CHAPTER II

STRESS AND STRAINS IN FORMATIVE STAGE OF INDIAN FEDERATION

A. INTRODUCTION

Indian society experienced a qualitative structural transformation during the British Rule, which led it on a new and different paths of development. British rules initiated some of the basic changes in social physiognomy of Indian society, though to subserve its own interest. It generated new currents in the economic processes, though as a colony of British capitalism. It inaugurated new principles of political rule, established different criteria of sovereignty, different norms for governance and administrative bureaucratic setup. Marx Pithily pointed out that British rule, though indeed for its selfish interest, unconsciously inaugurated a qualitative structural transformation which hitched the Indian Society to a new paths. For Indian Society there was no going back after freedom. Either it had to reshape
itself as capitalist or socialist society. The basic changes initiated by the British rule in India's socio-economic process was certainly initially designed to subserve their own interest but it had opened the door for federalism in the socio-economic field in India.

B. EVOLUTION OF CONSTITUTIONALISM

Indian federalism is the product of an evolutionary process which have transformed a highly centralised political system into a decentralised one under which the constituent units - the states, enjoy autonomy in a certain sphere guaranteed by the Constitution. According to some historian this evolutionary process went on for a period of eight decades from 1861 onwards in second half of the period of British rule. But we notice the beginnings of Indian federalism in the chapter Act 1833, prior to 1833, all the provincial Govts. had separate clocks with separate main springs working according to their likes. In that year,

the Superintendence, direction, and control of the whole civil and military Governments of all the territories and revenues were vested in the Governor General in Council.⁴ All the provincial Govts. were required to obey the orders and instructions issued by the Governor General in Council.⁵ Thus, a highly centralised form of Govt. was brought into existence. An imperial system of Govt. was inevitably followed by an imperial system of finance. The provincial Govts. were absolutely dependents on the central Govt. for everything. Such system of financial administration produced disastrous consequences. Firstly, the provincial Governments were not responsible for the augmentation of their resources. On the other hand, they had unfettered discretion, in the matter of giving remissions of revenues. Whenever famine appeared remissions were given with unapar ding hand. In the settlement of land assessment sacrifices have more than once been made which would hardly have been made, if a reduction in the aggregate revenues meant a certain reduction in the sum available for its administration and improvement.⁶

⁴. The Charter Act 1833, Sec. 39.
⁵. Ibid. Sec.–45.
In the final analysis the imperial system of finance was not conducive to the growth of the habit of economy in the spenders of money.  

In his evidence before the select Committee on East India Finance on 9 July 1872, the Hon'ble W.N. Massey said:  

"The arm of Central Government is not long enough to reach the numerous, powerful and I may say, semi-independent Government of India. I may say specially with regard to Bombay that own power of financial control over the expenditures of Bombay was baffled and defeated at every point. These great Government have had nothing to do but to aggrandise the importance of their positions by making out expensive estimates; and by maintaining the absolute necessity of all these estimates when they were criticised by the Central Government. It was a serious responsibility of the Central Government to take upon interest of to say that this and that expenditure, at a distance of thousands of miles were unnecessary . . . . If the Government puts its fingers on one item and say 'it is excessive' they say 'it is not'.

7. Select Committee on East India Finance, 9 July, 1872.  
8. Ibid.
It is exceedingly economical and you cannot diminish it without starving the service. If you say that such and such expenditure, can be altogether dispensed with there is a chorus of remonstrance from the Government. So, the control which the central Government exercised is of the weakest possible description.

On the other hand, a common purse with an unknown depth encouraged this provincial Governments to obtain for themselves the largest possible amount from the General Fund. Further they were under the impression that the more they draw the more it would bring honour to their administration. The large grants for public works made to the Bombay Presidency were rather attributable to the pertinacity with which the wants of that presidency were urged by its Government than to its real claims and requirements in comparison with those of other presidencies.

Under such circumstances, deficits in the budget estimate were inevitable. Let us take year 1834 when the management of India became purely Governmental. During the period 1834 to 1860 only seven years had surplus budgets while the remaining 19 years exhibited large deficits. As a consequence, the debt of the Government of India increased.
To overcome these deficits, financial federalism was suggested, a partial transfer of the charges of local character from the imperial to local accounts. As early as Lord Amharst's time, an Act was passed by which local funds were established by which the old tour duties were put into that fund. Since the time of Canning every year the Government of India transferred to local receipts various sources of income, more or less of local character to be administered by local Government.

