HISTORICAL INTRODUCTION

It is essential for a proper understanding of the Union-State relations under the Constitution of the Indian Republic that we should have an acquaintance with the more important among the Constitutional changes that have preceded the inauguration of our new Constitution. The Indian Constitution is a logical development, conditioned by India's history preceding its creation, from the Constitution established by the Government of India Act of 1935, the last important measure in a succession of Acts of the British Parliament creating machinery for the Government of India. It is, therefore, necessary to trace briefly the course of constitutional development from the factories established by the East India Company.

It is well to bear in mind that from the outset of British rule India had been divided into two parts under different forms of government: (a) British India, comprising a number of Provinces under direct British administration and (b) the Indian States which, broadly speaking, by treaty or usage, were autonomous as regards their domestic affairs but were under the 'suzerainty' of the Crown and its control of their external relations.

The British obtained their first foothold in India at the dawn of the Seventeenth Century when the East India Company, a trading concern, began its operations in the country. It was, however, not until the grant of the Diwani of Bengal, Bihar and Orissa by the Mughal Emperor Shah Alam in 1765 that the Company could be said to have acquired territorial sovereignty. When the Company began to undertake the responsibility of governance, the need of an effective system of Parliamentary supervision and control over the policy and the administration of the Company was keenly felt. The Regulating Act of 1773 was the first of a series of measures enacted by the British Parliament to prescribe and regulate the manner in which the conquered territory should be administered. The Act was a step in the direction of evolving a unified system of administration for the whole of India. It raised the status of the Governor of Calcutta to Governor General in Bengal and gave him power to superintend, direct and control the governments of all the Provinces. It also made provision for the establishment of a Supreme Court in Calcutta.

Pitt's India Act of 1784 had a two-fold effect on the Government of India. It created a department in England under the official style of "Commissioners for the Affairs of India," generally known as, the Board of Control, whose chief function was to control the policy of the Court of Directors. Pitt's measure thus established a dual system of Government by the Company and by a Parliamentary Board which lasted till 1858.
The Charter Act of 1833 introduced extensive changes in the constitution and functions of the Company. It declared that the territories in India were held by the Company in trust for His Majesty. It required the Company "to close their commercial business and to wind up their affairs with all convenient speed." The Company ceased to be a mercantile corporation. The Governor-General of Bengal was given the title of the Governor-General of India and his Council was enlarged by the addition of a fourth, a law member. The Governor-General-in-Council was empowered to make 'laws and regulations' for the whole of India and legislative functions were withdrawn from Bombay and Madras. The Act thus established legislative centralization. It brought into being an embryonic All-India Legislature. The former Acts had already brought the Presidencies of Bombay and Madras under the general superintendence and control of the Governor-General-in-Council thus creating a sort of administrative centralization.

The Indian Mutiny of 1857 brought the career of the Company to a close. The Mughal Emperor was deposed and his nominal sovereignty either passed to or assumed by the Crown. The India Act of 1858 transferred the government from the Company to the British Crown by its own servants. The Act created the office of the Secretary of State for India in England and transferred to the Secretary of State all the powers formerly exercised either by the Directors or the Board of Control. The Secretary of State was also provided with a 'Council of
India' consisting of fifteen members to assist and advise him in respect of Indian affairs. The Crown (the Parliament) became de jure as well as de facto sovereign of India.

Between the years 1858 and 1919 the administrative machinery in India remained substantially the same. But the legislative machinery was enlarged. Till 1858 the legislatures were glorified committees of the executives. By the Acts of 1861, 1892 and 1909 the representative principle was recognised by the admission of Indians to the legislative Councils in the Provinces and at the Centre. But the British statesmen emphatically asserted that this development was not intended to lead to parliamentary government as practised in Britain. Nevertheless, it is true that all these measures facilitated the introduction of responsible government.

