Chapter One

THE NATURE AND CONTROL OF FOREIGN RELATIONS DURING THE BRITISH PERIOD
When the national government replaced the British administration in India in 1947 it had inherited a large and well-knit administrative machinery which could perform most of the traditional functions of internal administration. But, during the colonial years India had not enjoyed any real independent international status and the Government of India had not regularly performed the function of formulating and executing a foreign policy of its own. India's 'foreign relations' during these years were wholly controlled and directed and mostly conducted by London. This was largely true of even the period of Company administration before the Crown took over the direct administration of the country in 1858. Still, during these years the nucleus of a foreign service organization was being slowly built up within the Indian administration within the scheme of its narrowly local and limited foreign policy functions. A separate Department of External Affairs, a few missions and posts in the neighbouring Asiatic countries and a specialized service for 'foreign' work were evolved during these years. They were primarily engaged in implementing aspects of British foreign policy in relation
to the defence of India, questions of emigration and treatment of Indians in certain British colonies and Dominions and certain matters relating to Indian commerce abroad. These institutions might be considered as the precursors of the present organization for the conduct of foreign affairs in India.
II

Nature of Foreign Relations

The nature of the 'foreign relations' of the Government of India from the early 17th century when the English merchants came as traders to this country till the transfer of power in the middle of the 20th century may be conveniently studied under six main heads:

(i) with the early foreign powers in India like the Portuguese, the Dutch and the French;
(ii) with the Mughal Emperor;
(iii) with the numerous Indian States on the sub-continent;
(iv) with the neighbouring states on the proximity of India like Afghanistan, Persia, the Persian Gulf, Tibet, Ava etc.;
(v) with the Dominions and other parts of the British Empire; and
(vi) with international organizations and conferences.

(i) With the early foreign powers: The early English traders in the country had to compete with similar traders from certain other European powers in attempting to develop their trading interests in this country. These were the Portuguese who had come first to the shores of India followed by the Dutch and the French. Within the country, they engaged themselves in conducting wars and concluding treaties and taking sides in the disputes among the big and small kings, nawabs and chieftains in the country. In the words of Sir Alfred Lyall, "the extent to which unofficial war was practised from the sixteenth to the eighteenth
century by the nations of Europe is perhaps hardly appreciated in this age of international law and ubiquitous diplomacy." (1) There was very little permanent about the patterns of power relations among them, these being determined largely by the vicissitudes of European diplomacy and the exigencies of the situation in India. (2) British power was firmly established in India by about the middle of the 19th century when all major challenges to their authority within the sub-continent from European or Indian powers had been largely overcome. During these years, British diplomacy in India was concerned with defending the security of the sub-continent from possible invasions from the north-west and the north-east by the French and from the north by the Russians. These considerations led to a good deal of diplomatic activity in London, Paris and St. Petersburgh. They resulted in the expansion of British-Indian diplomacy towards the limitrophe countries of India. (3)

(ii) With the Mughal Emperors in Delhi: At the time of the arrival of the English traders in India at the beginning of the 17th century the great Mughal Empire had reached the peak of its glory. It held sway over nearly the whole of the sub-continent. Numerous attempts were made by the English to open up relations with the Emperor in Delhi during these years.


(2) For details see, ibid., 35.

(3) This is discussed in detail below.
English missionaries worked at the Mughal court almost like Ambassadors. However, the most celebrated of such early attempts was the Embassy of Sir Thomas Roe at the Mughal Court from 1615 to 1619. (4) In course of time, the British were able to get large concessions from the Emperor. The grant of Diwani from the Emperor in 1765 came in the wake of the decline of the Empire, but it was a turning point in the development of British sovereignty in India. It regularised the position of the Company in Bengal. As Professor Dodwell says, "...the farmans of the emperor or parwanas of the nawab, though valueless without the support of English power, could not be fully discounted at Paris or the Hague without a serious breach of diplomatic etiquette." (5) From about the third quarter of the 18th century, for all practical purposes, the Company ignored the Emperor as suzerain. Lord Moira (1813-23) and later Governors-General were even reluctant to concede all the ceremonies and courtesies to the Mughal Court as they regarded that "nothing has kept up the floating notion of a duty owed to the imperial family but our

(4) H. H. Dodwell, ed., Cambridge History of India (Delhi, 1956) V, 77.

(5) Ibid., 176.

According to Sir Courtney Ilbert, British authority in India was derived from a two-fold source: the British Crown through a series of Charters and the Great Mughal Empire and the Indian rulers of the time. / Sir Courtney Ilbert, The Government of India (Oxford, 1907) 1._/
gratuitous and persevering exhibition of their pretentions." (6)
This suggestion was, at first, turned down by the Court of Directors. In 1857, it was decided that the imperial title should no longer be recognized after the death of the then Emperor Bahadur Shah II. After the outbreak of the 'Sepoy Mutiny' next year, the Emperor was tried for complicity in the Mutiny and was exiled to Rangoon where he died. A gradual change in the form and nature of the relations between the Mughal Emperor and the Government of India may thus be noted as the fortunes of the two came to be reversed. With the decline of the Mughal Emperors the need for maintaining any diplomatic relations with them disappeared.

(iii) With the Indian States: A similar change in the nature of relations may be noticed in the case of the British Government in India and the Indian States. The English acquired trading facilities and privileges on the basis of grants from the local rulers or from the Emperor at Delhi. The first territorial authority which the East India Company acquired in India was obtained from the Hindu prince of Wandiwash in 1639. (7) The first treaty signed by the Company with an Indian Prince was the Treaty of Anjengo with the Rajah of Travancore in 1723.


In 1771, the annual tribute to the Emperor had been stopped by Warren Hastings, Governor General when the former had moved under the protection of the Mahrattas.