But it was only in 1861\textsuperscript{10} that definite proposals, federal in character were made to overcome the recurring deficits in the imperial budget. In that year the Government of India seriously entertained the idea of giving to the provincial Governments powers of local taxation combined with local budgets and a great share of financial control. Samuel Laing, the Finance Member of the Governor-General-in Council said, "take what we are to give you and for the residue take certain powers of taxation." Here is the beginning of Indian Federalism. It was Laing who laid the foundation of the syanmic Indian federalism. In his evidence before the Select Committee on East Indian Finance, Laing said —

\begin{flushright}
\textsuperscript{9} G.O. No. 1951. F 7-1-1868 Minute of A.O. Arbuthnot.  
\textsuperscript{10} Indian Council Act 1861.
\end{flushright}
"At the time when I was in India and responsible for the finances of India, I believed that I organised the idea, though a part of the expenditure and giving a part of the receipts to local Governments so that they might have local budgets for local objects." 11

Samuel Laing reiterated his views again in his financial statement for the year 1863-64. Laing said -

"I am as strongly as ever in favour of the principle of local taxation for local purposes. In fact if this great Empire is ever to have the roads, the schools, the local police and other instruments of civilization which a flourishing country ought to have, it is simply impossible that the imperial Government can find either the money of the management."

In 1864, the federal idea received powerful support from Charles F. Trevelyan who wrote:

"It is simply impossible that all local works which are required for this great continent can be executed and maintained out of the imperial revenues. Local agency and local interest which are as multifarious as they are inexhaustible..."

11. Select Committee on East India Finance, 9-7-1872.
must be increasingly drawn upon and the imperial expenditure must be gradually confined to the objects which are of common interest to the whole of India. The action of the local Governments is tending in a greater or lesser degree in this direction but there is urgent necessity for more speedy and systematic arrangement. It will be my duty to call more particularly hereafter to this important of the subject."

Again, the federal idea was suggested by William Massey. He said 12:-

"The Government of India, upon a review of the financial condition of the Empire and increasing demands upon its resource, have deemed it expedient to make provision for permanent addition of a million sterling at the least to existing resources; with this end in view, the Governor General in Council had resolved that certain charges of a purely local character now borne by the revenues of India together with any further charges of similar character shall in future be provided from the local resources."

The Government of India also forwarded a bill embodying the proposals for the levy of a license tax on trades and professions, a house tax and a succession duty

on loads, which did not pay taxes. The proceeds of these taxes would be credited to local revenues for expenditure on services like education, police, jails, public works and roads. Thus, the Government of India favoured federalism to get over its financial difficulties. The provinces would bear the entire responsibility to carry on the administration of certain services. But the federal idea was not supported by the Madras Government. Thomas Pycroft wrote:

"In this presidency, local taxation for local objects and in relieving of imperial finances has for the present atleast fully reached its limits and that it would not be safer nor indeed practicable to carry it further."

Since the proposals were not acceptable to the provincial Governments, Massey brought forth a financial federalism not only to transfer charges but also revenues to meet the charges. Such transfer would be final. The Government of India would not meet the claims for additional funds to meet increased expenditures or changes transferred. Such increased expenditure must be met from the expansion of the revenues transferred or from additional taxation.
Massey's proposal was considered by the Madras Government as a step in the right direction. They, however, insisted that the federalism proposed by the Government of In India must be based on certain definite principles and not on expediency. That is the revenues transferred along with the charges should be adequate, to meet obligations. They said -

"The people are ceasing to be an ignorant, unreasoning mass, implicitly confiding in the wisdom of the rules, contendedly acquiescing in the justice and necessity of every fresh demand on their means, they will not fail to see that the new policy involves further taxation and if it is to be a lasting success, it must be initiated and carried out on principles which will command themselves to their intelligence as necessary and equitable.

The final step in this direction was taken by the Government of India in 1869. The Government of India transferred functions and revenues to the provincial Governments. John Strachey emphasising the federal principle wrote:

"There are two reforms without which it appeared to me that our financial position would never be placed on a satisfactory basis. The first was the necessity of carrying
out the principles that imperial revenues should not be expended purely on local purposes that local needs, schools, public works or sanitary improvements and so forth must be provided for from local sources and not from income of the State. The neglect of this principle had been a fruitful cause of our financial difficulties and a constant obstacle to the real progress of the country.

In accordance with this decision grants neither to be made by the imperial Government towards the maintenance of certain provincial services were reduced.

