Chapter III

ACT OF 1935: A POOR FEDERAL MODEL — THE FAILURE OF THE CABINET MISSION PLAN

"It is specifically necessary to avoid the mistake of interpreting the past in terms of the future. What has occurred in time cannot be undone, but it does not necessarily follow that nothing else could have happened, or that the actual course of events was the only possible or even probable outcome of the interplay of historical forces", Percival Spear has clearly stated. While it is undoubtedly true that the past must not be construed in terms of the future, it appears equally plausible that in most spheres those events have set precedents which have a bearing on what is happening today. The historical happenings cannot be undone, but there is a certain predictability about the future which indicates that precautions should be taken. Most of the anomalies today have their reasons solidly rooted in the past.

For instance, what the British discovered in the 19th century is still highly relevant. While the nature of their objectives was mostly responsible for their success, there was no head-on collision between British imperialism and Indian society and consequently there was no outright defiance. Indian society continued to centre around religio-social systems which were mostly devoid of political nationalism. Spear rightly points
out that "no doubt, both Hindu and Muslim preferred their own rulers to others but what both would die for was their religious ideals and social patterns." They proceeded to "civilize" India and to reform her society in what they believed to be the best way possible by introducing English education and an English sense of values. Commentators have suggested that the early British might have been essentially arrogant but as reformers they were certain that a transformation in India would benefit the Indians as well as themselves. It has therefore been stated "... that is why their influence in India has proved creative and why their period will be looked back on as formative for the India that is yet to be."4

LEGAL LANDMARKS

In the constitutional sphere, the legal landmarks* were the Regulating Act of 1773 and Pitt's India Act of 1784. Bombay and Madras were bound to Bengal "in unwilling subordination" and the Governor-General himself was made quite helpless in the face of a hostile Council in Calcutta.5 The Regulating Act therefore centralized authority in the Governor-General and his Council. The Act of 1883 again stepped up control by providing for a fully statted Central government, overriding wholly local autonomy by assuming exclusive powers to enact legislation, raise finances and govern the country. However a measure of devolution was

necessitated by administrative expediency in 1861. In 1870 Lord Mayo devised steps concerning financial devolution. Lord Dufferin opted for greater powers again, followed by Lord Curzon under whose aegis centralization of authority reached its zenith. The Decentralization Commission (1907-9) could not alter the unitary form of Indian administration. Rising political demands prompted Lord Hardinge to suggest greater provincial autonomy in 1911. The Act of 1915, however, reaffirmed the concentration of powers at the Centre. This necessitated a great amount of rethinking, culminating in Edwin Montague’s famous declaration on August 20, 1917. The Montford Reforms (1919) started the process of delegating responsibility to Indians in the provinces. Provincial autonomy was ultimately granted legal sanctity under the Government of India Act of 1935.

While these constitutional developments swept on, the Indian political system was made to undergo rapid changes. The latter half of the 19th century clearly showed how the British had reversed the Mughal tradition of respecting the autonomy of the units. The country was thus politically and administratively knitted so firmly, into an artificial unity, as Montague’s statement indicated, that the system could not be easily restored even after 1935.
In the social sphere, the great debates of 19th century Britain created an impact in India which might offer a very important clue to the disregard for constitutional proprieties in modern India. A duality developed in the Indian character which helped the system to survive without allowing it to develop. These discrepancies were brought to the surface by traumatic upheavals from time to time.

Conservatives and Radicals differed over what was to be done with India. The latter advocated that things were to be left as they were. "The company should govern in the Mughal and general Indian tradition, that is providing a framework of security beneath while traditional society would continue its wanted course. Peace would promote trade, and trade would be to Britain's advantage." The Radicals were advocates of free trade in the economic sphere and went beyond to question the foundations of what they considered unfair customs.