(7) Cambridge History of India, n. 4, V, 589.
It was a treaty of mutual friendship and reciprocal obligations. (8) This was true of other states also. As Lee Warner has said, "In accordance with the principles of international law it (Company) treated its allies (the Indian States) as if they were independent States." (9) But with changes in the fortunes of the Company in India, the nature of their relationship with the various Indian States also underwent changes. Subsequent treaties with Indian States, as with Hyderabad in 1759 or with Oudh in 1765 indicated the trends of these changing relations. They imposed definite limitations on the sovereignty of these States and required them to maintain subsidiary forces. (10) But even now, there were still a few states which could legitimately call themselves sovereign. K. M. Panikkar says, "That at the end of the eighteenth century and the beginning of the nineteenth, the chief Indian states like the Mahrattas and the Nizam, were even in the strictest sense independent sovereigns, could not be questioned." (11) With the Governor-Generalship of Lord Wellesley


(11) Panikkar, n. 8, 7. Mr. K. M. Panikkar is of the opinion that throughout this period, the principles of international law were not applied to the intercourse between European and Asian Powers. (K. M. Panikkar, Asia and Western Dominance (London, 1954) 42.) A different view has been expounded by Professor Alexandrowicz. (C. H. Alexandrowicz, "Treaty and Diplomatic Relations between European and South Asian Powers in the Seventeenth and Eighteenth Centuries" in Academie de Droit International, Recueil Des Cours 1960 (Leyden, 1961) II, 207-316.
(1798-1805) "the earlier system of treating the states as if they stood on an equal footing ... was finally abandoned; and political, as well as military supremacy (of the Company) was specifically recognised." (12) He followed the policy of subsidiary alliances, under which new treaties were concluded with the states. The policy of subsidiary alliance was followed by a 'period of subordinate isolation' from 1813 to 1857. (13) Under Marquess of Hastings, "treaties of mutual amity, friendly co-operation and reciprocal obligations were replaced by treaties of subordinate co-operation, allegiance and loyalty." (14) The policy now was, as Hastings himself recorded it, "to render the British Government paramount in effect, if not declaredly so." The British Government in India were to seek to "hold the other states as vassals in substance, though not in name." (15) This policy found its culmination during the Governor-Generalship of Lord Dalhousie (1848-1856). On the assumption of direct responsibility by the Crown for the administration of India, "the Crown was now in India what the (Mughal) Emperor once had been, a complete sovereign power predominant over all others and claiming allegiance." (16)

The nature of the relationship between the Crown and the British Government in India on the one hand and the Indian States


(13) Lee Warner, n. 9 7 Chapter IV.

(14) Raghubir Singh, Indian States and the new regime (Sitamau, 1937) 18.

(15) Cited in ibid., 22.

on the other was derived from various sources. As Lee Warner has said,

The sources from which the rules or principles that govern British relations with the Native States can be drawn, are first of all the Treaties, Engagements, and Sanads, entered into with them; secondly, the decisions passed from time to time by the paramount power in matters of succession, intervention, or of dispute with their rulers; and thirdly, the custom or usage, constantly adapting itself to the growth of society, which may be observed in their intercourse. (17)

Definite treaty relations existed only with one eighth of the 600 and odd states at the time; but the remaining seven-eights were in the same effective position as the others; "they lay under the shadow of their great neighbour, and carried out such orders as might receive from it." (18) Besides treaties, the form of these relations was also determined by what came to be called as 'political practice.' K. M. Panikkar has described this political practice as a curious combination of usage, executive decisions, and temporary expedients which in course of time acquired sanctity in the eyes of political officers." (19)

(17) Lee Warner, n. 9, 30.

(18) Cambridge History of India (Delhi, 1958) VI, 489.

(19) K. M. Panikkar, n. 8, 115-6.

Sir Charles Lewis Tupper who was a political officer in the Government of India had been specially deputed by the Government of India to make an enquiry into the relationship of Indian States with the government. On his report the Government issued a handbook which was to be treated as the Secret Political Law of India. /C. L. Tupper, Our Indian Protectorate (Calcutta, 1893)./7 "The political law that was developed," Panikkar says "was a curious amalgam of imperial ukases (styled 'Resolutions'), usage evolved in certain states and applied uniformly to all, sufferance, precedents of decision and claims of paramountcy contained in official pronouncements."
With the establishment of British paramountcy the states ceased to possess any international existence. Their foreign relations were entirely in British hands. The paramount power acted for them in foreign relations. They could not receive even a commercial agent of a foreign power at his title. Commercial treaties were arranged for them by the paramount power. They were not allowed to accept titles or honours from any foreign country or body. Their subjects were issued British passports and were given protection as British subjects in foreign countries. The paramount power acted in all cases involving their foreign interests. The external boundaries of these states were not international boundaries, unless it was a frontier or maritime state in which case it was regarded as a British frontier for international purposes. They were to refer to the paramount power all disputes and correspondence with each other. The British Government had special jurisdiction in them in respect of British subjects and foreigners and cantonments. The British Government in India also took a certain measure of interest in their internal affairs, interfering for regulating succession, or in the interests of 'good government.' These states were also involved in common defence arrangements with the British Government and were subjected to restrictions on the manufacture of arms, the strength of armed force and policy they maintained etc. Questions of salute, precedence and other ceremonies were determined by the paramount power. (20)

(20) For details, see Lee Warner, n. 9, 254-78.
With the decline of the states into subsidiary relationship with the British there was obviously no scope for any kind of 'foreign relations' between the two. (21) As Professor Dodwell has maintained, the form of relations between the Company and Indian States "seem to follow the international practice of Europe, but in substance they follow much more closely the lines of constitutional development." (22) There was not even the shadow of a doubt regarding the nature of these relations from the 19th century onwards. In the official vocabulary these relations came to be described by the term 'political,' as different from 'foreign.' The Department in the Government of India which looked after these relations was also designated as the Political Department, and the officers engaged in this work, the Political Officers. (23)

(iv) With the limitrophe countries: The Charter granted by Queen Elizabeth to the East India Company on 31 December 1600 had 'ordered, made, ordained, constituted, established and declared' the granting of rights "by way of traffic and merchandize to the East Indies, in the countries and parts of Asia, and Africa and

(21) Perhaps, alone among the numerous Indian States Baroda alone had a foreign minister, but his duties were primarily concerned with the relations with the Government of India and with no foreign power whatsoever. During the earlier years, a number of Indian chieftains and states had also appointed Vakils or Agents at the seat of the Company. On the practice of exchange of envoys see Alexandrowicz, n. 11, 302-4.

