CHAPTER I

INDIAN FEDERATION : ITS IMPERATIVES

The Constitution of a country, more often than not, is the outcome of the political climate in the country. It is an instrument devised to fit the government of a people in their given historical, political, geographical, economic and sociological environments.

Traditional political scientists classify Constitutions as unitary or federal. In a unitary form of Constitution, the Central Government enjoys all powers and the constituent units are totally subordinate to the Centre and exercise only powers delegated to them by the Centre. While by a federal Constitution we mean a political system in which there is a division of decision-making powers between the two governments, neither of which, ordinarily, dictate the decisions of the other. According to Bemwall, the general rule is that a country will go in for a unitary form of government if it can and would accept federalism only if it must.¹ In countries where the forces of unity and of diversity are in a state of equilibrium the federal political systems of government are adopted, while in those where the forces of unity are dominant and nationalism is deep-rooted, unitary systems of government are adopted. While in those in which the forces of diversity are in ascendancy, no kind of unity becomes possible with the result that the existence of a number of independent states becomes inevitable. What is therefore important in explaining the origins of different political systems, observes Watts, "is not the mere existence of the forces promoting unity and diversity, but their relative strength."² According to Dicey, it is the desire for union without unity which is a condition absolutely essential to the founding of a federal system.³ It was this

force which was at work in India when the present constitutional framework was created for the country. The framers, thus, opted for the adoption of a federal framework and gave to India a federal Constitution. But ever since its inception, the federal character of the Indian Constitution has been disputed by many a political scientists, constitutional lawyers and public men. Before the question, whether the Indian Constitution may or may not be classified as federal is discussed, it would be worthwhile to look into the imperatives of federalism in India.

"Federalism" means different things to different people. Its foundations have been laid in different countries at different times. As a form of political organisation, federalism has nowhere been adopted on the theoretical grounds of its real or hypothetical virtues. Rather, it has always emerged as a product of compromise and expediency and the driving forces behind it have invariably been the history, circumstances and problems of the country adopting it. Like most institutional forms, says William S. Livingston, federalism "is a solution of or an attempt to solve a certain kind of problem of political organization". According to Vile, federation is "perhaps as much a state of mind or anything else". Referring to American Federalism, he asserts, "It is connected with constitutional provisions, courts, the division of powers, the existence of State governments, with all the paraphernalia of power. Important as all these things are, however, it is above all the mental approach of Americans to the problems of government, which is the determining factor.... Americans have a federal attitude towards government which colours their whole approach to governmental problems, which ensures that the solutions found to those problems

5. Bombwall, 27.
will be within a particular pattern. The attitude is the product of the historical, geographic, economic and social forces which have framed the various aspects of the federal attitude...”

"American federalism" says Holcombe, "is not the product of a pre-conceived and approved principle... the Federal Union... was the creature of expediency rather than principle." This is as aptly applicable to a true Federation of America as to India, the federal character of which has been the subject of deep controversy.

Federalism is not new to India. Its foundations are deep rooted into her historical past. India is a vast country, as vast as Europe excluding Russia. Geography has divided this Indian sub-continent into well-marked regions of distinct natural and cultural homogeneity. She has at the same time been a meeting ground of races and religions, languages and cultures, though writers like Hutton, have likened it to a deep net into which various races and people of Asia had drifted and been caught. However, in the past on account of the absence of cultural homogeneity, and the lack of social mobility, independent and semi-independent kingdoms and principalities had established which sometimes came under the umbrella of one sovereign and sometimes broke apart. It was thus out of necessity that the federal system originated in India regulating the relationship between the central sovereign and the local chiefs.

The term 'federal' used here merely denotes that the local kingdoms and principalities enjoyed a considerable measure of independence of action under the limited authority exercised by the central Monarch. The state of things has been aptly described by Salig S. Harrison. He says, "Aggrandisement was a Hindu monarchical ideal, annexation was not. Although to secure his home base, a king might annex his immediate neighbouring kingdoms, when he embarked on his digvijaya, he did so normally for

8. Ibid.
prestige and not for the extension of any permanent machinery of bureaucratic power. He might take his troops to outlying regions periodically to show off his strength - to remind them, in the parlance of modern strategic doctrine, of his deterrent power. But conquered feudatory units ordinarily remained intact within an empire, often under their own kings, retaining their autonomous identity for all their payment of homage and tribute. When the empire dissolved they reverted back to their old independent status as a matter of course."

Until the Mauryas consolidated by conquest the northern states into an empire about 300 B.C., the Indian sub-continent was, thus, a conglomeration of independent states. The Mauryans holding sway over this territory, attempted to provide the archetype of a political organisation in which the autonomy of the various constituent regions was respected. Their empire consisted of loosely united collections of independent provinces, protectorates and autonomous principalities. These constituent regions led their own life, continued their old familiar systems of government (though under the agents of the central power) and used their own languages. It was in fact an informal 'territorial federalism', 'the political counterpart of the entrenched federalism of the Hindu society as such, which characterised the ancient Indian empire'. "Hindu society", according to Bipin Chandra Pal, "has been for countless centuries past a federation of many practically autonomous communities and castes." Rabindranath Tagore also maintained, "For India has all along been trying experiments in evolving a social unity within which all the

different people could be held together while fully enjoying the freedom of maintaining their own differences. This has produced something like a United States of social federation whose common name is Hindustan."^{16} It may safely be concluded thus, in a multi-lingual, multi-cultural and vast country like India, having acute disparities in economic and social development between different regions but, at the same time, possessing geographical contiguity, adoption of federal structure must have been a historical and social necessity.

However, this federalised political system of India broke down during the Mughal era. The Mughals attempted a centralised administration over the part of the country under their rule. With the expansion of their empire to the maximum limits, the character of the 'state' became in form, as well as, in fact that of a 'centralised autarchy'.^{17} The Mughal Kings concentrated all powers in their own hands and the provincial chiefs who were appointed and removed at their will, were treated as mere administrative agents.

But centralisation "was against the genius of the race"^{18}. The Mughals' attempt to impose a completely centralised administration on the essentially federal society of India, was thus a partial success. The Mughal 'state' being basically a police state touched the life of the people only at a few points, leaving the latter to manage their affairs through their village communities, their caste organisations and their trade guilds. The provincial authorities though subservient to the central administration, in practice, exercised a substantial measure of

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autonomy in the territory under their jurisdiction.19

The political and administrative integration, partially achieved during the Mughal period, was completed by the British rulers who succeeded them. During the regime of new rulers, the inherent forces of cohesion which had always been at work in India were given momentum by the development of swifter means of communication and transport.

The East India Company which came to India at the end of 1600 soon emerged as a significant political force. With the establishment of the Presidencies of Bengal, Bombay and Madras, the Company sought to follow the path of centralization as laid down by the Mughals. The first significant step, in this direction, was the passing of the Regulation Act in 177320, by the Parliament in England, which created the office of the Governor General and gave him an Executive Council and powers to make and issue rules, ordinances and regulations for the good order and civil government of the company's entire territories. The central authority thus created was essentially an executive body with strictly limited purposes. But the process of centralization continued and reached its culmination in the Charter Act of 1833, which gave to the British administration in India, a completely unitary character by vesting in the Governor-General in Council the superintendence, direction and control of the civil and military government and revenues of all territories under this control.21 This was the period when centralisation became the political creed.

19. Sir Shafa'at Ahmad Khan observed that a Byzantine state could not flourish in a country like India and that the Mughal Emperors "wisely respected provincial feelings and interfered little in the day-to-day life of the Provinces". See The Indian Federation, 24, Macmillan & Co. Ltd., London, 1937.

20. Earlier to the Act of 1773, the Presidencies were placed in charge of Governors directly answerable to the Court of Governors of the Company in England.

The theoretically complete centralisation did not, in practice, obliterate entirely the provincial independence of action. It was tempered by the demands of the situation. The vastness of the country with its multifarious population organised in units having different languages, cultures, as well as varying social and economic systems made the working of the centralised administration impossible. Thus hardly had the Company succeeded in building up an apparatus of centralization that the impracticability and undesirability of the system became evident. As a consequence a number of influential persons came forward advocating the adoption of the policy of decentralisation, implying thereby the largest measure of discretion to the Provincial Governments, both in general administration and financial matters. John Bright in 1858, while expressing his views on the principles on which alone the Government of India could be successfully organised, proposed the division of the country into a number of autonomous Presidency Governments, each directly controlled by the Secretary of State, without the intervention of the Government of India, which might be abolished.

But there were others, who could not appreciate the rationale of Bright's thesis. That was a time when the tendency in India was towards greater centralisation. The Government of India, in a despatch to the Home Government, expressed their disapproval of establishing such a federation of States and pointed out their own objections against such proposals. They wrote, "The army, the customs duties, the opium, the salt revenues, post office, the relations with foreign States, whether feudatory

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22. While the Government of India Bill 1858 was being considered by the House of Commons. "What you want", Bright said, "is to decentralise your government...You will not make a single step towards the improvement of India unless you change your whole system of Government, unless you give to each Presidency a Government with more independent powers than are now possessed." Mr. Bright's speech, 24 June, 1858, quoted in Sir John Strachey, India, Its Administration and Progress, 63, Macmillan & Co., Ltd., London, 1903.

23. Id. at 64.
or beyond the confines of India must always be directed by some
central authority. The management of these branches of public
affairs cannot be parcelled out among the several governments.
The financial arrangements of India must also be directed by some
central authority; for some provinces are rich, and yield a large
surplus, while others are poor and cannot pay their way. Funds
for carrying on the government of the poor provinces, for the army,
for the payment of interest on the public debt, for meetings the
home charges, must be found from a common purse for all India,
and the necessary control in such matters cannot be exercised
from an office in London."  

However, the Government agreed with the substance of Bright's
proposals viz. that there could be no successful or efficient
government in India unless the fundamental diversities of the
country were taken fully into account and they felt that each
great Province be administered by its own separate Government
with a minimum of interference from outside.  