The functional financial federalism brought into existence in 1871 did not stop there. It went a step further. An examination of the proposal revealed that the Government of India proposed to transfer charges to the amount of £ 4,86000 and to meet the charges, revenues to the aggregate of £ 4,62000. The item of expenditure were expensive ones and the items of revenues were inelastic. To get rid of a part of the burden thus thrown upon them, established local funds which were called upon to bear the cost of construction and maintenance of all roads, formerly provided for from imperial funds. Thus began the brilliant career of Indian federalism which in the later decades flourished further and finally received a recognised place in the Constitution of India.
An over centralised system of Government that prevailed prior to gradual and slow growth of Indian federalism was transformed, through a process from decentralisation to dyarchy and dyarchy to federalism. But it must be noted that the decentralisation was not the outcome of the emergence of nationalism of or democratic forces whereas dyarchy and federalism was mainly due to nationalism and democratic forces. It was only after 1885 when the Indian National Congress was established that these forces began to influence the course of events.

After a remarkable decentralisation which was affected by the Indian Council Act 1861, a further step was taken by passing the Indian Council Act, 1892. This Act partially satisfied the demands of the Indian National Congress by including non-official element into the legislatures and by giving the members the powers of discussing the budget and asking questions. The strength and division of additional Members in the Supreme Legislative Council and the Provincial Legislative Council of Madras, Bengal and North West Province was as follows.  

10. Paranjaps Dr. V.M. Constitutional History of India—p. 77.
(A) SUPREME LEGISLATURE

(Total strength of additional Members 16)

(i) Six Official Members.

(ii) Five elected Members including four non-official members, one each from the provincial Council of Madras, Bombay, Bengal and North West Province and one representative from Calcutta Chamber of Commerce.

(iii) Five nominated non-official members.

(B) PROVINCIAL LEGISLATIVE COUNCILS

(Total strength of additional Members 20)

(i) Nine official Members.

(ii) Six Elected Members including one from University, one from corporation and four from Municipalities and District Boards.

(iii) Five nominated non-official Members.

The sixty years between the passing of the Indian Council Act 1861 and the inauguration of Mantford Reforms in 1921 formed a period during which a significant measure of delegation of powers to the province took place without, of course, making any fundamental change in Centre-province relations.  

period, the Indian Nationalist agitation also slowly grew specially after 1905 when in consequence of the partition of Bengal a demand for Swaraj was put forward by the extremist element in the congress. Due to such pressure the Indian Council Act. 1909 (Minto Morlay Reforme) was passed which further enlarged the size of the supreme as well as the provincial legislatures, increased the proportion of elected members in them, provided for non-official majorities and increased their powers. The number of the Additional Members which was not more than sixteen as per the Act of 1892 was now raised to sixty. The total strength of the Supreme Council was thus at sixty-nine including the Governor General, six ordinary members of his Council, the Commander in-chief and the Governor of the province where the meeting took place. The breaking of the total membership of the Council was as follows.14

Like the Supreme Legislative Council, the strength of the Provincial Legislatures was also increased. The breakup of the memberships of the various Provincial Legislative Councils is summarised in the next page.  

15 Ibid. p. 87.
<table>
<thead>
<tr>
<th>Province</th>
<th>Ex-officio Members</th>
<th>Nominated Members</th>
<th>Selected Members</th>
<th>Expert Members</th>
<th>Total strength of Membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bengal</td>
<td>5</td>
<td>20 (not more than 16 officials)</td>
<td>28</td>
<td>2</td>
<td>55</td>
</tr>
<tr>
<td>Madras</td>
<td>5</td>
<td>21 (not more than 16 officials)</td>
<td>21</td>
<td>2</td>
<td>49</td>
</tr>
<tr>
<td>Bombay</td>
<td>5</td>
<td>21 (not more than 15 officials)</td>
<td>21</td>
<td>2</td>
<td>49</td>
</tr>
<tr>
<td>United Provinces</td>
<td>1</td>
<td>26 (not more than 20 officials)</td>
<td>21</td>
<td>2</td>
<td>50</td>
</tr>
<tr>
<td>Bihar</td>
<td>4</td>
<td>19 (not more than 15 officials)</td>
<td>21</td>
<td>1</td>
<td>45</td>
</tr>
<tr>
<td>Orissa</td>
<td>1</td>
<td>16 (not more than 10 officials)</td>
<td>8</td>
<td>2</td>
<td>27</td>
</tr>
<tr>
<td>Punjab</td>
<td>1</td>
<td>14 (not more than 6 officials)</td>
<td>1</td>
<td>2</td>
<td>18</td>
</tr>
<tr>
<td>Burma</td>
<td>1</td>
<td>13 (not more than 9 officials)</td>
<td>11</td>
<td>1</td>
<td>26</td>
</tr>
<tr>
<td>Assam</td>
<td>1</td>
<td>17 (not more than 9 officials)</td>
<td>7</td>
<td>2</td>
<td>28</td>
</tr>
<tr>
<td>Central Provinces</td>
<td>1</td>
<td>1 official</td>
<td>7</td>
<td>7</td>
<td>28</td>
</tr>
</tbody>
</table>
Supplementary questions, moving of resolution on budget and on matters of general and public importance were allowed. This position continued till 1919 when the Government of India Act 1919 was passed which established dyarchial form of government in the provinces.