(22) Dodwell, Cambridge History of India, n. 12, VI, 490.

(23) The organization of the Political Department and the Political Service are discussed in subsequent chapter.
to as many of the islands, ports and cities, towns and places, thereabouts, as where trade and traffic may by all likelihood be discovered, established or had." (24) In other words, the Charter had defined the jurisdiction of the Company not only over the whole of India, but also over the whole of the east. Numerous examples can be given of such territorial acquisitions by the Central and Local Governments during these years, like the acquisition of Ceylon in the first decades of the 19th century, the possession of St. Helena from 1658 to 1671 and again from 1673 to 1834, Lord Wellesley's projects about Mauritius and Batavia and the despatch of Indian forces to Cairo in 1800, the acquisition of Singapore in 1819 and the direct administration of the Straits Settlements till 1867 and the like. Active foreign relations were maintained with states and chieftains in Arabia, the Persian Gulf Area Aden, Persia, Afghanistan, Tibet, Western China and Siam. (25) In short, a very wide conception was "entertained by the Governors-General of Indian responsibilities and foreign interests." (26)

At the end of the 18th and the beginning of the 19th centuries, a new emphasis in the foreign relations of India appeared. This was largely the consequence of certain developments in the relations between Britain and certain other European powers.

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(25) For more details see, Cambridge History of India, V, 400-8; Imperial Gazetteer of India (Oxford, 1909) IV, 104-7 et

(26) Imperial Gazetteer of India, n. 25, IV, 106.
It was the period of the Napoleonic Wars in Europe. There was fear in London and Calcutta about the possibilities of an expanding French imperialism from the east or the West of India and of the Russian imperialism from the north. Bisheshwar Prasad says:

To preserve the territorial integrity of the British empire in India and to maintain its stability against their (the French and Russians) yawning aggression, came to be the basic elements in the foreign policy of the Government of India. It provided the primary incentive for contact with neighbouring oriental states and continued to be the determining factor for British Indian policy throughout the nineteenth century. (27)

This policy was based on "the notion that within the arc comprehending Suez, Pamir and Singapore, no other European power should be permitted to interpose her influence or acquire territorial possessions." (28) This policy continued throughout the 19th and early part of 20th centuries. Sir Alfred Lyall wrote in 1896,

The foreign relations of India are regulated by a kind of uncertain Monroe doctrine. I mean that we maintain over all the countries immediately adjacent the policy of allowing no intervention by other European nations, and the predominance of no influence except our own.


The diplomatic line defining the international cordon round India stretched from Gwetar Bay, in the Gulf of Oman, to the Mekong River near latitude 20°N. and longitude 101°E. Its extreme point on the north is Povalo Schveikovsk on the Tangdum bash Pamir, a little north of 37°N., while its southern limit is Victoria Point (below 10°N.) in the Mergui District of Burma. Within this area lay an area estimated at more than 1,800,000 sq. miles, inhabited by about 300 million people. / Imperial Gazetteer of India, n. 25, IV, 58./
It is this necessary attitude that gives us incessant occupation abroad in Asia and brings us into continual contact or collision with European rivals. (29).

French diplomatic activity in Persia at the time of the Persian War with Russia in the early years of the 19th century, and the fear of some secret negotiations by them with the Mahrattas instilled in the British Government a very sudden consciousness of the insecurity of the land frontiers of the sub-continent on the east and west. In the same way, Russian activities in Persia and in the Central Asian territories beyond the northern borders of India gave rise to similar apprehensions about the northern frontiers. The defence of India during the 18th century had been sought to be assured through supremacy at sea, but these developments gave rise to a new consciousness of the importance of the land frontiers. Thus it was that during the 19th and 20th centuries, Indian foreign relations "entered upon that range of diplomatic observation in which all the countries of Western Asia, from Kabul to Constantinople are surveyed as interposing barriers between Europe and the Indian possessions." (30) Soon this was also to cover the southern provinces of Tibet, Burma and Malaya.

The consequences of this policy in terms of the diplomatic activities of the Government of India could be seen in the missions of John Malcolm to Persia, of Baird to the Red Sea and of Syme to Ava in the early years of the 19th century. Treaties were concluded


(30) Lyall, n. 1, 280.
with Persia, the Persian Gulf chieftains, Kashgar and Yarkand. There were military missions or expeditions to Afghanistan, Nepal, Kashgar and Burma. There was also the annexation of the Punjab, the Sind, Chitral etc. and later Burma. There was the extension of protectorate over Bhutan, Sikkim, the chieftains of Baluchistan etc. British missions were set up in the capitals of these neighbouring states. The Persian Gulf thus became nearly a British sea. For long in the 19th century Aden and the Straits Settlement were directly administered by the Government of India.

(v) With the Dominions and the Colonies: The development of self-government was a slower process in India than in some of the other colonies of Britain. By about the time of World War I, Australia, Canada, New Zealand and South Africa had more or less attained the status of self-governing colonies, though it still required some more time before they began to exercise their full sovereignty in external affairs. During these years, India had continued to remain a crown colony. The beginnings of change were, however, visible during the years of the first World War. The Imperial Conference of 1917 modified an earlier resolution "to permit India being fully represented at future Imperial Conferences."