Thus between 1861 and 1909 steps were taken to secure cooperation and consultation of the nominated representatives of the people. These reforms did not satisfy India's demand for political advancement. Meantime, the Indian Nationalist movement, which had begun with the birth of the Indian National Congress in 1885, had come to regard the constitutional development of the British self-governing colonies as the model for Indian advance. The Congress looked forward to acquiring the same kind of Parliamentary government as

   Keith: Speeches and Documents on Indian Policy, vol. 2.
existed in the Dominions and ultimately to the same status of equal partnership with Britain as the Dominions were then in the process of attaining. The events of the Great War and the services that India rendered during the period of conflict emphasized and strengthened the Indian demand for self-govern­ment. The announcement of E.S. Montagu, Secretary of State for India, on the 20th August, 1917 was inevitable. Montagu declared that "The Policy of His Majesty's Government with which the Government of India are in complete accord is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire." This policy was explained and elaborated in the 'Montagu-Chelmsford Report' which formed the basis of the Government of India Act of 1919 which became operative in April, 1921.

The essentials of the structure of the Indian Constitution before the Reforms of 1919 were characterized by (1) the concentration of authority at the Centre; (2) the control over the legislative functions exercised by the executive; (3) the ultimate responsibility of Parliament for the whole of Indian Government. It was a highly unitary and centralized administration. The Provincial governments were agents of the Central

government and under its legislative and executive control. The Indian States too were under the political and military pressure of the representatives of the British Crown acting under the guidance and control of the Governor-General.

The Government of India Act, 1919, transformed the structure of government into a quasi-federal type. The main provisions of the Act were: (1) It established a measure of Provincial autonomy by devolving authority in provincial matters on to the provincial governments and freeing them to a large extent from Central control. (2) It began the process of realizing responsible government in the provinces by dividing the field of government into two parts (dyarchy); while such vital subjects as law and order were 'reserved' to the control of the Governor and his executive councillors responsible as before to the Secretary of State and Parliament, the rest of the field was 'transferred' to Indian Ministers responsible to their provincial legislatures. (3) It converted the Central Legislative Council into a bi-cameral legislature for British India, directly elected for most part on a national or unitary basis. Dyarchy was not introduced at the Centre, the whole Executive remaining responsible to the Secretary of State and Parliament. (4) It created a Chamber of Princes representing the Rulers of Indian States for deliberative purposes. (5) It provided for the appointment of a Statutory Commission in ten years' time to consider the possibility of further extension of responsible government.
Although the constitution under the 1919 Act was quasi-federal, it was, in substance, unitary. The general supremacy of the Centre over the provinces was unquestioned. Subject to the prior approval of the Governor-General of the introduction of measures on subjects like public debt, defence, discipline of the armed forces, the relations with foreign powers and Indian States, the repeal of the existing laws and matters within the competence of the Provincial Legislatures, the Central Legislature could enact laws for the whole of India, for British subjects and servants of the Crown in India and for British Indian subjects outside India. Besides, the Governor-General exercised extraordinary powers over legislation. He could return any bill for further reconsideration or veto it or certify that it was essential to the safety and tranquility of the whole or any part of India. He could legislate by ordinance in an emergency. Furthermore, proposals for appropriation could be made only on the recommendations of the Governor-General.

The subjects delegated to the Provinces were divided into two classes: 'Reserved' and 'Transferred'. The Reserved subjects, Irrigation, European Education, Police, Land Revenue, Prisons, Provincial Loans etc, were under the exclusive control of the Governor and his Council. The transferred subjects, Local Self-Government, Indian Education, Public Health, Fisheries, Agriculture, Cooperative Societies etc, were under the control of the popular Ministers
who were selected by the Governor and responsible to the Provincial Legislature. In the reserved field the Governor and his Council were bound to obey the orders of the Centre.

The legislative powers of the Provincial Councils were purely subsidiary. Provincial Legislation could be overridden by Central legislation. Certain provincial enactments required the assent of the Governor-General as of the Governor. The Governor could legislate by ordinance and restore grants by his power of certification.