The Government of India Act 1919 under the scheme of dyarchy made a definite step towards the direction of Indian Federalism. The reasons behind the passing of the Act are many, few of which, based on socio-political grounds, are mentioned below:

(1) The declaration of Montague, the Secretary of State, the policy of increasing association of Indians in every branch of administration and the gradual development of self governing institutions and with a view to progressive realisation of responsible Government in India.\(^\text{16}\)

(2) General rise of nationalism in India, and

(3) The British Policy of fighting the 1st World War.

\(^{16}\) M. Shiviah and M. Venkotarangiya - Indian Federalism. p. 27.
The Government of India Act 1919 brought about a Constitutional division of functions between the Government of India and the provincial Governments and transferred the administration of some of the provincial functions to ministers responsible to legislatures with a directly elected majority. Thus the provisions obtained autonomy of certain measure in administering the transferred subjects and the control over such functions by the Government of India and the Home Government was relaxed to a great extent. By placing a part of the provincial administration under the charge of ministers responsible to the local legislatures rather than to the Governor-General-in-Council and through him to the Secretary of State for India, dyarchy involved the establishment of a dual pattern of centre province relations, partly federal and partly unitary.17 Even though the authors of the scheme did not realise it, dyarchy was "a definite step towards federalising the Indian Governmental Organisation."18

The Government of India Act 1919 itself did not carry a division of powers between the central Government and provincial Governments but made a specific provision for the classification of functions, to be made by Rules.19

19. Sec. 45A(a) of the Government of India Act 1919.
The division of functions and finances formulated by the Function Committee and embodied in the Devolution Rules was, however, given a statutory basis. In drawing up the list of provincial subjects, the function Committee proceeded on the basis of what may be described as a federal criterion, viz - that all subjects in which the interest of the provinces predominate should be provincial, and that where extra provincial interests predominate, the subject should be treated as central.

The subjects in the provincial list were further sub-divided into 'reserved' and 'transferred' ones. The former were administered by the Governor of the province and the members of his executive council appointed by the crown. The transferred subjects were administered by the Governor in accordance with the advice of ministers who were responsible to the legislative council. But the division of functions spelled out in the Devolution Rules fell short of attaining a federal character in that the line of demarcation was not so definite or rigid as in a federation.

20. Subjects like local self Government education, agriculture numbering 51 were included in the State list.

21. Eg. defence, external affairs etc. numbering 46 items.

In practice, however, dyarchy did not work in strict conformity to theory. The reserved and transferred halves ceased to be separate entities. Moreover, the ministers in charge of the transferred departments had to depend on mercy of the reserved half to secure finance for carrying out their policies and the finance was included in the reserved half. Another case of unpopularity of dyarchical system was the existence of 30% official and non-official nominated members in the legislative council who were under the influence of the members of the Executive Council and on whose votes the ministers had to depend heavily. Consequently a demand was made for its abolition and its replacement by a fully autonomous unitary Government in the provinces.

The demand came from almost all political parties in the country. Even the officials became convinced of the unworkability of the dyarchical system. As a result the Simon Commission, appointed to inquire and report mainly on future of responsible Government in India, recommended the establishment of full responsible unitary Government, in each provinces. The Government of India Act 1935 was the outcome of the implementation of the Simon Commission's Report. Thus, dyarchy introduced
an element of partial federalism and with the establishment of full provincial autonomy under the Act of 1935 federalism ceased to be partial and became a full fledged one.