This introduced the phase of reforms after 1830. In a multi-pronged attack on traditional Indian society William Bentinck (1828-35) set up the committee of Public Instruction which began to argue on the relative merits of western and eastern learning, initiated a new land revenue policy, based on on-the-spot detailed surveys and reformed the judicial system, creating two new grades of
Indian judges. He attacked, in the name of universal moral law (which for him was the western moral law), social evils like sultee in 1828 and thuggee. It has been pointed out that for over twenty years successive governor-generals hesitated to move, but when Bentinck acted there was surprisingly little opposition. In 1813 the Charter Act sanctioned the annual sum of £10,000 for 'the revival and improvement of literature and the encouragement of the learned nations of India for the introduction and promotion of a knowledge of the sciences among the inhabitants of British territory in India'. In 1834 the new Law member, Thomas Babington Macaulay, arrived to begin the codification of Indian Public Law. The work, which was completed in 1861, introduced English procedures into all Indian Courts. "These procedures", it has been concluded "began a creative contact between the two countries which was to transform India within a century ..." Just as Bentinck was favoured by happenings in England and support even from the Conservatives (a Tory President of the Board of Control wrote to Bentinck: "We have a great moral duty to perform in India") so also the Marquess of Dalhousie (1846-56) was qualified by his experience with Gladstone in the Board of Trade in dealing with the English railway boom. Dalhousie pushed forward public works in India more vigorously than before. He planned and began the execution of the Indian railway system, introduced the telegraph and developed roads, pushed forward western education and with Sir Charles Wood, planned the first three Western Universities. It must not be overlooked, however, that with
all this Dalhousie capped his most spectacular success, the annexation of the Indian States. To round off an epoch, when Dalhousie left India in 1856 "the apparent public tranquillity concealed an explosive mixture which some incident might bring to a flashpoint". The Indian Mutiny, one of those great periodic upheavals, was that flashpoint and "can be described as a last moment of protest against the coming of the west on the part of traditional India".

Thus the "flashpoint" which was reached in 1857 revealed several significant flaws. The new laws and legal procedures not only brought into existence an indigent class of men to whom general anarchy and lawlessness offered a chance of retrieving what belonged to them of right but the resulting impoverishment was construed to be a part of a deliberate policy calculated to further the proselytising activities of the missionary. Sir Syed Ahmed Khan pointed out that "the Hindustanes fell into the habit of thinking that all laws were passed with a view to degrade and ruin them and to deprive them and their fellows of their religion".

The Mutiny then frightened the British rulers into more severe concentration of powers. Not that their reforming zeal was wholly curbed. Rather, laws were more frequently enacted in theory but overlooked in practice.

To the British the Mutiny also displayed the power of local
social forces which had convinced the rebels that the rulers would destroy their castes. By the Act of 1858 the Government of India was transferred to the Crown acting through a Secretary of State who received the powers of the Court of Directors and the Board of Control. The Crown was to appoint the Governor-General, the Law member of his Council, the Governor and the Advocates-General; the members of the Councils generally were to be selected by the Secretary of State in Council acting by a majority. Lieutenant-Governors were appointed by the Governor-General subject to approval by the Crown.

The Governor-General was styled officially as Viceroy, indicating his position as a direct representative of the Crown as well as the authority to control, superintend and direct the civil and military administration of India with the aid of his Council.

The position of the local governments was that of complete subordination in administration and legislation to the Centre which also assumed full financial control. The legislative power of the provinces was completely controlled by the requirements of the Governor-General's previous consent to the introduction of many kinds of Bills and to his assent to any measure passed, though matters were simplified by allowing as valid any Act once assented to even if not introduced with the requisite consent. The Act of 1858 transferred the military and naval forces of the company en-bloc to the Crown.
By the Morley-Minto Reforms of 1909 the additional members of the Governor-General's Council were increased from 16 to a maximum of 60. The Councils of Madras, Bombay and Bengal were to have a maximum of 50 which was also the strength of the Councils of United Provinces and Eastern Bengal, while Punjab and Burma were to have up to 30.\(^{16}\)

The pendulum swung towards greater devolution of powers with the report of the Decentralization Commission in February, 1909. Several lacunae in the Act also contributed to the move for greater liberalization of Governmental institutions. As the Montford Report pointed out: "The responsibility of administration remained undivided .... The conception of a responsible executive wholly or partially amenable to the elected Councils, was not admitted. Power remained with the Government and the Councils were left with no functions but criticism. It followed that there was no reason to loosen the bonds of official authority which subjected local governments to the Government of India and the latter to the Secretary of State and Parliament".\(^{17}\)

Once again the move for decentralization was inspired by world forces and the movement for greater self-determination for subjugated peoples. Woodrow Wilson's declaration in 1917, the demands of the Irish nationalists and the Russian revolution were some of the catalytic agents. The Congress and the Muslim League joined forces over the Khilafat question. At home the British Government faced mounting pressure for granting more powers to
The cumulative effect of such developments was that "the national demand for constitutional reforms, in effect, had become synonymous with the liberalization (sic) of provinces from Central authority to the maximum possible extent, namely provincial autonomy".  