The Conference gave full recognition of the Dominions as "autonomous nations of an Imperial Commonwealth" and of India as "an important part of the same." (32) India's political status was far below that of a self-governing Dominion at this time, but this new attitude was, as Hancock says, a "payment in advance which India

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had earned by her extraordinary services" to the British Empire in the war. (32) India was represented at the 1917, 1921, 1923 and 1926 Imperial Conferences. The Balfour Report of 1926 did not recognize for India that equality of status with Great Britain which it did in the case of the Dominions. Yet India continued to be represented at the Ottawa Conference of 1932, the Imperial Conference of 1937 and the Commonwealth Prime Ministers' Conference of 1944, though in the final communiqué of the 1944 conference India's name did not appear as a signatory. (33)

During the pre-independence years there were two outstanding issues which continuously brought India into contact with the Empire and the Dominions and necessitated some independent action by the Government of India. These related to the treatment of emigrant Indians and their descendants in the British colonies and Dominions. The latter referred to the sterling area and Imperial Preference. Regarding the emigration of Indians, Australia and Canada had brought in legislation as early as 1901 and 1920 respectively, and India in 1916 and 1920. (34) The 1917 and 1918 Imperial Conferences recognized the right of India and the Dominions to regulate immigration at pleasure. (35) As Keith

(32) Ibid., 169.
(33) Ibid., 263.
(35) This was the famous Reciprocity resolution. See Cd. 9177 and A. B. Keith, Speeches and Documents on the British Dominions 1918-1931 (London, 1948) II, 9-10. See also Hancock, n. 31, chapter IV.
has pointed out, the conflicting character of the interests of India and other Dominions in this matter had made it necessary for Britain to allow India to stand out as an autonomous unit of the Commonwealth in this regard, if Britain was to be spared of the embarrassment of contending with the Dominions on behalf of India. (36) Thus it was that the Government of India Act, 1919 made a subtle distinction between External Affairs and Dominion Relations. Regarding the former, the Governor-General was to act in his discretion, while in the case of the latter he acted as Governor-General-in-Council, advised by the Member for Commonwealth Relations in the Executive Council. The Government of India was now granted "the privilege of direct negotiation and correspondence with the governments of self-governing Dominions subject to certain limitations: direct communications on matters of facts or of Indian interest or of information; and direct negotiations with all Dominion Governments regarding emigration of Indian labourers; and with South Africa, regarding the position of Indians there through an Agent to be appointed to watch over Indian interests and other representatives. But no representation as to the proposals of a Dominion Government could actually be made except in consultation with the Secretary of State. (37) at Following an informal suggestion made at the 1921 Imperial Conference the Government of India decided to send Mr. V. S. Srinivasa Sastri

(36) Keith, n. 16, 11.

on a mission to the Dominions. His mission was concluded in
1922, though his visit did not cover the Union of South Africa. (38)

In the same way, in defining the economic relations with
the Empire and the Dominions the Government of India was given
a limited amount of independence. The British Office had always
to be kept under constant consultation regarding negotiations of
commercial agreements. (39) For example, India's commercial
conventions with Japan and Greece had been negotiated on behalf
of the Government of India by the Foreign Office. (40) But the
Joint Select Committee on the Government of India Bill recommended
in 1934 that India should have the right to negotiation on
immigration and tariff arrangements with the rest of the
Empire. (41) India had also been represented at the Imperial
Economic Conferences of 1923 and 1932. In consonance with the
decisions of the Imperial Conference of 1926 and the Report of
the Lapointe Sub-Committee appointed by this Conference all
commercial treaties to be signed by the British Government were
to contain a clause enabling the Dominions and India to adhere
to them at this option. (42) An organization for the overseas

(38) For details of this mission see India in 1922-23:
A statement prepared for presentation to Parliament, Great Britain
(London, 1923) 7-11.


(40) Government of India's Memorandum to the Indian
Statutory Commission, n. 37, 1337.

(41) Report of the Joint Select Committee on Constitutional

representation of India in the Dominions, was also developed during this period, though this was not of a specific diplomatic character. (43)

(vi) **International Conferences and Organizations:** A most significant change that took place in the development of international relations by India during the pre-independence years was the membership of the country in international organizations and its participation at international conferences. India had appended its signature to the Paris Peace Treaty as if it were an independent nation. India and the Dominions had together been grouped under the British Empire though unlike the Dominions India did not enjoy self-government. India was also an original member of the League of Nations and had the right of one vote and separate representation by its delegates at its Assembly Sessions. By virtue of its League membership India could also assume the same status as other nations vis-a-vis the Permanent Court of International Justice and the International Labour Office. At its 16th Session in 1932, India was given a permanent seat on the Governing Body of the I.L.O. The Indian delegate was also elected as the Chairman of the I.L.O. Conference in 1932. (44)

But at the same time there were obvious difficulties in applying to India — for that matter, even to the Dominions —

(43) For details see Chapter II.

the full terms of the Covenant. India could not be considered eligible to exercise independently the sanctions clause of the League Covenant. (45) Article X of the League Covenant talked of the 'existing political independence of all Members of the League,' and this was certainly inapplicable to the country. (46) When questions concerning the sovereignty of nations and peoples, as for example the question of the minorities in Central Europe, were being discussed at Assembly Sessions, the Indian delegation could not dare to raise similar questions of sovereignty with reference to India. Problems relating to India's self-government were kept out of the jurisdiction of the Permanent Court, since the Instrument of Ratification of the Optional Clause of the Permanent Court of International Justice stated specifically that disputes between the Government of India and the Government of any other member of the League which is a member of the British Commonwealth of Nations shall be outside the jurisdiction of the Court.