C. FEDERALISM UNDER THE GOVERNMENT OF INDIA ACT 1935.

It is now necessary to dwell upon various forces and factors which accelerated the federalism under the Government of India Act 1935, which can be described as a foundation stone of Indian federalism that has been articulated in the Constitution of India.

During the period between the inauguration of Montford Reforms and the enactment of a federal constitution for India in 1935, the federal issue was much discussed in the country. The gradual decentralisation of administration, the introduction of partial responsible governments in the provinces and the clear prospect of a further extension of the principle of responsibility made the centre-province relation one of immediate importance and brought the issue to the political stage in India. The activation of public life in the provinces as a result of 1919 reforms and the commencement of the passing of political power into hands of Indians aroused the interest,23 or appreciation24

23. As in the case of Hindu majority Community.
24. As in the case of Muslim minority community.
of various sections and elements affected by the process. The benefits following from the advent of democracy, on the other hand, affected unevenly the different strands in India complex social fabric and consequently awakened latent tension and strains.

The (Simon) Indian Statutory Commission in its report in 1930 emphasised the need not only for federalising the relations between the province and central Government but also for bringing the native states into all India Federation. Such emphasis was laid in view of the geographical and political unity of the country, the existence of common economic and defence needs and the growth of nationalism, the division of the country into British India and India was unnatural and the development of Indian polity must be in the direction of a solution embracing the whole of India.25 It further pointed out that such a development could only take the form of a federation as it was only in a federal constitution that the units, and the Indian States could be brought together while retaining their internal autonomy.

A further reason for federalising the constitution was the presence in British India of regions in different stages of economic and political development and it is only in federal set up that imbalance between them could be removed and backward areas properly developed. However, the Commission could not recommend immediate establishment of federation because of a number of special difficulties.

D. EMERGENCE OF NATIONALISM AS A FORCE

For the first time, the attention of the nationalists, who were till then preoccupied by the movement of Swaraj was drawn to the details of the constitutional problem at the annual session of the Congress in 1937. The working Committee of the Congress appointed a Committee to draft a constitution which also suggested, interalia, for full provincial autonomy. It rejected the demand of Muslims for the separate electorate and the reservation of seats in State Legislature on population basis. The draft constitution was accepted, though resisted by the Muslim and left wing Congress, in the special session held in 1927 in Calcutta. The draft constitution dealt with four issues:

27. Lack of self conscious political entity, haphazard formation of provinces, are the main.
(1) Dominion States of India within the British India.

(2) Provincial autonomy - It recommended that the control of all departments made over to the provinces should be vested in the council of Ministers responsible to the elected legislature.

(3) The Hindu Muslim problem of which the federalism became a part by the time.

(4) Role of the princely states in the Constitutional System.

The provisions suggested by the Committee were of federal form though there was no mention of the term federal.

Among the forces responsible for growth and development of federalism in India in the last 2, 3 decades of British rule, the rise and growth of nationalism and democracy are the primary forces.

The British as device to retain power conceded to (a) federalism and (b) communal electorate. Later princely states also favoured federalism because of their economic interest.
The Muslim favoured federalism as a safeguard of the 3 of the 14 points which Jinnah declared in 1929 vis-

(i) form of future constitution should be federal with residuary power in the States.
(ii) Uniform measure of autonomy to all States.
(iii) No change should be made in the constitution of Central Legislature except with the concurrence of the provinces.

The federalism which took shape in India till so far is definitely a result of political bargaining carried on by two parties - one standing for the unity under one strong Government, Government of the whole of the geographical area concerned and the other standing for autonomy of the units within the area. The process by which the British, the princely rulers and the Muslims came to some kind of agreement on the desirability of establishing a federal form of Government in India is in conformity with this thesis of William H. Riker.

For the first time in the history of the country there came to birth the consciousness among the people that inspite of differences of race, religion, language and culture they all constitute a single nation and as such they had an inherent right to rule the country themselves.29

This was clearly proved by the people in the various phases of non violent movement for Swaraj under the leadership of Mahatma Gandhi.

The British rulers realised that it would be difficult for them to resist the demands for nationalism and democracy and sooner or later responsible government had to be conceded. But they were not prepared to part with the power completely. As one of the devices to satisfy the people and retain the power they accepted federalism and embodied the principle in some form in the Government of India Act 1935.