Thus the very need of general improvement in the administration called for change in
the system which involved the devolution of certain powers to the
 Provincial Governments.

At the early stages, decentralisation was advocated, as is
evident from the above analysis, essentially on the ground of
efficient administration. Subsequently, however, with the establish-
ment of Indian National Congress in 1885 particularly, the process
was employed by the foreign rulers to meet the challenge to their
regime posed by the rise of nationalism.

Besides, centralisation was resented to by the Provincial
Governments. Loss of their former powers in consequence of the
Charter Act of 1833 brought them in conflict with the Government of
India. They felt that they were unnecessarily restrained by the

24. Government of India Dispatch No. 38, dated 8 June, 1880, Sec. 7.
Quote in Domowall, 39-40.
25. Strachey, 64. John Strachey also held the same view.
26. See infra.
latter in their effort to do good to the people under their charge and that they were reduced to the position of agents of the Central Government carrying out whatever orders the latter issued. They made out a case for decentralisation on the ground that in a country of the size of India in which there were numerous diversities, any attempt to adopt a uniform system of administration from a single centre was bound to fail. Moreover, owing to the lack of responsibility, the centralised system resulted in extravagance on the part of the Provincial Governments and thus economy suffered. Samuel Laing, then member of the Governor General's Council, made out a case for decentralisation in 1861 and suggested the transfer of certain subjects to the Provincial Governments, for local taxation to meet local expenditure.

Apart from these factors, the Government of India, themselves realised that the system had resulted in throwing upon itself extremely heavy burdens and responsibilities which had stood in the way of efficient administration.

There was one more factor which led the Government of India to introduce decentralisation. With lessons of 1857 Revolt fresh in their mind, they thought of following the policy based "on a search of ways and means by which the administrative and economic unity of India could move hand in hand without leading to political unity." The Government also felt necessary to bring the measures, specially legislative and financial, of the Government, under public scrutiny, so that, they might be able to know the public feeling before discontent flared up into


28. See infra.


open revolt.\textsuperscript{31}

The Indian Council's Act 1861, thus reversed the policy of centralization by restoring to the Presidencies of Madras and Bombay, legislative powers, which they had been enjoying prior to the Act of 1833.

In the year 1870, the Provincial Government were entrusted with the administration of police, education, medical services, jails, registration, roads etc.\textsuperscript{32} Decentralisation was taken further in 1877 when some more items of expenditure were made over to the Provincial Governments. To cover the expenses on these additional services, instead of increasing their fixed assignments, the Provincial Governments were given a share in the revenue collected under certain heads.\textsuperscript{33} By the Indian Council's Act 1892, the Governor General's Council was expanded and the rules of procedure were liberalised. Members were allowed to ask questions and to discuss the annual financial statements. The Act also enlarged the powers of the Provincial Governments and they were now enabled, with the previous sanction of the Governor General, to repeal or alter the Acts passed by the Governor-General in Council affecting their Provinces.\textsuperscript{34}

The main purpose of the Reforms of 1892 was to associate Indians of experience and ability with the administration so that the Government might "be able to shape their course with the advantage of a far more distinct knowledge and the wishes and feelings of the communities with whose interests they may be required to deal than had hitherto been the case."\textsuperscript{35}

\textsuperscript{31} Bombwall holds that the British rulers followed a two-pronged policy in their endeavour to counteract the rising Indian nationalism. On the one hand, "they sought to blunt its edge by making minor constitutional concessions without relaxing their control on the vital levers of authority". Secondly, "they tried to undermine its strength through deliberately adopted divisive measures." \textit{Supra} note 1 at 40-41.

\textsuperscript{32} See \textit{infra}, Lord Mayo's Scheme of 1870.

\textsuperscript{33} Financial Statement 1877-78, see \textit{infra} Lord Lytton's Reforms.

\textsuperscript{34} Sections 1-5, Indian Councils Act 1892.

\textsuperscript{35} Lord Dufferin, then Governor General's Minutes 1888, see \textit{II I.C.D.}, 103-106, 1961.
The system worked well for sometime. By the beginning of the 20th century, the social, political and economic conditions in the country had undergone a complete change. Feudal and politically divided India under so many petty rulers had given place to one and united India administered under the strong rule of a foreign bureaucracy. The development of the means of communications had inter-linked the whole country very closely internally, as well as, externally. English education and western ideas had changed the attitude of the educated Indians and they had started clamouring for their rights. The Indian National Congress and the Indian Press had become a potent factor in Indian political life. Though the British Imperialism was strongly entrenched in power, a threat to its supremacy, still in an embryonic stage, was taking shape. Political unity had been growing and the Indian National Congress was rousing the national aspirations of the people. "The India of 1905", writes Thomas, "was not the India of 1865". The most important question at that time related to the determining of the nature of relationship between the Government of India and the Provincial Governments, and the status of these Governments under the fundamental law of the country. The British efforts to meet the challenge posed by Indian nationalism through decentralisation and carefully guarded democratisation of Provincial Governments had the effect of generating new factors which reinforced the natural dynamics of Indian federalism.

During the Viceroyalty of Lord Minto, who was acquainted with the working of the federal Government of Canada and a moderate by nature, regulated advance was made in the direction which smoothened the process of decentralisation. In 1907, the Home Government appointed a Royal Commission "to report on the advisability of a large degree of decentralisation in the civil administration of British India." The Commission submitted its

36. Thomas, 283.
37. Bombwell, 42.
38. For details please see Chapter II, infra.
Report in 1909. The Commission considered the whole problem from a narrow administrative angle and did not make any far-reaching recommendations. However, as regards financial devolution, effective suggestions were made, which were accepted by the Government of India and were incorporated in the Financial Resolution of 1912.  

The political situation in the country was growing from bad to worse. With the advent of decentralisation and the progressive extension of representative government, though in homeopathic doses, the natural trend towards federalism was getting strengthened. Increasing transfer of powers to the Provinces and the growing volume of popular support to the concept of 'Provincial Autonomy' had the natural consequence of these provincial units forming part of British India, attaining an individuality and a personality of their own. The feeling of provincialism was gaining momentum and this gave rise to provincial antagonisms which posed a potential danger to the administrative unity of India.  

It is significant to note that geography has divided the Indian sub-continent into well-marked regions of district natural and cultural homogeneity. The wide diversities of language and religion are also identified with district territorial units. These factors did not influence the British authorities in the organisation of the Provinces in India. Rather, historical accidents, administrative exigencies were the guiding forces in the determination of their boundaries.  

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39. See Chapter II, infra.  
40. Bombwall, 42.  
41. To quote the State Reorganisation Commission: "Thus far the formation of provinces has been mainly governed by considerations of administrative convenience and economy and by reasons of military strategy and security...Administrative convenience itself required compact units with some measure of homogeneity. In some cases, therefore, various factors conducive to the growth of natural units operated in the background. They were, however, subordinated to the prime considerations of administrative and military exigencies." Report, para 20, 1955.
result some of the Provinces grew to be unwieldy and heterogeneous while some others presented features "rivaling in their heterogeneity India herself."\footnote{Bombwell, 44.}

With the introduction of 'dyarchy' under the Montford Reforms 1919, the character of the Provincial Governments became more emphasized and in a way they became autonomous units in the governmental apparatus and the constitutional development in the direction of a 'federation' made a significant advance. Public opinion in India was becoming increasingly attached to the idea of 'provincial autonomy' with its far-reaching extension to the principle of representative government in the Provinces as well as at the Centre.\footnote{It was in fact, a definite development towards federalising the Indian governmental organisation. Although, the authors of the scheme of 'dyarchy' had declared that "India is not yet ripe for a true federal system", yet the relationship so developed as a consequence of the partial responsible government in the Provinces, could well be described as federal in the Indian context. Report, Joint Select Committee 1919, Part I.} Writing in 1936 in the context of the Reforms of 1935, K.V. Punniah said, "the trend of political development in British India has been towards Provincial Autonomy and the idea of Federation which has recently come into prominence is only an extension of this development."\footnote{India as a Federation, 24, B.C.Paul & Co., Madras, 1956.} Thus something like 'federalism' unobtrusively crept into the Indian constitutional system by the back-door.

It is not surprising that with the growth of self-government in India, the demand for the reorganisation of Provinces on the basis of language gained momentum. Under the Mont-Ford Reforms, Indian leaders who had their political roots in the Provinces and whose interests laid in the expansion of autonomy in linguistically homogeneous Provinces could, therefore, advocate more fully such reorganisation of the boundaries. Such
a development further strengthened the geographical and social imperatives of Indian federalism. The provincial autonomy initiated under 'dyarchy' in 1921, thus, was a step on the road to a federal set-up in India.

Apart from geographical factors, the question of 'Muslim minority', led a considerable support to the trend towards a federal government in India. Under the prevailing circumstances, in the country, a federation appeared to be the only solution of the Hindu-Muslim communal tangle.

Muslim communalism, as a factor in Indian politics, was the child of British Imperialism. This poison in the body politic of India was injected by the Morley-Minto Reforms of 1909, in order to bring about a cleavage in the ranks of Indian nationalism. Following the traditional policy of "divide and rule", it was introduced to sabotage the political progress in India. Hindus and Muslims had lived together in this country for about nine centuries. "But this living together", in the words of Bombwall, was, "at best, a sort of co-existence, mostly peaceful though occasionally erupting into violent clashes, which stopped short of a real integration of the two communities into a single national entity." For the reason, the two communities continued to exist side by side, in India denoting two separate groups instead of becoming amalgamated in a pattern of homogeneous nationalism. The British masters further helped in accentuating the separateness of the two communities.

45. The Government of India Act 1909, embodied in substance the Government of India's scheme of communal representation. In 1892, Lansdowne, the Governor-General, wrote to the Secretary of State: "Indian society from historical causes is essentially a congeries of widely separated classes, races and communities, with divergence of interest and hereditary sentiment which for ages have produced common action of local unanimity. Representation of such a community upon such a scale as the Act permits, can only be secured by providing that each important class shall have at least the opportunity of making its views known in the Council by the mouth of some member specially acquainted with them." This suggestion was well appreciated by Lord Morley and was given effect to in the Act of 1909. G.O.I. Despatch 1892, II I.C.D., 298, 1961; G.O.I. Reform Despatch 1908, para 30, II I.C.D., 222.