India was also a member of the International Labour Organization and was later even elected as a permanent member of its Governing Body. Besides these, India also participated in a large number of international conferences of a non-political character. During and after World War I India participated in

(45) Article X of the Covenant of the League ran as follows:

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

(46) See the previous footnote for the text of the Article.
the numerous conferences dealing with the birth of the United Nations. Such for example, was the Indian representation at the San Francisco Conference of 1945. When the UN came into existence India was accepted as an original member of the same.

The opening up of relations with the neighbouring countries in Asia, the enhanced role in Imperial relations and the membership of and participation in international organizations and conferences gave some opportunity to India to get experience of international relations. But the scope and nature of these foreign relations were very limited. They were, in no sense, 'foreign relations' as exercised by an independent nation. They were, as far as possible, limited to non-political matters. The advantages that could have been derived in the form of an experience of international relations were offset to a considerable extent on account of this.
III

Control of Foreign Relations

During the entire period of British administration of India, the ultimate control of administration had always been with the authorities in London. But at the same time, due to reasons of distance from London, the Government of India had also come to enjoy large areas of discretion. The increasing control of the Government of India by Parliament and Crown and the improvement in the means of communication between London and India, however, tended to reduce the scope of this discretion.

During the trading period, between 1600 and 1765, the authorities of the East India Company in India enjoyed considerable autonomy from their authorities in London. (47) This was true of the field of foreign relations in particular. Though broadly in tune with the shifts and changes in European politics, they conducted wars and concluded treaties with their European rivals exercising a large measure of independence and autonomy. This autonomy was greater in the conduct of their relations with the Indian powers - the Mughal Emperor at Delhi and the nawabs and chieftains in other parts of India. Within India itself, British power came to be gradually consolidated in three centres - Bengal, Bombay and Madras. The Governors of the three Forts enjoyed almost virtual independence from each other within their

(47) Sir Courtney Ilbert has divided the development of British power in India into three periods: (1) the trading period from 1600 to 1765, (2) the second period from 1765 to 1858 when the Company became territorial sovereigns and (3) the period after 1858 when the Crown took over the administration of India. Ilbert, n. 5, 1.
respective geographical limits. The final co-ordination of their policies was effected by the Court of Directors in London. But this situation had led to much confusion as communications between London and India took anything between 6 months to one year.

Three distinct trends in the conduct of foreign relations may be traced during the later years, from 1765-1858, when the Company acquired large territorial possessions in India. Firstly, the territorial sovereignty of the Company was being shared in diminishing proportions with the Crown. Secondly, there was increasing control of the local authorities in India from London. Thirdly, there was a gradual centralization of power for the conduct of foreign relations in India by the Governor General in Calcutta vis-a-vis the Local Governments at Bombay and Madras.

From the very beginning there had been little doubt regarding the potential powers of the Crown regarding the control of the overseas possessions of the subjects. As noted above, the development of British sovereignty in India had been derived partly from the Charters of the Crown. The early Charters granted to the Company by the Crown had given it full powers of making war and peace. This had implied that the Crown was the reservoir of all powers which had only been delegated to the Company under the Charter. (48) The three distinct trends

(48) For example see the Charters of 1661, 1668, 1683 and 1758. The Charter of 1683 explicitly stated that the Crown reserved to itself "the sovereign rights, powers and dominion over all the forts and places of habitation and of 'the power of making peace and war, when we shall be pleased to interpose our royal authority thereon.'" For details see, Ilbert, n. 5, 16-19; Keith, n. 16, 11.
indicated above were expressed in a series of parliamentary enactments in Britain.

By the Regulating Act of 1773, Parliament demonstrated its right to intervene with definite authority in the affairs of the Company in India. (49) The Regulating Act was important in a further respect in that it tried to co-ordinate the activities of the various local governments in India through the centralising power of the Governor-General in Calcutta. The more or less autonomous powers of the local governments in their mutual relations had led to much confusion through unco-ordinated policies and activities of these various authorities, a situation which was pointed out by Warren Hastings to the Company's authorities in London. (50) The Regulating Act provided for a general centralization of powers regarding the making of war and peace with the Governor-General in Council in Calcutta, which functioned under directions from the Court of Directors of the Company in London. The Pitt's India Act of 1784 provided for a Secret Committee of the Court of Directors, consisting in practice of the Chairman and Deputy Chairman, to be in special charge of the more important aspects of the foreign relations of the Company in India. The Act also strengthened the position of the Governor-General in relation to the Governors of Bombay and Madras. (51) While, therefore, in the opening stages of its

(49) For text of the Act see, A. C. Banerjee, ed., Indian Constitutional Documents (Calcutta, 1945) I, 15-23.

(50) Letter to the Court of Directors dated 11 November 1773, ibid., 13. See also Keith, n. 16, 78-82.

(51) Banerjee, n. 49, I, 16-17 and 55-73.
operations in India the Company was represented by one of the Governors (Madras, Bombay or Calcutta), with the creation of the Supreme organ of the Governor-General the latter became the agency authorizing the conclusion of treaties. (52)

Control from London however remained incomplete due to factors of distance. It took nearly six to eight months for a letter from London to reach India so that much had to be left to the initiative and discretion of the authorities in India. The very enlarged conception which the Governors-General of India had regarding their power in this sphere may be noted from the actions of the Marquis of Wellesley (1798-1805) in India. He had regarded his duties "as exercising the executive authority of the government of the British possessions in India" which he considered to be related to the conduct of the relations between the British power in India and the Foreign States and as connected with the internal government of the British possessions. (53) He thought that "no check can be imposed on the Governor-General in Council in the exercise of this authority in the regulation of our connection with the foreign states of India." (54) The "considerable confusion in the field of diplomacy simultaneously occupied by different authorities distant from each other" was evidenced in the simultaneous appointments of two envoys to Teheran in 1812 by the authorities in Calcutta and London.

