent within the sphere surrendered to them by the central government? Federalism implies a particular type of central-local relationship; whether it is achieved by this process or that does not necessarily count.

Subsequent constitutional reforms, based mainly upon the recommendations of the Report on Indian constitutional Reforms, 1918, was made in 1919. Under it, though the unitary form of government was retained, the Provinces were given a more distinguished status. According to Sir Fredrick Whyte, the Preamble to the Government of India Act was a 'fingerpost to federalism'.

33. Sir Fredrick Whyte - India A Federation, PP. 33-34
as in the fifth paragraph of the Preamble it was said,
'concurrently with the gradual development of self-
governing institutions in the Provinces of India it
is expedient to give to those Provinces in provincial
matters the largest measure of independence of the
Government of India, which is compatible with the due
discharge by the latter of its own responsibilities.'

Though theoretically the relation between the
Central Government and Provincial Governments did not
alter materially, the control of the Government of
India over the Provinces was substantially relaxed. The
distinguishing feature of the reforms of 1919 was the
provision for a clear division of functions between the
Central and Provincial Governments. S.45A of the
Government of India Act laid down that provision was to
be made by rules under the Act regarding the classifica-
tion of subjects and devolution of authority (in respect
of Provincial subjects) to the Provincial Governments.
Accordingly, Devolution Rules were framed by the
Government of India in which the actual classification
of functions was made. The Central Government was
invested with duties which are normally undertaken by
a federal government, such as defence, external affairs,
railways and other strategic communications, currency
and coinage, posts and telegraphs, civil and criminal
law and criminal procedure, commerce and certain other
All India functions not enumerated in the Provincial list.

The list of Provincial subjects included items
the most important of which were the maintenance of law
and order, the administration of justice and jails,
medical administration, public health, education, agriculture, irrigation, co-operation and local self-government.

Although the Scheme of allocation of functions between the Centre and the Provinces follows more closely a federal pattern, the Provinces were legally subordinate to the centre. The allocation of functions was settled in rules made by the Government of India; and in cases of doubt as to whether a matter did or did not relate to a Provincial subject the decision of the Governor-General in Council was to be final.

As regards legislation considerable amount of powers was given to the Provinces. S.80A of the Government of India Act empowered the Provincial Legislatures to make laws for the peace, order and good government of the Provinces subject to the provisions of the Act. Except in the cases mentioned in clause 3 of S.80A, the previous sanction of the Governor-General was not necessary in order to introduce a bill in the Provincial Legislature. Though the Devolution Rules made under the Act classified Central and Provincial subjects, for the purpose of distinguishing the functions of the Local Governments and Local Legislatures of Governors' Provinces from the functions of the Governor-General in Council and the Indian Legislature, the division was not

the division was made into watertight compartments. The jurisdiction of the Central and Provincial Legislatures were concurrent, though without the previous sanction of the Governor-General no Provincial Legislature could introduce a bill regulating a Central subject or a Provincial subject which was made subject to Indian legislation. This was also evident from S.15(2) of the Government of India Act, 1919 which provided: "Nothing in this Act, or in any rule made thereunder, shall be construed as diminishing in any respect the powers of the Indian legislature as laid down in Section sixty-five of the Principal Act, and the validity of any act of the Indian legislature or any local legislature shall not be open to question in any legal proceedings on the ground that the Act affects a provincial subject or a central subject as the case may be ...."

However, the provision for the reservation of certain types of bills passed by the Provincial Legislature for the consideration of the Governor-General by the Governor is worth mentioning. This constituted a serious limitation of the legislative powers of the Provinces. But granting all these, a large measure of devolution was undoubtedly effected.

Some important changes were introduced in the system of Provincial administration. The constitutional experiment that was made in the Provincial sphere was known as 'Dyarchy'. Under this system the Provincial

36. S.56A(3) and (f) of the Government of India Act.
administration was bifurcated into two halves. Certain Provincial subjects termed 'Reserved subjects' were kept under the charge of the Governor and his executive council. Other subjects, known as 'Transferred subjects' were placed under the control of Governor, acting on the advice of his ministers. The reserved half of the Provincial functions included the administration of justice, police, land revenue, prisons, irrigation, famine relief, etc. Among the important transferred subjects were to be mentioned local self-government, education, public health and medical services. As regards the administration of the reserved half, the Governor and his executive Council were under the control of the Government of India and the Secretary of State. The ministers who were in charge of the transferred half were responsible to the Provincial Legislative Councils.

It was accepted that there were several subjects regarding which the Provinces were to be given some amount of autonomy. The Joint Select Committee on the Government of India Bill, 1919 suggested that in the case of the transferred subjects the control of the Governor-General in council and thus of the Secretary of State was to be restricted 'within the narrowest possible limits.' So the control of the Government of India regarding the transferred subjects was limited to a few cases mentioned in the Devolution Rules. The Governor, thus, was normally

required to act on the advice of the ministers as regards these subjects. Thus it is that relations of a federal character as between the Centre and the Provinces entered practically, (though not in theory) into the constitutional set-up so far as the transferred departments were concerned.

As regards finance also, the Provinces were given almost an autonomous position. The Central and Provincial heads of revenue were clearly distinguished for the first time. The system of divided heads, i.e., the system of sharing revenue from the same sources by both the Centre and the Provinces was abolished. The Provincial budgets were to be separated from the Central budget, while before the reforms of 1919, they were used to be included in the budget of the Government of India. Powers of the Provincial Governments were enlarged by removing the necessity of taking previous sanction of the Governor-General for bills regarding certain scheduled taxes. The Provinces were endowed with borrowing powers for the first time, although getting previous sanction of the Governor-General in Council for raising any loan was laid down as a requirement.

Thus, though the Provinces were vested with a devolved and not an original authority, they were provided with new fields to work upon in every respect. The Act of 1919 was actually a 'half way house' in the transition from a unitary state to a federal one, although the distance was not measurable at the time.