46. Bombwall, 49.
In 1906, the year in which Muslim League was formed, the famous Muslim Deputation led by the Aga Khan waited on Lord Minto at Simla and demanded separate electorates and weightage in case the elective principle was adopted in the constitution of the district and municipal boards, governing bodies of universities, the Provincial Councils and the Imperial Legislative Council.\(^{47}\) It is beyond doubt that the major source of inspiration for this demand was the Anglo-Indian bureaucracy led by the Governor General Lord Minto himself and in the biggest show on the communal stage, the hero's role was played by Mr. Archbold, then Principal of Aligarh College.\(^{48}\)

Muslims in India, always suffered from two weaknesses. First was the group consciousness, a feeling that the Muslims constituted a distinct entity and that the interests special to one community, though opposed to those of the other, must be protected. Poet Iqbal, in his presidential address to the All India Muslim League Allahabad Session of 1930, asserted that "each group has a right to free development according to its own cultural traditions" and did not make a secret of his communal sentiments when he said: "I love the communal group which is the source of my life and behaviour; and which has formed what I am by giving me its religion, its literature, its thought, its culture, and thereby re-creating its whole past, as a living operative factor, in my present consciousness."\(^{49}\)

The second fear with Muslims was the fear of 'majoritarian democracy', which for many Muslim leaders meant a Hindu Raj in India. The fear was expressed by Maulana Muhammad Ali during the first session of the Round Table Conference in his latter addressed to the British Prime Minister, Lord MacDonald. He wrote: "There is hardly a community which has not a real or imaginary grievance against the old Muslim rulers and what we know of human nature

\(^{47}\) Muslim League was founded on December 30, 1906, exactly 90 days after the Viceroy's reception of the Simla deputation. II I.C.D. 207-9, 1961.

\(^{48}\) Id. at 205-6.

elsewhere brings it home to us that even today there is a feeling of revanche harboured against the Mussulmans in the minds of some Hindus and some members of other communities which is not the case against any other community whether Sikh or Maharata or Rajput. It is with this feeling that we must provide safeguards for the future when framing a constitution for an ideal Indian government in which all would feel safe, equal and free. 50 He also made reference to the fact that the discontent of Indian Muslims had resulted from the contrast they drew between their former position as a ruling community and their present position as a minority exposed to the danger of their being dominated over by those over whom their ancestors once ruled. 51 He, therefore, suggested the reconstitution of the Indian Constitution on a federal basis, which alone could secure to the Muslims, a position of rulers and allay their fear of Hindu domination.

A 'Federation of India' was, therefore, for the Muslims, the only way of integrating themselves in the Indian polity. The accident of history made the problem a bit easier. Muslims constituted a minority in the country as a whole, but they were placed in a majority in certain parts of it. Their demand for a federation was, therefore, prompted by hope that they might be their own masters, at any rate, in areas in which they constituted a majority. 52

In 1924, the Muslim League passed a Resolution, clearly raising the demand for a federal set-up in India. Since then a federal Constitution ensuring maximum autonomy and residuary powers to the Provinces remained the sheet-anchor of the League's

50. Appendix I, Report, Minorities Committee, First Round Table Conference, 1930-31.
51. Ibid.
52. Mr. Jinnah's Fourteen Points, March 28, 1929, III L.C.D. 245-48, 1961. Henceforth, the policy of Muslim leaders was directed towards the creation of more and more Muslim majority Provinces and getting "a large share in the federal or central Indian Government by virtue of the number of Muslim majority provinces".
policy. 'The Muslims', observed Dr. Iqbal, "demanded federation because it is prominently a solution of India's most difficult problem, the Communal problem." He maintained: "The unity of an Indian nation, therefore, must be sought, not in the negation, but in the mutual harmony and cooperation of the many."

It was, thus until the two-nation theory took birth, a general consensus among the Muslim League and the Indian National Congress that a 'federation' would be a practicable as well as desirable way for India to achieve independence, national unity and democracy.

Another factor which combined to make a federal polity for India inevitable, was the position of the Native States in the Indian political system, which constituted nearly a third of the country. These States laid all over the country and the territories of many of them had interspersed with British India in many places. Theoretically not a part of British India, though the Crown exercised suzerainty over them. They existed in complete isolation, away from the political life of the rest of India, yet any large change, political or economic in British India was bound to affect them.

The relationship between these States and the Government of India created under various treaties, engagements and sadoads did not fit in the usual categories of unitary, federal or confederal systems, nor was it international or constitutional. But "paramountcy" was the term used to denote it. "Paramountcy" was political in form because it was through the exercise of the

54. Ibid.
55. The Imperial Gazette of India described that there were 562 Native States varying in their size and extent, as consisting of territories in India, not being within 'His Majesty' dominion, yet under His suzerainty.
political pressure that the British influenced the conduct of the people in the States. The 'Paramount Power' exercised over them meant the Crown acting through the Secretary of State for India and the Governor-General-in-Council who were responsible to the British Parliament.  

Under the treaties, engagements or sanads entered into between the two, the Government of India had become supreme in matters connected with 'defence' and 'external affairs'. The power of the Government of India was also extended to 'posts and telegraphs', 'railways' and other means of communication and transport, to the extent to which such powers were required for strategic and military purposes. By implication, the 'Paramount Power' was free to call upon the Rulers to do anything which in their opinion was essential to make effective their control over external affairs. In internal matter, the Rulers were sovereign, though in theory only. Practically here also the British authorities could intervene to any limits.  

This all made the position of the States under the system of 'paramountcy' most unsatisfactory. So vague and undefined was the meaning attached to this concept that the guarantee given by treaties of non-interference in internal affairs ceased to have any meaning. This was much resented to by the Rulers and they made a plea before the Butler Committee 1928, to define 'paramountcy'. The Committee rejected the demand and observed that paramountcy must remain paramount to fulfil its obligations in a rapidly changing world. Thus the relationship though contractual, did not rest on treaties made in the past. It was "a living, growing relationship shaped by circumstances and policy, resting... on a mixture of history, theory and modern fact." However, the general policy of the Government of India, while the precise limits of 'paramountcy' remaining undefined, was to let the States alone in the management of their internal affairs without intervention, except, in cases of gross maladministration and serious

56. Report, Indian States Committee (Butler Committee), para 18, 1928-29.
59. Id., para 39.
revolts there.

Thus, though geographically inter-meshed with British India, the States, for all political and constitutional purposes, were a separate entity. But the rising Indian nationalism, in due course, emerged as a powerful force, compelling the States to come closer to the rest of India. The British authorities attempted to win over the Indian Princes to their side, to counter-weight the strength and intensity of nationalists' radicalism. Having grown apprehensive of the danger to their empire in India, they could now see to the autocratic rulers of the States as their "helpers and colleagues in the great task of imperial rule", and they advocated the establishment of a closer association between the States and British India. The Indian Princes, on their part, apprehended that "the democratic winds blowing across British India would not, for long, leave their feudal strongholds unaffected." They did not fail to realize that the people of British India might make common cause with the people in their States in destroying their personal autocracy. In their effort to meet the challenge, they started negotiations to prevent the transfer to a responsible government, of the power of 'paramountcy'. The Princes who were not satisfied with their position, presented their grievances to Mr. Montague, when he was visiting India in connection with the Reforms. They desired to form an all-India Organization for discussing their considered views on matters of common interest. They wanted to have some voice in the determination of all-India policy and an Imperial Tribunal to decide disputed questions between themselves and the Government of India. This all necessitated the establishment of a common forum for the meeting of the native Rulers and to confer with the British authorities on matters of common interest.

60. Lord Hardinge in 1916 described them so and introduced the practice of consulting the ruling Princes on matters of imperial interest and in matters affecting the States as a whole.
61. Bombwall, 54.
The Mont-Ford Report accepted the main proposals of the Princes and on their recommendations, the British Government set up in 1921, the 'Chamber of Princes'. Being a deliberative body, the Chamber could not do much to justify its existence. Yet, its establishment, as commented by the Simon Commission, made "an important stage in the development of relations between the Crown and the States", for it involved, "a definite breach in an earlier policy, according to which it was rather the aim of the Crown to discourage joint action and joint consultation between the Indian States and to treat each State as an isolated unit apart from its neighbours." 64

The Indian National Congress defined its attitude towards the States in 1927 at its Madras Session and assured the people of the States of its sympathy with and support in their legitimate and peaceful struggle for the attainment of full responsible government in their States.

When it became evident that the British would have to agree to the introduction of the parliamentary form of government at the Centre in British India, there arose a fear in the minds of the Princes as to the probable effect of such reforms on their States. The question was discussed in the Chamber of Princes in January 1926. It was followed by a Conference, held in July 1926, by the viceroy, or political officers. On the basis of the decisions arrived at in the Conference, Lord Birkenhead, then Secretary of State, appointed a Commission of Enquiry known as the Indian States Committee, with Sir Harcourt Butler as its Chairman,

63. The Chamber consisted of 108 Princes of Class I States, 12 representatives of 127 Class II States and the remaining States getting no representation. The Chamber was to work purely as a deliberative body whose resolutions did not bind even its own members. As the membership of the Chamber was voluntary, some of the larger States like Hyderabad, Mysore, Baroda, Indore, Travancore, Gwalior etc. never joined it.

64. Report, Indian Statutory Commission, para 100, 1930. The Commission even recommended the formation of a greater Indian Council composed of representatives of the States and British India "to discuss matters of common interest to both".
to make recommendations as to how the British hold over the Indian States could be perpetuated. The Committee made a comprehensive study of the relationship between the States and the British India. It paved the way for the acceptance, by the States, of the federation. The Committee however made a reference to the demand made by the Princes that "without their own agreement, the rights and obligations of the Paramount Power should not be assigned to persons who are not under its control, for instance an Indian Government in British India responsible to an Indian Legislature." The Committee, thus, recorded the historical nature of the relationship between the Paramount Power and the Princes and thereby boosted the bargaining position of the States in negotiations, which were to precede the framing of a federal Constitution, by endorsing that the Crown could not transfer paramountcy powers or any part thereof to the future Federal Government of India without the express consent of the Princes.