In matters of finance, before the Act of 1833 each Presidency was an independent unit. The Act brought about complete financial centralization in that it vested all financial powers in the Centre and required the revenues collected in the Provinces to be credited to the Central Government which made grants to the Provinces. In 1882, first steps in financial decentralization were taken. Certain heads of revenue were assigned to the Centre others were called divided heads as the net revenue collection under these heads were divided between the Centre and the Provinces. Until the 1919 Act was given effect to the Central sources of revenue were Customs, Railways, Posts and Telegraphs, Salt, Opium and Tributes from Indian States. The Provincial sources included Forests, Fees for Registration of Deeds. The Chief Divided Heads were Land Revenue, Stamps, Excise, Incometax and Profits from Irrigation works.
Upto 1919 the Provincial budgets were included in the Central Budget. The Provinces had no power to borrow. Their discretion in sanctioning expenditure was limited by codes of administrative instructions either from the Central Government or form the Secretary of State. The principle underlying the financial arrangements was that the Centre allotted to each Province what it thought was sufficient and appropriated the rest.

Under the Act of 1919 the most important question was the apportioning of revenue between the Centre and the Provinces, so as to ensure that each had adequate resources to perform the functions for which they were separately responsible. There was no apportionment of revenues within the province between the transferred and the reserved fields. There was some improvement in the position of the Provinces. Divided heads were abolished. Sources of revenue were divided between the Centre and the Provinces. The latter had to pay to the former annual contributions which were to be reduced progressively until they were totally abolished.

Prior to 1919 the Indian budget required the approval of the Secretary of State before presentation to the Legislature. The Act of 1919 gave the Indian Legislatures a degree of control through the Standing Committees and Committees of Public Accounts each of which had a majority of elected members. In the transferred field the hold of the Secretary of State continued, as regards certain matters.
In the reserved field it was considerably relaxed but not abolished. The Central budget still required his approval. The Provinces could borrow within India with the consent of the Centre and outside India with the sanction of the Secretary of State.

The Reforms of 1919 were regarded by an influential body of Indian public as halting and limited in scope. The hopes of 1919 were mostly disappointed. There was a renewed demand for a revision of the Government of India Act with a view to securing for India Dominion Status together with responsible government for the provinces, in the Indian Legislative Assembly. A re-examination of the whole Constitutional question was undertaken with the appointment of the Statutory Commission in 1927 under the Chairmanship of Sir John Simon. It ended with the passing of the Government of India Act, 1935. A group of Indian Leaders formed themselves into an All-party Conference and produced a report (the Nehru Report) in 1928 embodying proposals for the future Constitution of India. The Constitution as conceived by the All-party Conference was more unitary than federal. The Simon Commission gave its Report in 1930. Its recommendations were: (1) Provincial autonomy should be strengthened by further devolution from the Centre and by the extension of responsible government over the whole field of administration, including law and order. (2) No change in the Central Executive was needed but the Central Legislature was to be
reconstituted on a federal rather than a unitary basis, its members being indirectly elected by Provincial Legislatures. The establishment of an All-India Federation including the Indian States was relegated to the distant future. No reference was made to Dominion Status.

The rapid march of political events in India gave no opportunity for a proper appreciation of the Report of the Simon Commission on its merits. The British Government summoned in London a Round Table Conference of the representatives of different parties in England and in India and of the Indian Princes to consider the question of the Indian constitution. The Conference held three sessions in London in 1930, 1931 and 1932. In the light of the proceedings of the Conference the British Government formulated its proposals in a White Paper which was examined by a Joint Select Committee of both Houses of Parliament. Its report became the basis of a bill which became law in 1935 and came to be known as the Government of India Act, 1935.