E. NATIVE STATES AND RELIGIOUS MINORITY

The two major factors which powerfully influenced the Government of India Act 1935 to make provision for federalism were:

(a) nearly a third of the country consisted of Indian States who theoretically were not part of British India though the British

30. The second device was the communal electorate.
crown exercised suzerainty over them. It was unthinkable of an Indian Government excercising control only over the parts of the country constituting British India. A general Indian Government could be organised only if the Indian States, could by some device be brought into it, and this could only be by some sort of federation and secondly –

(b) to satisfy the Muslim minority who were clamouring for safeguard of their rights. Geographical convenience and the accident of history has resulted in the Muslim population being in a majority in certain provinces. The Muslim demand therefore was for a federation with the residuary power in the federating provinces so that they may be their own masters at any rate in the provinces in which they command a majority.31 These factors powerfully

31. Setalvad, M.C. Union and State Relations under the Indian Constitution, p. 4.
influenced British and Indian opinion so that ultimately there emerged a general consensus that India's political structure should be that of a federation comprising of provinces and Indian States. That broadly the Government of India Act 1935 contemplated.

Under the Act, the provinces became, with certain limitations, fully autonomous and dyarchy was abolished. The council of ministers responsible to the legislature wholly elected secured control over the whole sphere of provincial Government. In the field of administration there was a statutory obligation that the Executive powers of a province should be exercised:

(a) so as to secure respect for the laws of the federal legislature which apply in the province,

(b) so as not to impede or prejudice the executive authority of the federation and it was competent for federation to issue directions necessary for the purpose.

32. Governor's right to reserve the bill passed by the legislature to the assent of the Governor General.
A clear distinction was made between the provincial and federal sources of revenue. The Act also provided shared taxes being levied by the federal government and the proceeds from being shared with the provincial governments. Federal Government could also make grant in aid to the provinces. For the matters of common interest provisions had been made for the co-operative action by the Government and for that purpose provision for setting up an interprovincial council had been made. However, the provinces were in every respect assigned a status inferior to that of states in the federation.

P. CUMULATIVE FACTORS INFLUENCING CENTRE STATE RELATION

In a country where the forces of unity and of diversity are in a state of equilibrium a federal system of government is possible. Indian federalism is an example of this theory of R.J. Watt. As already pointed out the federalism embodied in the Government of India Act 1935 was the outcome of 3 factors:

(a) British Imperialism,
(b) fear phycosis of Muslim of dominance by the majority, and

(e) the princely attachment to internal sovereignty. Of these the first one represented the force of unity while the other two represented those of diversity. The equilibrium which existed between them underwent a change in the decade 1937-47. The forces of diversity gradually became so strong that it appeared that a number of independent states might be established. The situation was averted to some extent and what actually happened was the division of the country into only two independent states - India and Pakistan. As a result the promise given by the Indian National Congress in its Election Manifesto 34

34. The Election Manifesto declared: The federalism of India must be a willing union of its various parts. In order to give the maximum freedom to the constituent units there may be a minimum list of common and essential federal subjects which will apply to all units, and a further optional list of common subject which may be accepted by such units as desired to do so.
and the historic resolution of the constituent Assembly moved by Jawaharlal Nehru and adopted in Jan. 27 35 could not be materialised.

C. FEDERAL PRINCIPLE AND THE CONSTITUENT ASSEMBLY

The Constituent Assembly was originally convened to frame a constitution strictly in conformity with the Cabinet Mission Plan of May 16, 1946 which recommended the establishment of "a Union of India, embracing both British India and the States, which should deal with the following subjects: Foreign Affairs, Defence and Communication, and should have powers necessary to raise the finances required

35. The resolution runs as follows: "Wherein the territories that now comprise British India, the territories that now form Indian States, and such other parts of India as are British India and the States, as well as such other territories as are willing to be constituted into the Independent Sovereign India shall be a union of the all, and wherein the said territories, whether with their present boundaries or with such other as may be determined by the constituent Assembly and thereafter according to the law of the constitution, shall possess and retain the status of autonomous units together with residuary powers and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the union or as are inherent or implied in the Union or resulting therefrom."
for the above subjects*, and which further recommended that "all subjects other than union subjects and all residuary powers should vest in the provinces" and that States will retain all subjects and powers other than those ceded to the union. 36

The Union powers Committee and the Union Constitution Committee constituted by the Assembly worked on this basis till the announcement of Mount Batten Plan which scrapped the Cabinet Mission Plan and recommended the partition of British India into India and Pakistan, each free through its own Constituent Assembly to frame their respective constitution of any kind they liked.