The Butler Committee, thus, left it open to the States not to come to any closure union with British India if their special claims were not recognised. For the time being, these recommendations dashed to the ground all hopes of a federation between British India and the States.

In the meantime, things took a different turn. The people of the States organised themselves into Indian States People Conference and began to put forth the demand for responsible government for them. The Indian National Congress assured them its sympathy and support in their legitimate and peaceful struggle. Soon the pressure from the people of the Indian States increased who declared themselves, in unequivocal terms, to be in favour of a federation.

65. Report, Indian States (Butler) Committee, para 58, 1929.
66. Id., paras 50-60, Appendix III.
The Princes, who were marking time, read the writings on the wall and perceived that sooner or later, a United India was certain. They realised that if they joined with British India in a federation with some reservation of power, which was possible at that time, that might save their position. Further, there were many matters of economic character like tariffs, railways, posts and telegraphs, salt and opium etc., which till then were being regulated by the Government of India. Any change in British India Policy towards these matters was bound to affect the States also. They got afraid that a responsible government coming to and going out of office at the behest of an elected legislature might not show any consideration to the economic interests of the States. With a better bargaining position recognised by Butler Committee, the Princes expected that they would easily be able to secure "a position of great advantage and privilege in the federal blue print without conceding any dilution of autocracy in their dominions."67

All these considerations went into their minds and the Princes were moved to seek admission into the All India Federation. The Maharaj of Bikaner in December, 1929 said, "I look forward to the day when a United India will be enjoying Dominion Status under the aegis of the King Emperor and the Princes and States will be in the fullest enjoyment of what is their due as a solid federal body in a position of absolute equality with the federal provinces of British India."68 Speaking broadly on behalf of the States and Princes, he stated that an All India Federation was likely to prove the only satisfactory solution of India's problem.69

67. Bombwall, 55.
69. Speech of Maharaja of Bikaner, Nov.17, 1930. Proceedings of the First Round Table Conference, quoted in III I.C., 360, 1961. The Nawab of Bhopal on behalf of the rulers stated that they were ready to join the federation provided their internal sovereignty was guaranteed. R. Coondoo, The Division of Powers in the Indian Constitution, 80, Bookland Pvt. Ltd., Calcutta, 1964.
The British, unable to resist the demands of nationalism and democracy, were not prepared to part with power completely. They thus welcomed an all-India federation to perpetuate their imperial interests. The Muslim found in federalism safeguards against their persecution in the Hindu majority regions and their desire to be their own masters in the Provinces in which they commanded a majority. For the Princes, federation might save their position and provide them a share in legislation and administration in respect of matters of economic character and enable them to protect their interests while preserving their internal autonomy. The Nationalists believed that federation was a practicable as well as a desirable way for India to achieve independence, national unity and democracy. The country was thus almost unanimously in favour of the establishment of a Federation.

Lord Irwin, the Viceroy, on October 31, 1929 made a statement whereby he fore-shadowed the setting up of a Round Table Conference, at which the representatives of British India and the Indian States would meet the representatives of the British Government and Parliament, to discuss the principles of a new Constitution of India.70

Accordingly, the first session of the Conference (First Round Table Conference) was held in London between November 12, 1930 and January 19, 1931, without Congress being represented in it.71

70. This move was first suggested by Mr. Simon who was the Chairman of the Indian Statutory Commission, 1927-30. It was supported by the British Government and the Viceroy Lord Irwin.

71. The Indian National Congress wanted to get an assurance from Lord Irwin that the Conference would meet not to discuss when Dominion Status was to be established but to frame a scheme of Dominion Constitution for India, but a distinctively negative note from the Viceroy led the Congress to launch upon a programme of civil disobedience. Pattabhi, Sitaramayya, History of the Indian National Congress, Vol.I, 594, Madras, 1935.
The federal issue dominated the first session of the Round Table Conference. The Conference recommended the establishment of a federation. It further advocated the idea of complete responsibility in the Provinces and partial responsibility at the Centre. It demanded that India must be prepared in future to defend herself. Surprisingly enough, the Princes nodded their heads in favour and expressed their willingness to join it, if their rights were safeguarded.  

The First Round Table Conference returned its delegates home with the word 'federation' on their lips, with little success to have found a solution for the problem of adjusting the relationship of Indian States with British India. The greatest setback was the absence of Congress from its deliberations. Lord Irwin, who was conscious to create an atmosphere of cordiality and co-operation on the Indian political scene, made an appeal to Mr. Gandhi to agree to a compromise, and Gandhi-Irwin Pact was signed on 5th March, 1931. It created an atmosphere of goodwill and cordiality. Gandhiji agreed to participate in the Second Round Table Conference which raised high hopes about the successful outcome of the Conference.

Nevertheless, the Second Round Table Conference was convened to meet on September 7, 1931. But it did not open with the meeting of the full Conference, only its Federal Structure Committee and the Minorities Committee carried on the work. Mahatma Gandhi directed his attention to finding out a solution to the communal issue. He, vehemently, opposed the claims of the minorities to have separate electorates. This embittered the

72. Speech of Maharaja of Bikaner at the Round Table Conference, Nov.17, 1930. III 1,2,3, 360, 1961.
73. Lord Irwin took a practical move in that regard and as a gesture for reconciliation, ordered the release from jail of Gandhiji who on his part reciprocated the new approach by withdrawing the Civil Disobedience Movement.
latter who formed an alliance against the Congress leader. Muslims refused to participate in the discussions until all their demands were conceded. All this severely handicapped the progress of the Federal Structure Committee and Gandhiji had to admit "with deep sorrow and deeper humiliations" utter failure to secure an agreed solution of the communal problem. The Conference was wound up with a declaration made by Mr. MacDonald that if the Indians could not present them "with a settlement acceptable to all parties, as the foundations upon which to build", the Government "would be compelled to apply a provisional scheme."  

The Muslims had been demanding from the Government, an early settlement of communal problem. In response to their demand, Mr. MacDonald announced the Command Award on 16th August, 1932. While making the Award, the disinterested British Government was very generous to the minorities and more particularly to the Muslims. It was not well received in India. British axiom of 'divide and rule' indeed reached the very home and hearth of the Indian people. The attempt to divide the 'Caste Hindus' from the Scheduled Caste Hindus, however, was the bitterest blow which Gandhiji could not stand and he staked his life by undertaking on September 20, 1932, a fast unto death, unless the British revised their decision. After six days of deliberations, the Award was modified on the basis of an agreement, known as the 'Poona Pact' concluded on September 25, 1932. Under this Pact, the Depressed Classes gave up separate electorates and got more seats reserved for them in return.

74. Gandhiji's speech at the Second BTC, November 30, 1931. II Speeches & Documents, 233-236.
75. II Speeches & Documents, 238, 1957.
76. The Award gave separate electorates to Muslims, Sikhs, Europeans, Anglo-Indians and the Depressed Classes. The principle of weightage in representation was also accepted and extended to all Provinces. II Speeches & Documents, 261-65.
77. Id. at 265-266.
On the conclusion of the Second Round Table Conference, a Consultative Committee had been appointed for bringing out an agreement on communal and other leftover issues. The Committee could not recommend any solutions. This compelled the British Government, which was bent upon to impose a new Constitution in India, to convene the Third Round Table Conference in London, for "a final review of the whole scheme" and "to fill in the important gaps left by the discussions at the earlier two Conferences". The Conference held its deliberations from November 17, 1932 to December 24, 1932. Congress did not participate in these discussions. It was the smallest, the shortest and, in its composition, the most conservative of the three Conferences. The Conference adopted a "less formal and more expeditious procedure" and the decision, that speeches should not be published, accelerated the proceedings. At the close of the Conference, Sir Samuel Hoarse, the Secretary of State for India, declared three important points about the proposed new Constitution for India, viz., (1) that accession to the federation of about 50 per cent of Indian States, reckoned in terms of number and population, would be regarded as justifying the inauguration of the All India Federation; (2) that Muslims would be given 33 1/3 per cent of the British Indian Seats in the federal Legislature and (3) that Sind and Orissa would become separate new Provinces.

The results obtained at the three Conferences were embodied in the White Paper issued by the British Government in March 1933. It contained a detailed outline of the new Constitution in the form of proposals. The three major principles enunciated in the

78. It was so clearly made out by Mr. Ramsay MacDonald on December 1, 1931. Ibid.
79. Even the Labour Party of Great Britain abstained from participating in it. This introduced "a definitely party element into the proceedings of this session", A. S. Keith, A Constitutional History of India, 1600-1935, 308, Central Book Depot, Allahabad, 1961.
The next step in Constitution-making was taken in April, 1933 with the appointment of a Joint Select Committee of the two Houses of Parliament with Lord Linlithgow as its Chairman. The Select Committee declared that there should be an All India Federation, but it would come into existence only when at least 50 per cent of the Princes joined it; that responsible government in all the British Provinces should be introduced; that the safeguards to be provided in the Constitution, should not in any way interfere with the growth of healthy conventions and should only be necessary during the period of transition. These recommendations formed the basis of the Government of India Bill which was introduced in the House of Commons on December 12, 1934 and debated in both the Houses of Parliament. The Bill was vehemently opposed by a section of the Conservatives but it went through in the teeth of all the oppositions and received Royal assent on August 4, 1935, as to become the Government of India Act, 1935. The Act laid down the blue-print of an All India Federation, but few really believed that the blue-print would come to life.