According to the Joint Committee on Indian constitutional Reforms "notwithstanding the measure of devolution in the Provincial authorities which was the outcome of the Act of 1919, the Government of India is and remains in essence a unitary and centralized Government, with the Governor-General in Council as the keystone of the whole constitutional edifice; and it is through the Governor-General in Council that the Secretary of State and ultimately Parliament discharge their
responsibilities for peace, order and good government of India. 7


The chief provisions of the Government of India Act, 1935 were: (1) It completed the development of Provincial Autonomy by conferring on the Provinces a separate legal personality and liberating them entirely from the Central control except for certain specific purposes. (2) It established complete responsible government subject to some safeguards in all the Provinces which numbered eleven, with the new Provinces of Sind and Orissa. (3) It envisaged the "federation of India," comprising both Provinces and States, with a Federal Central Executive and Legislature for the management of central subjects. (4) Dyarchy, dethroned in the Provinces was enthroned at the Centre. Foreign Affairs and Defence were 'reserved' subjects under the control of the Governor-General, the other subjects were transferred to Ministers subject to similar safeguards as in the Provinces. (5) The federal principle was recognised but in general the Constitution was more unitary than federal. (6) It confirmed the policy of 1917. It confirmed and extended Parliamentary government in the Provinces and introduced it at the Centre.

As the federal part of the Act was not to operate

until a specified number of States had acceded to it, it there
never came into operation. But were important developments
in the Provinces which became autonomous as a result of the
Act.

The Act of 1935 brought about a complete and clear-cut division of legislative powers between the Centre and the Provinces. It enumerated separately and exhaustively the powers of the Federal Centre, the powers of the Provinces and Concurrent Powers, in three separate lists. The form and content of the Lists reflected the attempt to compromise the conflicting views of non-Muslims who desired the Canadian way of division of powers i.e., making the Centre strong and defining the powers of the units, and of the Muslims who advocated the maximum possible powers to the units. The residuary powers were to be allotted either to the Centre or to the units by the Governor-General in his discretion.

Although the Act envisaged a federal structure, the unitary control was retained by the British Parliament as represented by the Governor-General.

Provincial autonomy was hedged around with many restrictions and diluted by the special responsibilities of the Governor.

The executive authority of the Province was to be exercised by the Governor, with some exceptions, on the advice of the Council of Ministers. But in matters in respect
of which he had special responsibilities, he was not obliged to consult his Ministers. He could act in his individual judgment. Matters for which the Governor had a special responsibility related to the prevention of grave menace to the peace of the Province, the protection of the interests of minorities, the rights of public services and of the Rulers of States, the execution of Governor's orders and the prevention of discrimination against British trade. In other matters the Governor could act in his discretion, i.e., although he was obliged to consult his Ministers, he was not bound to accept their advice. Thus in a sense, dyarchy continued, in an undefined way, in the Provincial field.

The provincial legislative field was extensive but subject to severe restrictions. The Governor could return a Bill for reconsideration or veto it or reserve it for the consideration of the Governor-General. The previous sanction of the Governor-General was essential to the introduction of any Bill which affected an Act of the British Parliament, the Governor-General's legislation, the criminal procedure Code in respect of Europeans. Similarly the prior sanction of the Governor was necessary, in the case of bills repugnant to a Governor's Act or Ordinance. The Governor could stay the proceedings of any Bill before or after its introduction on a certificate that it or any proposed amendment to it affected the discharge of his special responsibilities.
The Governor had some legislative powers. He could legislate by Ordinance or pass an Act called the Governor's Act. If circumstances made it impossible to work the Constitution, the Governor could assume the powers of any organ of Government other than those of the High Court. In respect of finance, he could restore a rejected demand by his power of certification.

As noted earlier certain classes of Bills could not be introduced in the provincial legislatures without the previous sanction of the Governor-General. The Central Legislature, too, suffered under similar restrictions.

The outbreak of the Second World War and the strengthening forces of Indian nationalism led to the collapse of even the Provincial part of the Act. The various amendments necessitated by the prevailing state of emergency tightened the Central grip over the Provinces. The Governor-General's power to legislate by ordinance retained in the Act normally affected the subjects within the Centre's competence. But the Act provided that in the event of the promulgation of a state of emergency the power to legislate by ordinance extended even to provincial subjects.