H. SOCIO-ECONOMIC FACTORS

The political, economic and geographical compulsions necessitated a close relationship between the States of India*, and at the same time the princely states were prepared to accede only three essential subjects viz - external affairs, defence and communications. On the other

hand many influential provincial leaders who had tests of provincial autonomy under the Government of India Act. 1935, were also against the unitary form of Government. Ultimately in a joint meeting of the Provincial Constitution Committee and the Union Constitution Committee, held on June 7, 1947, adopted by a resolution that the constitution of free India should be of federal structure with a strong centre. 37

For the purpose of framing a federal constitution with a strong centre, the constitutional experts suggested application of doctrine of implied, inherent and resultant powers and stretched the ambit of three subjects vis. defence, foreign affairs and communication. The Union Powers Committee in its first report (April 17, 1947) included 16 subjects under defence. Seventeen items under foreign affairs and twelve under communications. Within the category of resultant powers as many as fourteen items like Union Judiciary, Union Services, currency etc. were included. It also dealt in the same way with finance. The Union Constitution Committee held a similar view. But after the finalisation of partition scheme, the report was abandoned and the Union Constitution Committee recommended that the residuary power should be located in the centre.

In respect of legislative, administrative and financial powers it took the Government of India Act 1935, as model with the modification of increase of number of items from fifty-nine to eighty-seven in the federal list. Concurrent list was retained with thirty-six items. All this was the outcome of the conviction that a weak centre would prove fatal to the stability of the country.

After inconclusive debate on the report, the matter was referred to the Drafting Committee. The Drafting Committee after taking into consideration the views of all categories of people finally adopted three lists on September 1949.

In the administrative and financial powers the provision of the Government of India Act 1935 were more or less adopted. Although everyone felt that the units should have adequate finance to meet the demands for social services and nation building activities, there was very little demand for the units being endowed with independent sources of revenue.

- Viewing the whole, the scheme of legislative, administrative and financial relations between the centre and states as embodied in the constitution and the provision it contains for the exercise of the emergency
powers it may be concluded that federalism as it emerged from the deliberations of the Constituent Assembly was characterised by such a strong centre that many scholars do not hesitate to look on the Indian political system as unitary, with certain federal features. The constitution makers aimed to have a governmental machinery in which the local initiative and strong (central) control were blended. In Dr. Ambedkar's well known description, "... the federalism will consist of the union at the centre and the states at the periphery each endowed with sovereign power to be exercised in the field assigned to them by the constitution. Yet the constitution avoided the tight mould of federalism, in which the American Constitution was caught and could be both unitary as well as federal according to the requirements of time and circumstances. But after 33 years of the working of the constitution this contemplated local initiative is replaced by local dissatisfaction.

38. K.C. Wheare - op cit. p. 27.
39. Austin Granville - Indian Constitution - Corner Stone of the Nation, p. 188.
40. C.A.D. Vol. VII. 33-34.
I. WHY STRONG CENTRE

The weighty reasons put forward for a strong centre was that throughout the long history of the country it was the absence of a strong central government that led to aggression and conquest from outside and that it was equally responsible for the successful revolts by the provincial government and establishment of independent Kingdoms by them. Dangers like these were averted when the centre was strong as was the case under the Mauryan Empire in ancient past, the Moghal period in the medieval time and the British Empire in the modern era. The conclusion was consequently drawn that if the newly won political freedom and unity were to be preserved the centre should be strong enough to defend the country against both external aggression and internal disruption. The constitution framed by the Assembly had this as its aim and attempted to achieve this by endowing the centre with monopoly of control over defence, external affairs, means of communication and transport and adequate control over finances and by conferring upon it extensive powers to be exercised in time of emergency.
J. CONTEMPORARY SITUATION

It was not merely lesson drawn from history but also contemporary situation with which the Assembly was constrained during the period of its deliberations that influenced it in creating a strong centre. Apart from Pakistan's aggression against Kashmir, partition brought alongwith it millions of refugees who had to be rehabilitated. Their influx resulted in communal rioting in several areas and caused a break down of law and order. Such communal tension had affected the federal plan as is evident from the Nehru Report and Sapru Report, which in substance recommended a centralised federal structure. Yet for the sake of peace and emity the members agreed to recommend the establishment of a loose federal system.