The changes also led to the declaration of the Secretary of State for India in the House of Commons on August 20 to help "gradual development of self-governing institutions with a view to the progressive realization of responsible government in British India as an integral part of the British Empire".  

Montague's announcement therefore began a process of democratization by transfer of power.

On June 2, 1919, the Government of India Bill was introduced in the House of Commons. The Bill became an Act on December 23, 1919, and came into full operation in 1921. A prominent feature of the Act was the addition of a Preamble. The "declared policy" of Parliament was based on four principles enunciated in the Montague-Chelmsford Report:(1) Popular control of local bodies, (2) some measure of responsibility in the provinces, leading to complete responsibility as soon as conditions permitted, (3) complete responsibility of the Government of India to the British Parliament with enlargement in size and larger representative character for the Central Legislature of India and (4) the gradual relaxation
of the control of Parliament and the Secretary of State over the Governments of India and the provincial Governments. The principles were applicable only to British India; the princely States were not included.  

The Act of 1919 classified Central and Provincial subjects principally to help devolution to local governments. And as Keith points out, the classification of subjects was the essential novelty of the Act --- marking the transition from the process of centralization begun by the Regulating Act of 1773 to the adoption of the federal principle under the Act of 1935.

Following the meetings and report of the Reforms Inquiry Committee (1924), the failure of the Simon Commission and the abortive Round Table Conferences came the next major legal landmark, viz., the Government of India Act of 1935.

Summing up the features of the new Act succinctly, Spear writes that "the Act continued and extended all the existing features of the Indian Constitution. Popular representation, which went back to 1892, dyarchy and ministerial responsibility, which dated from 1921, provincial autonomy, whose chequered history went back to the 18th century presidencies, communal representation, which first received overt recognition in 1909 and the safeguards devised in 1919, were all continued and in most cases, extended. But in addition, certain new principles were introduced. These were the federal principle, with its corollary of provincial
autonomy and the principle of popular responsibility in the provinces". The federal structure was completed by the creation of a Federal Court and a Federal Reserve Bank.

Popular governments were installed in the provinces. These were to be appointed by the Governor but responsible to a popularly elected Assembly. On Defence and Foreign Affairs the Governor-General was to appoint Counsellors for discharging the necessary functions which were beyond the purview of the Central Ministers. It has been well said that "The Act of 1935 formed an organic connecting link between the old and the new. It contained within itself the seeds of independence". It also contained the seeds of Partition by overlooking wholly the fact that India was a plural society. The dominance of one socio-cultural segment over another was to lead to mutual recrimination, an eventual parting of ways, and centralised Government in two sets of basically regimented polities.

During the Commons' debate on the transfer of power the Prime Minister, Mr. Atlee pointed out: The essence of the Indian problem is to get Indian statesmen to understand the real problems they have to face ... A very grave fault of the reforms that we have carried out over the years is that we have taught irresponsibility instead of responsibility ....

A description of the reforms will bear out unfortunately that Indian statesmen were quite logically a product of a way of
life which was imposed for British rule to prosper and which fostered a sort of ambivalence in the Indian mind.*

While prior to World War I constitutional reforms were a garb for strengthening Central powers, the decadence of Western power beginning from 1905 led to a movement for helping Indians to participate in government. After the Second World War Britain's days as a colonial power had come to an end. The transfer of power was achieved in a hurry since Mountbatten had set a time limit to return to his duties in the Navy. A disastrously careless statement by Nehru led to the Cabinet Mission Plan being scuttled and to Direct Action Day after which partition became an inevitable. India was left with a legacy of centralization even though it did not make much sense after the division. The laws of history seemed to have reasserted themselves after more than three decades with the move for greater decentralization of powers.

Sir Winston Churchill was possibly not the most keen advocate of independence for India. But the considerations on which he held his reservations, other than not presiding over the liquidation of the British empire, were almost prophetic: India is to be subjected not merely to partition, but to fragmentation and haphazard fragmentation. The time limit, far from bringing the Indian parties to their senses, was calculated to make them step up their demands.