The Act also effected a division of the sources of revenue between the Centre and the units. Revenue from subjects on the Provincial and Concurrent Lists were given to the Provinces. The Provinces also received net receipts from terminal taxes, death duties and stamps which were on
the Central List. Out of the proceeds of duties on salt, excise and export duties, the Federal Legislature could, but did not, make contributions to the provinces. Sixtytwo and a half percent of the export duty on jute was allotted by an Order-in-Council to the jute-producing provinces. The Provinces were also receive a share of the income tax fixed at 50% by an Order-in-Council.

The Indian States.

Something must be said about the parts of India other than British India known as the Indian States. These were more or less independent or semi-independent hereditary rulers or Princes each governing his territory under the suzerainty of the British Crown. In 1935, there were over 562 states with areas ranging from 85,000 to 49 square miles. They were, as the Montagu-Chelmsford Report described, in all stages of development, patriarchal, feudal, or more advanced while in a few States were found the beginnings of representative institutions. "The characteristic features of all of them, however, including the most advanced are," the Report adds, "the personal rule of the Prince and his control over legislation and the administration of justice."

The relation between the Crown and the States was termed Paramountcy while that between the Crown and the Government of British India was called sovereignty. The States had no international status. The Paramount Power controlled foreign affairs, maritime rights, etc. Few States had separate
postal service and few could strike their own coinage. Some paid tribute. In some were stationed the troops of the Central Government in cantonments which had been ceded.

The internal affairs were, with some restriction, in the hands of the Rulers themselves. There was a Resident in each State to 'advise' the Ruler and report to the Viceroy. The States were prohibited from negotiating with the Crown directly and on an equal footing as was made perfectly clear by Lord Reading's letter to the Nizam of Hyderabad in 1926. The Paramount Power could effectively interfere in the internal affairs of any State in the name of good government and security of the State. It resolved disputes between the States. Its approval was necessary to validate successions to the throne. The regency and the education of a minor heir were determined by it. The Paramount Power could depose a Ruler or curtail his powers.

The Rulers had few opportunities for exchange of ideas among them until the establishment of a Chamber of Princes on the recommendation of the Montagu-Chelmsford Report. The Chamber was not an executive but a deliberative, consultative and advisory body. The rights of individual Rulers and the internal affairs of a State were outside its province. The sessions of the Chamber were irregular and attendance at them was poor.
The Princes had been unhappy over the exercise of paramountcy whose scope was undefined. They also resented the 'advice' tendered them by the Resident. They wanted their relationship with the Crown to be defined as precisely as possible. In 1927, at the request of the Princes, the Indian States Committee under the Chairmanship of Sir Harcourt Butler was appointed to inquire into and report upon the nature of the relationship between the Princes and the Crown. The Committee opined that the Viceroy and not the Governor-General should deal with the States as the relationship of the latter was with the Crown and not with the Government of India, a recommendation which was given effect to in the Government of India Act of 1935 and that the relationship between the Paramount Power and the Princes should not be changed without their consent or transferred to a new Central Government responsible to the Indian Legislature. The Committee also confirmed the view that the rights of the Princes, as set out in their treaties, sanads and engagements, had been modified by the practice of the Political Department. It did not define the scope of paramountcy. It simply concluded that "paramountcy must remain paramount." The findings of the Butler Committee did not evoke any enthusiasm among the Princes.

During the sessions of the Round Table Conference the Princes were generally in favour of the principle of an All-India Federation. An All-India federation, they thought,
would entitle them to be heard on all-India questions, provide 'constitutional safeguards' for their interests and also compel a redefinition of paramountcy. As the Princes were disappointed on the last point, they withdrew their support and decided not to join the proposed federation during the British period.