(52) Alexandrowicz, n. 11, 293.

(53) Wellesley to the Court of Directors dated 9 July 1800, Banerjee, n. 49, I, 137.

(54) Ibid., 130.
While the London envoy went on conducting peaceful negotiations for a treaty, a military expedition was on the move to Teheran on orders from Calcutta. The confusion was settled only when a third envoy with greater powers than the earlier two arrived from London and concluded a definite treaty. (55) Some of these difficulties were being sought to be removed by the parliamentary enactments of 1793, 1813, 1833 etc. (56) Speaking in Parliament on the Charter Act of 1853, Sir Charles Wood, the President of the Board of Control of the Company, observed that the responsibility for foreign policy lay exclusively with the President of the Board of Control of the Company in London, and through him with the Cabinet. (57) But the power and authority of the Governor-General was still considerable in practice. As Dodwell has written:

The war in Sind, the war with Sindhia, the war with Burma, the war with Sikhs, were begun, conducted and concluded on the responsibility of the Governor-General of the day. So that the field in which the authority of the Board was uncontested was also that in which its authority could be least exercised. (58)

The control exercised by the Supreme Government in India over the Local Governments in the field of diplomacy became increasingly well established was also on account of the territorial

(55) Imperial Gazetteer of India, n. 25, IV, 105.
For more details on this expedition see P. N. Kirpal, The East India Company and Persia 1800-1810 (Punjab University Historical Society Monograph); Aitchison, n. 25, XII, 7-9.

(57) Cited in Cambridge History of India, n. 18, VI, 14.
(58) Ibid., 15.
consolidation of India under British power and the development of better means of communication. Lord William Bentinck, Governor-General of India (1828-36), writing in 1831 had complained of the "total inadequacy of the government stationed at Calcutta to control and superintend the administration of the Western Provinces" and stated that "this control has been rather nominal than real." But, at the same time, he said that in matters relating to the "general measures of government, to political negotiations, to the making of treaties, to the declaration of war, to great financial arrangements, and latterly to the confirmation of all regulations," there has been some degree of control of the Supreme Government over the Provinces. (59) Two years later, in a dispatch on the Charter Act of 1833 the Court of Directors stated that the powers for 'the regulation and management of external relations' should be with the Supreme Government. It said:

With respect to the great questions of peace and war, there is no room for deliberation. It is very obvious they should be determined wholly by the Superintending Government which alone has under its eye the whole of the relations of the state. We think indeed that the diplomatic interests of the state will be placed with most advantage entirely in the hands of the Supreme Government. (60)

At the same time, it was conceded that in exceptional cases the supervision of a particular Residency or the conduct of a particular negotiation could be delegated to the Local Government. (61) In spite of


(60) Dispatch from the Court of Directors to the Government of India dated 10 December 1834, Banerjee, n. 49, I, 225.

(61) Ibid., 225-6.
the clear definition of powers between the Supreme and Local Governments, difficulties were experienced occasionally. Even as late as 1854, at the time of the Crimean War, Lord Dalhousie protested to the Court of Directors against the issue of direct orders by them to the Governor of Bombay to despatch troops and supply funds to Turkish Arabia. (62) Here again, as noted above, the development of the means of communications was a factor of decisive importance in the assumption of complete control in matters of foreign relations by the Supreme Government over the Local Governments.

The Government of India Act 1858 transferred the administration of the Government of India from the Company to the Crown. (63) The Secretary of State for India, heading the India Office in London, was a member of Her Majesty's Government in London, responsible for Indian affairs to the British Parliament. Matters relating to the making of war and peace, negotiating with foreign powers, relations with the Indian States etc. were performed by him through the Governor-General, and other matters dealing with internal administration through the Governor General-in-Council. The India Office had a Political Department which looked after foreign relations in consultation with the Foreign Office.

Improvement of communications between India and Britain was an important factor for the increasing control from Britain.

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(62) Imperial Gazetteer of India, n. 25, IV, 105.
(63) For text see, Banerjee, n. 49, I, 262-73.
The Red Sea cable was laid in 1870 enabling quick contacts between London and Bombay. Earlier, as Dodwell has observed, "foreign policy had been the matter in which the governor-general had enjoyed a greater liberty of action than in other branches of administration." (64) The exigencies of foreign relations which did not often permit prior consultation with London on account of paucity of time had left the Governor-General with much initiative and had enabled him to face London with fait accompli. "Telegraph and cable invested the distant incidents with a growing influence upon European politics and at the same time permitted European cabinets to control action which in the past had depended on the discretion of local governors." (65) The tremendous difference in the degree of control exercised from London can be noticed from the ways in which the Marquis of Wellesley (1798-1805) and Lord Curzon (1899-1905) conducted foreign relations in India. Both were vigorous men and both sought to pursue active policies in India. But while Wellesley had very largely succeeded in doing so, Curzon could not. In 1876, Lord Northbrook had to resign his Governor Generalship after differences of opinion had developed between him and Lord Salisbury, the Secretary of State for India in London. (66) Improvement of the means of communications,

(64) Dodwell, n. 18, VI, 403. See also H. H. Dodwell, India (Bristol, 1936) II, 176-9.

(65) Cambridge History of India, n. 18, VI, 403.