* Dr. Rajendra Prasad said on August 15, 1947: "Let us gratefully acknowledge, while our achievement in no small measure due to our own sufferings and sacrifices, it is also the result of world forces and events, and last though not least it is the consummation and fulfilment of the historic tradition and democratic ideals of the British race". (Mission with Mountbatten, p. 135).
These parties' claims to represent the Indian masses were fictitious... In handing over the Government of India to these so-called political classes, we are handing over to men of straw of whom in a few years no trace will remain. If couched in strong terms, for the vast majority of Indian leaders "who represented" the masses, a good deal of the Churchillian outburst holds true.

AZAD'S STORY

The role of the Congress leaders was of undisputed importance during the transfer of power. The story as told by some of the established narrators of the period offer some interesting clues.

When, in 1928, political excitement mounted with the appointment of the Simon Commission, the Congress passed the Independence Resolution of 1929 and gave the government one year's notice of its intention to launch a mass movement if the national demand was not met.

What must sound almost strange in the circumstances is that the Government of India Act 1935, which followed soon after, provided the issue for nationalist demands, very similar in their content to those of the advocates of greater regional power today.

For instance, Congress reacted unfavourably to the Act because of the special powers reserved for the Governor to declare a state of Emergency, by which he could suspend the Constitution and assume all powers to himself. "Democracy in the provinces
could, therefore, function only as long as the Governors permitted it".29

Intra-party wranglings within the Congress party became serious enough for a section to oppose the assumption of office of the party’s nominees in the provincial ministries. If Congress was to carry out its election pledges "a clash with the Governor was inevitable", it was pointed out. "They therefore argued that the Congress should try to wreck the Constitution from within the legislature.30

It was none other than Mr. C. R. Das who suggested that "independence would not come all of a sudden where the method followed was that of discussion and persuasion." He predicted that the first step would be the achievement of provincial autonomy.31

Certain world forces prompted the British to begin negotiations for granting India greater self determination. Around December, 1941, after the Japanese attack on Pearl Harbour, President Roosevelt of the USA had reportedly urged the British Government to conciliate Indian leaders.32 The Chinese dictator, General Chiang Kai-Shek, had apparently also held the same view.33

Accordingly, in August, 1940, the Viceroy invited the Congress President to discuss the participation of the party in the Government on the basis of an extended Executive Council with greater powers.

In accordance with the new proposals, the Congress President met the head of the British delegation, Sir Stafford Cripps, who
arrived in New Delhi in March 1942. Sir Stafford brought along with him proposals for a new Executive Council of the Viceroy's, to function for the duration of the war. The British Government solemnly pledged that as soon as the war was over the question of Indian independence would be taken up. Cripps also stressed that after the war the provinces would have the option of deciding whether to join the Union or not.34

Congress rejected the Cripps offers on two grounds. The Council, it thought, was to act as a Cabinet, which turned out to be incorrect. Secondly, it could not accept the option granted to the provinces to stay outside the Union.35

Another point of interest here is that Cripps had pointed out, as had a spokesman of the Communist Party of India (Marxist) recently, that once the right of the provinces to opt out was recognized, no province would in fact demand the right. Not to concede the right, would on the other hand, raise suspicion and doubt. The provinces would be able to look at the question objectively only when they felt that they had perfect freedom to decide as they chose.

In the House of Commons, the most original suggestion at that time, was put forward by the Socialist rebel Zilliacus, who saw India as the classic problem of national minorities who were distrustful of being left to the tender mercies of the majority. The Muslim minority was more than a national minority but less than an independent nation. He cited the example of the USSR to
suggest that India should enjoy multi-national membership of the United Nations, which would enable the Muslims to have the same status as the Ukraine and become a separate member.36

"NON-REPRESENTATIVE ELEMENTS"

The British War Cabinet's proposals, as conveyed by Sir Stafford, met with Congress hostility because "even the Constitution-making body is so constituted that the people's right to self-determination is vitiates by the introduction of non-representative elements .... the complete ignoring of the ninety millions of the people of the Indian States and their treatment as commodities at the disposal of their rulers is a negation of both democracy and self-determination".37 While the sentiments about the princes is palpably correct, very similar apprehensions have been expressed both about the forces behind the Indian Constitution and the interests which dominate the Indian socio-political structure today.