Under the 1935 Act, the position of a federating State was not the same as that of a British Indian Province. While the Executive and Legislative powers of a Province were defined by the Act, the States could accede to the federation on the execution by the Ruler of an Instrument of Accession specifying the matters over which sovereignty was surrendered. The States had to surrender power over a substantial number of subjects though these might differ between different States. The representatives of the Provinces were elected and those of the States were the Rulers' nominees. There were important fiscal and economic differences between States and Provinces. Compared with the latter the former enjoyed many special privileges. The federation was a curious combination of autocracy and democracy. The scheme was likened by Meston to the 'mixing of oil with water.'

The Act of 1935 was federal in form but unitary in spirit. The Governor-General acting under the direction of the British Parliament and also as the Crown Representative, acting himself or through his Governors, Agents-General and Residents, had ample powers of superintendence, direction
and control of the machinery of government. These ultimate powers were retained for various reasons and among them: (a) a determination on the part of Britain not to part with power relating to essential matters like Defence and Foreign Affairs; (b) the desire on her part to retain ultimate control of the administration in the British Parliament; (c) the desire of the Princes to bring their States into a federation but without impairing their separate existence or losing the benefit of British support to their federal rule against the forces of Indian nationalism; and (d) the fear on the part of Britain if there was no strong and homogeneous centre.

In March 1942 the British Government sent Sir Stafford Cripps to India with a Draft Declaration of British Policy towards India after the war. The Cripps offer did not contemplate the immediate establishment of a responsible national government at the Centre. It was finally rejected by almost all the Indian Political Parties for different reasons. The political stalemate continued. In March 1946 the British Labour Government sent a Cabinet Mission of three members to discuss the Indian problem with Indian leaders and help in setting up a suitable machinery for framing a constitution for India. It may be noted that the right of Indians to frame their own constitution was recognised by the British Government in 1940. As no agreement seemed possible between the Congress and the Muslim League the Mission, as a sort of compromise, formulated certain basic principles upon which the

1 K. M. Munshi, The Hindustan Review, September 1950, P. 1
future Constitution of India should be framed and recommended the setting up of a Constituent Assembly for the purpose. The Mission's proposals were not accepted by the League. The League's determination to create Pakistan and the Nationalists' ambition to preserve the unity of India were incompatible. Hence Partition of India became inevitable and was accepted by the Congress and the League.


In July 1947, the Indian Independence Act was passed by the British Parliament. The new Dominions, India and Pakistan, came into existence on 15 August 1947. Until the new constitution came into operation India was governed by the 1935 Act with certain essential modifications. The 'safeguards' and provisions relating to the discretion and independent judgment of the Governor-General were swept away along with his power to reserve bills for the consideration of the Crown. The British Government relinquished all responsibility for the government of India. The office of the Secretary of State was abolished.

The powers of the Federal Legislatures were exercised by the Constituent Assembly which sat since December 1946. The Constituent Assembly, in addition to its main business of evolving a constitution, legislated on Central subjects and exercised the power to amend the 1935 Act.

An important consequence of the Indian Independence
Act was that Paramountcy over the States lapsed, and with it all treaties, engagements and sanads between the Rulers and the Crown except those affecting customs and communications which were to continue until denounced by the Ruler of superseded by fresh agreement with the Government of India. Some Rulers asserted their independence against the advice of Lord Louis Mountbatten to accede to one or other of the Dominions. The Constituent Assembly approved an Instrument of Accession requiring as a minimum, surrender of sovereignty over defence, foreign affairs and communications. Thanks to the bold and far-sighted policy of the late Sardar Patel, who presided over the Ministry of States, rapid progress was made in the attachment of States to Provinces and the amalgamation of States into unions. Some States were converted into Chief Commissioners' Provinces. Some States were allowed to continue as individual units. All the States were brought within the framework of the new Constitution.

It was against this background that the new Constitution was evolved. The Framers naturally decided to build the new constitutional structure firmly on the foundations of the Government of India Act, 1935 thus preserving the continuity in the Constitutional development of India.