(66) Ibid.
as well as other things, had "curtailed enormously the power of the Indian Government and rapidly transferred the effective control of foreign policy to London with the result that at the close of this period it had become possible to contemplate an entente with Russia with little concern for Indian views." (67)

By the latter half of the 19th century, therefore, control of foreign relations had passed completely into the hands of the Secretary of State for India, and of the British Foreign Office in London. This was conclusively proved during the Viceroyalty of Lord Curzon. On the question of Tibet, Afghanistan, Persian Gulf etc. the Government of India could act with little freedom and the policies carried out were invariably those formulated in London. (68) At best, the Government of India could only hope to bring pressure on the India Office and thereby on the British Government. This was what Lord Morley, Secretary of State for India (1905-1915) meant when he wrote in 1907 from the India House, "The plain truth is that this country cannot have two foreign policies." (69) The Governor-General was simply one of the agents for carrying out British foreign policy in the limitrophe countries of India. What gave him additional importance was that this foreign policy was mostly formulated with an eye on the security of the British possession of India. On questions of making war and peace, the actual position of the Government of India may be realized from the fact that

(67) Keith, n. 16, 192.

(68) For details see, Cambridge History of India, n. 18, VI, 427-8.

(69) Lord Morley, Recollections (London, 1907) 179.
neither in 1914 nor in 1939 was it considered necessary for India to make a special declaration of war. (70) The power to make peace is a prerogative of the Crown, so that though India was made a signatory to the Paris Peace Treaty, an Order in Council was duly issued for India in respect of each treaty to which her signature was given. In the case of a frontier war the Government of India could, however, act on behalf of the Crown, but under proper authorization, as was done in the various Afghan settlements. (71) India, like the Dominions, was also allowed to enter into governmental accords which were not in the name of the King and were not treaties proper. (72) But in all these, the power was exercised by the Secretary of State and not by the Government of India. The Government of India was not even empowered to correspond directly with foreign powers, or even with the British diplomatic and consular representatives abroad except on certain specified routine matters. British representatives abroad could only correspond with the India Office and not directly with the Government of India. (73)

(70) A single declaration of war was considered sufficient for Great Britain, the Dominions and India in 1914. But in 1939 the Dominions regarded that special declarations of war by their own Parliaments were necessary. But India was automatically drawn into the war with the declaration from London. For details see, Nicholas Mansergh, Survey of Commonwealth Affairs: Problems of External Policy 1931-1939 (London, 1952)

(71) Great Britain, Cmd. 324 (1919), cited by Keith, n. 16, 409

(72) Keith, n. 16, 320 ff.

The procedure adopted regarding the exchange and recognition of foreign consular representatives in India was indicative of the great handicaps under which the Government of India was functioning in matters of foreign relations. (74) Only the Imperial Government could be addressed by the foreign governments in such matters. The appointment of a Consul-General to India, if it was permanent, required His Majesty's exequatur. It was directed that no consular appointment requiring His Majesty's exequatur could be recognized by the Government of India until an intimation of the appointment had been received from the Secretary of State. (75) Applications for the issue of H. M.'s exequatur regarding appointments of Consuls-General in India were received at the British Foreign Office who referred it to the India Office. On intimation from the India Office that it had no objection, the Foreign Office made the necessary arrangements for the issue of the exequatur. The Secretary of State for India now sent the necessary directions to the Government of India. The Government of India then provisionally recognized the Consul-

(74) Various European nations, the United States and some other American Republics, Liberia, Japan, Persia and Siam had established consular representation by the beginning of the century. See Appendix II-A: List of Foreign Representatives in India as on 15 May 1946.

Under the rule of the Company such officials were recognized by the Court of Directors according to the phrases and forms used in the following despatch addressed to the Government of Bombay on 2 August 183: "At the request of His Majesty the King of the French, which has been communicated to us through the Queen's Government, we have consented to the recognition of M. as Vice-Consul for France at Bombay." But the transfer of India to the Crown in 1858 led to a change in procedure.

(75) Foreign Department - General A - Proceedings April 1885, 7-12.
General after consulting the views of the Presidency Government in the matter. Confirmation of the appointment was made by H. M.'s Government. (76) Foreign consuls had no *locus standi* in the matter of direct dealings with the Government of India. They dealt with only the Provincial Governments on matters relating to the welfare of their nationals as individuals and even any question with regard to trade and commerce which might affect the general commercial policy of the country was to be discussed with the Foreign Office. (77) No foreign consular representative in India was also given any diplomatic status. (78)

However, there had always been some difficulty about defining exactly the proper spheres of authority between the India Office and the Government of India. This difficulty was, for example, continuously expressed in the relations between the two offices during the Viceroyalty of Lord Curzon. They became all the more pronounced after World War I, when India began to assume a new status in international relations. The colonial status of India could not be easily reconciled with the new international status of India, implied by its signature of the Treaty of Versailles and its membership of the League of Nations. There was an illusory character to the new international status of India in default of self-government. As Hancock has pointed

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(76) *Foreign Department - General B - Proceedings May 1906*, Nos. 239-55.

(77) *Foreign Department - Secret G - Proceedings September 1912*, Nos. 8-13, page 5-8, Notes.

(78) *Foreign and Political Department, F. No. 36-G, 1931.* The proposal of the Spanish Government to appoint a Commercial Attache in India with diplomatic status was turned down on this ground.
out, it showed the "danger of a policy which had granted the forms of status before it had granted substance." (79) The helplessness of the Government of India even in vital matters of Indian interests was demonstrated when it found it could take no action on a resolution passed by the Indian Legislative Assembly in 1925 recommending the Government of India to instruct the Indian representative at the next Assembly of the League to ventilate the grievances of Indians in the mandated territories, like Tanganyika. (80)

Within India, the exclusive competence of the Government over matters relating to foreign relations had become absolutely clear by this time. The local governments were positively precluded from any action involving foreign relations. The Government of India Act, 1919 confirmed this when in the first attempt at a detailed "clarification of subjects, in relation to the functions of government, as central and provincial subjects," External Relations, including naturalisation and aliens, and pilgrimages beyond India were listed under central subjects. (81) The Government of India Act, 1935 repeated the same provision that "External Affairs: the implementing of treaties and agreements with other countries, extradition,