The All India Federation, which the Government of India Act 1935, aimed to establish, was perhaps the most complex federation ever known in the history of federalism. It emerged on the face of conflicting forces, progressive and reactionary, the latter outweighing the former. The three conflicting forces operating at the Indian political scene, viz., the Indian nationalism, the British imperialism and certain vested interests pampered by the ruling British in the garb of Indian Princes, the Muslim communalism, safeguards for minorities, were at play to influence
the formation of the new Constitution. The Act failed to satisfy the political hunger of the Indian people and became unpopular among them. It was, as Bombwall put, "a case of still-birth" and the scheme of federation outlined in the Act never came into operation.

There were certain anomalies contained in the Act of 1935 itself. To add to these, unwillingness of the Indian Princes to join the proposed federation, its vehement rejection by both the Congress and the Muslim League, stood as a rock in the way of the proposed Federation. The Federation was to come into being when a sufficient number of Indian States entered it. The Federation was to consist of the British Provinces and those Indian States which elected to enter it, thus giving a choice to the Rulers of the States to join it or stay out. The key to the inauguration of the Federation was thus given to the Princes, whose unwillingness rendered impossible the establishment of the Federation.

Further, while the Act 1935 itself laid down the quantum of legislative and executive powers to be exercised by the Federal Government in respect of the Provinces, the subjects in respect of which a State would come under the authority of the Federation, depended on the terms of the 'Instrument of Accession' to be executed by its Ruler. With the result the extent of

81. Bombwall, 185.
82. According to Section 5(2) of the Act of 1935, the States comprising at least half of the total population of all the Indian States, and whose Rulers were entitled to choose half of the number of the total number of seats allotted to the States in the Council of State (the Upper House of the Federal Legislature), were to accede to the Federation.
83. Section 5(1)(b), Government of India Act, 1935. While the British Indian Provinces were automatically to become units of the Federation, it was made voluntary for the Princes to accede to it.
84. The Princes wanted safeguards for two things, namely, their sovereignty and their financial position.
85. Section 6 of the Act 1935.
federal power would have been different not only as between Provinces and States, but also as between one State and another. To further accentuate the lack of uniformity in the scope of federal power, the States were made the repositories of all residuary powers, while in the case of Provinces, the Governor General was to decide, in his discretion, whether a particular residuary power should vest in the Provinces or the Federation.

The States were also granted larger weightage of representation in all the organs of the Federal Government. While, the representation of each Province in the Federal Legislature was to be roughly in proportion to its population, the States were given much in excess of what they could claim on that basis. The most undemocratic feature of the proposed scheme was the manner of election to these legislative bodies. While the representatives of the Provinces were to be elected either directly or indirectly by the people, those of Indian States were to be nominated by the Rulers themselves. It was this aspect of the proposed Constitution which met with the strongest opposition from the Indian National Congress which supported the struggle waged by the people of the States for civil liberty, democracy and emancipation from the princely yoke.

To further strengthen the position of Princely Rulers, their concurrence was made essential to bring any change in the Constitution and powers of either House of the Federal Legislature,

86. This flowed as a corollary to Section 6.
88. The States with less than 25 per cent of the total population got 40 per cent of the seats in the Upper House and one-third of the seats in the Lower House of the Federal Legislature. Section 18 of the Act 1935.
89. First Schedule to the Act 1935.
90. Bombwall, 203. The strange feature of the whole scheme was that the people of the States were given no voice at all in the entire process of constitution-making.
while amendment to the Act had to be compulsorily accepted by the Provinces.  

It is thus evident that the British Provinces were, in every respect, assigned a status inferior to that of the Princely States, in the proposed Federation. The peculiar method of accession of the States to the Federation, was unprecedented and evidently incompatible with the theory and practice of federalism. The result would have been to make the proposed Federation "a Federation composed of disparate constituent units, in which the powers and authority of the Central Government will differ as between one constituent unit and another." In the words of Dr. Rajendra Prasad, "it will be a kind of federation in which unabashed autocracy will sit entrenched in one-third of India and peep in every now and then to strangle popular will in the remaining two-thirds." The glaring anomalies, pointed out above, in the proposed federal set-up, led the belief that the federation, if came into being, would soon break down.

With such a privileged position given to the States, the Princes decided to keep away from the Federation. This retreat of the Princes was based on their fear that if the people of the States came into close contact with the British Indians, which was certain under the proposed scheme, they might become restive and agitate for reforms. In the federation they read the liquidation of their autocracy.

Though the Princes had the major share of responsibility for the failure of the federation, Congress and the Muslim League also contributed to wreck it.

92. Report, Joint Committee on Indian Constitutional Reform, para 29, 1934.
The Congress rejected the scheme in its entirety as a Constitution "designed to facilitate and perpetuate the domination and exploitation of the people of India."\(^94\) The all-India Federation proposed in the Act of 1935, the Indian National Congress apprehended would act 'not as a door but as a road-block for India's march to independence.'\(^95\) The Congress agreed in principle with the idea of an all-India Federation, but it was totally opposed to the federal scheme contained in the Government of India Act 1935.

To the Muslim League, the federal scheme embodied in the Act of 1935 was "wholly unnatural, artificial and unknown to any Constitution."\(^96\) The League was no less vehement and forthright in rejecting the scheme as the Congress. The League declared that "the all-India Federal Scheme of the Central Government was fundamentally bad. It is most reactionary, retrograde, injurious and fatal to the vital interests of British India via-a-vis the Indian States, and calculated to thwart and delay indefinitely the realisation of India's most cherished goal of complete responsible government and is totally unacceptable."\(^97\)

It is evident that both the Congress and the League were of the view that the privileged position accorded to the Princely States in the new Constitution would adversely affect the interests of British India. However, it was not the opposition of either the Congress or the League that caused the miscarriage

\(^94\) Indian National Congress Resolution, 12-14 April, 1936. I Speeches & Documents, 385. While discussing in June 1934, the scheme of White Paper of 1933, on the basis of which the Act of 1935 was enacted, the Congress outrightly rejected it and resolved that "The only satisfactory alternative to the White Paper is a Constitution drawn-up by a Constituent Assembly elected on the basis of adult suffrage or as near it as possible with the power, if necessary, to the important minorities, to have their representatives elected by the electorates belonging to such minorities." III I.C.D., 1961.

\(^95\) Bombwall, 204.


\(^97\) Resolution of the All India Muslim League, 11-12 April, 1936 I Speeches & Documents, 385.
of the federal project, but what killed it was the unwillingness of the Indian Princes to join it. The British authorities made repeated efforts to persuade them to join the Federation but found them "drawing back from the grand design of a United India." 98 As it happened, the establishment of the proposed Federation was rendered impossible, and with it the introduction of responsible government at the Centre. The Central Government and the Legislature, thus, continued to operate as they were constituted under the Government of India Act, 1919, until the final withdrawal of the British in 1947.

The Federal Scheme envisaged by the Government of India Act 1935, never came into being. But Part III of the Act, relating to Provincial Autonomy, was launched on April 1, 1937. Thus, so far as British India was concerned, federalism became an accomplished fact. From this standpoint, the Government of India Act 1935 "marked a definite milestone in the constitutional history of India." 99 The Act placed the Centre-Province relations on an unmistakably federal basis, giving the Provinces an independent statutory existence, with authority of their own. It is noticeable that the scheme contemplated under the Act relating to the Centre-Province relations and several other matters, was grafted with minor changes in the Constitution of Independent India.

The 'federal elements' contained in the Act of 1935 were: the more or less clear and precise division of powers between the Centre and the Provinces, which could not be amended by the unilateral action of either Government; the enjoyment of autonomy by each Government in the sphere allotted to it by the Act; the provisions of independent financial resources and the establishment of a Federal Court charged with the duty and power to secure the observance of constitutional limits by the Central and Provincial Governments. The administration of the Provinces was entrusted to their respective Council of Ministers fully

accountable to a wholly elected Legislature. They were thus no more to be the administrative agents of the Central Government.

The 'distribution of powers' enshrined in the Act of 1935 was the first contribution to the federal systems of government. The method adopted for the purpose, in the words of the Joint Select Committee, was "without precedent". The statutory allocation of exclusive jurisdiction of the Provinces and the Federation was made on the basis of the three lists of subjects: the Federal List of 59 subjects, the Provincial List with 54 items and the Concurrent List incorporating 36 subjects. The Concurrent List over which both the Federal and the Provincial Legislatures could legislate was divided into two groups, Group I of 25 items relating mainly to the matters of law and order and personal rights and status and Group II of 11 items relating to matters of social and economic legislation.

In respect of "residuary powers", the Act adopted an unusual course of entrusting the Governor-General in his individual judgement, with the power to settle ad hoc on each occasion their allocation to either Federal or to the Provincial Legislature. Though the method was novel one, but it was defended as "a reasonable compromise" in view of "an apparently irreconcilable difference of opinion... between the two great Indian communities on the matter". The Joint Select Committee disclosed:

... we gather from our discussions with the Indian delegates that a profound cleavage of opinion exists in India with regard to the allocation of the residuary legislative powers; one school of thought, mainly Hindu, holding as a matter of principle that these powers should be allocated to the Centre, and the other, mainly Muhammadan, holding not less strongly that they should be allocated to the Provinces.

5. Report, Joint Committee on Indian Constitutional Reform, paras 54, 56, 1934.
On this point, the Joint Committee approved the White Paper Proposals to include in the Provincial List, a general power to legislate on any matter of a merely local and private nature in the Province not specifically included in that list and not falling within the Federal and Concurrent List. But "in order to provide for the possibility that a subject which is, in its inception, of a merely local or private character may subsequently become of "all-India interest", the White Paper proposed that power be vested in the Governor General "in his discretion to sanction legislation by the Federal legislature on the same subject matter." The proposal was approved by the Joint Committee and incorporated as Section 104 of the Act.

Not only the "residuary powers" but the whole "division of powers" embodied in the Act, revealed the interplay of some of the forces which played their role in shaping the federal structure contained in the Act. A long and fierce battle between the autonomists and the centralists continued throughout the framing of the Constitution of 1935, more particularly on the question of "division of powers". As already seen, the Muslims wanted that the area of Provincial Autonomy should be extended as much as possible, with a view to securing protection for their special interests and maintaining themselves as a distinct political entity. On the other hand, the nationalists were concerned more about the security and stability of the country as a whole than about the extent of provincial self-government. On this point, the British Statesmen supported the nationalists' viewpoint and "a centralised form of government" implying thereby "a stable and strong administration" was preferred.