While thus expressing concern over the non-representation of the people from the princely states, the War Cabinet's legitimate insistence on recognition of territorial units was taken to task: "Each territorial unit should have the fullest possible autonomy within the Union, consistently with a strong national state", the Cabinet proposed. But this was found unacceptable because the idea "encouraged and would lead to attempts at separation at the very inception of a Union and thus create friction just when the utmost cooperation and goodwill are most needed".38
Almost in the same breath it has been conceded that "all over the world the tendency was for decentralization of power. In a country so vast as India with people so diverse in language customs and geographical conditions, a unitary government was obviously most unsuitable. Decentralization of power in a federal government would also help to allay the fears of the minorities ... the Constitution of India must, from the nature of the case, be federal. Further, it must be so framed as to ensure autonomy to the provinces in as many subjects as possible". The claims of provincial autonomy had to be reconciled with those of national unity. This could be achieved by finding a satisfactory formula for the distribution of powers and functions between the Central and Provincial Governments. Some powers and functions would be essentially provincial or centrally exercised by consent. The first step was therefore to devise a formula by which a minimum number of subjects should be declared as essentially the responsibility of the Central Government.

In addition, there would be a list of subjects which could be dealt with centrally if the provinces so desired.

These were the proposals Abul Kalam Azad submitted to the Cabinet Mission on April 6, 1946.

The Congress had also accepted the Azad Plan. They agreed to grant full autonomy to the provincial units and vest residuary powers in the provinces. Two lists of Central subjects, one
compulsory and one optional, were to be provided to enable a provincial unit to administer all subjects except a minimum delegated to the Centre if it so chose. The scheme ensured that the Muslim majority provinces were internally free to develop as they wanted to, but could at the same time influence the Centre on all issues which affected India as a whole. Azad's feeling was the situation in India was such that all attempts to establish a centralized and unitary government were bound to fail. "Equally doomed to failure was the attempt to divide India into two states".

The Cabinet Mission Plan provided that only three subjects would belong compulsorily to the Central Government. These were Defence, Foreign Affairs and Communications. The Mission, however, added a new element to the Plan. It divided the country into three zones — A, B and C to ensure greater security for the minorities. Section B included the Punjab, Sind, the NWFP and British Beluchistan. This would constitute a Muslim majority area. Section C would include Bengal and Assam, the Muslims enjoying a small majority over the rest.

Lord Pethick Lawrence, leader of the Mission, felt that in the beginning the Muslim majority provinces would delegate only three subjects to the Centre to make sure of complete autonomy for themselves. The Hindu majority provinces were more likely to transfer several more subjects. This would in fact have ensured a
truly federal set-up, whereby the federating units would be assured
of the freedom to decide on the number and nature of subjects to be
transferred to the Central Government.44

There has been a reference to the idiosyncrasies of political
leaders which played no small part in the transfer of power. One
such occurred on July 10, 1946. Azad writes45 "... Now happened one
of those unfortunate events which changed the course of history.
On 10 July, Jawaharlal (Nehru) held a Press Conference in Bombay
in which he made a statement which in normal circumstances might
have passed almost unnoticed, but in the existing atmosphere of
suspicion and hatred, set in train a most unfortunate series of
consequences. Some Press representatives asked him whether with
the passing of the Resolution by the All India Congress Committee,
the Congress had accepted the Plan in toto, including the composi-
tion of the interim government.

Jawaharlal stated in reply that the Congress would enter
the Constituent Assembly 'completely unfettered by agreements and
free to meet all situations as they arise'.

Press representatives further asked if this meant that the
Cabinet Mission could be modified.

Jawaharlal replied emphatically that the Congress had agreed
only to participate in the Constituent Assembly and regarded itself
free to change or modify the Cabinet Mission Plan as it thought best.
I must place on record that Jawaharlal's statement was wrong. It was not correct to say that Congress was free to modify the Plan as it pleased. We had in fact agreed that the Central Government would be federal. There would be the compulsory list of three Central subjects while all other subjects remained in the Provincial sphere. We had further agreed that there would be three sections, viz., A, B, and C, in which the provinces would be grouped. These matters could not be changed unilaterally by Congress without the consent of other parties to the agreement.