(79) Hancock, n. 31, I, 170-1.


including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India" would be a federal legislative subject. (82)

(82) Government of India Act, 1935, Articles 100 and 104 and the Seventh Schedule, List I, item 3.
IV

The Secretary of State and the Governor-General

The process of constitutional evolution in India during the pre-independence years had thus vested the real powers for the conduct of foreign affairs in London. This power was exercised by the British Government through the Secretary of State for India who acted in consultation with the Foreign Office. The office of the Secretary of State had come into existence under the Government of India Act, 1858. (83) His powers and duties were defined under this and subsequent enactments. He was vested with all the powers and duties exercised formerly by the President of the Board of Control and the Secret Committee of the Court of Directors. He was a member of His Majesty's Government and, in later years, was almost invariably a member of the Cabinet. He was thus the constitutional adviser to the Crown on matters relating to India. He was appointed like other Secretaries of State by the Crown on the advice of the Prime Minister. He exercised his powers on his personal responsibilities as well as in consultation with the Council of India. (84) Communications pertaining to the making of war and peace, negotiating with foreign powers, relations with Indian States etc. were classified as 'Secret.' These were to be communicated to the Members of the Council only if the Secretary of State thought it fit and necessary. (85) The

(84) Sections 7-30, ibid., 264-9.
(85) Section 28, ibid., 268.
conduct of the foreign relations of India was thus placed under the personal responsibility of the Secretary of State who dealt with them in consultation with the Foreign Office and the Cabinet.

There was, however, an anomaly between the position of the Secretary of State with regard to his responsibilities towards India and his membership of the British Government. This anomaly became all the more evident with the attainment of the 'quasi-international status' by India after World War I. This was pointed out by the India Office itself in its Memorandum to the Indian Statutory Commission in 1930. It stated that the vesting of the powers of superintendence, direction and control of the external relations of India in the Secretary of State precluded any independent status for India. As a member of the British Government the Secretary of State could not be expected to take an independent line of foreign policy from that of the British Government. At the same time, India's signature to the Treaty of Versailles and its membership of the League of Nations implied the contrary. (86) The anomaly was sought to be resolved by drawing up in 1920 a system of mutual consultation and agreement regarding the respective spheres of authority and influence of the Secretary of State and the Government of India on the performance of India's new commitments in the international field. The following principles were adopted:

(1) That a formal decision to the effect that either the Secretary of State or the Government of India is the proper authority in Imperial and international questions should be avoided;

(ii) that it should be tacitly recognized that the Secretary of State is, as a fact, responsible for the representation of India in these questions;

(iii) that the appointments and instructions should be subject to proper consultation and agreement between the Government in India and the Secretary of State; and,

(iv) that reports should be addressed according to circumstances. (87)

This vagueness of definition did not, however, resolve the problem, as was evident from the resignation of Montague as the Secretary of State for India in 1922. The proposals for the peace treaty with Turkey by the British Government had given rise to hostile expressions of public opinion in India. As the chief spokesman for the Government of India the Secretary of State published certain criticisms of the proposals. These were, however, against the policy of the British Government. Montague had to resign for having violated cabinet solidarity. The position of the Secretary of State was thus a very anomalous one, but this could be resolved only by first resolving the anomaly of India's political dependence on Britain and of her new international status.

Within the Government of India the responsibility for foreign affairs was vested in the Governor General. Ever since the introduction of the portfolio system in 1861 by Lord Canning the Foreign Department had always remained under the personal responsibility of the Viceroy and Governor-General. Lord Curzon described this departmental responsibility of the Viceroy as follows:
He is the head, not merely of the whole Government, but also of the most arduous Department of Government, viz., the Foreign Office. There he is in the exact position of an ordinary Member of Council with the difference that the work of the Foreign Department is unusually responsible, ... (88)

The direct association of the Foreign Department with Defence was on grounds of the close interconnection between defence and foreign affairs. Consequently, in later constitutional enactments purporting to transfer limited spheres of power to the Indians it was specially provided that External Affairs would remain under the personal responsibility of the Governor-General. The Government of India Act, 1935 thus provided that "the functions of the Governor-General with respect ... to external affairs, except the relations between the Federation and any part of His Majesty's dominions, shall be exercised by him in his discretion, and his functions in or in relation to tribal areas shall be similarly exercised." (89) The relations between India and the Dominions were thus considered to be outside the sphere of external affairs, and, therefore, within the ministerial sphere. The relations between India and the foreign countries were defined as external affairs and, therefore, outside the ministerial sphere. This distinction had been maintained even before the enactment of the 1935 Act. (90)

The responsibilities of the Viceroy and Governor-General were, however, exercised under directions from the British Government (communicated to him through the Secretary of State)


(89) Section 11 (1).

and through its agencies. The Act of 1935 left no doubt at all in this matter. It stated that in these matters in which the Governor-General was to act in his discretion or to exercise his individual judgement (such as external affairs) "he shall be under the general control of and comply with such particular directions, if any, as may from time to time be given to him by the Secretary of State."(91)

This, as was noted above, had remained the practice before and after this enactment. The position of the Governor-General was therefore subsidiary to that of the Secretary of State, but as the chief executive in the Government of India in India he still played an important role in the limited context of Indian foreign relations.

The colonial status of the country and the absolute control of its foreign relations from London put limitations on the development of a well-developed a full-fledged administrative system for the conduct of foreign relations in the pre-independence period. Policy was formulated in London in the Foreign Office which performed its functions in consultation with the India Office where necessary. (92) There was no need for any organization for the formulation of foreign policy in India. Nor was any elaborate organization considered necessary to carry out this foreign policy by the Government of India. As an aspect of imperial policy they were done by the British Foreign Service. Naturally, there was little pressure to develop a proper administrative system for foreign relations within the Government of India.

(91) Section 14 (1).