6. White Paper Proposals for Indian Constitutional Reform, 1933. See also, Report, Joint Committee on Constitutional Reform, paras 54-56, 1934.

With the result, 'the division of powers' as it finally emerged, created a very powerful central authority in India and restricted the ambit of Provincial Autonomy. But this tilt in favour of the Centre did not necessarily destroy the federal character of the scheme contained in the Act. The rationale of the scheme lies in the fact that the framers of the Constitution of Independent India could hardly deviate from it.

In the 'Administrative sphere', the Act of 1935 widened and strengthened 'the independence of the Provinces'. Their executive power went along with their legislative power and this power was to be exercised on behalf of His Majesty.\(^8\) To ensure proper execution of federal laws, certain restriction were imposed on the provincial authority.\(^9\) The Governors of the Provinces were to exercise their discretionary powers and discharge their special responsibilities subject to the control of the Governor-General. The Provinces were to exercise their executive powers in such a manner as not to impede or prejudice the exercise of the executive power by the Federal Government.\(^10\) There were some other limitations of this nature. In addition to these, there were certain legislative and financial powers which could be exercised unilaterally by the Governor if, in his individual judgement, he considered such exercise necessary to discharge his special responsibilities. He could issue ordinances, place laws on the statute book and appropriate finances independently of the advice of the Ministers or approval of the legislature. These were the limitations on the Provincial Autonomy operating in the most normal of times. While the autonomy of the Provinces could be wholly suspended if the Governor-General issued a proclamation of emergency, which he could do if he was of the view that "a grave emergency exists whereby the security of India is threatened whether by war or internal disturbance."\(^11\)

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8. Section 49 of the Act 1935.
9. Id., Section 122.
10. Id., Section 126.
11. Id., Section 126A.
In spite of limitations, like these, the Provinces acquired a far greater administrative independence. Restrictions were there, no doubt, on their autonomy, but they did not destroy its substance. Remarkably enough, the pattern of administrative relations between the Centre and the Provinces under the Government of India Act 1935, has been virtually borrowed and transplanted in the Constitution of Independent India.12

In the financial sphere the Act of 1935 brought about considerable improvement. The Act for the first time marked a clear distinction between the provincial and federal sources of revenue.13 But it worked steadily to the disadvantage of the Provinces. The sources of revenue assigned to the Provinces being inadequate and inelastic, resulted in deficits in the budgets of most of the Provinces. The dependence of the Provinces on the Centre in respect of financial matters thus continued. The reason for this all as explained by one critic was that "provincial prosperity and development was consciously subordinated to Central security and all elastic sources of revenue had been collared by the Government of India."14 In the words of P.J. Thomas, however, "the financial authority of the Provinces is now nearly as complete as can be under a Federal Constitution." The fact is that the Act of 1935 invested the Centre with the more lucrative and elastic sources of revenue while the Provincial Governments had to manage with less lucrative and inelastic sources. It may further be added that this defect can be found in every system of constitutionalism and no Federation has so far succeeded in devising a financial system satisfactory from the point of view of both independence and adequacy. This

13. For details, please see Chapter III.
is also true as far the financial provisions of the Indian Constitution of 1950.

All said, and, the limitations on Provincial Autonomy recognised, the fact remains that there was a distinct advance in the position of the Provincial Governments. For the first time, in the history of British India, the Provinces acquired an independent position and were invested with a distinct legal personality of their own. The scheme was a novel and unusual one. So was accepted by the Joint Committee. They justified the enactment and said, "Of course in thus converting a unitary state into a federation, we shall be taking a step for which there is no exact historical precedent."\(^{16}\) It is interesting to note that the pattern of Union-State relations under the Constitution of Independent India bears so close a correspondence to the scheme of federal-provincial relations embodied in the Government of India Act 1935 that the Indian Constitution, in this respect, has been described as a "palimpsest of the Act."\(^{17}\)

The movement in the direction of federalism, as noticed above, was the outcome of the existence and operation of three main factors promoting unity and diversity and their respective centripetal and centrifugal tendencies. These factors were, British Imperialism, Muslim Communalism and Princely decry for their internal sovereignty. Of these, the first represented the forces of unity while the latter two represented those of diversity. The interplay of these forces and the resulting balance made the federal form of government inevitable. The result was a federation under the Government of India Act 1935 and operation of provincial autonomy.

\(^{16}\) Report, Joint Committee on Indian Constitutional Reform, Para 27, 1933.

But a change overtook the country in the decade 1937-47 whereby the equilibrium which existed between the forces of unity and diversity till then, got disturbed, giving phillip to the latter. The British, the unity force by then, read the writing on the wall and realised that it would be impossible for them to maintain their imperial hold over the country and that they would have to transfer power to Indian hands, sooner or later. They, therefore, got indifferent towards constitutional reforms and marked a complete departure in their policy towards Indian problems. They were found no more interested in maintaining the political unity of even that part of India which was directly ruled by them. For, it did not matter them much whether they transfer power to one government having control over the whole country or a number of governments each controlling certain parts of it. This was so evident from the Draft Declaration made by the British Government on March 30, 1942 while sending Sir Stafford Cripps to India to negotiate a settlement with the political parties. The declaration accepted the Congress demand for Indian Constituent Assembly but subject to the right of any Province not to accept the Constitution so framed by it.  

This novel and provocative principle of non-accession for the Provinces was denounced by the Congress as "a severe blow to the conception of Indian unity." Henceforth, this trend towards balkanisation of the country continued with the British.  


19. To give it a strong footings the British Prime Minister announced in the House of Commons in February 1947, that power would be transferred to responsible Indian hands by a date not later than June 1948, "whether as a whole to some form of Central Government for British India, or in some areas to the existing Provincial Governments or in such other way as may seem most reasonable and in the best interests of the Indian people." Mr. Attlee's Statement, February 20, 1947. II Speeches & Documents, 566, 1957. Lord Mountbatten, also proceeded on the same basis when he came out with a statement on June 3, 1947, expressing the final decision of the British Government on the point. Mountbatten Plan, June 3, 1947, II Speeches & Documents, 675-76, 1957.
The only party which stood, at that time, for the unity of the country was Indian National Congress which was practically in the wilderness during 1939-1945, thus, giving momentum to the decisive forces. On its overwhelming success at the 1937 election the Congress was approached by Muslim League leaders to set-up composite Congress-League ministries in Congress majority Provinces. But, the Congress, having won over all majorities, held itself under no obligation to include representatives of the League in the new ministries, except on its own terms. This failure on the part of Congress strengthened the belief, held by some adventurous Muslim leaders that "the Muslims should have a separate homeland." 20

Until 1937, Muslims regarded themselves as minority and claimed rights similar to those claimed by other important minorities in other parts of the country. The events of 1937, however, changed the situation. The poor showing by the League in the 1937 election highlighted that it was decaying as an organisation. The Muslim Mass-Contact Campaign 21 launched by the Congress under the leadership of Mr. Nehru, was regarded by the League as a challenge to its very existence. Mr. Jinnah declared that it was calculated to divide and weaken and break the Mussalmans and to detach them from their accredited leaders. He denounced the Congress as a Hindu fascist body, and began openly to talk of the Hindus and Muslims as two different nations. Ultimately, Mr. Jinnah gave Muslim communalism a new turn and spelled out the new doctrine of two nation theory at the Lahore Session of the All India Muslim League on March 22, 1940. A Federation with residuary powers vested in the Provinces no longer satisfied them. Different proposals began to be moved which could meet the League's demands short of partitioning India into two sovereign states. But, Mr. Jinnah, who was till then one of the leaders of the Muslim community had fast become the leader "to keep the pot boiling to get his Pakistan." 22

21. Mr. Nehru on 'Mass Contact Programme' March 19, 1937; I Speeches & Documents, 422-23.
Not merely the probability of a partition as demanded by Mr. Jinnah, other decisive forces, though with a mild tone, were also raising their heads during the decade. Sensitive to Hindi and Aryan imperialism of the north, E.V. Ramaswamy Naicker, the leader of the Justice Party in Madras, demanded in 1938 the formation of a separate Tamil Nadu. During this period, the extremists among the Sikhs led by Master Tara Singh became vocal to put forward their claim to have an independent Sikhistan.

The doctrine of direct relations between the Indian Princes and the British Crown, recognised by the Butler Committee, had already been woven into the fabric of the Government of India Act 1935, which provided for the voluntary accession of the States to the proposed Federation. It encouraged separatists trends and obstructionist tactics in princely quarters, and the Princes with a wishful thinking, that they were left free to decide for themselves their political future, started playing with the idea of complete independence and of the formation of a separate federation.

The divisive forces were gaining strength and anti-national wind started blowing in some parts of the country. "Strong forces were at work", observes Morariji Desai, "to create conditions which would have resulted in the division of the country in four or five regions that would have been at best held together by a loose confederation." Even the Cabinet Mission was forced to

23. He went forward to lead the Dravida Kazagham Party to agitate for the creation of an independent Dravidasthan comprising the whole of southern India. M. Venkataramaiya, Nationalism in India, 21, Andhra University, Waltair.