So far as the princely states were concerned, difficult negotiation had to be carried out as to persuade the princely states to acced to the dominion and avert the bulkanisation of the country. Even then the state of

42. Sapru Report - Para 226. p. 177.
Hyderabad hesitated to accede necessitating police action against it. Most of the states that acceded the system of administration were medieval in character and effective step had to be taken before it could be modernised and brought on a level with that which existed in the provinces. There was the rebellion of the communist in Telengana pointing out that disruptive forces were still active. The economy was in a state of disarray and famine condition prevailed in several areas, and acute food crisis necessitating import from abroad on a large scale. Faced with situation like this the constitution makers felt that only a strong centre could deal with it. Nehru supporting centralised co-ordination and control remarked "we have to deal with a situation in which, if I may say so, if we do not try our utmost the whole of India will be a cauldron within six months ....... and I do not know whether it will be a cauldron in the next six months due to the economic situation."

Granville Austin summarises the whole situation as follows:--

"Some forces dragged the Assembly members almost exclusively in one direction towards a centralised

43. Nehru speech in the Assembly's States Committee, February 5, 1947.
co-operative federalism. They had earlier caused the Assembly to adopt a direct, parliamentary constitution as distinct from one based on "Gandhian decentralisation". The antecedents of both decisions lay in the history of previous thirty years, in the great pressure exerted by the conditions existing during the framing period, and in the belief of Assembly members that the renaissance of India demanded strong central Government. 44

The Assembly members justifying the strong centre to meet the future need contended that political freedom should be used for building a new society, for rapid economic development and for the provision of social and welfare service. Granville Austin remarks "the immediate goal of social revolution improving the standard of living and increasing industries and agricultural productivity, provided yet another reason for a strong central authority". 45

D.P. Khaitan, a member of the drafting Committee said:

"Only on basis of total wealth of the country, could India build up the edifice of education, health, 

44. Austin Granville - Ibid. p. 191.
45. Austin Granville - Ibid. p. 191.
culture and so on." It is believed by the Constituent Assembly members that only a strong centre is the answer of all these past, present and future problems of India. The voices in favour of strong centre were, in comparison, to that against it much louder. And the situation prevailing there made the issue of provincial power almost a dead one. Even K.M. Panikkar, favouring the unitary type of Government went upto the saying that "federation is a fair weather constitution" and to have one in those situation would be "definitely dangerous to the strength, prosperity and welfare of India". 47

It may, therefore, be stated that history of the past, the contemporary situation, the needs of the future were those factors which influenced the demand for a strong centre.

K. CRITICAL APPRAISAL

Inspite of dominant voice in favour of a strong centre, the idea of federalism with a strong centre was not without opposition. There were some who while broadly


47. Panikkar, A Note on some principles of the Union Constitution. Quoted from Austin Granville. Ibid. p. 191.
accepting the need for a centre in the circumstance in which the country was placed refused to equate it with a centre having as many subjects as possible within its jurisdiction. They reminded the Assembly that it was a federal constitution that it had to frame and that in such a constitution the units should have appreciable powers and not be reduced to the position of "glorified district boards. 48 Santhanam while upholding the views that the centre should be made responsible only for all India subject and not for everything observed," the strength of a centre consists not only in adequate powers in all India but which really should be in the provincial field. It is in this positive as well as negative delimitation of powers that a real federal system rests. 49

In spite of so many forces pulling towards a tight federal structure, the Assembly members were hesitant to take a decision on this vital issue till the announcement of the partition. The main reason behind this was that most of them were familiar with the

49. C.A.D. Vol. V. p. 56.
concept of American federalism and secondly they felt that
the entire Indian population, including themselves, were
members of one family, who for the first time in
possession of their own home must find a way to live
together in it. But after announcement of partition by
Mountbatten on June 3, 1947, there was no hesitation in
resolving that the Indian constitution should be federal
with a strong centre giving residuary power to the centre.

From the historical and contemporary facts
stated above it appears that the constituent Assembly
Members had to take the decision of having a federalism
with a strong centre in order to maintain the unity of the
country, to work as a cohesive force among the members of
different ethnic and religious communities and bring a
social revolution. Originally by heart and soul they
wanted a liberal type of federalism for India. But the
historical events between the period from Cabinet Mission
Plan, May 1946, which recommended federal type of Government
for both British India and province with residuary power
in the hand of provinces, and Mountbatten Plan which
suggested the partition of India into Indian Union and
Pakistan, compelled the Assembly Members to take a strong
decision with which they would have such a constitution.
under which centre would have a strong hand so that no further division of the country would be possible. In trying to achieve this wealth the Constituent Assembly Members were over cautious and gave more power to the centre than what was necessary in a matter to be seen in the light of the working of the constitution during the last 33 years.