The Muslim League had accepted the Cabinet Mission Plan, as this represented the utmost limit to which the British Government would go. In his speech to the League Council, Mr. Jinnah had clearly stated that he recommended acceptance only because nothing better could be obtained.

DIRECT ACTION DAY

Thereafter events moved swiftly. The Muslim League Council met at Bombay on July 27. Mr. Jinnah reiterated the demand for Pakistan. The Council rejected the Cabinet Mission Plan and decided to resort to direct action for the achievement of Pakistan. 'What we have done today', he declared afterwards, 'is the most historic act in our history. Never have we in the whole history of the League...'

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done anything, except by constitutional methods and by constitutionalism. But now we are obliged and forced into this position. This day we bid good-bye to constitutional methods .... Today we have also forged a pistol and are in a position to use it!.

The Congress Working Committee met again on August 8, and resolved to accept the Cabinet Mission Plan in its entirety.

It was, however, too late and Mr. Jinnah was adamant that Nehru's statement represented the real mind of the Congress.

For Mr. Jinnah also, the move was possibly unfortunate. Azad speculates on whether, by rejecting the Cabinet Mission Plan, the Muslim leader hoped to initiate fresh discussions and press home his demands. Be that as it may, the British Government did not oblige.

Lord Mountbatten was then given the responsibility of expediting, as the last Viceroy of India, the transfer of power. The original scheme, set out by Mountbatten himself, was to produce a Plan by October 1947, discuss it with the British Government, and put it before the Indian leaders by January, 1948.

Mountbatten arrived to face considerable Hindu-Muslim tension. The League's 'Direct Action' Plan set off the spark and disturbances shook Bengal, Bihar, Lahore and the NWFP.

Mr. Jinnah gave a frank warning (in his talks with Mountbatten) that unless an acceptable political solution was reached
very quickly he could not guarantee to control the situation from his side. A similar warning was given by Congress leaders.

While Mountbatten sadly commented after his talks with Jinnah that the latter was "a psychopathic case, hell-bent on his Pakistan", it must not be overlooked that he himself was set upon a naval career after transferring power in the shortest possible time. There were quite a few clues to indicate that he was a man in a hurry.

Although the Cabinet Mission was still functioning officially, it had, for all practical purposes, collapsed. This was the last attempt to achieve a unitary system for India. Unity had been the greatest of the British legislative and administrative achievements in India but by March, 1947, the only alternatives were Pakistan or chaos. By June 3, Lord Mountbatten was able to arrive at a settlement. After seventy-three days of diplomacy, the Mountbatten Mission was completed.

The Plan had several features. First, it was 'partition within partition'. The Punjab and Bengal, were given the right to decide on their own partition prior to option for India or Pakistan. Whatever might have been the failings of Mr. Jinnah's two-nation theory, and for whatever ends he might have utilized his arguments, the Muslim League leader had his point when he told the Viceroy that 'a man is a Punjabi or a Bengali before he is Hindu or Muslim. They
share a common history, language, culture and economy. You must not divide them". Mountbatten's reply apparently was that they were Indians first.53

The only opponent of the Partition Plan appeared to be Gandhi who somewhat idealistically proposed that the Congress-Muslim League deadlock be broken by calling upon Mr. Jinnah to set up a Government.54

The other feature of the Plan was Dominion Status. This was a master-stroke on many grounds, but in particular because it made possible the maximum administrative and constitutional continuity, on the basis of the Government of India, Act 1935. In the words of Mountbatten: "I know of no other country in the world today that is already a working Constitution, but which may be amended by a stroke of the pen day by day to be made to work more agreeably".55
References

10. Ibid, p. 128.
14. Ibid.
17. Montford Report, para 78.
32. Ibid, p. 34, para 2.
33. Ibid, p. 37, para 2.
35. Ibid, p. 51.
37. Ibid, p. 56, para 2.
40. Ibid, p. 125, para 5.
42. Ibid, p. 132-33.
43. Ibid, p. 133, para 5.
46. Ibid, p. 139, para 4.
49. Ibid, p. 142, para 2.
55. Campbell - Johnson, Alan Mission With Mountbatten, Bombay, Jaico, 1951, p. 3.