26. The Cabinet Mission, consisting of Lord Pathick-Lawrence, Secretary of State for India, Sir Stafford Cripps and Mr. A.V. Alexander, arrived in New Delhi on March 23, 1946, with the avowed purpose of assisting "the Viceroy in setting up in India the machinery by which Indians can devise their own condition" and mediating between the Congress and the Muslim League in order to find a middle ground upon which the communities of India could be constitutionally united. Broadcast by the Mission over Delhi Radio, 16 May 1946. II Speeches & Documents, 577-84, 1957.
recognise the strength of these forces. To bring about a stable
and practicable solution, the Mission proposed an all-India Union
with control only over three subjects - defence, external affairs
and communications. It also conceded to the Provinces the right
to secede from the Union, if they so desired, at the end of ten
years.27

The situation became critical on the rejection of the
Mission Plan by the Muslim League. However, the British
Government's efforts to bring round the Congress and the Muslim
League to an agreement continued. Lord Mountbatten, was sent to
India in February 1947, as the Viceroy, to find an agreed solution
for a United India on the basis of the Cabinet Mission Plan. He
was entrusted with the task of transferring to Indian hands
responsibility for the Government of British India "in a manner
that will best ensure the future happiness and prosperity of
India."28

Lord Mountbatten came to India under most inauspicious
circumstances. He soon realised that in the face of the
progressive deteriorating situation in the country, if the
procedure for the transfer of power was not finalised quickly,
"there was a possibility that at least in some parts of the
country, there would be no authority to whom power could be
transferred."29 He, therefore, being eager to wind up his
assignment in India as quickly as possible, hastened the state
of political uncertainty to cease. He took renewed interest in
maintaining as much of the political unity of the country as
possible. On June 3, 1947, he submitted the final plan, which he
had brought from London, according to which the transfer of power
was to be made only to the two dominions, India and Pakistan.

27. Cabinet Mission Plan, May 16, 1946, Il Speeches & Documents,
580, 1957.
28. Statement by Mr. Attlee, the Prime Minister in the House
of Commons, 20 February, 1947. Id. at 669.
29. V.F. Menon, Transfer of Power in India, 357, Orient Longmans,
Calcutta, 1957.
Thus, all dangers of further balkanisation of the country were averted. The only tangle left unresolved was with regard to the accession of Indian States, who were given option to join one of the two dominions or remain if they so preferred, outside both of these, as independent States.\(^30\)

Geographically, the "princely States" constituted the heart of India.\(^31\) As already pointed out, their territories were so inter-mixed with those of the dominions, to be created under the Mountbatten Plan, that they were obliged to accede to the appropriate dominion. The essential defence and security requirements of the country as well as her economic and geographical compulsions resulted in all the States contiguous to India, acceding to the Dominion. The willingness with which the Princely States joined Indian Dominion, evidently proved that equilibrium between the forces of unity and of diversity which was titled in the 1937-47 decade, was restored, so far as India outside Pakistan was concerned.

It has been seen that until 1937, all the forces in India were leading to the development of a consensus in favour of a "federal polity" based on a minimal centre and maximum autonomy for constituent units. The Cabinet Mission Plan of 1946, was the last serious attempt to solve the constitutional problem of the country on such a basis. But the failure of this endeavour, and the consequent partition of India worked as catalytic agents and gave to the development of Indian federalism a new orientation, a "Federation With a Strong Centre."

It is remarkable to note that at no time during its deliberations, was there a general debate in the Constituent Assembly, on whether India should be a unitary or a federal 'State'. The reasons for this are clear. The Assembly was


\(^{31}\) Coupland observes "India could live if its Moslem limbs in the North-West and North-East were amputated, but could it live without its heart." The Future of India, 152, Oxford University Press, London, 1944.
originally convened to frame a Constitution strictly in conformity with the Cabinet Mission Plan 1946, which recommended the establishment of "a Union of India embracing both British India and the States, which would deal with the following subjects: Foreign Affairs, Defence and Communication, and should have the power necessary to raise the finances required for the above subjects." The Mission further provided that "All subjects other than the Union subjects and all residuary powers should vest in the provinces", and that "the States will retain all subjects and powers other than those ceded to the Union."  

The Assembly was, thus, not writing on a clear slate but that it had to create a federal system of government. With such a limitation imposed upon it, there was no room for any general discussion on the desirability or otherwise of a federal system. This was precisely the reason that while there was a lengthy debate on the "Objectives Resolution", moved by Mr. Nehru on 13 December, 1946, no one questioned that part of the Resolution which stated that "the territories of the Indian Sovereign Republic, 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."  

The Resolution thus proposed 'a loose federation not unlike the United States under the Articles of Confederation'. Such a "weak federal government" was evidently not to the liking of most of the members of the Assembly but they accepted it with a view to accommodating the Muslim League's point of view, as a sop to the Provinces with a Muslim majority. Purshotamdas Tandon, expressed the feelings of many others when he observed:

32. II Speeches & Documents, 577-84.
34. Constituent Assembly Debates (hereinafter cited as C.A.D.), Vol.1, Part 3, 67. It may be recalled that Muslim League did not participate in the Assembly deliberations.
There are many of us who are against giving residuary powers to the provinces. Personally, I would oppose the grant of residuary powers to the provinces in the best interests of the country, especially in view of the conditions prevalent in the provinces owing to the Hindu-Muslim problem. The Resolution, however, gives residuary powers to the provinces so that the Muslim League may not say that we have done in their absence as we pleased.

Sri Krishna Sinha, in the same tone, realised the need for a strong centre when he said: "India must have a centralized Republic." The framers of the Resolution, he also conceded had "taken care to take into account the feelings of our Muslim League friends." Equally emphatic was Dr. Ambedkar when he declared that as far as he was personally concerned, he would like to have a strong Centre, "stronger than 'the Centre we had created under the Government of India Act, 1935'". He, however, submitted that "these wishes have no bearing on the situation at all." Thus, with a lingering hope that the Muslim League might be persuaded to cooperate with the work of Constitution-making for a United India, in accepting a 'minimal' federation, the members of the Assembly were merely "making a virtue of a necessity."

The Union Powers Committee and the Union Constitution Committee constituted by the Assembly, limited, as they were, by the terms of the Cabinet Mission Plan 1946, worked on the basis of a 'weak federation' contained in the 'Objectives Resolution', till the announcement on June 3, 1947 of the Viceroy partitioning India into two. The First Report of the Union Power Committee,

35. Id. at 88.
36. Ibid.
37. Id. at 101.
39. This announcement scrapped the Cabinet Mission Plan and recommended the partition of British India into two States of India and Pakistan, each free, through its own Constituent Assembly, to frame for itself any kind of Constitution it wanted. II Speeches & Documents, 671-74, 1957.
thus, provided in general terms for a very weak central government.\textsuperscript{40} The Committee in its Second Report took note of the tremendous changes that followed the partition and stressed the fact that the Constituent Assembly was no longer bound by the limitations imposed by the Cabinet Mission's Plan 1946, on the form of government to be established under the Constitution so enacted.\textsuperscript{41}

Having been free from the shackles of the Cabinet Mission's Plan, the members of the Assembly saw no reason, why they should stick to the scheme of "a complete unadulterated federation,"\textsuperscript{42} contemplated in the Objective's Resolution and embodied in the First Report of the Union Powers Committee. The partition of the country and serious disorders following it, thus, caused the reconsideration of the federal scheme to be adopted for what remained of India.

The effect of this reconsideration was that the Union Powers Committee now recommended that "the Constitution should be a federal structure with a strong centre." The Committee unanimously expressed its view, thus\textsuperscript{43}:

\begin{quote}
it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere.... that the soundest framework for our Constitution is a Federation with a strong centre.
\end{quote}

The Provincial Constitution Committee, also took the question as to whether India should be a federation or a unitary

\textsuperscript{40}. First Report, Union Powers Committee, April 17, 1947. II Select Documents, 743-47.
\textsuperscript{41}. Second Report, Union Powers Committee, July 5, 1947. II Select Documents, 777.
\textsuperscript{42}. Speech by E.V. Pataskar, XI C.A.D., 670.
\textsuperscript{43}. Second Report, Union Powers Committee, II Select Documents, 777.
state. With a view that the question was of common interest to the Union Constitution Committee also, the former postponed its consideration, and proposed it to be discussed at a joint meeting of both these Committees. Though the joint meeting was held on June 7, 1947, but the subject was not taken for consideration, because, Mr. Nehru stated that the point had already been discussed by the Union Constitution Committee at its meeting the previous day and the conclusion arrived at was that the Constitution should be a federal structure with a strong centre. The conclusion, so placed, was accepted without any further debate at the joint meeting. 44

Although the Assembly was free, after June 3 Announcement, to frame either a unitary or a federal constitution for India, there were, however, practical considerations which fatted this freedom. The Union Powers Committee in its Second Report, thus, pointed out 45:

At the same time we are quite clear in our minds that there are many matters in which authority must lie solely with the units and that to frame a constitution on the basis of a unitary State would be a retrograde step, both politically and administratively.

The federal trend was, no doubt, deeply affected by the Partition, it could not, however, be reverted. Thus stated N.V. Gadgil 46:

In the course of the last hundred and fifty years and more particularly, in the course of the last fifty years, this country has been accustomed to certain political institutions and it was not possible to depart violently or substantially from

44. Minutes of the Joint Meeting, June 7, 1947, Id. at 608-9.
46. XI C.A.D., 657-58.
the political trends and tendencies already prevalent in the country. It was, therefore, clear that the nature of the State would be federal, a point on which there is perfect agreement between all parties in the country.

Not only the political development, the natural imperatives of "federalism in India" also remained operative, so did the influence of historical developments of the past few decades. It has already been noted that political, economic and geographical compulsion necessitated a close relationship between the Princely States and British Indian Provinces. But quite many Princes were determined to make things difficult for the country. They were not disposed to become completely integrated in a unitary polity and lose all their individuality. The efforts of the Negotiating Committee to prevail upon the Princes to participate in the task of the Assembly, were meeting only with partial success. They were, at the most, prepared to accede in only three subjects - external affairs, communication and defence. There was, therefore, at that juncture, no alternative to federalism if new India should be composed of both the Provinces and the territories of Indian States. A general debate, thus, under the prevailing circumstances could have served no great a purpose.

Another important factor, which impelled the Assembly to create a federal set-up, was the attitude of the new power-holders who had emerged in the Provinces after the Government of India Act, 1935 came into operation. Many prominent leaders in the Congress Party, which dominated the Assembly had tested the sweets of office when they formed their ministries and worked them

47. The Committee was appointed by the Constituent Assembly on December 21, 1946, to confer with the corresponding Committee set up by the Chamber of Princes and other representatives of the States. I Select Documents, 598; XI C.A.D., 657-58.

48. By 28 April, 1947, the representatives of only a few States had taken their seats in the Assembly. These were Baroda, Cochin, Udaipur, Jaipur, Jodhpur, Bikaner, Patiala and Rewa. III C.A.D., App. 'A', 383-86.
during the years 1937-39. These leaders were, thus, naturally averse to the establishment of a unitary system which would deprive them of opportunities for exercising power in their own rights. These leaders stood for shared and not concentrated power. The political fact of the existence of provincial autonomy which the ruling provincial elite were not prepared to abandon, constituted one of the factors behind the new federalism.  

Though "federalism" became the accepted creed in the Constituent Assembly, there were quite many members who put forward a strong plea in their defence for a unitary system. K.M. Panikkar, eminent historian and publicist, pointed out that the proposal to frame a federal Constitution for the country was fundamentally defective. He referred to the classical federations like the United States, where the trend was towards unitarism. He stated:  

Federation is a fair-weather constitution and in the circumstances of India, it is likely to be a dangerous experiment leaving the national government with but limited powers, weak and consequently incapable of dealing with national problems.

Brajeshwar Prasad, another exponent of unitarism carried the fight tooth and nail. His contention was that federalism was a conservative force entirely unsuited to the needs of the modern collectivism which demanded reforms of a radical character in all departments of life and that it would weaken the country as a military power and expose it to the attacks of the super power. He pointed out that under federalism semi-sovereign part states would come into existence and innumerable Pakistans would be established in the country.

49. The prolongists of this view included highly influential personalities like Govinda Ballabh Pant and B.S.Kher.  
Shri Prasad condemned both federalism and parliamentary democracy. P.S. Deshmukh, a critic of federalism, became so alarmed by the world situation, by the unstable conditions in India and by the need for greater cooperation between the Union and Provincial Governments, that he recommended the scrapping of the Draft Constitution (which provided for a federal pattern) in favour of unitary government. He pleaded that such a government would satisfy the need for uniform policies in the economic and financial fields and create more stable conditions in the country.53

However, the views of the unitarians like these could have but little bearing on the situation. It was felt that the advantages flowing from a unitary system could well be secured if the Constitution provided for "federation with a strong centre." It was over this aspect that there was a general agreement among the members of the Assembly ever since the very commencement of its deliberation. The Assembly thus addressed itself to create a strong centre within the federation. The constitutional experts were ready with the answer and found that such a system would require that as many subjects as possible should be brought within the jurisdiction of the Centre along with vesting it with residuary authority. The question was re-examined by the Union Powers Committee after the announcement of the Partition and it came out recommending that residuary powers should be located in the Centre. So far as the legislative, administrative and financial powers were concerned it took the Government of India Act as the model to be followed.

The Second Report of the Union Powers Committee was discussed in the Assembly but the debate remained inconclusive and the matter was referred to the Drafting Committee under the Chairmanship of Dr. B.R. Ambedkar. The Drafting Committee, further enlarged the scope of the Central authority. The distribution of legislative powers between the Union and the States was set down.

in three lists of the Seventh Schedule to the Draft Constitution.

In the field of administrative powers, the provisions of the Government of India Act 1935, were more or less, incorporated in the new Constitution. In addition to them and to further strengthen the Central authority, a new element was introduced empowering the President to assume to himself, any of the functions of the State Government, when he could declare, on the failure of a State Government to give effect to or comply with the directions given by the Centre, that the Government of the State was not being carried on in accordance with the Constitution. This attracted considerable opposition in the Assembly but all the same, it was incorporated in the Constitution.

The 'distribution of financial powers' is yet another proof of the fact that the concept of a strong centre had become an article of faith with the majority of members in the Constituent Assembly. In this respect also the Act of 1935 was almost taken as the model to be followed. Though it was felt that the units should have adequate finances to meet the demands for social services and the nation-building activists with which they were to deal, there was not much demand for the units being endowed with independent sources of revenues. There were raised not much objections to the more lucrative taxes being made over to the Centre. On the other hand, such allocation was a welcome for some of the members, at least for two reasons. That all the odium of resorting to burdensome taxation would fall on the Centre and not on the units. Further, that unless the Centre had large powers of taxation, it would not be in a position to transfer wealth from the richer to the poorer units.

Such was the federalism which emerged from the deliberations of the Constituent Assembly that many constitutional fundits were tempted to look on the Indian Constitution as a quasi-federal

55. For a detailed discussion on financial relations, please see Chapters V & VI, infra.
constitution, in the sense, a unitary constitution with subsidiary federal features rather than a federal constitution with subsidiary unitary features.\textsuperscript{56}

There were weighty reasons behind the creation of the centre-oriented federation in India. It was generally felt 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 governors and the establishment of independent kingdoms by them. If the newly won political freedom and unity were to be preserved, the majority in the Assembly realised that the Centre should be strong enough to defend the country against both external and internal disruption.\textsuperscript{57}

Not merely the lessons drawn from history, but also the contemporary situation with which the country was confronted during the period of its deliberations influenced the Constituent Assembly in creating a strong Centre. Pakistan's aggression against Kashmir and the problem of rehabilitating millions of refugees the partition brought along with it, the resulting communal riotings in several parts of the country, the breakdown of law and order, the intransigence of the Princely Rulers and the rebellion of the communists in Telangana, alarmed the members in the Assembly that the disruptive forces were still active tending to balkanize the country. Not the least, the economy was also in a state of disarray and famine conditionsloomed large over several parts of the country. Faced with a situation like this, the framers felt that only a strong Center could deal with it.

A strong Centre would be the need for the future not only to hold down divisive forces inherent in the country but also


\textsuperscript{57} K.K. Munshi's Speech. \textit{VIII C.A.D.}, 927.
to accomplish rapid nation-wide economic development. Many members in the Assembly contended that political freedom so achieved, should be used for building a new society, for rapid economic growth and for the provisions of social and welfare services. This could alone be accomplished by a strong Central Government who could take an all-India view of various matters, work out a comprehensive plan and command the resources required to execute it. G.I. Mehta vehemently declared:

We must also not forget the economic forces and strategic considerations today tend to invest the centre with large powers. If we want to organize economic development and social welfare as people organize for war, then the state of the future will have to be a positive state, it will have to be a social service state. It will require large finances; and more or less homogeneous economic conditions will have to be maintained in order to achieve these purposes.

Apart from the peculiar conditions of the country, the members of the Drafting Committee and some eminent political leaders in the Assembly, took note of the developments that had occurred in older federations of the world, which indicated the inevitability of a 'paramount' centre. The trend towards centralization in the classical federation of United States was pointed out on more than one occasion. Alladi Krishnaswami Ayyar stated:

In view of the complexity of industrial, trade, and financial conditions in the modern world, and the need for large scale defence programmes, there is an inevitable tendency in every federation in the direction of strengthening the federal government. The Draft Constitution in several of its provisions has taken note of these tendencies instead of leaving it to the Supreme Court to strengthen the Centre by a process of judicial interpretation.

59. VII C.A.D., 335.
There was thus an overwhelming sentiment in favour of a strong Centre.

All this does not mean that the Assembly was completely lacking in champions of 'State Autonomy'. There were several members there, who while broadly accepting the need for a strong Centre in the circumstances in which the country was placed, refused to accept it as contained in the Draft Constitution. They complained that it was a federal constitution that the Assembly 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'. They contended that the scheme of the Draft Constitution had whittled down the powers of the States considerably and that the Draft was in spirit a unitary form of government (and not a federal one), that was sought to be imposed on the country. The critics of over-centralisation pointed out that the Constitution should provide for a powerful centre but urged that the creation of such a centre should not involve an undue or excessive sacrifice of local autonomy, so as to result in annihilation of the federal principle. Thus stated K. Santhanam:

I too am anxious to have a strong Government for the country but my conception of the strength of the Centre is rather different from that embodied in the Union Powers Committee's Report. I do not want that the Central Government should be made responsible for every thing. The initial responsibility for the well-being of the people of the Provinces should rest with the Provincial Governments. It is only in strictly all-India matters that the Central Government should have responsibility and shall come into play. Therefore, the strength of the Centre consists not only in adequate powers in all-India matters but freedom from responsibility for those subjects which are not germane to all-India but which should really be in the Provincial field. It is in this positive as well as negative delimitation of powers that a real federal system rests.

According to Santhanam, a Centre with fewer powers would really be stronger than one with too many powers.

In spite of such criticism against a strong Centre, the Constitution which provided for it, received the approval of the Assembly. The framers were alive to the need of bestowing a substantial measure of autonomy on the units, but they were moved by the political and economic conditions obtaining in the country. The requirements of national solidarity and planned economic development thus strengthened their belief. K.K. Munshi reminded the Constituent Assembly:

The strength, the power and the unity of public life which India has developed, during the last one hundred years is mainly due to centralised administration of the country. I would warn the Members... to remember that one supreme fact in Indian history is that the glorious days of India, were only the days whether under the Mauryas or the Moghuls, when there was a strong central authority in the country, and the most tragic days were those when the central authority was dismembered by the provinces trying to resist it. We do not want to repeat that fatal mistake.

The result, naturally, was a federal Constitution providing for a Central Government, strong enough not only to take care of its own responsibilities but to guide and coordinate the activities of the Units, in a remarkable manner, allowing them, in normal times, to act independently "in a designated and by no means insignificant area of government."

It may thus be concluded that "Indian federalism" has come into existence not as a result of any a priori theory but out of the necessity created by special conditions obtaining in the country. Indian Federation is centrally-oriented, but the extent of central authority does not affect the federal principle so long as the Constitution designates, as the Indian Constitution

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62. VIII C.A.D., 927.
63. Bombwal, 274.
does, a well defined sphere, wherein under normal conditions, the units are legally free to act independently of central control. It is, however, a matter of common observation that political institutions do not necessarily operate in complete and strict conformity with the terms of the Constitution on which they are based. Same is true about Indian federal Constitution.